

## ESSAYS

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### #ACADEMICFREEDOM: TWITTER AND FIRST AMENDMENT RIGHTS FOR PROFESSORS

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#### INTRODUCTION

Speech is not “free” in academia. Campus codes regulate disrespectful language.<sup>1</sup> Professors have been disciplined for speech that creates a hostile learning environment for their students.<sup>2</sup> Twitter has extended professorial speech to the Internet. How do campus speech codes apply to a professor’s tweets? There is scant information to answer this question; however, some tweets have stirred controversy. Professor David Guth was put on leave by the University of Kansas for tweeting that the children of NRA supporters should be shot dead.<sup>3</sup> The University of Illinois withdrew a job offer with tenure to Professor Steven Salaita because his tweets were viewed as “harassing, intimidating, [. . .] hate speech.”<sup>4</sup> These tweets ex-

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1 *E.g.*, CAL. INST. OF TECH., INSTITUTE POLICY ON ACCEPTABLE USE OF ELECTRONIC INFORMATION RESOURCES (2013), available at <http://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2005/02/Cal-Tech-Acceptable-Use-13-14.pdf> (prohibiting communications that discriminate, harass, defame, offend, or threaten individuals or organizations).

2 *Bonnell v. Lorenzo*, 241 F.3d 800, 803–05 (6th Cir. 2001).

3 John Milburn, *University of Kansas Professor David Guth Suspended Over Tweet Won't Return in 2013*, HUFF POST COLLEGE (Oct. 25, 2013, 1:59 PM), at [http://www.huffingtonpost.com/2013/10/25/university-of-kansas-david-guth\\_n\\_4164298.html](http://www.huffingtonpost.com/2013/10/25/university-of-kansas-david-guth_n_4164298.html). Prof. Guth tweeted, “The blood is on the hands of the #NRA. Next time, let it be YOUR sons and daughters. Shame on you. May God damn you.” *Id.*

4 Interview of Chancellor Phyllis Wise, in Nicholas C. Burbules et al., *A Response to the Committee on Academic Freedom and Tenure (CAFT) Report*, (Jan. 6, 2015), at 7,

pressed outrage at Israel’s bombing of Gaza, and therefore, voiced a widely held political viewpoint.

This Essay asks: is every tweet from a professor protected as a form of academic freedom by the First Amendment? Professor Salaita’s watershed case poses sharply conflicting positions on academic freedom for faculty members. In support of Professor Salaita, a faculty committee at the University of Illinois asserts: “Regardless of the tweets’ tone and content, they are political speech—part of the robust free play of ideas in the political realm that the [University] Statutes insulate from institutional sanction, even in the case of ideas we may detest.”<sup>5</sup>

To answer my research question, I explore how courts rule on First Amendment claims by faculty members who have been disciplined or lost their jobs for speech that their school considered to be disruptive to its mission or operations. These cases are a small but important part of First Amendment jurisprudence. Two Supreme Courts opinions—*Waters v. Churchill*<sup>6</sup> and *Garcetti v. Ceballos*<sup>7</sup>—provide colleges and universities a clear legal advantage. My conclusion, based on more than forty cases involving disruptive faculty speech, applies to different verbal controversies. No case, however, involves a professor’s tweets. I explore how Twitter relates to academic expression, and I conclude that courts are unlikely to grant First Amendment protection to faculty tweets that direct physical intimidation to specific individuals or groups.

