

**Review of the June 18, 2017 Actions  
of Professor Johnny Williams and College Policy**

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## 1. Purpose and Scope of Review

I have been asked as Dean of the Faculty by President Berger-Sweeney to conduct a review of the June 18, 2017 words and actions of Professor Johnny Williams, a tenured Professor of Sociology and scholar of race and racism employed by Trinity College, and determine whether or not they contravened College policy. Such a review necessitates delineating his words and actions, listing College policies that may have been contravened, and coming to a conclusion as to whether the words and actions of Professor Williams have contravened them.

## 2. The Words and Actions Under Review

On June 18, 2017 at 9:27pm in a post on his personal (not Trinity) Facebook page<sup>1</sup> Professor Williams wrote:

*It is past time for the racially oppressed to do what people who believe themselves to be “white” will not do, put end [sic] to the vectors of their destructive mythology of whiteness and their white supremacy system.  
#LetThemFuckingDie*

On June 18, 2017 at 9:36pm in a second Facebook post Professor Williams wrote:

*I’m fed the fuck up with self identified “white’s” daily violence directed at immigrants, Muslim and sexual [sic] and racially oppressed people. The time is now to confront these inhuman assholes and end this now.*

Several days earlier Professor Williams had also shared an online article from *Medium* by “Son of Baldwin”.<sup>2</sup> The article, entitled “Let Them Fucking Die” included an embedded article from *Fusion* titled “Bigoted Homophobe Steve Scalise’s Life Was Saved by a Queer Black Woman.”<sup>3</sup> This article referred to the fact that Steve Scalise, a congressman who is rumored to have spoken at a meeting of white supremacists and has opposed extending legal protections to LGBTQ people, was protected and possibly saved by a black lesbian police officer during a recent shooting at a Republican party softball practice. Williams used the title of the “Son of Baldwin” article as a hashtag in his first Facebook post on June 18. Professor Williams claims that the hashtag was used frequently on “Black Twitter”<sup>4</sup> to engage in discussion of the race

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<sup>1</sup> Facebook is a social media site and is a public forum that is designed to encourage interaction.

<sup>2</sup> Personal communication with Professor Williams, 7/6/17

<sup>3</sup> <https://medium.com/@SonofBaldwin/let-them-fucking-die-c316eee34212> (accessed 7/3/17)

<sup>4</sup> A collective of primarily African-American activists focused on issues of interest to the black community.

relations issues that are central to the article with that title.<sup>5</sup> Son of Baldwin's commentary argued that various marginalized people should not come to the aid of "bigots"<sup>6</sup> should they be in distress. He argued that such bigots had not come to the aid of black people in similar circumstances historically and in recent years.

The language of the article was extremely provocative, listing a litany of instances in which the readers might decline to provide aid to bigots.

If you see them drowning.  
If you see them in a burning building.  
If they are teetering on the edge of a cliff.  
If their ships are sinking.  
If their planes are crashing.  
If their cars are skidding.  
If they are overdosing.  
If their hearts have tellingly arrested.  
If they are choking in a restaurant.  
If they are bleeding out in an emergency room.  
If the ground is crumbling beneath them.  
If they are in a park and they turn their weapons on each other:  
Do nothing.  
*"If you see them walking down the street and they start to cry, each time you meet, walk on by."*  
Least of all put your life on the line for theirs, and do not dare think doing so, putting your life on the line for theirs, gives you reason or cause to feel celestial.<sup>7</sup>

On June 20<sup>th</sup> 2017, *Campus Reform*<sup>8</sup> wrote about Professor Williams' posts. This is a website focused on what it claims are incidents of liberal bias in American higher education. It has the aims of changing college policies and promoting the firing of professors with whom it does not agree. According to reporting in the *Chronicle of Higher Education* It considers such actions that result from its reporting as "victories".<sup>9</sup> The article in *Campus Reform* reported that Professor Williams "appeared to endorse the idea that first responders to last week's congressional shooting should have let victims "fucking die" because they are white." It also suggested through editing that Professor Williams was proposing killing white people.

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<sup>5</sup> Personal communication with Professor Williams, 7/6/17

<sup>6</sup> In the essay the word "bigots" is qualified in the following way "white/cisgender/heterosexuals who practice bigotry (or do not believe they practice bigotry even when they do)."

<sup>7</sup> <https://medium.com/@SonofBaldwin/let-them-fucking-die-c316eee34212> (accessed 7/4/17)

<sup>8</sup> <https://www.campusreform.org/?ID=9334> (accessed 7/3/17)

<sup>9</sup> Schmidt, Peter (2015) "Higher Education's Internet Outrage Machine" *The Chronicle of Higher Education*, 8 September

Many of the responses to these events conflate Williams with the author Son of Baldwin. No evidence supports this attribution. Without clear reference to Professor Williams' original words and actions, others have repeated *Campus Reform's* suggestion that Williams endorsed allowing Scalise and others to die and encouraged violence against white people.

In an apology following these events Professor Williams gave his own interpretation of what he meant in his Facebook messages:

"I regret that the hashtag that I quoted from the title of an article was misinterpreted and mis-perceived as inciting violence and calling for the death of 'white' people."

"I never intended to invite or incite violence. My only aim was to bring awareness to white supremacy and to inspire others to address these kinds of injustices."<sup>10</sup>

### **3. Relevant Policies in the Trinity College Faculty Manual**

The Trinity College Faculty Manual "defines the instruments by which the Faculty conducts its own business, participates in College-wide governance, and defends its rights, prerogatives, and interests."<sup>11</sup> The important sections of the Faculty Manual relevant to this review are Appendix B.1 *Policy Statement on Academic Freedom*, Appendix B.3 *Non-Discrimination at Trinity College* and Appendix B.5 *Statement in Professional Ethics*.

#### 3.1 Academic Freedom

"Academic freedom" in North America is a concept with roots in German higher education but with specific American flavor, recognizing that American academics, unlike their German counterparts, are not direct employees of the state. Academic freedom is believed necessary to allow faculty to perform as scholars and teachers without undue interference from their employers, the state, donors, or public opinion. Faculty are supposed to be able to conduct their teaching and research without fear, reprimand, or punishment for their beliefs and actions. Without these freedoms, it is believed, faculty would not properly serve as faculty – "the freedom of individual faculty members against control of thought or utterance from either within or

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<sup>10</sup> Cited in Megan, Kathy "Trinity Professor Flees Campus After Threats Over Facebook Comments, Issues Public Apology" *Hartford Courant* June 22, 2017 <http://www.courant.com/education/hc-trinity-williams-facebook-furor-20170622-story.html> (last accessed 7/6/17). This version of events was confirmed in a conversation with Professor Williams on 7/6/17.

<sup>11</sup> Faculty Manual/2016 page i

without the employing institution remains the core of the matter.”<sup>12</sup> A key role of academic freedom is to prevent academic thought from simply conforming to some orthodoxy – particularly orthodoxy imposed by public opinion.

Academic freedom was confirmed in the Supreme Court of the United States as a special part of the First Amendment in the case of *Sweezy v. New Hampshire* in 1957.<sup>13</sup> In a plurality opinion, Chief Justice Warren wrote:

The essentiality of freedom in the community of American universities is almost self-evident. No-one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leadership in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.<sup>14</sup>

Trinity College policy on academic freedom closely reflects the American Association of University Professors (AAUP) definition of academic freedom. It is also the case that our accreditation body, the New England Association of Schools and Colleges (NEASC) includes attention of academic freedom as one of its standards.<sup>15</sup> On the issue of academic freedom, the Trinity College Faculty Manual reads as follows:

#### Appendix B.1: Policy Statement on Academic Freedom

The 1940 Statement of Principles on Academic Freedom and Tenure of the American Association of University Professors is a satisfactory expression of the College’s position on academic freedom. The College’s own statement on academic tenure and related policies, adapted from the A.A.U.P. guidelines, is contained in “The Amended 1969

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<sup>12</sup> Fuchs, Ralph F. (1997) “Academic Freedom – Its Basic Philosophy, Function, and History” in Richard T. De George (ed) *Academic Freedom and Tenure: Ethical Issues* (Rowman and Littlefield), p.137.

