

CONFIDENTIAL ATTORNEY–CLIENT PRIVILEGED COMMUNICATION
Johnson County Community College

Investigation Report
Complaints of Kathy Brown (Student)

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Introduction and Background

Complainant, Kathy Brown, was a student at JCCC for one semester – Spring 2009.¹ She raised several complaints through various means during that semester. Her first complaint, made in February 2009 to Csilla Duneczky (Interim Assistant Dean of Sciences, now Dean of Sciences), was that her right to free speech had been abrogated by Dr. Michael Clark, professor of her Anatomy and Physiology class. On May 1, Complainant filed a written complaint with Marilyn Rhinehart, Vice President of Instruction, against Kami Day, Associate Professor of English and Fellow of the Office of Diversity Equity and Inclusion (“ODEI”) for censoring by content her First Amendment right to free speech. On June 12, Complainant submitted a written complaint to Dennis Day, Vice President of Student Affairs, against Carmaletta Williams, Executive Director of the ODEI, for suppression of free speech by content; this complaint also alleged that Williams removed her from the Diversity Discussion Group (“DDG”) ListServ, in which she had previously participated. By this point, Complainant was no longer a student at JCCC.

In the summer of 2009, Dr. Day contacted me about commencing an investigation into the complaints and on August 24 I received permission from the College to initiate the investigation. I gathered and analyzed initial documentation the week of August 24 and interviewed Complainant on August 28. During this interview, Complainant agreed to furnish additional information and documentation for review and both Complainant and I agreed that several issues remained to be discussed. I reminded Complainant of this via email² and on August 29 Complainant forwarded two emails from Dennis Day. I emailed Complainant on August 31 again requesting the additional documentation and noting that a follow-up interview would be conducted upon receipt of the additional materials.

On September 4, Complainant forwarded to me various recent postings from the Diversity Discussion Group. The same day I followed-up with Complainant via email, reminding her of the specific information and documents that I had been expecting to receive. After receiving no response from Complainant, I emailed her on September 15 to schedule a final interview. Complainant replied on September 17, again asking for clarification on requested documentation and indicating that she would be available the following week. My email response to her attempted to clarify both information concerning documents and several questions Complainant raised. I informed Complainant that I was sending her a copy of the sets of documents she had previously submitted to Dennis Day so she could

¹ Ms. Brown is an attorney; she explained in her interview that she returned to college to bridge her LPN to an RN degree. She registered for, but did not complete, two courses.

² Specifically requested: “Please forward to me any and all documents you would like me to consider in my investigation of your complaints. We specifically discussed production of additional DG postings not included in the sets referred to above as well as the emails exchanged during the time you did not have access to the DG, which you have stated was from April 11 until approximately May 11.”

provide me any materials not already submitted, and suggested Tuesday, September 22 or Wednesday September 23 as a date for her follow up interview.³

Complainant replied on September 22 that she would be available on Friday, September 25. Complainant then contacted me in the morning of the 25th to postpone the interview for health reasons and suggested Tuesday, September 29. Complainant was unable to meet on the 29th because of continuing health concerns and advised that she would be in contact when she was able to meet. When Complainant contacted me, she suggested October 7 or 8 and we met on October 8. During this meeting Complainant provided various emails and agreed to provide several other documents and/or emails she referenced during the interview. Complainant forwarded five emails to me on October 22. As these five emails did not include all information discussed and requested, I requested via email that any other documentary evidence be provided to me no later than Monday, October 26. Complainant submitted additional email correspondence on October 27, 28 and 29, but several requested items remained outstanding – all documents that she stated she possessed. One of particular interest was a document showing the Diversity Discussion Group membership; she mentioned it in an email to Williams on April 22 and again to me on October 8. In an email to me on October 29 Complainant stated that she thought she was close to finding that document and several others. I inquired about these documents again on November 12. Ultimately, she did not submit additional documentation.

In addition to Complainant, I interviewed and/or obtained information from Clark, Duneczky, Rhinehart, Williams, Kami Day, Monica Morrison (Administrative Assistant I), Robert Becker and Daniel Holmes (Systems Programmer/Analyst), and “Student #2.”

Chronology and Details of Complaints (Obtained from documents and interviews with Complainant)

- Complainant met with Csilla Duneczky, then Interim Assistant Dean of Sciences, now Dean of Sciences, to discuss her **Free-Speech Complaint Against Dr. Clark** shortly before February 5 and followed the meeting with an email dated February 5. Complainant reports that during an after-class discussion with a fellow student (“Student #2”) she was silenced by Clark because of the content of her speech. She and Student #2 were discussing his button that said “War Is Not the Answer” and she asked him questions such as “What about World War II?” “What would you do if your family were threatened?” and “What if Islamic terrorists came into your home and wanted to take away your daughters because they had worn short sleeves?” Complainant reports that Clark leaned over his desk, “put his fat finger” in her face and said “Stop!” She was surprised but thought perhaps he was trying to prepare for class so she suggested they should move into the hall. Clark told her, “No, you can’t have that discussion *anywhere* here.” When she asked why, Clark said that she was making Student #2 uncomfortable. Complainant reports that Student #2 told Clark several times that he was fine, but Clark again told Complainant that she could not have the discussion anywhere at JCCC.
- In the February 5 email Complainant asked Duneczky to identify what Complainant referred to as a “discomfort policy” at the College and said that her right to free speech was abrogated by Clark when he told her to stop her conversation with another student because it might make someone uncomfortable.

³ These emails are available if desired for review in this matter.