## I. FIRST AMENDMENT LIMITS ON ACADEMIC FREEDOM

Early cases granted broad protection for the speech rights of teachers.<sup>8</sup> A high point was reached when professors successfully challenged a New

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*available at* [https://archive.org/details/pdfy-uFQikP3A-pCpJj\\_Z](https://archive.org/details/pdfy-uFQikP3A-pCpJj_Z) (alteration in original) (quoting COMM. ON ACADEMIC FREEDOM AND TENURE OF THE UNIV. OF ILL. AT URBANA-CHAMPAIGN, REPORT ON THE INVESTIGATION INTO THE MATTER OF STEVEN SALAITA 26 (2015), [hereinafter SALAITA REPORT] *available at* <http://www.senate.illinois.edu/af1501.pdf>) (internal quotation marks omitted). One tweet implied that Jews bring anti-Semitism on themselves: “By eagerly conflating Jewishness and Israel, Zionists are partly responsible when people say antisemitic [sic] shit in response to Israeli terror.” Steven Salaita, TWITTER (July 18, 2014, 1:19 PM), <https://twitter.com/stevesalaita/status/490184057054322688>. Another tweet implied that every Jewish child grows up to become a murderer: “Zionist uplift in America: every little Jewish boy and girl can grow up to be the leader of a murderous colonial regime.” Steven Salaita, TWITTER (July 14, 2014, 7:26 PM), <https://twitter.com/stevesalaita/status/488872177257955328>. *See also infra* notes 52 & 54 (providing additional examples of anti-Semitic tweets).

<sup>5</sup> SALAITA REPORT, *supra* note 4, at 26 (emphasis omitted).

<sup>6</sup> 511 U.S. 661, 671 (1994) (government as employer has more power to restrict speech than government as sovereign).

<sup>7</sup> 547 U.S. 410 (2006).

<sup>8</sup> *E.g.*, *Beilan v. Bd. of Pub. Educ.*, 357 U.S. 399 (1958).

York law that required them to swear an oath against Communism.<sup>9</sup> The Supreme Court singled out academic freedom as “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”<sup>10</sup> More recently, the Supreme Court has gradually restricted speech rights for public employees.<sup>11</sup> These limits have seeped into academia.<sup>12</sup> According to *Connick v. Myers*, speech of public employees is constitutionally protected if it concerns a matter of public interest or importance.<sup>13</sup> Courts determine if speech is protected under the First Amendment by examining its context, form, and content.<sup>14</sup> These elements are weighed against the employer’s interests in a *Pickering* balancing test.<sup>15</sup> Courts also judge whether the disputed speech motivates an adverse employment action.<sup>16</sup>

More recently, two significant restrictions have been added to this balancing approach. *Waters v. Churchill* ruled that a public employer is not required to prove that employee speech is disruptive.<sup>17</sup> All that is required is an employer’s reasonable prediction of interference with a governmental function.<sup>18</sup> *Garcetti v. Ceballos* stated that speech for public employees is not protected if it pertains to the internal affairs of government units.<sup>19</sup> These restrictions were forged in a hospital and a state’s attorney’s office, where employers exert significant control over employee speech.<sup>20</sup> Justice Souter noted in *Garcetti*, however, that the disruptive speech doctrine does

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9 Keyishian v. Bd. of Regents, 385 U.S. 589 (1967).

10 *Id.* at 603.

11 See *Waters*, 511 U.S. at 675; *Garcetti*, 547 U.S. at 424.

12 Estelle A. Fishbein, *New Strings on the Ivory Tower: The Growth of Accountability in Colleges and Universities*, 12 J.C. & U.L. 381, 382–85 (1985) (stating that courts and Congress put “colleges and universities on an inexorable march toward academic accountability”).

13 461 U.S. 138, 146 (1983).

14 *Id.* at 147–48.

15 *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

16 *Id.*

17 511 U.S. 661, 671 (1994) (holding that the government as employer has more power to restrict speech than the government as sovereign).

18 *Id.* at 673 (holding that public employers are allowed to make reasonable predictions of when speech disrupts operations).

19 547 U.S. 410, 418 (2006).