<sup>13</sup> 354 U.S. 234 (1957).

<sup>14</sup> Cited in Post, Robert C. (2012) *Democracy, Expertise, and Academic Freedom* (Yale University Press) p.70.

<sup>15</sup> Standard 6.3 states “The institution protects and fosters academic freedom for all faculty regardless of rank or term of appointment.

<https://cihe.neasc.org/standards-policies/standards-accreditation/standards-effective-july-1-2016> (accessed 7/4/17).

Statement on Faculty Appointments, Reappointments, Promotions, and Tenure” printed in this Manual. The relevant portions of the 1940 A.A.U.P. Statement are:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends: specifically, (1) freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic freedom:

The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his/her other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

The teacher is entitled to freedom in the classroom in discussing his/her subject, but should be careful not to introduce into his/her teaching controversial matter that has no relation to the subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

*The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline, but his/her special position in the community imposes special obligations. As a person of learning and an educational officer, he/she should remember that the public may judge his/her profession and institution by his/her utterances. Hence he/she should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he/she is not an institutional spokesperson.*

Louis Joughin (ed.), *Academic Freedom and Tenure* (Madison: The University of Wisconsin Press, 1967), pp. 34-36 (emphasis added).

This makes clear that the source of authority for Trinity's policies on academic freedom is the 1940 Statement of Principles on Academic Freedom and Tenure. The 1940 *Statement* was jointly formulated by AAUP and a leading organization of administrators, the Association of American Colleges. The *Statement* is the norm for higher education in the United States and has been endorsed by over 250 scholarly organizations. The 1940 *Statement* refers to three realms in which the concept of academic freedom applies: research, teaching, and extramural activities. The relevant realm for Professor Williams' words and actions is the realm of extramural activities (the section emphasized above). The history of the 1940 Statement of Principles on Academic Freedom is worth rehearsing.<sup>16</sup> Extramural activities were first covered by the AAUP's 1915 *Declaration of Principles*.

In their extramural utterances, it is obvious that academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression. But, subject to these restraints, it is not, in this committee's opinion, desirable that scholars should be barred from giving expression to their judgements upon controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialties. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest. And, speaking broadly, it may be said in the words of a nonacademic body already once quoted in a publication of the Association, that "it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen."<sup>17</sup>

Over time the defense of academic freedom in extramural activities was strengthened. In the 1940 *Statement* the language is less ambiguous. This is the language highlighted above from the Faculty Manual. Following the case of the dismissal of a Professor of Biology at the University of Illinois in 1960 for offending public morals and values (see Appendix A), the AAUP position was further clarified in 1970 in a joint interpretation with the Association of American Colleges (AAC) that continued to remove any qualifiers.

The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty members fitness for the position.<sup>18</sup>

In its successive statements the AAUP has distinguished the protections afforded to extramural speech from the issue of academic freedom in research. A scholar does not have to be speaking externally about an issue related to their research to be protected. In Professor Williams' case,

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<sup>16</sup> The following account is drawn from Chapter Six of *For the Common Good: Principles of American Academic Freedom* by Matthew W. Finkin and Robert Post (Yale University Press, 2011).

<sup>17</sup> AAUP 1915 *Declaration* in *For the Common Good* (Kindle edition location 1059)

<sup>18</sup> Cited in *For the Common Good* (Kindle edition location 1077)

however, there clearly is a close connection between his research on the social construction of “race” and his Facebook comments. Regardless, the relationship between higher education institutions and what their faculty employees say cannot easily rest on whether or not an extramural utterance draws on their professional expertise. One way for colleges to deal with extramural utterances is thus to completely dissociate from them. The AAUP-AAC perspective described in the 1970 interpretation of the 1940 *Statement* is that institutions of higher education can only protect research by not accepting any responsibility for other statements by faculty regardless of the relationship between their utterances and their scholarly interests.<sup>19</sup> This argument was not new in 1970 and had been clearly stated by Abbot Lawrence Lowell, President of Harvard (1909-1933) and legal scholar.

If a university or college censors what its professors may say, if it restrains them from uttering something that it does not approve, it thereby assumes responsibility for that

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<sup>19</sup> It is unclear whether or not Trinity Policy incorporates the 1970 interpretation of the 1940 *Statement*. The Faculty Manual states that the source of authority for its Statement on Academic Freedom is the 1940 *Statement*, the original text of which is repeated (in slightly modified form). On the AAUP’s own website the 1940 *Statement* includes footnotes that lead the reader to the 1970 interpretation. The interpretation does not change the original text but provides what it considers an authoritative interpretation the text’s meaning. This review considers both the original text from 1940 as it appears in the Faculty Manual and the 1970 interpretation. The footnote that appears in the 1940 *Statement* – but is missing from the Faculty Manual – reads:

Fourth 1970 comment: This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 “Statement” immediately following its endorsement:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher’s fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 “Statement” should also be interpreted in keeping with the 1964 “Committee A Statement on Extramural Utterances,” Policy Documents and Reports, 31, which states inter alia: “The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position. Extramural utterances rarely bear upon the faculty member’s fitness for the position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.”

which it permits them to say. This is logical and inevitable, but it is a responsibility which an institution of learning would be unwise in assuming.... If a university is right in restraining its professors, it has a duty to do so, and it is responsible for whatever it permits. There is no middle ground. Either the university assumes full responsibility for permitting its professors to express certain opinions in public, or it assumes no responsibility whatever, and leaves them to be dealt with like other citizens by the public authorities according to the laws of the land.<sup>20</sup>

This line of reasoning is prudent for institutions of higher education and simply disconnects them from the extramural utterances of their faculty. If faculty members break a law, then the relevant authorities will prosecute them. In *For the Common Good*, Finkin and Post describe a third, stronger reason for the application of academic freedom to extramural utterances. They describe it as a “prophylactic protection for freedom of research and freedom of teaching.”<sup>21</sup> It is impossible, they observe, to separate the freedom faculty require in the classroom and in their research from the rest of their lives. If faculty are always in a state of doubt about whether or not their extramural activities are protected or unprotected, they will lack the confidence in their institution that is necessary to conduct teaching and research freely and without self-censorship. “To suppress extramural speech would thus create an atmosphere of repression inconsistent with the climate of trust and autonomy necessary for faculty to contribute optimally to the mission of higher education.”<sup>22</sup> According to Finkin and Post, this final explanation is the one that judges most often use to in protecting the speech and actions of faculty. This general and broad ranging defense of academic freedom in public utterances outside of the classroom and research is supported by a review authored by the general counsel of the City University of New York.