- Duneczky responded via email on February 6 stating, in part, that “the faculty try to provide an environment where students can focus on the subject matter” and invited Complainant to continue the conversation. Complainant responded via email on March 10, more than a month later, emphasizing that the conversation she was referencing took place after class and that Clark had told her that she “could not have that conversation.” Complainant stated that she believed Clark, not the student, was uncomfortable with the subject matter of her conversation and disagreed with her point of view. She believes it was for these reasons he told her to stop. She states in her email that any sort of “discomfort policy” would be in violation of the First Amendment. Duneczky forwarded this line of emails to Marilyn Rhinehart on March 10.⁴
- After being contacted by Complainant, Rhinehart scheduled an appointment with her in early April. Complainant did not attend and emailed Rhinehart on April 11. Another meeting date was set for April 14.
- Complainant called Williams on April 13 to inform her that she was no longer receiving DDG postings via email. Williams’ office inquired with IS staff that same day and received an email from Daniel Holmes showing that Complainant was not on the distribution list of a posting made on April 8, nor did she appear on the list of list members who had unsubscribed from the list. Complainant also emailed Williams the afternoon of the 13th informing her that she was still receiving no postings, that Kami Day suggested during a telephone conversation that day that she re-enroll, which she says she did, and that Williams and Kami Day’s (oral) statements that “certain points of view will not be tolerated” on the DDG violate the JCCC’s policies on Group formation/membership and constitute censorship by content. Williams responded on the 14th that after checking with the Vice President, Policy and Strategic Initiative, she could find no such policy on group formation/membership.
- During their April 14 meeting, Complainant and Rhinehart discussed both her complaint against Clark and her concerns about the Diversity Discussion Group. Rhinehart followed up with Complainant on April 19 via email (see below).
- On April 16, Complainant contacted Dorothy Friedrich, (Vice President, Policy and Strategic Initiative) and related her complaint about Clark, who she says told her that College policy does not allow for conversations that might make a person uncomfortable. She also asked Friedrich about College policies on group formation and membership. Friedrich told her she was unaware of any such policies. Complainant further alleged that she was dropped off the DDG after she disagreed with Williams and Kami Day.

⁴ Chronologically interesting: Complainant had previously emailed Duneczky on March 4 to inform her of her plan to withdraw from Clark’s class because of medical issues, “NONE of which were caused by good Dr. Clark!” She also attributes her poor performance in his class to her medical issues. She withdrew her request to be advised of the source of the “rules against discomfort” indicating that she had had no additional issues with Clark that caused her concern. In a March 6 email response to Duneczky’s reply, she tells Duneczky that “like Drs. Clark and Cannel, you are a caring and gifted person.” Interestingly, her email to Duneczky dated March 10, only four days later, goes into great detail about her belief that Clark infringed upon her right to free speech.

- Friedrich informed Don Perkins (Executive Director, Budget & Auxiliary Services) and Rhinehart of her conversation with Complainant on April 17 and reported to them that she referred Complainant to Paul Kyle, Dean of Student Services. According to Friedrich, Complainant told her that she had discussed her concerns with an attorney friend who advised her that she could make a complaint that *she* was the one made uncomfortable and that she could use her epilepsy as a reason for a complaint.
- On April 17, Complainant forwarded her email correspondence with Duneczky about Clark to Dennis Day, Vice President of Student Service, along with various DDG postings/threads – the final one was a posting by Complainant on April 13.⁵
- Rhinehart followed up with Complainant via email on April 19, informing her that she would be discussing the complaint with Duneczky. Rhinehart also told Complainant that she had reviewed some of the DDG posts and it appeared that otherwise civil dialogue had turned into the perception of personal attack around April 8 or 9.
- On April 20 Complainant emailed Rhinehart thanking her for the update on her **Formal Complaint** (emphasis hers) against Clark, Williams, and Kami Day. She reminded Rhinehart that her complaints against Williams and Day include “their practice of systematically burdening/suppressing free speech in their official capacity” whenever someone’s speech “disagreed with their [far-Left] views.” (parentheses in original) She further included Kami Day’s stated practice of discriminating against students in her classes who disagreed with her political views. She also forwarded her email exchanges with Duneczky from February and March (which Rhinehart had) and her email exchanges with Williams on April 13 and 14.
- Rhinehart responded to Complainant on April 21 explaining that she did not perceive their April 14 meeting to be a Formal Complaint, as such complaint must be in writing. She informed Complainant that Williams reports directly to President Calaway, so she would be addressing only the concerns raised about Clark and Kami Day. She asked Complainant to speak with Andy Anderson, Dean of English and Journalism, with regard to her complaints against Kami Day prior to her (Rhinehart’s) review of her formal complaints. She included the Student Academic Appeals Board Policy and further requests a written statement of the matters of appeal for each faulty member. Finally, Rhinehart informed her that she will respond to the complaint no later than April 27, unless she is advised by College personnel that she should consult with other parties.
- On April 21, Dennis Day emailed Complainant informing her that he had spoken to Rhinehart about her complaint and that he could not find anything at the College that would exclude her from the DDG. He encouraged her to send an email to join_diversity@list.jccc.edu to join the group and told her that this would be the last conversation he would have with her unless something else came up. Complainant characterizes this as an attempt to get rid of her and her complaints. (Complainant responds on May 5, see below.)

⁵ Interesting, considering that Complainant says she stopped receiving postings around April 9; she was apparently still able to post as of April 13.

- Complainant sent an email to the address sent to her by Dennis Day on April 22, describing it as her fourth request to be restored to the DDG. She forwards the same email to Williams, perhaps because the “join” email bounced back to her. Williams responds that she simply needs to click on the link and provides it again, in the same format (join_diversity@list.jccc.edu.) She also tells her that they never took her off the list and that, in fact, there is “no record that your e-mail address was ever on our listserv.” Presumably Williams is basing this statement on the information she received from IS indicating that Complainant’s email address was not on the distribution list of the April 8 posting that IS used as a test to check Complainant’s membership status.
- On April 23, Complainant reported to Rhinehart that she has not been able to reach Anderson.
- On April 30, Complainant sent Williams (cc’ing Dennis Day, the DDG, Rhinehart, Kami Day, Duneczky, President Calaway, and Friedrich) an email entitled “Still excluded from the Diversity List after 8 requests.”
- On May 1, 2009, Complainant responded to Rhinehart’s request that she reduce her complaint to writing and submitted her **Formal Complaint against Kami Day** to Rhinehart. This complaint alleges that Kami Day:
 - Used her position to censor by content Complainant’s First Amendment right to free speech.
 - Used instrumentalities of the College to target Complainant for excoriating, uncivil and intolerant speech because Complainant disagreed with her political views.
 - Informed Complainant that she systematically discriminates against students in her class who do not share her political beliefs.
 - Removed Complainant from the DDG to prevent her from voicing dissent and in retaliation for having done so.
 - Violated the Establishment Clause by exhibiting hostility to religion.