20 *Id.* at 419 (noting that government employers need significant control over their employees’ words and actions).

not translate easily to academia,<sup>21</sup> where intense disagreement can drive inquiry.<sup>22</sup>

How have these precedents affected faculty members who assert a First Amendment right? Eighteen court opinions ruled in favor of schools in the course of discussing disruptive faculty speech.<sup>23</sup> In losing these cases, faculty invoked the First Amendment to justify discussions of personal details about their sex life,<sup>24</sup> inappropriate advances,<sup>25</sup> wanton vulgarity,<sup>26</sup> and required reading about their sexual arousal.<sup>27</sup> Other losing cases involved faculty whose speech was confrontational, degrading, or conducive to an atmosphere of tension.<sup>28</sup>

In contrast, twenty-three opinions specifically referenced disruptive faculty speech and ruled for a faculty member.<sup>29</sup> The greater number of

21 *Id.* at 438 (“I have to hope that today’s majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write ‘pursuant to . . . official duties.’”) (Souter, J., dissenting) (citing *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003)).

22 *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (noting that civilization depends on freedom of inquiry for teachers and students).

23 See *DePree v. Saunders*, 588 F.3d 282, 282 (5th Cir. 2009); *Trejo v. Shoben*, 319 F.3d 878, 878 (7th Cir. 2003); *Bonnell v. Lorenzo*, 241 F.3d 800, 800 (6th Cir. 2001); *Jackson v. Leighton*, 168 F.3d 903, 903 (6th Cir. 1999); *Scaliet v. Rosenblum*, 106 F.3d 391, 391 (4th Cir. 1997) (per curiam); *Jeffries v. Harleston*, 52 F.3d 9, 9 (2d Cir. 1995); *Ghosh v. Ohio Univ.*, 861 F.2d 720, 720 (6th Cir. 1988) (per curiam); *Maples v. Martin*, 858 F.2d 1546, 1547 (11th Cir. 1988); *DePree v. Saunders*, No. 2:07cv185KS-MTP, 2008 WL 4457796 at \*1 (S.D. Miss. 2008 Sept. 30, 2008), *aff’d* 588 F.3d 282 (5th Cir. 2009); *Marinoff v. City Coll. of N.Y.*, 357 F. Supp. 2d 672, 672–73 (S.D.N.Y. 2005); *Scaliet v. Rosenblum*, 911 F. Supp. 999, 999 (W.D. Va. 1996), *aff’d* 106 F.3d 391 (4th Cir. 1997); *Cohen v. San Bernardino Valley Coll.*, 883 F. Supp. 1407, 1407 (C.D. Cal. 1995), *aff’d in part, rev’d in part*, 92 F.3d 968 (9th Cir. 1996); *Wirsing v. Bd. of Regents*, 739 F. Supp. 551, 551 (D. Colo. 1990), *aff’d*, 945 F.2d 412 (10th Cir. 1991); *Fong v. Purdue Univ.*, 692 F. Supp. 930, 931 (N.D. Ind. 1988); *Landrum v. E. Ky. Univ.*, 578 F. Supp. 241, 242 (E.D. Ky. 1984); *Bradford v. Tarrant Cnty. Jr. Coll.*, 356 F. Supp. 197, 197 (N.D. Tex. 1976), *aff’d*, 492 F.2d 133 (5th Cir. 1974); *Franklin v. Leland Stanford Jr. Univ.*, 218 Cal. Rptr. 228, 228 (Cal. App. 1985); *Mills v. W. Wash. Univ.*, 208 P.3d 13, 13, 21 (Wash. App. 2009) *rev’d on other grounds*, 246 P.3d 1254 (Wash. 2011) (en banc).

24 *Scaliet*, 911 F. Supp. at 1007.

25 *Trejo*, 319 F.3d at 888.

26 *Bonnell*, 241 F.3d at 803–04.

27 *Cohen*, 883 F. Supp. at 1410 n.3.