At both private and public institutions of higher education, academic freedom should continue to protect speech in which faculty speak as citizens on matters of public concern. Although not directly related to the primary rationale for academic freedom, such freedom of expression is part of a long and valued tradition of universities as places committed to wide-ranging debate on such matters. There is no good reason why any faculty, whether at private or public universities, should be subject to reprisals because colleagues, administrators, alumni or politicians take umbrage at the expression of views on subjects of public concern.<sup>23</sup>

So what limits are there to academic freedom in extramural utterances? A key term in the 1970 interpretation of the AAUP-AAC approach to academic freedom is the concept of “fitness” and, conversely, “unfitness.” The limits to what constitutes academic freedom are set extremely broadly to avoid any atmosphere of repression that might impede the proper conduct of teaching

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<sup>20</sup> Cited in *For the Common Good* (Kindle edition location 1129)

<sup>21</sup> Cited in *For the Common Good* (Kindle edition location 1148)

<sup>22</sup> *For the Common Good* (Kindle edition location 1148)

<sup>23</sup> Schaffer, Frederick P. 2012 *A Guide to Academic Freedom*

[http://www1.cuny.edu/mu/vc\\_la/2012/01/02/a-guide-to-academic-freedom/#ftn75](http://www1.cuny.edu/mu/vc_la/2012/01/02/a-guide-to-academic-freedom/#ftn75) (accessed 7/1/17)

and research. The limit is activity that conveys “unfitness” for the position. Unfitness has the specific meaning of not conforming to the requirements of the faculty member to perform their functions as a teacher and scholar. More precisely, it refers to their academic competence to teach and conduct scholarship in their chosen fields. Such a judgment should be primarily made by faculty associated with the discipline in question, not administrators or trustees.<sup>24</sup> Another limit to academic freedom in public utterances is utterances that violate federal, state, or local law. Defamation is one example. Of greater relevance for present purposes is the exception for “fighting words” where the words are connected to a clear and present threat of an illegal act that is likely to happen. We will explore these concepts as we address the application of these protections and limits to the case of Professor Williams.

### 3.1.2 Academic Freedom and the Extramural Utterances of Professor Williams.

Before considering the applicability of Trinity College’s policy on Academic Freedom, itself derived from the 1940 *Statement*, let us examine the content of Professor Williams’ messages in more depth.

*It is past time for the racially oppressed to do what people who believe themselves to be “white” will not do, put end to the vectors of their destructive mythology of whiteness and their white supremacy system.*

*#LetThemFuckingDie*

Professor Williams appears to be arguing that people who consider themselves to be “racially oppressed” need to act in such a way that they “put [an] end” to something he calls “vectors” of a mythology and system of whiteness and white supremacy. The word “vectors” in the sentence is vague and could lead some to regard individual people as “vectors” of “the destructive mythology of whiteness” and the “white supremacy system.” But this is certainly not the only likely candidate. The word vector has two common meanings, both of which are possible. The first is an abstract idea of something with characteristics of direction and magnitude that links two points in space. Such a vector may commonly be represented by an arrow. It is possible that such a meaning could be used metaphorically to refer to the general scope and historical direction of the mythology and system Williams writes of. So this would imply putting an end to all the factors that are behind the magnitude and direction of the “mythology of whiteness and their white supremacy system.”

The second, more troubling meaning of “vector” is an organism that carries disease and aids in its spread. This would suggest, metaphorically, that the “racially oppressed” need to end individual organisms which could be thought of as humans. Even with this meaning, however, “vectors” could refer metaphorically to things other than individual humans – it could refer, for instance, to

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<sup>24</sup> On the situation of Professor Williams, the professional body of the discipline of sociology, the American Sociological Association, has released a statement of support for him that was also signed on to by the *American Philosophical Association*. <http://www.asanet.org/news-events/asa-news/asa-statement-events-trinity-college> (accessed 6/30/17).

the media, the legal system, or even aspects of higher education. The terms “mythology of whiteness” and “white supremacy system” are, of course, contentious but are certainly supported by much scholarship in race theory, including Williams’ own work, as components in systematically asymmetrical power relations between “white” people and others.<sup>25</sup> Professor Williams has clearly stated that he meant that he wanted an end to the system of white supremacy.<sup>26</sup>

One of the most troubling aspects of the first message is the use of hashtag “#LetThemFuckingDie” at the end of the message – a reference to the article *Let Them Fucking Die* by Son of Baldwin. It is instructive to review what function a hashtag serves in social media. It is usually associated with Twitter and not with Facebook, but many social media users recognize its meaning across platforms. Its use is defined on Twitter’s website.

#### Using hashtags to categorize Tweets by keyword:

- People use the hashtag symbol (#) before a relevant keyword or phrase in their Tweet to categorize those Tweets and help them show more easily in Twitter search.
- Clicking or tapping on a hashtagged word in any message shows you other Tweets that include that hashtag.
- Hashtags can be included anywhere in a Tweet.
- Hashtagged words that become very popular are often [Trending Topics](#).<sup>27</sup>

The use of the hashtag symbol, then, is not necessarily an endorsement or sign of approval – its foremost purpose is to allow people to become part of a conversation and makes it easier for other users to find comments on social media. It links one social media event to others thematically and increases the likelihood that the message will be read by those with similar interests.<sup>28</sup> While this is the original purpose of hashtags, some people may use them in other ways. It would be reasonable for some readers to interpret # LetThemFuckingDie as an endorsement of either the article or a course of action and its use by Professor Williams reflects poor judgment in the current political climate.

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<sup>25</sup> For example, see Berger, Maurice (2000) *White Lies: Race and the Myths of Whiteness* (Farrar, Straus and Giroux); Allen, Theodore ([1994, 1997] 2012) *The Invention of the White Race* (2 volumes) (Verso); Williams, Johnny E. (2016) *Decoding Racial Ideology in Genomics* (Lexington).

<sup>26</sup> Personal communication with Professor Williams 7/6/17.

<sup>27</sup> <https://support.twitter.com/articles/49309> (accessed 6/29/17)

<sup>28</sup> While the hashtag #LetThemFuckingDie has not been widely used except in response to Professor Williams’ messages, it does reflect the hashtag #LetThemDie which was trending in summer 2017 among critics of Republican healthcare plans.

Now let us consider the second message:

*I'm fed the fuck up with self identified "white's" daily violence directed at immigrants, Muslim and sexual and racially oppressed people. The time is now to confront these inhuman assholes and end this now.*

This message follows the logic of the first message suggesting that Professor Williams is reacting to regular acts of violence directed against variously identified social groups by "self-identified whites." Williams' use of quotes around "whites" is consistent with scholarship that seeks to question and undermine any natural or biological basis for whiteness or, indeed, race in general.<sup>29</sup> The second part of the message argues, in a similar way to the first message, that it is time to end "this" by, at least in part, confronting "these inhuman assholes." While it is clear that the process of ending "daily violence" involves a confrontation with those he labels "inhuman assholes," this cannot easily be conflated with what it is that Williams is seeking to "end." What is the antecedent of "this?" The strongest interpretation is that Williams seeks an end to the "daily violence," and not to the "inhuman assholes." If the latter were the case, the appropriate word would be "them."

We continue the close examination. The people labelled "inhuman assholes" are those who inflict "daily violence" against immigrants and others. Williams links this with the "mythology of whiteness" and the "white supremacy system" through the reference to the "self-identified whites" who inflict the violence. While this could be interpreted as an indictment of white people in general, there is nothing in the message making that interpretation clear. "Self identified whites" may refer to those who derive a strong and exclusionary identity from their race, such as white supremacists. Williams further limits the people of whom he is speaking to those who enact "daily violence" against immigrants and others. He thus appears to be referring not to the entire population of white people (or Caucasians), but rather to a small subset of people who identify as white in an exclusionary way and enact violence against various marginalized groups.

So are Professor Williams' Facebook messages protected under the 1940 *Statement* and Trinity College policy on academic freedom? These documents provide the framework for judgment. While the sections on teaching and research are inapplicable, the section on extramural utterances of faculty members as citizens covers his remarks. The 1940 *Statement* (before the 1970 interpretation that is now included in the 1940 Statement on the AAUP website) does leave open an area of ambiguity in its reminder that:

*As a person of learning and an educational officer, he/she should remember that the public may judge his/her profession and institution by his/her utterances. Hence he/she should at all times be accurate, should exercise appropriate restraint, should show*

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<sup>29</sup> This point was confirmed in a personal conversation with Professor Williams on 6<sup>th</sup> July 2017.