All allegations against Kami Day relate to activity on the DDG with the exception of the third bullet point, which involves claims that she discriminates against students in her courses. It should be noted that Complainant was never a student in Kami Day’s classes. The only source provided of the basis of such a complaint is Complainant’s allegation that Kami Day told her during a phone conversation on April 13 that she discriminates against students who disagree with her views on homosexuality and same-sex marriage. Because this conversation took place over the phone, there is no written record of what was said. Information included below regarding Complainant’s credibility will naturally factor into any determination about what was in fact said during the conversation. Kami Day has denied both on the DDG and to me that she made such a statement and in fact states that she specifically told Complainant that she does NOT discriminate against these students. The College should be aware if any formal complaints have been made against Kami Day over such an issue.⁶

⁶ Information gathered from www.ratemyprofessors.com shows several negative student comments about Kami Day’s focus on homosexuality, gender and transgender issues in Spring 2009 courses, however none of these students on this virtually anonymous website complains that his or her grade was impacted by having views or beliefs distinct from Day’s.

- On May 5, Complainant responded to Dennis Day's April 21 email informing him that despite repeated attempts to rejoin the DDG, "I continued to be banned." She explains that she has "re-joined" numerous times,⁷ and has emailed Williams and even President Calaway. She expresses to Day that she believes she is being banned because of the content of her speech.
- Complainant met with President Calaway and Dennis Day on May 11 and Dennis Day restores her to the DDG on May 14.
- Complainant contacted Williams via email on the May 14 and asks for copies of all the posts since her departure from the board as well as an email from Williams about the tone on the DDG. Williams replies that she does not store the board postings.
- On May 18, Complainant emailed Williams mentioning that topics on group website go back to 2004 and again requests an email Williams sent about the "bad tone" on the DDG. Complainant forwards same to Dennis Day who replies on the 19th that IT told him they only bank emails for approximately one week.
- On May 19 Linda Jameson provided Complainant – via a DDG posting – a link to a webpage listing all discussion threads including DDG postings.⁸
- On June 1 Williams decided to change the format of the DDG to one which is in essence a "bulletin board" to which only she and her assistant Susan McGarvey can post informational announcement and events.
- On June 12 Complainant submits to Dennis Day her **Formal Complaint against Carmaletta Williams**, which references her original complaint in April. Complainant states that Williams used the power of her Office as head of the ODEI and the instrumentalities thereof to:
 - Suppress students'/persons' rights to Free Speech and Free Assembly.
 - Violate the Establishment Clause of the Constitution in a tax-funded school.
 - Engage in discriminative/unlawful acts toward Complainant and anyone who objects to her behavior, including banning/dropping Complainant from Free-Speech Forum.
 - Pretextually discontinue the Free-Speech Forum for unlawful purpose.
- October 6 – Complainant is not allowed to register for the Silent Witness Peacekeeper's Workshop. Williams states that the workshop is limited to students, staff and faculty of JCCC. An examination of the emails/posting to the DDG related to this workshop shows that the sessions were limited to current students, staff and faculty. This does not violate any College policy or Constitutional protection.

The refusal of Complainant to reveal names of those she believes are aggrieved – whether members of the DDG or students in Kami Day's classes – necessarily limits the investigation to the claims

⁷ Presumably using the link provided by both Williams and Dennis Day.

⁸ When the format of the DDG changed in June 2009, the settings were also changed to retain posts for only 60 days.

she makes herself. Claims related to Kami Day's classes are discussed above. Claims related to Complainant are discussed below.

Analysis of Complaints

Free Speech Complaint Against Dr. Clark

Clark's account of the incident in question differs in several ways from Complainant's version. Complainant describes her conversation with Student #2 as occurring after class; Clark agrees that it was technically after the end of the designated class period, however it occurred during a time when students linger in the class room to ask questions and to hear what questions were being asked by other students. Clark remembers Complainant incessantly questioning Student #2 about various scenarios related to war and that Complainant seemed to want to include him (Clark) in the discussion. Clark's main concern was that he have an opportunity to address the questions of other students relevant to the course work. He does not recall her asking if they should take conversation into the hall, but she did say something along the lines of "Oh, am I not supposed to talk about this??" as if she was trying to get him to say that. He remembers saying something like, "It's not that, but we're here for anatomy. It's not like you can't talk about it, but we're talking about anatomy now." He denies that he ever told Complainant to "stop" and when asked if he told her that she could not have that conversation (about war) *anywhere* on campus, he laughed in disbelief and said that he has "never, ever, told someone what they can and cannot talk about." He later commented that it is "ludicrous and defies logic that any teacher would say that you can't talk about something no matter where you are."

Clark agrees that he may have said something about the whole situation getting uncomfortable, but that was in relation to the manner in which she was speaking, not because of the subject matter. He explained that "such a confrontational style toward another student is not how you'd like people to behave in your classroom." As the instructor of the class, he felt it was appropriate to make that comment in his classroom. He says he would not have stopped to say anything to students having this type of conversation in the hallway. He believes that anyone who heard the line of questioning Complainant was addressing to Student #2 would have found it uncomfortable – again, not because of the subject matter, but the way in which she was addressing the other student. Clark described Complainant as "awkwardly belligerent" and adds that he has taught a wide variety of students, but never had anyone quite like her in class.

I was able to locate and interview Student #2 and I found him to be a highly credible witness. He is no longer a student at JCCC but plans to continue his nursing education at UMKC once he saves enough money. He reports that he sat next to Complainant in Clark's class and describes her generally as a "wonderful" person with whom he had some interesting discussions. She had expressed strong opinions before, but on the day in question he found her very pushy and annoying. The conversation seemed to turn into something more – as if Complainant was not going to stop until she had "converted" him to her way of thinking. Because that was never going to happen, Student #2 simply stopped responding to her, but felt awkward just walking away – in part because he did not want to be disrespectful. They had worked their way to the front of the room during the discussion because Student #2 was "trying to get away" from her and listen to the questions being asked by the other students. He believes that Clark recognized this and at some point Clark said something along the lines of "I don't want to have this in my class if it's not about anatomy." He thinks Clark was the one who at some point suggested they have the conversation out in the hall. Complainant seemed pushy about wanting to continue the conversation in the classroom. When asked if Complainant was the one who

suggested they move into the hallway, Student #2 said, “no, that’s not right, that’s not what happened.” Student #2 agrees that although the class period was technically over, they were still in the room and people were still in there asking and waiting to ask questions. Eventually, because the one-way conversation went on so long, students from their class were gone and others were entering the room in for the next class.