28 See *Maples*, 858 F.2d at 1554; *Fong*, 692 F. Supp. at 955; *Mills*, 208 P.3d at 21.

29 See *Hulen v. Yates*, 322 F.3d 1229 (10th Cir. 2003); *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671 (6th Cir. 2001); *Burnham v. Ianni*, 119 F.3d 668 (8th Cir. 1997) (en banc); *Burnham v. Ianni*, 98 F.3d 1007 (8th Cir. 1996), *vacated*, 119 F.3d 668 (8th Cir. 1997); *Jeffries v. Harleston*, 21 F.3d 1238 (2d Cir. 1994), *vacated*, 513 U.S. 996 (1994), *rev’d on remand*, 52 F.3d 9 (2d Cir. 1995); *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992); *Stern v. Shouldice*, 706 F.2d 742 (6th Cir. 1983); *Daulton v. Affeldt*, 678 F.2d 487 (4th Cir. 1982); *Kim v. Coppin State Coll.*, 662 F.2d 1055 (4th Cir. 1981); *Trotman v. Bd. of Trus-*

these cases, compared to the group that favored schools, suggests that disruption does not work against faculty in speech cases. However, only eight opinions ruled for instructors after 1994 when *Waters* gave public employers latitude to predict institutional disruption.<sup>30</sup>

Nonetheless, one significant precedent ruled against a school that asserted a disruptive speech argument. In *Hardy v. Jefferson Community College*, a college instructor who taught a communication course devoted a class period to language that marginalizes minorities.<sup>31</sup> Students offered words such as “‘girl,’ ‘lady,’ ‘faggot,’ ‘nigger,’ and ‘bitch.’”<sup>32</sup> After their classmate complained to campus administrators, Professor Hardy was terminated.<sup>33</sup> Distinguishing this case from *Bonnell v. Lorenzo*,<sup>34</sup> the Sixth Circuit reasoned that this was “a classic illustration of ‘undifferentiated fear’ of disturbance on the part of the College’s academic administrators.”<sup>35</sup>

In rare cases, courts found that schools violated the First Amendment rights of professors whose controversial beliefs caused disruption. The Second Circuit ruled that a professor engaged in constitutionally protected speech when he published his view that African-Americans are intellectually inferior to Caucasians—even though this caused disruptive protests.<sup>36</sup> Faculty members who criticized campus administrators engaged in protected speech, even if their communications unsettled operations.<sup>37</sup>

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tees, 635 F.2d 218 (3d Cir. 1980); *Appel v. Spiridon*, 2011 WL 3651353 (D. Conn. 2011 Aug. 18, 2011), *aff’d in part, rev’d in part*, 521 Fed. App’x 9 (2d Cir. 2013); *Milman v. Prokopoff*, 100 F. Supp. 2d 954 (S.D. Iowa 2000); *Bonnell v. Lorenzo*, 81 F. Supp. 2d 777 (E.D. Mich. 1999), *rev’d*, 241 F.3d 800 (6th Cir. 2001); *Burnham v. Ianni*, 899 F. Supp. 395 (D. Minn. 1995), *rev’d*, 98 F.3d 1007 (8th Cir. 1996), *aff’d*, 119 F.3d 668 (8th Cir. 1997) (en banc); *Jeffries v. Harleston*, 828 F. Supp. 1066 (S.D.N.Y. 1993), *aff’d in part, vacated in part*, 21 F.3d 1238 (2d Cir. 1994), *vacated*, 513 U.S. 996 (1994), *rev’d on remand*, 52 F.3d 9 (2d Cir. 1995); *Bishop v. Aronov*, 732 F. Supp. 1562 (N.D. Ala. 1990), *rev’d*, 926 F.2d 1066 (11th Cir. 1991); *Hickingbottom v. Easley*, 494 F. Supp. 980 (E.D. Ark. 1980); *Croushorn v. Bd. of Trustees*, 518 F. Supp. 9 (M.D. Tenn. 1980); *Hillis v. Stephen F. Austin State Univ.*, 486 F. Supp. 663 (E.D. Tex. 1980), *rev’d*, 665 F.2d 547 (5th Cir. 1982); *Cooper v. Ross*, 472 F. Supp. 802 (E.D. Ark. 1979); *Aumiller v. Univ. of Del.*, 434 F. Supp. 1273 (D. Del. 1977); *Duke v. N. Tex. State Univ.*, 338 F. Supp. 990 (E.D. Tex. 1971), *rev’d*, 469 F.2d 829 (5th Cir. 1972); *Close v. Lederle*, 303 F. Supp. 1109 (D. Mass. 1969), *rev’d*, 424 F.2d 988 (1st Cir. 1970).