*respect for the opinions of others, and should make every effort to indicate that he/she is not an institutional spokesperson.*

This passage suggests that, despite the protection offered to extramural utterances, Williams, or any other faculty member, should be “accurate,” “exercise appropriate restraint,” “show respect for the opinions of others,” and “make every effort to indicate that he/she is not an institutional spokesperson.” Let’s take each of these in turn.

On the question of accuracy, Williams is making the claim that it is time for the “racially oppressed to do what people who believe themselves to be “white” will not do put [sic] end to the vectors of their destructive mythology of whiteness and their white supremacy system.” As Chief Justice Warren reminded us in *Sweezy v. New Hampshire* “few, if any, principles are accepted as absolutes” in social science. The question of “accuracy” is harder to determine here than it might be in mathematics or natural science. It is certainly within reason that Professor William’s statement be called “accurate”, in so far as social science can ever be called “accurate.” His premise is within the bounds of what might reasonably be argued by a sociologist.

On the question of exercising “appropriate restraint,” the context helps guide the application of this phrase. Professor Williams was writing on social media, a robust contemporary forum. His two Facebook postings followed several years of events in the news in which police officers shot and killed unarmed black people. The postings were, in Williams’ account, in immediate reaction to the shooting of Charleena Lyles, a pregnant African American woman, by police in Seattle on the morning of June 18<sup>th</sup>. Professor Williams posted his brief Facebook comments that same evening, nine minutes apart. His call for an end to the “mythology of whiteness” and the “white supremacy system” do not seem inappropriate or unrestrained. The use of profanity in the two messages may be troubling to some and might reasonably be interpreted as a lack of restraint. However, “restraint” is perhaps best understood in relation to the time, place, and manner of an utterance and Facebook is a social media site with a very wide definition of what is acceptable – a definition that includes profanity. It is surely the case that faculty members as citizens in extramural utterances frequently use language that may upset others. Moreover, it seems unreasonable for institutions of higher learning to be in the business of policing the use of profanity outside the classroom.<sup>30</sup>

It is hard to see how showing “respect for the opinion of others” is desirable or necessary in a Facebook post which, by definition, is more or less the expression of individual opinion. It would seem wrong-headed to expect Williams to recognize and respect the opposite opinion in the

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<sup>30</sup> In *Cohen v. California*, the U.S. Supreme Court overturned the conviction of a man who had been charged with disturbing the peace for wearing a jacket bearing the phrase “Fuck the Draft” in the corridors of a courthouse. The Court ruled that the state could not criminalize the display of this profanity, observing that “The defendant did not engage in, nor threaten to engage in ... any act of violence.” 403 U.S. 15, 16-17 (1971). The phrase was speech, pure and simple, without any conduct. While vulgar, it was not erotic and hence entirely beyond the possible realm of obscenity as the Court has defined it.

same posts. That would involve suggesting respect for the opinion that there is not a “white supremacy system” or that it is not time to put an end to it. These would be inconsistent with Williams’ own beliefs and scholarship. Social media sites exist as a kind of “public square” for vigorous and provocative debate. The structure of many sites, including Facebook, allows those with contrasting views to make any comment they wish. As for indicating that Williams was not an “institutional spokesperson” for Trinity College, in these posts he makes no mention whatsoever of his affiliation.

Regardless of the judgments above, we should bear in mind that the AAUP, along with the Association of American College, released a clarification of the 1940 *Statement* in 1970. Their joint clarification removed all of these qualifiers and left only one limit to academic freedom in matters of extramural expression – the question of “fitness.” The question of fitness would center on Professor Williams’ ability to be a sociologist. His comments are clearly consistent with his own work as a critical race scholar as well as the work of others in his field. He has already been supported by his academic professional body, the American Sociological Association. There is no evidence to suggest that Williams’ comments indicate a lack of “fitness” in this sense.

### **3.1.3 Conclusion on Issue of Academic Freedom**

**Professor Williams’ comments were clearly provocative and controversial and used language upsetting to some people. It is equally clear that Professor Williams’ comments are political speech in a public forum on issues of current social concern, and therefore lie at the very heart of the First Amendment and principles of academic freedom. They are not directed at Trinity College or at specific individuals, nor do they undermine Professor Williams’ fitness or ability to serve as a sociologist. Taken in context, his comments aligned with credible scholarly opinion, were not ill-suited to an online discussion, and created no perception that he was speaking on behalf of Trinity College. Social media encourage, rather than inhibit, others in expressing contrary opinions and do not inherently appear to call for “respect for the opinions of others.” I conclude that Professor Williams’ two Facebook postings are thus examples of the practice of academic freedom in an extramural setting. While Williams’ posts are certainly protected in a public setting such as Facebook they would be judged differently in a classroom setting where the use of profanity, for instance, can rightfully be regulated and where provocative statements can and should be more carefully contextualized.**

### **3.1.4 A Note on the Legal Regulation of Speech**

A further limit to academic freedom in an extramural setting is speech that violates the law. Most relevant for present purposes is the category of “true threats” or “fighting words.” Before turning to these concepts, we first briefly consider the legal dimensions of “hate speech.”

Hate speech may be defined as speech that offends, threatens, or insults groups based on race, color, religion, national origin, sexual orientation, disability, or other traits.<sup>31</sup> Thus by definition, hate speech offends, threatens, or insults a group. Is this desirable speech? Most people would answer no. Can the government punish hate speech? Here, too, the answer is no, provided that the speaker does not also directly provoke or engage in bad acts. The core principle is that the First Amendment does not allow the government to punish us for being generally offensive, insulting, or vaguely threatening.<sup>32</sup> (Appendix A offers examples of U.S. Supreme Court cases on this point.)

The rise of the Internet has prompted new concerns under the law over threatening speech.<sup>33</sup> The core legal concepts include true threats and fighting words. The U.S. Supreme Court has set the bar high for true threats. Vague, casual, or general statements do not rise to the level of a true threat. The speaker must instead desire to communicate a serious expression of an intent to commit an act of unlawful violence directed to a particular individual or group of individuals.

Fighting words are an earlier concept, dating to 1942. In somewhat archaic terms, the Court ruled that the First Amendment would not protect speech that would likely incite the listener to engage in a fight.<sup>34</sup> Fighting words are sometimes considered a sub-category of true threats.

It is highly unlikely that any reasonable person, and certainly any reasonable judge, would interpret Professor Williams' words as representing a true threat or fighting words. In his own terms, he was arguing for an end to what he considers to be such discriminatory conduct. There was no direct threat against people or property. Even if Professor Williams' words were in some way racist or discriminatory, they would be protected as the extramural utterances of a citizen in the public sphere.

### 3.2 Non-Discrimination

Having covered the issue of academic freedom we now turn to other college policies from the Trinity College Faculty Manual that may have been violated by the actions of Professor Williams. The first of these is "nondiscrimination" – the subject of Appendix B.3.

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<sup>31</sup> American Bar Association (undated) "Debating Hate Speech." Available at [https://www.americanbar.org/groups/public\\_education/initiatives\\_awards/students\\_in\\_action/debate\\_hate.html](https://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/debate_hate.html).

<sup>32</sup> Certain populations, such as schoolchildren, military service members, and prisoners may have more limited free speech rights than the general population. The First Amendment also permits reasonable regulation of the "time, place, and manner" of speech. A school may prohibit a child from using a racial epithet, and a library may prohibit use of a megaphone on its premises.