Student #2 reports that Clark never told Complainant to “stop” and in fact was not forceful at all in his communication. When asked about Complainant’s contention that “he stuck his fat finger in my face and said ‘Stop!’,” Student #2 said that was “way overboard and a lie.”⁹ He describes Clark as strict with rules but also a “very respectful, very kind person.” Clark never said that he (Clark) was uncomfortable. He believes Clark eventually said that Student #2 seemed uncomfortable. Student #2 felt relieved that Clark noticed this – he was starting to wonder how he would be able to get along with Complainant and continue to sit next to her after that exchange. Student #2 felt quite awkward with Complainant after this incident and tried to keep their conversations to a minimum. Clark approached Student #2 after the incident and told him that he could change seats in the class if he wanted to, but since Complainant was missing a lot of classes at this point he did not change his seat.

Student #2’s account of the incident in question parallels Clark’s and places the conversation as occurring while students were leaving the class room, during a time when students would typically linger to ask Clark questions about the subject matter. Free Speech rights in this context are balanced with the government’s legitimate interest in providing an appropriate and effective learning environment. Furthermore, Student #2’s credible testimony does not support Complainant’s contention that Clark told her she could never talk about war or political issues anywhere on campus. My direct observations taken in conjunction with this might lead one to believe that Complainant is at best exaggerating or even lying. I do not believe that Complainant is intentionally fabricating stories about Clark. I believe that her perception of the events is that she was told not to talk about certain topics; the speaker and another witness counter this interpretation. Had Clark told Complainant she could never talk about topics such as war, foreign policy, etc. anywhere on campus that would indeed run afoul of free speech rights generally on campus. Within the confines of his classroom, a professor may take into account the educational interests of his students. Furthermore, a professor who is fielding questions from students and preparing for his next class isn’t *required* to participate or even tolerate an off topic conversation.

Diversity Discussion Group – Free Speech

Complainant alleges that both Kami Day and Williams used their positions to censor by content her First Amendment right to free speech on the DDG. The Free Speech analysis for the DDG is different than the one above. Complainant herself identifies the DDG as a public forum. At all times while Complainant was a member of the DDG, it was a forum open to all and was either intended to be a forum for discussion of topics germane to diversity on campus or had developed into such a forum. While the DDG is not an open public forum in the traditional sense that public streets, sidewalks, parks or city squares are, it is likely to fall into the category of “designated public forum” – it is conducted on College property but has been designated as a forum for discussion of particular topics – or even a “limited public forum” – one in which the College may define the scope of the subject matter and speaker identity.

⁹ Student #2 has a very gentle nature and made great efforts to choose his words carefully and to be fair in his responses. He was very firm in this response.

Background:

The topic of same-sex marriage was discussed on the DDG in early April after a posting about the Iowa Supreme Court striking down a ban on same-sex marriage. After objecting to what she classified as the “Far-Left radical political views” of forum members who praised the decision, Complainant alleges that she was subjected to an escalating barrage of verbal abuse. She believes she was called “racist” “oppressive” and “homophobic.”

A review of postings shows that a polarized, yet civil debate on the topic was taking place on the DDG initially. On April 5, Complainant herself praised the intellectual debate on the forum stating “we are engaging here in intellectual discourse **without** the dreadful tone and invective which so often characterizes those discussions . . . *it is not easy to discuss these matters*. The reason is a good one: Because we care so much about them They come from our religious faith, our deeply-held convictions, our actual lives.” She then thanks everyone in the group for sharing their thoughts and states that she will offer her Holy Communion at Mass for the group, especially Williams.

Kami Day responded to this post within the hour with several questions directed toward Complainant and related to one of her previous posts: whether Complainant believed the relationships of same-sex couples could be based on love, commitment and mutual interests; and whether she believed that Day, as a non-Christian, should be bound by Christian beliefs. The same day, a sociology professor posted that opposition to same-sex marriage would be included in the sociological definition of “homophobia.” This led to Complainant demanding an apology, calling it an affront to all of Roman Catholicism. Williams responded that an apology was not necessary and equated opposing same-sex marriage to opposing interracial marriage. Complainant called upon the professors on the DDG to support her request for an apology and to condemn this example of “name-calling.” Complainant then harkened back to the “discomfort policy” she inquired about in the Clark matter, stating “What of the great care taken at JCCC to refrain from causing discomfort, offense, to fellow students?”¹⁰

Several list members attempted to calm the waters, some saying that they did not believe that anyone was questioning or attacking Complainant’s religion, but rather they were questioning any attempt to impose her morals on others. The individual who posted the definition of homophobia explained that definitions of “isms” and “phobias” apply institutionally, not individually, and then indeed did offer an apology in an effort to reduce tension.

On April 7, Kami Day posted an article about the Vermont Supreme Court decision on same-sex marriage, discussed some of her views on homophobia, and stated her position as to whether the United States was actually founded on Judeo-Christian belief. Complainant replied, addressing Kami Day specifically, stating that her argument was logically flawed and tautological and telling her that she disrespected California’s “we the people” by disagreeing with the popular vote on Proposition 8 (banning same-sex marriage.)¹¹ Complainant queried why members of the forum were constantly

¹⁰ It is in her closing in this post, dated April 6, that Complainant first identifies herself as “Esq.” and “Thomas More Law Center, Pro Bono Counsel.”

¹¹ Kami Day had first addressed Complainant specifically, by name, on April 5 when she asked her the questions referenced previously.

criticizing the United States but did not address Islam's attitude toward homosexuality. Complainant closes with a link to www.barenakedislam.wordpress.com¹²

After this, several DDG members expressed their opinions of Complainant's post. Examples are: "Although I am not a Muslim, I must say that I do not appreciate that you are using this list to promote religious hatred and bigotry," ". . . distasteful that you are using this listserv to promote racial and religious bigotry" and "Injustices abroad do not license turning a blind eye to injustices here." One female faculty member expressed her disappointment in the post and shared her experience as an Islamic woman. Kami Day responded that Complainant was the only one in the discussion whose tone was nasty, sarcastic, and even hateful (with regard to Islam.) She took issue with Complainant addressing her – sarcastically, she believed – as "dear friend" and stated that she did not know her and "could not imagine a universe in which [she] would want to be [her] friend."

Complainant replied to Kami Day that she was appalled by the hostility of her response. She continued to use terms such as "dear lady" and "dear friend,"¹³ and repeated her questions about why homosexuals and others remain silent on Islam's attitudes toward homosexuality (criminalized in Islamic countries) and women (which Islam "routinely degrades /disenfranchises/executes/clitoridectomizes.") Complainant apologized to the Muslim faculty member for hurting her feelings, and then urged her to speak out about such issues. She added that she herself had spoken out about the priest sex scandal in the Catholic Church, but she was able to do so because she did not fear punishment by death as her Muslim friends do.