<sup>30</sup> *Hulen*, 322 F.3d at 1229; *Hardy*, 260 F.3d at 671; *Burnham*, 119 F.3d at 668 (en banc); *Burnham*, 98 F.3d at 1007; *Appel*, 2011 WL 3651353 at \*20; *Milman*, 100 F. Supp. 2d at 954; *Burnham*, 899 F. Supp. at 395. Notably, the *Burnham* case contributed three opinions to this small total.

<sup>31</sup> 260 F.3d at 671.

<sup>32</sup> *Id.* at 675.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 678–79 (citing *Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001)).

<sup>35</sup> *Id.* at 682.

<sup>36</sup> See *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992).

<sup>37</sup> See *Trotman v. Bd. of Trustees*, 635 F.2d 216 (3d Cir. 1980).

One case epitomized the amorphous boundary that demarcates the First Amendment's protection of academic freedom. The City University of New York (CUNY)'s Professor Leonard Jeffries gave a widely publicized speech in Albany that made insulting references to Jews.<sup>38</sup> In response, CUNY removed him as department chair but retained him as a faculty member. Professor Jeffries won damages and reinstatement to his department chair position.<sup>39</sup> But the Supreme Court vacated the Second Circuit's affirmance of the trial court's ruling.<sup>40</sup> Afterwards, the appellate court reversed itself,<sup>41</sup> ruling that CUNY had a reasonable belief that Professor Jeffries's speech would disrupt its operations.<sup>42</sup>

In sum, the disruptive speech doctrine that has taken hold for public sector employers has had an apparent effect on First Amendment faculty cases. Professors usually lose cases if their employer proves that it had a reasonable belief in characterizing their speech as disruptive.

## II. TWITTER AND THE SPEECH RIGHTS OF PROFESSORS

To date, there are no Twitter cases involving college faculty. Given the growing popularity of this messaging service, Twitter controversies are likely to result in litigation. Courts will not treat Twitter as a unique speech category. Instead, tweets will be judged by their context, form, and content.<sup>43</sup>

How might this framework apply to faculty tweets? For context, Twitter is a social media technology that allows people with an account to publicize their views to the world. Its broad platform for social connectivity enables professors to publicize discourse. For form, Twitter is an awkward tool to communicate academic ideas. Its rigid architecture impedes scholarly exchange. Marx would probably have found some epigrammatic ways to use Twitter; but *Das Kapital* would not squeeze into 140-character tweets. For content, Twitter does not offer a scholarly culture. Most tweets are babble (about 40%) or conversation (about 37%).<sup>44</sup> Very little information is socially significant; news is about 4% of tweets.<sup>45</sup> The tone

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38 *Jeffries v. Harleston*, 828 F. Supp. 1066, 1091 (S.D.N.Y. 1993) (describing CUNY's president as the "head Jew at City College"), *aff'd in part, vacated in part*, 21 F.3d 1238 (2d Cir. 1994), *vacated*, 513 U.S. 996 (1994), *rev'd on remand*, 52 F.3d 9 (2d Cir. 1995).

39 *Id.* at 1071.

40 *Harleston v. Jeffries*, 513 U.S. 996 (1994) (vacating *Jeffries v. Harleston*, 21 F.3d 1238 (2d Cir. 1994)), *rev'g on remand*, 52 F.3d 9 (2d Cir. 1995).