<sup>33</sup> Rothman, Jennifer E. (2001) "Freedom of Speech and True Threats" *Harvard Journal of Law and Public Policy* 25/1: 283.

<sup>34</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)

## Appendix B.3: Non-discrimination at Trinity College

Trinity College is committed to a policy of non-discrimination in education. “Trinity College does not discriminate on the basis of age, race, color, religion, sex, sexual orientation, handicap or national or ethnic origin in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other College-administered programs.” (Trinity College Student Handbook)

The Faculty endorses the College’s policy and disassociates itself from any actions that violate the College policy.

(Passed April 10, 1984)

The *Statement on Discrimination and Harassment* in the *Employee Handbook* is more up-to-date and offers greater detail. This report therefore considers these issues in relation to the fuller statement in the *Employee Handbook* (see Section 4.2 below).

### 3.3 Professional Ethics

The Faculty Manual includes a section on professional ethics that reads as follows:

#### Appendix B.5: Statement on Professional Ethics

Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the *special responsibilities placed upon them*. *Their primary responsibility to their subject is to seek and to state the truth as they see it*. To this end professors devote their energies to developing and improving their scholarly competence. *They accept the obligations to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge*. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student’s true merit. They respect the confidential nature of the relationship between professor and student. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom. They avoid any exploitation, harassment, or discriminatory treatment of students.

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues.

They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of Faculty responsibilities for the governance of their institution.

(...)

As members of their community, professors have the *rights and obligations of other citizens*. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. *When they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.* (Passed December 8, 1992) (emphasis added)<sup>35</sup>

The final paragraph of this section appears to be the most pertinent to the matters at hand. In the first paragraph, however, is a passage that underlines the responsibilities of faculty to “seek and to state the truth as they see it”. It is probable that Professor Williams’ actions were an example of this responsibility being carried out. Recent events, and particularly the shooting in Seattle and the failure to prosecute a policeman in Minnesota for the shooting of a black man, appears to him to be evidence of a system of white supremacy that needed to be changed and he used the opportunity provided by Facebook to “state the truth” that he saw.<sup>36</sup> The question then arises as to whether he exercised the necessary “self-discipline” and “judgment” in stating the truth as he sees it. These two demands can certainly contradict each other. Given the present political climate and the desire of organizations such as Campus Reform to identify what they see as liberal bias in higher education it might reasonably be argued that Professor Williams might have exercised better judgment and exhibited more self-restraint. Balancing the responsibilities in this part of the statement on professional ethics can be difficult, and, after careful analysis, I do not believe that Prof. Williams’ statements on social media violated his ethical responsibilities under this provision.

In the final paragraph there is a demand that faculty “avoid creating the impression of speaking or acting for the college or university.” As discussed above, at no point did Professor Williams mention Trinity College in the Facebook entries, so this is not an issue of concern. The paragraph also affirms that faculty should not be denied the “rights and obligations of other citizens” – an observation that squarely aligns with well-settled interpretations of academic freedom in extramural utterances.

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<sup>35</sup> The Faculty Manual’s Statement on Professional Ethics, adopted in 1992, closely tracks the AAUP’s 1966 Statement on Professional Ethics, which was revised in 1987 and 2009.

<sup>36</sup> Personal communication with Professor Williams, 7/6/17.

**Leaving aside the question of “non-discrimination”, which will be addressed below under the Employee Handbook section, there is no policy in the Faculty Manual that Professor Williams transgressed. In addition, his extramural utterances are covered by the concept of academic freedom, his responsibility to “state the truth” as he sees it, and his rights as a citizen.**

#### **4. Relevant Policies in the Trinity College Employee Handbook**

All employees, including faculty, are covered by policies laid out in the Trinity College Employee Handbook. It “provides a set of basic performance expectations for faculty, administrators and staff” and, in the case of faculty, needs to read alongside the Faculty Manual.

Two sections of the Handbook are relevant to this case. These are the *Statement on Rights and Responsibilities* and *Statement on Discrimination and Harassment*. I will deal with each in turn.

##### 4.1 Rights and Responsibilities

The section on Rights and Responsibilities reads as follows:

*Statement on Rights and Responsibilities* (effective date: January 1, 2009)

Trinity College expects that *all employees will maintain standards of conduct that will protect the interests and safety of all members of the community and the reputation of the College*. As a member of the College community, each employee is also entitled to certain rights and privileges. This section, in addition to the policies contained in Section 3.00 Major College Policies, is intended to provide guidelines for conduct which will help to ensure that employees understand what is expected of them as employees of the College. (emphasis added)

The key passage here refers to employees maintaining “standards of conduct that will protect the interests and safety of all members of the community and the reputation of the College.” The series of events that started with Professor Williams’ Facebook posts have threatened the safety and security of the college to the point where the administration felt it necessary to close the College for one day. Threats have been ongoing and, out of concern for the safety of Professor Williams and the security of campus, the College placed Professor Williams on temporary paid leave pending this review. It is also the case that, at least amongst some people, the reputation of the College has been harmed. In considering whether the College has suffered reputational harm, the College should also recognize that protecting the right of a faculty member to make highly controversial statements about current issues in his area of academic expertise may enhance the College’s reputation. Thus the logical question is whether Professor Williams’ words and actions were directly responsible for the safety and reputational risks. The task of distinguishing Williams’ own actions from the erroneous and malicious stories that circulated in certain parts of the media is difficult. Media stories incorrectly claimed that Williams’s posts indicated a desire to kill white people.

As to reputational risk, it is indisputable that the College's reputation has been harmed amongst some observers. Some people have objected based on their beliefs about what Professor Williams said. Others objected to the College's response to the situation arising after the media reported his postings. It is almost impossible to dissociate Williams' words and actions from all the events that followed. It certainly seems pertinent that there were no threats to College safety or visible harm to the College's reputation between June 18<sup>th</sup>, when Williams' posts were published online, and June 20<sup>th</sup>, when the *Campus Reform* article was published. I conclude that inappropriate and in some instances extreme reactions to Professor Williams' statements, more than the statements themselves, were the proximate cause of the threats to the safety on campus and any related reputational harm to the College.

#### 4.2 Discrimination and Harassment

The section on discrimination and harassment in the Employee Handbook reads as follows:

*Statement on Discrimination and Harassment* (effective date: October 17, 2011)

Harassment and discrimination are contrary to the College's mission. *The College is committed to responding to all reports of harassment, abuse, or discrimination and will use all reasonable means to prevent, confront, and eliminate such behavior.* Harassment and discriminatory acts infringe upon a victim's dignity and integrity, often denying or limiting a victim's access to academic life. Harassment and discriminatory acts are among the most egregious in our community and warrant the most serious penalties. *Anyone who is found to have violated the College's Harassment Policies through intentional and targeted behavior directed at any individual(s), on or off-campus, should expect that the College will impose sanctions, up to and including termination or expulsion from the College.* With the consent of the victim(s), the College will report the incident to the police when the alleged action constitutes a hate crime. Further, the College reserves the right to restrict anyone who is accused of violating the College's Harassment Policies from all college property and/or events pending the resolution of the complaint.

Maintaining our commitment to a campus climate where harassment and discrimination are not tolerated must be a shared goal. *By joining the Trinity College community, faculty, staff and students accept that they have an individual responsibility to help create an environment free of harassment. We encourage prompt reporting of any behavior that falls short of our communal values and we expect faculty, staff and students to cooperate fully in any College investigation or judicial process regarding harassment allegations.*

The College does not consider ignorance to be a reasonable defense in complaints of harassment and discrimination. As such, all faculty, staff and students should familiarize

themselves with the particulars of the College's Discrimination and Harassment policy as outlined in the Student Handbook and Employee Handbook.