Complainant believes, as she stated in a posting on April 9, that "the overwhelming preponderance of time spent [on the DDG] is spent attacking **everything** American, **everything** traditionally religious, and everything which doesn't utterly **fall into lock-step** with their radical Left views." [Emphasis in original.] It is around this time that Complainant states she stopped receiving emails of DDG postings – more on this below.

Part of what Complainant seems to be protesting is that if a "discomfort policy" exists (and to her it must, because Dunczky wrote in her February 6 email "there are many topics of conversation that can be uncomfortable and we try to be sensitive to how others around us may feel . . . the faculty try to provide an environment where students can focus on the subject matter") then who was safeguarding *her* level of discomfort as student on the DDG? Yet, she states in a later posting: "What of any import is ever accomplished w/o discomfort? Answer: Nothing. So why is everyone endlessly preoccupied with their 'comfort'? Of all the things in this world to be obsessed with I can't imagine anything more stupid than that."

Analytically, there is a difference between a) a classroom setting where Complainant is attempting to engage in a conversation with a student who would continue to sit next to her in class and who, in that moment, simply wanted to either listen to the questions being asked by his fellow students or, alternatively, to leave the room and get out of the conversation, and b) one in which Complainant

¹² Examples of headlines/stories from this source close in time to this posting are "Rape by Muslims, epidemic in Europe, and headed this way now that IslamObama wants to increase Muslim immigration in U.S." and "Serves Her Right: Canadian female journalist who converted to Islam and went to Pakistan to show that Islam and Jihad are not the evil the West says they are, is now being held by the TALIBAN and will BEHEADED unless Canada pays a \$3.75 million ransom."

¹³ In May, Complainant also addressed a "supporter" as "my dear [person's name]."

voluntarily joins an open forum about Diversity and expresses her opinions. If others do not agree with her and express this, such is the nature of a public forum. In the classroom/between-class setting, Clark was charged with safeguarding the educational objectives involved and could reasonably comment that the tone of the conversation was uncomfortable and ask them to stop the non-A&P discussion *in that setting* and take it somewhere else.

One might wonder why Complainant joined the Diversity Discussion Group at all. When asked what she expected from the DDG, Complainant did not have a ready answer but ultimately said that the forum looked interesting as it was billed as an opportunity to “step into someone else’s shoes.” She told me she joined after looking at a list of Student Groups and found herself interested in “Young Republicans” and “Diversity Group.” When I checked the list of student groups in September 2009 there was a “College Republicans” group but no “Diversity Group” listed. No one, including Complainant, has been able to point me to language on the College website or in any publication containing the phrase “step into someone else’s shoes”

Establishment Clause

Establishment Clause claims brought in the context of higher education institutions typically deal with the imposition of religious views on students, not with faculty expressing their own views in a public forum. Kami Day stated on the DDG that she is not a Christian. She is also open about having a female partner and advocating for same-sex marriage – a position Complainant clearly disagrees with based on her religious beliefs. That said, there is no evidence to support a contention that the Establishment Clause was violated on this Free Speech forum. Religion is a valid topic on a diversity forum. No one told Complainant not to express her religious views and she certainly did not seem stifled in continuing to express her beliefs by any discussion or viewpoint held by others.

Diversity Discussion Group – Removal From

Complainant alleges that sometime around April 9 she was removed from DDG membership after expressing opposition to views held by Kami Day and Williams. On April 13, Complainant sent an email to Williams and Kami Day suggesting that she perhaps did something to her Gmail account that was stopping emails from the DDG. She also spoke with Williams and Kami Day on the phone that day and followed up with another email to Williams that afternoon.¹⁴

Complainant stated that during their telephone conversation on April 13 Williams alternated between denying that she had removed her from the DDG and saying that only *she* had the authority to do so, therefore saying or implying (Complainant used both words) that she had in fact removed her. When I asked Complainant if Williams ever actually told her that she had removed her from the DDG, she said yes. Her husband – who was present during both interviews of Complainant – interjected at this point and said that he did not think Williams had ever actually told Complainant that she had

¹⁴ As a matter of credibility/accuracy/characterization on the part of Complainant, it is worth pointing out that in her April 13 email to Williams she states “Although Kami and I continue to disagree on the topic of same-sex marriage rights, our talk was cordial and indeed a long one – nearly ½ hr.” In a posting to the DDG on May 19 entitled “An invitation” Complainant writes, in reference to the same conversation on April 13, “What you on the List don’t know is that I spoke privately with both Carmaletta and Kami, and both were viciously hostile.” Unfortunately, this kind of variation in her account of the phone conversation with Kami Day shows a tendency on the part of Complainant to mis- or at least re-characterize information for different purposes and, taken in conjunction with other evidence, diminishes her overall testimonial credibility.

removed her, but that Complainant concluded from Williams' comments (about being the only one who could remove her) that she did.¹⁵

Between Complainant's first and second email on April 13, Williams' office inquired with Dan Holmes in IS about Complainant's status. He provided information showing that Complainant was not on a recipient list of a DDG posting on April 8, nor was she on the list of individuals who unsubscribed from the list. When I interviewed Williams, she put forth the theory that Complainant was never actually subscribed to the DDG but was somehow receiving the messages from a list member or the website.

As evidenced in the chronology, it took from April 13 to May 14 for Complainant to become reinstated on the membership list of the DDG, and this only occurred after she informed President Calaway of the issue via email on May 1 and met with him on May 11. Complainant had emailed Williams numerous times, directed her concerns to Dennis Day, and attempted to re-join the DDG numerous times using the link the Williams provided to Complainant directly and to Dennis Day to pass on to Complainant. Unfortunately this link was invalid. Complainant's documentation shows that at least one attempt to re-join using this method resulted in an email bounce back to her; she forwarded this email to Williams on April 22 and Williams sent the same link back to her as the mechanism for joining. Although Williams responded to an April 30 email from Complainant ("Still excluded from the Diversity List after 8 requests"¹⁶) on May 19 saying that for some reason Complainant's emails were landing in her "junk mail" folder, she clearly received the April 22 email. During my interview of Williams, I tested the "link" (more properly described as an email address, not a "link" to a website) and received an immediate bounce back. When I asked Williams about this, she looked at the address and told me that the underscore (_) between "join" and "diversity" should have been a hyphen (-). It is impossible to determine whether or not Williams deliberately provided a faulty link to Complainant, but from Complainant's perspective it would certainly appear that her requests to re-join the listserv were being ignored at an administrative level.