41 *Jeffries v. Harleston*, 52 F.3d 9 (2d Cir. 1995).

42 *Id.* at 13.

43 *Connick v. Myers*, 461 U.S. 138, 147–48 (1983).

44 See *Twitter Study*, PEAR ANALYTICS (Aug. 2009), [pearanalytics.com/wp-content/uploads/2012/12/Twitter-Study-August-2009.pdf](http://pearanalytics.com/wp-content/uploads/2012/12/Twitter-Study-August-2009.pdf).

45 *Id.*

of tweets is also problematical for academic speech. By compressing speech, Twitter forces some speakers into attention-seeking tweets that become instant embarrassments. Some evidence suggests that Twitter facilitates bigotry.<sup>46</sup> A recent research project, titled the “Geography of Hate,” used a Google map to track tweets that are homophobic, racist, or demeaning to disabled people.<sup>47</sup>

For now, Twitter is not a medium for much academic speech. Followers do not seek deep insights. Tweets are shallow. Twitter content rarely concerns news. But Twitter is also a robust social medium that expresses social and political commentary. It illuminates conditions in censored parts of the world.<sup>48</sup> It is an evolving technology, with a growing network of communities. Scholars are beginning to employ Twitter for professional purposes.<sup>49</sup> Some have already established Twitter reputations.<sup>50</sup> More are likely to follow.

In sum, Twitter cannot be summarily dismissed as an outlet for academic speech, but neither can it be ranked on a par with a classroom, conference, or peer-reviewed publication.

Returning to my research question: is every tweet from a professor protected as a form of academic freedom by the First Amendment? In the wake of *Waters* and *Garcetti*, colleges and universities have won most First Amendment cases involving disruptive faculty speech.<sup>51</sup> This strong trend implies that tweets that disrupt a school’s mission or operations are not protected by the First Amendment.

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46 See, e.g., *Jackson v. Deen*, No. CV492–139, 2013 WL 1911445, at \*4 (S.D. Ga. May 8, 2013) (plaintiff attorney in case involving race discrimination claim against TV celebrity Paula Deen often tweeted racially-charged language).

47 Monica Stephens, *Geography of Hate: Geotagged Hateful Tweets in the United States*, HUMBOLDT STATE UNIV., [http://users.humboldt.edu/mstephens/hate/hate\\_map.html#](http://users.humboldt.edu/mstephens/hate/hate_map.html#) (last visited Mar. 17, 2015). The map was based on all geocoded tweets in the United States from June 2012 to April 2013 that contained hate words such as “fag,” “nigger,” and other offensive terms. *Id.*

48 Shannon Williams, *Foreigners Denied Facebook and Twitter as North Korea Orders Blanket Ban*, TECHDAY NETGUIDE (Nov. 3, 2014, 10:00 AM), <http://netguide.co.nz/story/foreigners-denied-facebook-and-twitter-as-north-korea-orders-blanket-ban/>.

49 See G. Veletsianos, *Higher Education Scholars’ Participation and Practices on Twitter*, 28 J. COMPUTER ASSISTED LEARNING 336 (2012).

50 David Burkus, *Top Professors on Twitter*, DAVID BURKUS, <http://ldrlb.co/top-professors-on-twitter/> (last visited Feb. 23, 2015).

51 Compare cases decided after 1994 in *supra* note 23 (eleven wins for schools), with cases decided after 1994 in *supra* note 29 (eight wins for faculty members). See also *supra* note 30 (indicating that three opinions that faculty won were from one case).