*Additionally, while some actions, speech, and forms of expression run contrary to individual beliefs and even our community values, we recognize that many of them are protected by law and are permissible under the principles of academic freedom. We fully expect that those who introduce protected but controversial, provocative, or divisive elements, and those who disagree with them, will make themselves available to civil debate and discussion. The College provides space for provocative and unpopular speech and expression so long as those actions do not violate the law and/or are not found to be targeted and intentional actions that violate our harassment policy. (emphasis added)*

The harassment policy identified here is another section of the Employees' Handbook that reads (in part):

Discrimination:

Members of the College community are prohibited from engaging in *physical or verbal acts that have the purpose or effect of denying the right to equal access to education or employment on the basis of Protected Class* as defined in Policy 3.01 Statement on Commitment to Diversity. Discrimination is deemed to have occurred when there is evidence of differential treatment, i.e., *when an agent or employee of the College, acting in his or her official capacity, treats a student or employee differently based on membership in the aforementioned protected classes without a non-discriminatory reason to do so, with the result that the person is prevented from participating in or gaining the privileges of programs and services of the College.* Discrimination may also occur between parties of equal authority, or between students, based on the Protected Classes.

General Harassment/Abuse:

Harassment includes, but is not limited to, physical or non-physical behavior, such as assault, abuse, stalking, hazing, invasion of privacy, and intimidation. The following definitions provide examples of behavior that will not be tolerated:

**Assault** is nonconsensual physical contact that places someone in fear or apprehension of immediate harm. Relationship violence may also be categorized as assault.

**Stalking** refers to a pattern of behavior where an individual willfully, maliciously, and repeatedly follows another in his/her course of daily activities in such a way that the stalker's actions can reasonably be found to interfere with another person's ability to perform his or her regular duties or cause that person to feel frightened, intimidated, harassed, threatened or molested.

**Invasion of privacy** is unauthorized taking and use of facts, information, and/or property not in the public domain that a reasonable person would desire to keep from the public eye.

**Intimidation** is spoken, written or physical conduct directed toward an individual or individuals that unreasonably interferes with his/their full participation in the Trinity College community or that is intended to create or may be reasonably determined to have created a threatening or hostile environment.

Discriminatory Harassment:

Is harassment based on Protected Class [sic].<sup>37</sup> *Discriminatory harassment includes conduct specifically directed at an individual or a small group of individuals and expresses hatred or contempt on the basis of stereotyped group characteristics or because of a person's identification with a particular group. Discriminatory harassment also includes any action or speech directed toward members of the Protected Classes that reasonably can be determined to be threatening in content or is spoken in a manner that suggests violence toward such persons is imminent. Discriminatory harassment is deemed to have occurred when harassing conduct is sufficiently severe, pervasive, or persistent that it interferes with or limits a student's or employee's ability to participate in or gain the privileges of programs and services of the College.*<sup>38</sup> (emphasis added).

The central question is whether Professor Williams' Facebook posts constitute either harassment or discrimination. More precisely, whom has been harassed or discriminated against? Which groups or individuals are the Facebook comments aimed at as subjects? The most clearly identified group are "self-identified 'whites' who are described as "inhuman assholes". The reason for this group being identified in the posts is their "violence directed at immigrants, Muslim and sexual and racially oppressed people." As discussed above, a broad interpretation of the second post would be that it is directed at all white people. A narrow interpretation is that it is directed against those people who identify themselves as white and who practice the kinds of violence listed. Whether such self-identified individuals in the latter group would be protected under the Employee Handbook is debatable, but in any event, the Professor's statements did not target specific persons at Trinity.

*Discrimination*, as described in the Employee Handbook, refers to actions between members of the Trinity Community including faculty, staff and students. As Professor Williams' posts were not specifically about, or directed at, other members of Trinity this does not seem to be an issue.

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<sup>37</sup> A "protected class" under Federal Law is a group of people with some shared characteristic who are legally protected from discrimination. These include race and color among others.

<sup>38</sup> The remainder of this section of the Handbook applies to sexual harassment and romantic relationships and is not pertinent to this case.

In terms of *General harassment or abuse*, Professor Williams' posts are clearly not examples of *assault, stalking, or invasion of privacy*. It is possible for a Facebook post to constitute *intimidation*, but the posts in question were not directed against an individual or group of individuals but rather people the Professor identified as having committed "*daily violence directed at immigrants, Muslim and sexual and racially oppressed people.*"

*Discriminatory harassment* is defined in the Employee Handbook as directed against an individual or a small group of individuals. Neither is the case in Professor Williams' posts. While the posts do target people based on "their identification with a particular group" – self-identified "whites" – they focused specifically on groups that have engaged in the practice of violence against a range of "oppressed groups." Finally, we need to examine whether Professor Williams' writing was sufficiently "*severe, pervasive, or persistent that it interferes with or limits a student's or employee's ability to participate in or gain the privileges of programs and services of the College.*" As these were two, short posts that made general observations in the realm of public discourse and that targeted no individuals, they are not "severe" or "pervasive" enough to constitute racial harassment.

#### 4.3 The Relationship between Academic Freedom and Policies on "Rights and Responsibilities" and "Discrimination and Harassment" in the Trinity College Employee Handbook

How should the policy on academic freedom in the Faculty Manual be harmonized with non-discrimination policies and other policies at Trinity? Fortunately, the Trinity College Employee Handbook provides guidance. It indicates that, in evaluating whether conduct violates those other policies, faculty members must be given greater leeway when their conduct involves speech on matters of concern and therefore implicates principles of academic freedom. In the Statement on Discrimination and Harassment, the Employee Handbook reads:

*Additionally, while some actions, speech, and forms of expression run contrary to individual beliefs and even our community values, we recognize that many of them are protected by law and are permissible under the principles of academic freedom.*

In other words it is not advisable to limit academic freedom under the guise of some other policy that seeks to define such things as "community values." Indeed, the history of cases around academic freedom is littered with instances where a professor appeared to offend popular values but was nonetheless protected, or, in hindsight, should have been protected (see Appendix A and particularly the case of Leo Koch).

Indeed, the role of academic freedom in relation to other policies has been acknowledged in other contexts. . In the case of gender discrimination under Title IX, for instance, the U.S. Department of Education, through its Office of Civil Rights, has offered this guidance:

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate,

interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard.<sup>39</sup>

The advice offers as examples the use of sexually demeaning texts in a class and a writing exercise in which male class members read aloud their own sexually demeaning texts. As speech that has a pedagogical purpose and, moreover, is not directed against specific individuals, these activities would be protected by academic freedom. Title IX and sexual harassment are clearly very serious policy issues in higher education but such policies, when applied, must account for academic freedom. The same is true here. Consistent with principles of academic freedom and First Amendment values, the College should be reluctant to read its policies as prohibiting the kind of politically controversial speech that Professor Williams posted, but it is free to give safe harbor to the expression of opposing points of view and to encourage civil dialogue on the issues raised.

## 5. Summary of Conclusions

The appropriate authority for Trinity College in matters of academic freedom is the Faculty Manual. The Faculty Manual Policy *Statement on Academic Freedom* appears in Appendix B.1 and is derived from the 1940 *Statement of Principles on Academic Freedom and Tenure* jointly formulated by the American Association of University Professors and the Association of American Colleges. These two groups clarified the 1940 *Statement* in a 1970 interpretation. The 1940 *Statement* is authoritative and widely used in higher education in the United States. It has been endorsed by over 250 academic organizations and adopted by countless universities and colleges.