Complainant clearly was a member of the DDG in early April. Emails of postings from April show her member number and the email account with which she was subscribed. There is no testimonial or documentary evidence to support a theory that Complainant unsubscribed herself from the DDG.¹⁷ This leaves the only plausible explanation that either the IS department or one of the list administrators (Williams and McGarvey) removed Complainant. The IS department employees responsible for

¹⁵ This is another example of statements by Complainant that call into question the accuracy of her accounts of conversations and statements at issue in this investigation.

¹⁶ It should be noted that the following individuals were also copied on the April 30 email: Dennis Day, Marilyn Rhinehart, Kami Day, Csilla Duneczky, Terry Calaway, and dorothy@jccc.edu. (According to the on-line faculty and staff directory at www.jccc.edu, Dorothy Friedrich's address is dorothyf@jccc.edu; she, presumably, would not have received the email.)

¹⁷ Every list member has the ability to unsubscribe himself or herself by clicking an email link at the end of any email posting received. When this link is clicked, the member receives an email requesting verification of the unsubscribe. Complainant actually received such a confirmation email on May 27, 13 days after she was reinstated to the DDG, when another member inadvertently clicked Complainant's link at the bottom of an email instead of her own. To her credit, although she initially wondered about the intention of the member (as the member had expressed strong opposition to a number of Complainant's postings) during her interview Complainant stated that she absolutely believed the other member had simply made a mistake and clicked on the wrong line. Significantly, Complainant states that she did not receive a similar email in April, adding to the notion that neither Complainant nor another regular member unsubscribed her at that point – either intentionally or inadvertently.

maintaining the exchange servers report that they would not have removed a list member without a request from the list administrator; neither remembers such a request, nor could find documentary evidence of such a request coming into them or anyone else in IS.

It is not illogical for Complainant to believe that Williams removed her from the DDG – she had the motive and the opportunity. Williams stated during her interview that she would have liked to have removed her, but there was no policy in place that would allow her to do so. In my review of the JCCC website, I found a webpage with a detailed set of instructions to assist a list administrator in adding or removing someone from the membership list. At the end of the day, Williams denies that she removed Complainant and no documentary evidence exists that would either prove or disprove this.¹⁸

The fact that Williams' assistant inquired about Complainant's status on April 13 suggests that Williams was unsure of that status. If she had removed her from the membership list, she would have known that she was not on it. Additionally, had she removed her, she would be familiar with the process for ascertaining the list of members and could have accessed that information herself. It remains unclear how or when Complainant was no longer on the membership/distribution list. She was able to post responses to prior messages through April 13, but had stopped receiving new posts sometime earlier. What *is* clear is that the posts stopped and it took an extraordinary amount of time and effort on her part to be reinstated.¹⁹

Complainant's Return to Diversity Discussion Group and Ensuing Issues

Dennis Day reinstated Complainant to the Diversity Discussion Group on May 14, 2009. Between May 14 and June 1 when the DDG is converted to a "bulletin board" format, Complainant was involved in several long threads as least as heated and divisive as the postings in early April. Topics included abortion, President Obama's visit to Notre Dame, Sonia Sotomayor's nomination to the Supreme Court, La Raza, and slavery – as well as Complainant's allegation that Williams removed her from the DDG in April, details about her formal complaint, and an invitation by Complainant to others to send her any additional concerns or complaints about the ODEI.

It is clear from reading numerous postings on the DDG that a number of group members were put off by Complainant's posts, whether they were posts asking why no one was bringing up the atrocities committed against homosexuals in Muslim countries, arguments against same-sex marriage, anti-abortion posts, posts stating that she was a "Minuteman" and a fan of Michael Savage,²⁰ or posts accusing Williams of removing her from the DDG. Some members expressed their disagreement with Complainant and/or frustration with Complainant's strong and even strident approach to discussing certain topics. Many did so in a factual, respectful and measured manner. Complainant's Formal Complaints allege that she was "excoriated and subjected to *ad hominem* attacks"; her Complaints list

¹⁸ According to the IS department, the Lyris system writes over membership data when an individual rejoins a group and will only show the current subscription information. To test this, I joined the group, unsubscribed, and then joined again; I contacted IS after re-subscribing and confirmed that the initial subscription data had been overwritten.

¹⁹ I remain a bit puzzled why Complainant did not use the mechanism she originally used to join, which she states (several times) was via the Student Groups page.

²⁰ Minutemen actively seek to "secure the United States' borders . . . against unlawful and unauthorized entry of individuals . . ." Savage is outspoken in his opposition to illegal immigration and his support of the English-only movement and deportation of Muslims.

numerous examples of “sickening” attacks that are simply expressions of opinion, just as she expressed her opinion on many topics.²¹

Commendably, but certainly not required by the First Amendment, some participants tried to bridge some differences in opinions. Dennis Arjo comments, “I don’t think words like “homophobia” are very useful in discussion like this . . . it is just not realistic to expect those on the other side of this debate to have their position labeled ‘homophobic’ without taking offense, even if none was intended.” Mark Foster, who posted the sociological definition of homophobia, wrote, “. . . if apologies will reduce tension, I have no problem with apologizing.” When posts got contentious in May, Kevin Mimms specifically addressed Complainant and commented that her posts generally serve to promote her own agenda and not an understanding of her position. He told her that with her educational background she could do better in her posts and asked her to use her talents to help people understand that she is an intelligent person who has something of value to say. He later commended one of her posts that he believed showed improvement in this regard. She publicly thanked him for his input.