At this point, only one Twitter lawsuit is pending.<sup>52</sup> In public appearances, Professor Salaita contends that the University of Illinois rescinded his job offer due to donor pressure that resulted from his anti-Israel tweets.<sup>53</sup> A faculty committee found no evidence of donor pressure, but also rejected the school's civility rationale for not forwarding Professor Salaita's appointment.<sup>54</sup>

After Professor Salaita filed his lawsuit in federal court, the campus published a list of some tweets that led to the withdrawal of his job offer.<sup>55</sup> In addition, Professor Salaita re-tweeted a post that appeared to advocate the stabbing death of a pro-Israel journalist.<sup>56</sup> Near the time he filed his lawsuit, he posted a vaguely homicidal tweet that can be read as intimidation directed at the chancellor who blocked his appointment.<sup>57</sup> Professor

52 Jodi S. Cohen, *Steven Salaita Files Lawsuit Against the University of Illinois*, CHI. TRIB. (Nov. 17, 2014, 5:05 PM), <http://www.chicagotribune.com/news/local/breaking/ct-steven-salaita-lawsuit-met-20141117-story.html>.

53 Steven Salaita, *Steven Salaita: U. of I. Destroyed My Career*, CHI. TRIB. (Sept. 29, 2014, 6:36 PM), <http://www.chicagotribune.com/news/opinion/commentary/ct-steven-salaita-tenure-jews-twitter-tweets-unive-20140929-story.html>.

54 SALAITA REPORT, *supra* note 4.

55 *A Statement by the University re Steven Salaita Complaint*, UNIV. OF ILLINOIS (Jan. 29, 2015), <http://uofi.uillinois.edu/emailer/newsletter/66664.html>. The news release included the following tweets:

"You may be too refined to say it, but I'm not: I wish all the f\*\*king West Bank settlers would go missing."

"Zionist uplift in America: every little Jewish boy and girl can grow up to be the leader of a monstrous colonial regime."

"If #Israel affirms life, then why do so many Zionists celebrate the slaughter of children? What's that? Oh, I see JEWISH life."

"Zionists: transforming antisemitism [sic] from something horrible into something honorable since 1948."

"Let's cut to the chase: If you're defending #Israel right now you're an awful human being."

The first tweet referred to three Israeli teens who were kidnapped while hitchhiking in the West Bank on June 12 or June 13, and found dead several days later. See Ray Sanchez, *Hamas Leader Admits Militants Abducted Slain Israeli Teens*, CNN (Aug. 22, 2014, 8:01 PM), <http://www.cnn.com/2014/08/22/world/meast/israel-teens-death-hamas/>.

56 See Steven Lubet, *Professor's Tweets about Israel Crossed the Line*, CHI. TRIB. (Aug. 14, 2014), <http://www.chicagotribune.com/news/opinion/commentary/ct-speech-steven-lubet-salaita-university-illinois-20140814-story.html> (reporting Prof. Salaita's re-tweet of the "vile suggestion that journalist Jeffrey Goldberg ought to get 'the pointy end of a shiv'"). Prof. Salaita's "shiv" re-tweet looks even less deserving of First Amendment protection after the beheading of two journalists, James Foley and Steven Sotloff. See Chelsea J. Carter, *Video Shows ISIS Beheading U.S. Journalist James Foley*, CNN (Aug. 20, 2014), <http://www.cnn.com/2014/08/19/world/meast/isis-james-foley/>; Chelsea J. Carter & Ashley Fantz, *ISIS Video Shows Beheading of American Journalist Steven Sotloff*, CNN (Sept. 9, 2014), <http://www.cnn.com/2014/09/02/world/meast/isis-american-journalist-sotloff/>.

57 It states: "My last boss mysteriously disappeared. #FiveWordstoRuinAJobInterview." Steven Salaita, TWITTER (Jan. 17, 2015, 10:48 PM),



Salaita and his supporters contend that all of his tweets deserve First Amendment protection. I suggest, to the contrary, that some tweets are not constitutionally protected. My research shows that when a university makes a reasonable prediction that students or faculty would feel intimidated by personally abusive or demeaning speech, courts support actions that promote a campus climate of tolerance.

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<https://twitter.com/stevesalaita/status/556659301511864320>. This tweet uses similar death-imagery to Prof. Salaita's "wish" that settlers "would go missing." *See supra* note 55.