Professor Johnny E. Williams Facebook posts of June 18<sup>th</sup>, 2017 constitute “extramural utterances” that are protected exercises of academic freedom under Trinity College policy. His statements are not true threats or fighting words, they do not violate the law, and they do not threaten violence against specific individuals or more generally advocate violence. Moreover, his statements fall squarely within his area of scholarship and teaching, and are consistent with his published works. That his statements should be protected under principles of academic freedom is underscored by the support given to him in this matter by the American Sociological Association.

Trinity College policy on *Professional Ethics* in the Faculty Handbook dovetails with the College’s principles of academic freedom. It outlines the responsibility for faculty both to “seek and to state the truth as they see it” and to exercise “self-discipline” and “judgment” while doing so. While some may question Professor Williams’ self-discipline and judgment, I believe that he

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<sup>39</sup> Office of Civil Rights “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” January 19, 2001.

was endeavoring to state “the truth” as he “sees it,” exercising the academic freedom Trinity policy provides. .

Trinity College policy in the *Employee Handbook on Rights and Responsibilities* asks all employees to promote the safety of the community and to not harm the college’s reputation. While the events following Professor Williams’ posts may have affected the reputation of the College and brought safety and security into question, those results were more attributable to extreme reactions to his posts than to the actual statements in the posts themselves, which were not directed to specific individuals or at Trinity and did not advocate racial violence.

**Professor Williams did not violate the Trinity College policy in the *Employee Handbook on Discrimination and Harassment*. His statements did not advocate racial violence or discrimination against white people generally, but rather focused on people the Professor identified as having committed “daily violence directed at immigrants, Muslim and sexual and racially oppressed people.” Furthermore, the *Employee Handbook* makes it clear that principles of academic freedom must be taken into account in evaluating whether faculty speech constitutes a violation of other College policies, especially speech on matters of public concern or speech within a faculty member’s academic discipline. To do otherwise would undermine academic freedom and create a chilling effect on appropriately free scholarship and teaching.**

**It is my view that there are no grounds to institute disciplinary action against Professor Williams. It is certainly the case, however, that these events necessitate a wider conversation about academic freedom and the role of professional restraint and judgment in an era of social media and political fracturing.**

Our mission statement declares that “*Trinity College is where the liberal arts meet the real world.*”<sup>40</sup> This point of juncture is not always comfortable for either the College community or the wider population. Yet by adhering faithfully to its policies, the College can best protect its core values and long-term vitality.

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<sup>40</sup> Trinity College Mission Statement, adopted by the Board of Trustees, October 15, 2016. <http://www.trincoll.edu/AboutTrinity/mission/Pages/default.aspx> . The College also observes, “At Trinity, we believe in independent thinking. We stand for it and we teach it.” <http://www.trincoll.edu/AboutTrinity/Pages/default.aspx>

## Appendix A: Some Cases Relevant to the Current Review

### *Sweezy v. New Hampshire*<sup>41</sup>

This is the case from 1957 in which the Supreme Court of the United States recognized academic freedom as a special part of the First Amendment. Paul Sweezy was a Marxist economist who taught courses of “Dialectical Materialism” and socialism more broadly. He was also a public supporter of Henry Wallace’s Progressive Party outside of the classroom. The Attorney General of the state of New Hampshire sought to prevent Sweezy from teaching this material in the context of the wider climate created by the House Un-American Activities Committee. The Supreme Court came down on the side of Sweezy arguing that his constitutional rights under the Fourteenth Amendment had been violated. While this an important statement of role of academic freedom in Federal law it does not usually apply to private colleges such as Trinity College as we are not a government entity.

### *Leo Koch and the University of Illinois*<sup>42</sup>

This is not a legal case but a series of events that led to the firing of Professor Leo Koch, a Professor of Biology, from the University of Illinois in 1960. This case led, eventually, to the clarification of AAUP policy on extramural utterances in 1970. Koch was an Assistant Professor at the University of Illinois at Urbana-Champaign. In a letter to the student newspaper, *The Daily Illini*, Koch suggested that there were double standards regarding talk about pre-marital sex. He said it seemed to be allowed for men and not for women. He argues that people were worried about offending the leaders of religious institutions. He concluded his letter with the claim that students should be able to use contraceptives and engage in sexual activity without fear of social consequences. He used his title “Professor of Biology” when signing the letter. The letter was followed by public outrage and notices in the national media including the *Chicago Tribune*. A right-wing anti-communist missionary sought to have Koch fired. Pamphlets were circulated accusing Koch of subverting the moral and religious foundations of the United States. Koch was fired and never worked as an academic again. The argument given was that he had offended community and wider standards and values and that he had encouraged immoral behavior. It was for this reason that the AAUP eventually clarified its statement of extramural utterances and removed the qualifying passages. Real academic freedom has to include the right to go against institutional or wider sets of values and standards to really count as freedom. It is clear that Koch could not be fired now as community values and standards were, and should have been, open to question.

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<sup>41</sup> *Sweezy v. New Hampshire*, 354 U.S. 234 1957.

<sup>42</sup> See Wilson, John K. (2015) “Academic Freedom and Extramural Utterances: The Leo Koch and Steven Salaita Cases at the University of Illinois” *Journal of Academic Freedom* <https://www.aaup.org/sites/default/files/Wilson.pdf> (accessed 7/1/17)

*Levin v. Harleston*<sup>43</sup>

In 1987 Michael Levin, a tenured professor of philosophy at City College of the City University of New York published a series of letters and articles – including in the *New York Times* – that argued that black people were, on average, less intelligent than white people. The President, Dean and students at the College accused Levin of being a racist. His classes were disrupted and he received death threats. President Harleston authorized a “shadow section” of Levin’s required Philosophy 101 course and the Dean sent students a letter informing them of Levin’s stated views. The Chair of the department refused to institute the “shadow section” and the Dean had to institute it. The President asked the Faculty Senate to investigate the alleged racism of Levin. They refused. The President appointed an ad hoc committee to review the question of when speech inside and outside the classroom might go beyond speech protected by academic freedom and to apply this specifically to Professor Levin. Levin sued the College for an infringement of his rights to academic freedom and won.

*Jeffries v. Harleston*<sup>44</sup>

In 1991, Leonard Jeffries, a tenured professor and Chair of the Black Studies department at City College of the City University of New York gave a keynote address to the Empire Black Arts Festival in Albany, New York. In the speech he made anti-Semitic claims about Jews in the slave trade and in Hollywood amongst other things. The speech was reported in the media including New York newspapers and there was widespread public outrage. On August 8, 1991 President Harleston wrote to the faculty condemning the bigotry in the speech. He requested that the Provost review the matter and come to a conclusion as to whether Jeffries could remain as Chair of the department. The Provost’s report stated that Jeffries was operating effectively in his role. The President ignored the Provost’s report and sought to end Jeffries’ term as Chair. Jeffries sued claiming that the President had denied him his remaining two years as Chair and had thus violated his rights. Jeffries won the case and again on appeal. He was reinstated as Chair for the remainder of his term. The decision noted that if the remarks had been made in a classroom there may have been cause for action – but these were remarks in a public setting and Jeffries was entitled to say them as any citizen would be.

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<sup>43</sup> *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992) I draw on chapter four of Richard De George (1997) *Academic Freedom and Tenure: Ethical Issues* (Rowman and Littlefield) for this account.

<sup>44</sup> *Jeffries v. Harleston*, 828 F. Supp. 66 (S.D.N.Y. 1993). I draw on chapter four of Richard De George (1997) *Academic Freedom and Tenure: Ethical Issues* (Rowman and Littlefield) for this account.

*Andrea Quenette and the University of Kansas*<sup>45</sup>

The University of Kansas suspended Professor Andrea Quenette after receiving student complaints about a discussion of race she led in a communications studies class. “Quenette was accused of creating a hostile environment in her class through her comments on race, but she and others said she expressed nonhostile, legitimate opinions that were protected by academic freedom.” She was placed on paid leave while the university conducted an investigation. Four months later the University notified Quenette that the investigation had cleared her of wrongdoing. She resumed her position.

Asked whether the episode might affect her future teaching about race, Quenette responded affirmatively.

"I don't believe I have much choice other than to be guarded. To be honest, I am afraid of engaging in a discussion of race and diversity in the classroom....I hope that I can use resources on my campus and support from other faculty to better equip myself for such a situation. Given the importance of diversity on our campuses, it is a conversation that should take place in my classroom, but I am anxious about it. This disappoints me because not only do I love teaching and exploring topics of interest to my students, but I care deeply about students' development and well-being. I want students to feel they are in a good situation that allows them to learn and grow in positive ways. I believe it will be harder for me to respond to my students now because I am afraid of saying something wrong."

Several months after concluding the investigation, the university denied Quenette reappointment to a tenure-track position.

*George Ciccariello-Maher and Drexel University*<sup>46</sup>

On Christmas Eve 2016 Professor George Ciccariello-Maher of Drexel University tweeted the message “All I want for Christmas is white genocide.” He would later claim that the statement was meant to mock the very idea of “white genocide” – an idea widely

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<sup>45</sup> See Jaschik, Scott (2016) “Professor Cleared to Teach After Furor Over Race” *Inside Higher Ed* 3/21/16. <https://www.insidehighered.com/news/2016/03/21/u-kansas-professor-cleared-teach-after-controversy-over-discussion-race>

<sup>46</sup> See Jaschik, Scott (2017) “Drexel, Twitter and Academic Freedom” *Inside Higher Ed* 1/3/17 <https://www.insidehighered.com/news/2017/01/03/drexel-issues-new-statement-about-academic-freedom-and-inclusivity> (accessed 7/1/17).

propagated by white nationalists. The following day the President of Drexel condemned the tweet in the following statement:

Drexel became aware today of Associate Professor George Ciccariello-Maher's inflammatory tweet, which was posted on his personal Twitter account on Dec. 24, 2016. While the university recognizes the right of its faculty to freely express their thoughts and opinions in public debate, Professor Ciccariello-Maher's comments are utterly reprehensible, deeply disturbing and do not in any way reflect the values of the university. The university is taking this situation very seriously. We contacted Ciccariello-Maher today to arrange a meeting to discuss this matter in detail.

This message was widely condemned as an insufficient defense of the Professor and possible infringement of his academic freedom. On December 29<sup>th</sup> the President and Provost issued a new statement which made a stronger case for academic freedom.

The social media comments over winter break by George Ciccariello-Maher, Associate Professor of Politics and Global Studies at Drexel, have precipitated a heated public dialogue. The issue has caught the attention of national media and put Drexel in the spotlight. As University leaders, we understand that people have very different perspectives and opinions on such matters; it is our duty to ensure that all members of our community feel truly welcome and can participate in an inclusive learning environment. Instances such as this one both test and strengthen Drexel's fundamental dedication to the principles of academic freedom and freedom of expression.

The University vigorously supports the right of its faculty members and students to freely express their opinions in the course of academic debate and discussion. In this vein, we recognize Professor Ciccariello-Maher's tweets as protected speech. However, his words, taken at face value and shared in the constricted Twitter format, do not represent the values of inclusion and understanding espoused by Drexel University. As we engage with one another in conversation, it is important to remember that these principles –academic freedom, freedom of speech and the need for inclusivity and respect – are not mutually exclusive. In fact, Drexel's long history demonstrates a steadfast commitment to creating an environment in which these principles coexist and complement one another.

Very often electronic forms of communication (Twitter, in particular) are limited in their ability to communicate satire, irony and context, especially when referencing a horror like genocide. While Professor Ciccariello-Maher has defended his comments as satire, the wide range of reactions to his tweets suggests that his intentions were not adequately conveyed. These responses underscore the importance of choosing one's words thoughtfully and exercising

appropriate judgment in light of the inherent limitations presented by communications on social media.

Vigorous debate on complex and controversial topics, as we are currently seeing in our country, requires that a university provide a safe learning environment for all. We are committed to ensuring that Drexel is such an environment for those who study, teach and work here, while upholding our foundational commitment to academic freedom.

The University strongly encourages the use of speech—not threats or violence—to counter speech with which one disagrees. In the coming months, we look forward to a constructive exchange of ideas and opinions on the subject of academic freedom and freedom of speech.

Sincerely,  
John A. Fry, President  
M. Brian Blake, PhD, Executive Vice President for Academic Affairs and Provost

#### Selected Cases on Hate Speech

##### Brandenburg v. Ohio<sup>47</sup>

A Ku Klux Klan leader could not be punished for delivering an inflammatory speech encouraging listeners to take violent action against racial minorities. The Court ruled that the First Amendment protected the speech, which was not “directed to inciting or producing imminent lawless action **and** ... likely to incite or produce such action.”

##### R.A.V. v. City of St. Paul, Minnesota<sup>48</sup>

A city could not adopt a law punishing someone for displaying a symbol on public or private property if the symbol aroused anger in others on the basis of race, color, creed, religion, or gender. The text of the law named the Nazi swastika and a burning cross as examples of illegal displays. The Court ruled that these symbols, by themselves, may express group hatred but do not create a direct threat. “Let there be no mistake about our belief that burning a cross in someone’s front yard is reprehensible. But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire.”

##### Matal v. Tam<sup>49</sup>

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<sup>47</sup> Brandenburg v. Ohio, 395 U.S. 444 (1969)

<sup>48</sup> R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377 (1992)

<sup>49</sup> Matal v. Tam, No. 15-1293 (June 19, 2017)

The day after Professor Williams posted his Facebook comments, the Supreme Court decision addressed hate speech. The case involved a rock band's effort to trademark its name: "The Slants." (The band included Asian musicians.) The trademark office denied the application on the basis of a federal law prohibiting disparaging trademarks. The Supreme Court ruled that disparagement was an improper basis for denying a trademark. Justice Samuel Alito wrote "We have said time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.... Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate." Slip Opinion pp. 22, 25. (Internal quotations and citations omitted.)

### Selected Cases on True Threats and Fighting Words

#### Elonis v. United States<sup>50</sup>

In this 2015 ruling concerning a Facebook posting, the Supreme Court addressed for the first time the interpretation of a Facebook posting. Could Mr. Elonis be prosecuted for graphic, violent Facebook postings concerning his ex-wife and others? He wrote his descriptions of bombing, murder, and other violence directed toward the individuals as rap lyrics and labeled them fictitious. Federal law made it a crime to transmit threats in interstate commerce. Did the "lyrics" constitute a threat? The Court concluded that the mere expression of threats could not be criminalized. Judges and juries would also need to examine the speaker's intent.

#### Virginia v. Black, 538 U. S. 343, 359 (2003)

The Court defined true threats as "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." As the doctrine has developed, an intention to create fear in the victim may suffice for prosecution, rather than an intention actually to commit the threatened act.

#### Chaplinsky v. New Hampshire<sup>51</sup>

The First Amendment would not protect a speaker whose words would likely incite the listener to engage in a fight. The Court concluded that the phrases "damned racketeer" and "damned Fascist" were epithets likely to provoke the average person to retaliation and thereby cause a breach of the peace.

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<sup>50</sup> Elonis v. United States, 575 U.S. \_\_\_\_ (June 1, 2015)

<sup>51</sup> Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