There are a number of posters who agree with Complainant’s positions on various issues and support her willingness to post. After Williams posted a link to President Obama’s speech, Monica Morrison shared Complainant’s opinion that Obama should not have been invited to speak at Notre Dame because his views on abortion are incongruous with Catholic teaching. She later noted that her intent is “not to attack or convert but to share [her] opinions.” In another post she asks that DDG members try to accept Complainant for who she is and listen to her with an open mind. It is important to note that Williams – along with other DDG members – commended Morrison and another poster for sharing their opinions on the difficult issue of abortion in a rational, respectful manner. This supports Williams’ contention that she was not opposed to Complainant or anyone else expressing an opinion that runs contrary to what someone else may have posted but, rather, was opposed to Complainant’s particular tone and tactics in expressing her opinion.²²

Certainly, group members do not have to respond to posts at all – as they apparently did not do in response to Complainant’s rather random post celebrating the Navy SEALs rescue of Captain Phillips from Somali terrorists/pirates on Easter Sunday. Complainant has both criticized others and received criticism herself for leaving questions unanswered – but this is part of the “free” in free speech. Another part is that one may engage in all the free speech he or she likes, but that does not shield one from a lot more free speech in return. Numerous posters expressed disagreement or discomfort with Complainant’s posts. Some have mentioned that prior to Complainant’s arrival on the DDG, different points of view were discussed but never with such vehemence and force. Others, who agreed with Complainant’s postings, have expressed that they appreciate Complainant’s posts and points of view. Morrison, who agrees with much of what Complainant had to say, made a point of expressing herself in

²¹ Examples provided by Complainant include: “I would consider opposition to inter-racial marriage by the European American majority to be racism.” “Kathy . . . maybe the umbrage you feel will enable you to feel a bit for the sorts of name-calling that LGBT people typically endure while growing up.” “I think people want to limit homophobia to overt harassment or violent acts . . . but the fear that same-sex marriage somehow threatens straight marriage is homophobia as well.” “Wow. I specifically told Brown that I do not discriminate against my students who disagree with me about same-sex marriage or anything else.” “I must say that I do not appreciate that you are using this list to promote religious hatred and bigotry.” “I am a woman and I am from an Islamic country and I have to say that I have never felt . . . disenfranchised or abused in my homeland.”

²² In her interview, Morrison found such support by Williams to be a bit hollow considering how Complainant had been “attacked” on the DDG.

a different manner, but ultimately believes that while Complainant was at times “too combative” she had the right to express her thoughts and should not have been attacked on the forum for doing so.²³

Civility

The JCCC Notice of Nondiscrimination states: “Johnson County Community College is **a place where freedom of expression and civility are encouraged**. In valuing diversity, the college recognizes the individual differences based on unique ethnic, cultural, gender and political backgrounds, and the differences represented by staff in age, education and physical ability. **In a diverse environment, it becomes the responsibility of each employee to respect these individual differences and to refrain from imposing personal viewpoints on other staff or students.**”

This policy encourages, but does not mandate, civility. If one is not civil, there are several natural consequences including being ignored and diminished credibility. As several witnesses point out, greater understanding may be achieved when participants refrain from personal attacks and bombastic rhetoric and focus instead on issues. There are numerous posts on the DDG that do not achieve this goal, some of which follow:

- ~ One of Complainant’s posts in May is entitled “. . .President Obortion given a standing ovation at Notre Shame”
- ~ In other posts, Complainant struck hard at an issue that she knew was very dear to Kami Day’s heart – same-sex marriage. Day calls Complainant’s tone “nasty, sarcastic and even hateful (your remarks about Islam prompt me to add that adjective).” Complainant later calls this an *ad hominem* attack and declares that she is being savaged in print.
- ~ Day clearly believed Complainant’s remarks to be nasty and sarcastic. Perhaps Day found Complainant calling her “my dear friend” to be patronizing or even demeaning; her response was, “I can’t imagine a universe in which I would want to be friends with you.”
- ~ In another post, Kami Day states that she will do what Williams did and direct Complainant’s emails into to her junk mailbox.
- ~ Others wrote things about Complainant such as: “Maybe we should all just pay attention to the old Internet saying, ‘don’t feed the trolls,’ and “I . . . encourage [staying] on the List and ignore Ms. Brown, even giggle at her posts.”
- ~ One witness recalls a post made by Jason Rozelle, a Diversity Fellow, praising Williams’ decision to change the format of the DDG so that he would not have to read the input of “someone” in particular. This witness stated that it was clear to whom he was referring, and that while he might have had that opinion and even expressed it privately to Williams, it was quite another matter to post it on the DDG for all the members, including Complainant, to read.
- ~ Williams’ posts to the DDG are the most disappointing, considering the office she holds:
 - “I have suggested that we all just ignore [Complainant’s] posts and maybe she would go away . . . I want it to die a quick death.”

²³ Morrison did not know Complainant in May but has since met her and is on friendly terms with her.

- “I’m going to cue my inbox to put [Complainant’s] messages in my junk box where they belong . . . I will no longer respond because I will no longer read any of her filthy lies. She is not worth the emotional investment it would take for me to respond to her. In fact, she is not worth any investment-emotionally, intellectually, etc. from me.”
- “Go somewhere else if you are trying to build a reputation and a business . . .you aren’t important enough in my life. No need responding to this message. I have excluded you from my mailbox.”
- “Hallelujah!! Hallelujah!! Hallelujah!!! Well said, Jenna! I love you and appreciate you for saying this. Now Jenna and those others of you who are disgusted with some of the recent posts to this forum: Please don’t leave the listserv. We all appreciate your courage and forthrightness. This is a wonderful listserv. Let’s not abandon it to those who would corrupt it.”
- “Thank you Jenna. I hate it that this miserable woman [Complainant] was bothering you.” (Not posted to the DDG, but Complainant, Jeffrey Couch, Susan McGarvey and Kami Day are included in the distribution list.)

As Executive Director of the Office of Diversity, Equity and Inclusion, Williams should have set the tone for the group and assisted in guiding and reaffirming the tone. Instead, she added to the uncivil tone and, arguably, because of her role as Executive Director of the ODEI, condoned the incivility directed at Complainant, including a public (on the DDG) campaign of ignoring her. Clearly, no one is required to read or respond to anything posted to the DDG or any other listserv, however, a statement by the Executive Director that she is excluding someone from her inbox entirely sets a “tone” itself.

The American Association of University Professors has weighed in on this topic:

“The governing board and the administration have a special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility. Members of the faculty, too, have a major role; their voices may be critical in condemning intolerance, and their actions may set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women.”

(The statement was endorsed by AAUP’s Committee A on Academic Freedom and Tenure and by its Council at their meetings in June 1992. It was published in the July-August 1992 *Academe*.)

Williams was fairly unapologetic in her interview and stated that she did not see her role on the DDG to be different than any other participant’s. She did comment that she was ashamed that she had “stooped to [Complainant’s] level” in some of her comments. When about her comments, Kami Day – who quite naturally found Complainant’s views on same-sex marriage personally hurtful – expressed more regret for her responses. She acknowledged that while the topics were so very personal and the postings by Complainant so impactful and “pounding,” she and others “could have done differently” and added that she and others have something to learn from the experience.

Complaint about Discontinuation of the Diversity Discussion Group

The DDG itself has not been discontinued; rather the format of the group has changed to one that is in essence a “bulletin board” to which only Williams and McGarvey (her assistant) can post informational announcement and events. In that sense, it is no longer a Diversity Discussion Group. Complainant asserts that it is not true that only Williams and McGarvey can post to the listserv and states that her attempts have bounced back but other “favorites” of Williams have been allowed to post and/or respond. The two postings forwarded to me by Complainant as evidence are in fact postings by Williams. A review of other postings to the DDG at various times in the past two months is consistent with the idea that Williams and McGarvey are the only individuals who can post. Complainant in her Formal Complaint compares this change to a hotel not allowing Blacks to stay, however that would be a valid analogy only if she and the others who expressed views similar to hers were restricted from participating while everyone else was allowed to post and comment.

According to Williams, the forum was initiated so that members of the Diversity Committee could communicate with one another without having to meet in person. Over time, the listserv evolved into a forum where topics germane to the concept of diversity on campus were discussed. The College is not obligated to provide this discussion forum, however the College and the list administrators should consider the purpose of a listserv of this nature, particularly one entitled “Diversity Discussion Group.” Currently the listserv is functioning as a bulletin board, much like a physical bulletin board outside of an office. There may be a reason to have one forum for the posting of announcements and another on which members of the College community can discuss broader issues. This forum can and should protect the discussion of topics that might be found to be offensive to some participants. The participants, however, should be encouraged to attack ideas and not one another. Truly substantial argument is only possible in the absence of disrespect and insults. If it is indeed to be a discussion forum, a rational purpose might be to foster inquiry and understanding.

Several options may be considered by the College:

- Limit participation in any future configuration to current students, faculty and staff.
- A moderated forum – which of course raises the issue that someone has to moderate and decide what can be posted. This is clearly time-consuming.
- Establishing rules for posting – similar to those established by many on-line editions of newspapers and magazine. This involves the same issue as a moderated forum: someone has to review posts and decide whether or not to remove them.
- Return the DDG to its original purpose of informative and organizational tool for members of diversity committees and/or subcommittees. Membership limited to those individuals.
- New format – suggested by one witness who finds the listserv to have potential value as a more open forum: have each Diversity Fellow be responsible for running and moderating an on-line forum on a particular topic related to diversity. Postings would be restricted to that topic and the duration of the particular forum would be several weeks. Incorporate guidelines for participation and allow list members to object to posts, which would then be reviewed by a committee – perhaps the Diversity Fellows.

Summary and Conclusion

The U.S. Supreme Court has held that students at public institutions do have rights to freedom of expression in the classroom. These First Amendment rights, however, are not absolute. The classroom setting is not a traditional “public forum” where free speech is allowed the most protection. The interests of the “government” – in this case the College – are weighed against the free speech rights of students. It is generally acknowledged that professors may define the course agenda, set and limit topics for discussion, and give grades that reflect a student’s knowledge or reasoning. Furthermore, faculty members have broad authority to manage classroom behavior and maintain order in the classroom. While Complainant would argue that her conversation with Student #2 was conducted outside of the confines of class time, the setting – while technically “after the bell had rung” – was in fact much more like the classroom setting than a conversation occurring in the hallway.

On the other hand, the DDG in the format in which it existed in Spring semester 2009 was a public forum – most likely a designated or limited public forum. Membership was open to all, including individuals outside the College community, and all members could express their views. It was a forum where numerous and varied topics, some controversial to some members, would be discussed. Whether proper tone and civility were maintained is not a matter of First Amendment rights. The College policy on nondiscrimination encourages both free expression and civility. Neither is required.

The change in format of the DDG is not a violation of student free speech; it is simply no longer an existing venue. Students, staff and faculty are free to discuss any topic anywhere on campus that would be considered a traditional public forum. Student groups may also be founded and discussion groups generated within the parameters of the College guidelines.

If Complainant or any other member was removed from the DDG for expressing particular and perhaps unpopular views, free speech rights are indeed implicated. Presuming that someone is deliberately removed from the listserv in question – which has not been determined with certainty by this investigation – the remedy would be to reinstate the member to the group list. This happened, but this took a month and a considerable amount of effort. The result, quite naturally, was a suspicion of the motivations of the College Administration involved.

A parallel concern is the process through which Complainant had to go to register concerns. It was difficult for Complainant to find a “home” for her complaints. The process and channels through which her various complaints traveled were confusing to me and I am certain the process was confusing and burdensome for Complainant. The most obvious example is that of not being reinstated to the DDG until after meeting with President Calaway, but another example is the effort she found herself making to find the appropriate forum for registering a complaint about the ODEI.

The Mission Statement of the Office of Diversity, Equity and Inclusion is this: The Office of Diversity, Equity and Inclusion at Johnson County Community College seeks to create and nurture a campus climate where all feel safe and welcome, where difference is valued and respected, and where students, staff, faculty, community members, and guests experience diversity in all aspects of campus life.

If this is the mission of the ODEI, it did not accomplish its mission with Complainant. She did not feel valued and respected. She sees the ODEI as only welcoming to those who agree with the views of its leadership, which is not inclusive of the entire College community. I can understand why Complainant’s

approach and viewpoint were unpopular with the ODEI, the Diversity Fellows and many members of the DDG. She did not appear to want to step into anyone's shoes but her own. She said things that shocked and upset people and then objected vociferously when she felt attacked. A diverse conversation may well be a very difficult conversation and it is difficult to be in the minority no matter which side of the spectrum you come from. On a related note, Complainant makes note of the fact that many posters to the DDG have a liberal viewpoint, but she is not the only participant who express opinions contrary to what she call "Radical Far Left" opinions. The fact that social conservatives/traditionalists are in the minority of the active posters in the emails I have reviewed does not raise free speech concerns. And the reason why conservatives appear to be in the minority on a diversity discussion group is really for conservatives, not the College to answer.

Ultimately, the cure for uncomfortable speech is more speech. It is interesting to me that the one individual who seemed to be able to reach Complainant and affect some change in her demeanor – shortly before the DDG changed format – was a former student and not the head of the ODEI. As Justice Louis Brandeis said in a famous quote about freedom of expression, "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence."