

# University of Missouri School of Law Scholarship Repository

---

Faculty Publications

Faculty Scholarship

---

2018

## The 2015 University of Missouri Protests and their Lessons for Higher Education Policy and Administration

Ben L. Trachtenberg

*University of Missouri School of Law*, [trachtenbergb@missouri.edu](mailto:trachtenbergb@missouri.edu)

Follow this and additional works at: <https://scholarship.law.missouri.edu/facpubs>

 Part of the [Education Law Commons](#)

---

### Recommended Citation

Ben L. Trachtenberg, The 2015 University of Missouri Protests and their Lessons for Higher Education Policy and Administration, 107 *Kentucky Law Journal* 61 (2018).

Available at: <https://scholarship.law.missouri.edu/facpubs/740>

This Article is brought to you for free and open access by the Faculty Scholarship at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

# The 2015 University of Missouri Protests and their Lessons for Higher Education Policy and Administration

*Ben Trachtenberg*<sup>1</sup>

## ABSTRACT

*In 2015, student protestors at more than eighty American universities issued administrators demands related to racial justice. Even readers intensely interested in both civil rights and higher education policy could name few of these institutions. Yet somehow the University of Missouri (“Mizzou”)—along with Yale and a few other universities—became nationally famous as a hotbed of racial unrest. At most of these eighty universities, presidents did not resign, enrollment did not plummet by thousands of students, nor did relations with state politicians deteriorate terribly.*

*In the tradition of legal narrative and storytelling, this Article explores how the University of Missouri managed to fare so badly after students began protesting during the fall of 2015. It draws upon both public sources and the author’s own observations as a faculty leader. The Article reviews the details and context of the Missouri protests and then presents a case study of crisis management and conflict resolution gone awry. Applying observations about higher education policy and administration to the phenomenon of student protests—particularly those related to race—the Article identifies potential pitfalls for university administrators and student activists. It then explains how specific actions taken (and, in some cases, not taken) by University of Missouri leaders increased the risk that student protests would lead to long term institutional damage.*

*Finally, the Article suggests lessons that leaders at other universities—including trustees and administrators, as well as students and faculty—can take from Mizzou’s experiences. Contrary to popular opinion, Mizzou did not have a uniquely bad racial climate, nor did its students behave in inexplicable ways. Instead, the challenges faced in Missouri will present themselves elsewhere, and leaders who have taken the time to learn from Mizzou’s mistakes will fare better than those who choose to ignore this history.*

---

<sup>1</sup> Associate Professor of Law, University of Missouri School of Law. I thank the Harvard Graduate School of Education for hosting my February 12, 2018 and October 2, 2018 presentations on this topic, as well as attendees who provided feedback. I also thank readers of earlier drafts, including Larry Dessem, Chuck Henson, Bob Jerry, Nicole Monnier, Rigel Oliveri, and Francine Trachtenberg. Further, I appreciate additional insights provided confidentially. Finally, I thank the members of the Kentucky Law Journal for all of their editorial work.

## TABLE OF CONTENTS

ABSTRACT .....	61
TABLE OF CONTENTS .....	62
INTRODUCTION .....	63
I. BACKGROUND: MIZZOU BEFORE FALL 2015, MIKE MIDDLETON, AND THE PROTESTORS .....	65
A. <i>A Brief Review of Mizzou History from 1839 to Summer 2015</i> .....	66
i. From the University's founding until World War II .....	66
ii. Integration and the Post-World War II era .....	68
iii. The Year Before the Fall 2015 Protests .....	71
B. <i>The Story of the Protests, in Brief, along with Ugly Questions—     Asked Aloud at Last</i> .....	74
C. <i>Loving Mizzou so much it Hurts</i> .....	79
II. BRIEF LESSONS FROM THE THEORY AND PRACTICE OF NEGOTIATION .....	82
A. <i>Why We Can't "Get to Yes"—What Does "Yes" Even Mean?</i> .....	82
B. <i>Why We Can't "Get to Yes"—Who Can Agree?</i> .....	86
III. WHAT DO THEY WANT? JUSTICE. WHEN DO THEY WANT IT? SOON .....	87
A. <i>The Underlying National Grievance—A Justice Deficit</i> .....	87
B. <i>The Campus Context and the Power of Education</i> .....	89
IV. GOING FORWARD: TELLING MISSOURI'S STORY .....	92
A. <i>Reconsidering Wolfe's Questions about Missouri</i> .....	93
B. <i>What Exactly Went Wrong? Specific Lessons from     Missouri's Experience</i> .....	96
i. The President, the Chancellor, and Several Deans Disliked One Another and Could Not Work Together .....	96
ii. The University Moved Slowly in Situations that Demanded Quickness .....	98
iii. Top University Leaders Did Not Speak with One Voice about Important Matters .....	109
iv. The University's Governing Board and the President's Office Did Not Make Use of Potential Sources of Information. ....	111
V. BEYOND MISSOURI: FUTURE CHAPTERS OF HIGHER EDUCATION POLICY .....	113
A. <i>The Big Picture—Implications for Your Campus and the Country</i> .....	114
i. Dispelling some Popular Misconceptions about Events in Missouri ..	114
ii. Taking Missouri's Lessons to other Institutions .....	115
B. <i>Some Advice for Students</i> .....	117
CONCLUSION .....	119
APPENDIX A: <i>DRAMATIS PERSONAE</i> .....	121

POINT: “Campus tantrums can bring historic institutions down in ruins.”<sup>1</sup>

COUNTERPOINT: “There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into an abyss of injustice where they experience the bleakness of corroding despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.”<sup>2</sup>

#### INTRODUCTION

This Article explores the tension between the two quotations printed above, each of which is correct. As John Hersey—the novelist and English professor—observed after watching firsthand the near catastrophe of May Day 1970 in New Haven,<sup>3</sup> even one of the richest and oldest universities can suffer grievous wounds at the hands of a determined group of angry people. As Martin Luther King, Jr. observed in the Birmingham City Jail, injustice shortens the supply of patience.<sup>4</sup> The powerful will always find protest untimely, and the common citizen will deem even the most peaceful demonstration annoying and unpleasant.<sup>5</sup> Eventually, for better or for worse, the aggrieved will demand a hearing. On campus, this demand may take the form of student protests, and university administrators and faculty leaders who have not considered how to respond to student protests are committing malpractice.<sup>6</sup>

This Article is addressed to stakeholders of the American colleges and universities at which diversity and inclusion are, and will continue to be, important issues in the near and distant futures—which is to say, every higher education institution in the country. After recent events at Missouri, Yale, and elsewhere, some trustees and administrators may suffer from a sort of diversity fatigue, causing them to wonder when this problem will no longer demand their attention. The only honest answer is “never,” and leaders counseling otherwise disserve the institutions they govern. For the foreseeable future, trustees will need to hire presidents and chancellors who can deftly manage their institutions’ diversity and inclusion

<sup>1</sup> JOHN HERSEY, LETTER TO THE ALUMNI 52 (1970) (writing in context of Vietnam-era protests at Yale University).

<sup>2</sup> MARTIN LUTHER KING, JR., LETTER FROM BIRMINGHAM CITY JAIL 6 (1963), <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0> [<http://perma.cc/4CVV-Z9HP>].

<sup>3</sup> For general background on the May Day protests, see Paul Bass & Doug Rae, *The Panther and the Bulldog: The Story of May Day 1970*, YALE ALUMNI MAG. (July/Aug. 2006), [http://archives.yalealumnimagazine.com/issues/2006\\_07/panthers.html](http://archives.yalealumnimagazine.com/issues/2006_07/panthers.html) [<http://perma.cc/DPL5-TD7L>] (“Whatever the reason, death and destruction passed by New Haven.”).

<sup>4</sup> King, *supra* note 2, at 3–6.

<sup>5</sup> See, e.g., Frank Newport, *Martin Luther King Jr.: Revered More After Death Than Before*, GALLUP (Jan. 16, 2006), <https://news.gallup.com/poll/20920/martin-luther-king-jr-revered-more-after-death-than-before.aspx> (reporting that in “1963, King had a 41% positive and a 37% negative rating” but that by “1966—the last Gallup measure of King using this scalometer procedure—it was 32% positive and 63% negative”); see also *Adverse Note on MLK Political Cartoon*, THE KING CENTER, <http://www.thekingcenter.org/archive/document/adverse-note-mlk-political-cartoon> [<http://perma.cc/U7RB-HXUV>] (depicting King as responsible for violence; a handwritten note on the cartoon asks, “How can you, a minister of the gospel of Jesus Christ, be such a deceitful hypocrite?”).

<sup>6</sup> See, Julianne Basinger, *Campus Unrest*, TRUSTEESHIP (Nov./Dec. 2016), <https://www.agb.org/trusteeship/2016/novemberdecember/campus-unrest> [<http://perma.cc/6EPD-TRYF>].

strategies. Campus leaders who lack this skill will fail just as surely as those unable to balance budgets.

To me, the racial justice issues raised by student activists are real. But one need not agree with me on pretty much any social policy question to accept my main conclusion that these issues cannot sensibly be ignored by university leaders. In the forthcoming pages, I aim to convince those who might otherwise not be especially interested in discussions of diversity and inclusion in higher education that, like it or not, their duty to their institutions demands that they not only study these issues but also insist that top administrators on their campuses possess the aptitudes and attitudes needed to lead in this area.

In addition, I aim to offer concrete advice to administrators and faculty leaders about how they can prepare for student protests before they occur, as well as how they can respond when protests arrive. Using the 2015 protests at the University of Missouri as a case study, this advice draws on broader observations about higher education policy and administration. Indeed, not only are student protests a well-known phenomenon to anyone familiar with the history of American higher education,<sup>7</sup> student protests have also inspired conflict resolution scholarship.<sup>8</sup> University leaders would be wise to study the past,<sup>9</sup> lest they be unprepared for the future.

Finally, I suggest to student activists that they can draw their own lessons from Mizzou,<sup>10</sup> and these lessons may prove counterintuitive. For example, while the Mizzou protestors won real victories, those gains have come with undeniable costs. Are those costs the “fault” of the protestors? Probably not, as I explain in some detail later. Nonetheless, injuries to the university—particularly in the form of massive budget shortfalls and serious reputational damage—hinder the university’s ability to become the inclusive, excellent institution that protestors desire. As but one example, consider that recruiting black students and faculty is not easy when a university becomes known for bad treatment of black students and faculty. Without presuming to tell student activists what to do, this Article highlights some of the dilemmas they will likely face at campuses nationwide.

---

<sup>7</sup> See generally TERRY H. ANDERSON, *THE MOVEMENT AND THE SIXTIES: PROTEST IN AMERICA FROM GREENSBORO TO WOUNDED KNEE* (1995) (discussing student protest movements of the 1960s); IBRAM H. ROGERS, *THE BLACK CAMPUS MOVEMENT: BLACK STUDENTS AND THE RACIAL RECONSTITUTION OF HIGHER EDUCATION, 1965–1972* (2012) (discussing African-American student protest movements of the 1960s and 1970s).

<sup>8</sup> See, e.g., RODERICK A. FERGUSON, *WE DEMAND: THE UNIVERSITY AND STUDENT PROTESTS* 3 (2017) (noting that student protestors at 80 universities issued demands related to race in 2015); UNIVERSITY CRISIS AND STUDENT PROTESTS IN AFRICA: THE 2005-2006 UNIVERSITY STUDENTS’ STRIKE IN CAMEROON (Francis B. Nyamnjoh et al. eds., 2012); Carol Liebman, *Mediation as Parallel Seminars: Lessons from the Student Takeover of Columbia University’s Hamilton Hall*, 16 *NEGOTIATION J.* 157 (2000).

<sup>9</sup> See, e.g., BRIAN BURNES, *MIZZOU 175: THE REMARKABLE STORY OF MISSOURI’S FLAGSHIP UNIVERSITY FROM 1839 TO 2014* (2014) (discussing Vietnam-era protests and earlier student protest at MU); HERSEY, *supra* note 1; ROGER ROSENBLATT, *COMING APART: A MEMOIR OF THE HARVARD WARS OF 1969* (1997).

<sup>10</sup> “Mizzou” refers to the University of Missouri’s flagship campus, located in Columbia, Missouri. The abbreviation “MU” also refers to the Columbia campus. The abbreviation “UM” refers to the four-campus University of Missouri System.

To accomplish these goals, this Article explores factors that contributed to the especially devastating effects of the protests at the University of Missouri. In the process, I hope to dispel some common misconceptions about what went wrong in 2015.

Part I of this article provides background, giving context for the events that brought so much attention to Columbia, Missouri during 2015. It then frames the questions that the remainder of this Article attempts to answer: Why did things go so wrong at Mizzou, and what can we learn from what happened? Part II offers brief insights gleaned from the theory of negotiation. In particular, it addresses two difficulties associated with student protests: first, it can be hard for university administrators to know what concessions will resolve a dispute, just as it is hard for protestors to decide what deal will satisfy them; second, it is difficult for administrators to know who can reach agreement on behalf of student protestors, who often have amorphous leadership and are always at risk of being outflanked by a new student group. Part III explores particular difficulties associated with student protests related to racial justice. Because university students of color have been taught that civil rights protestors are among America's greatest heroes and because intelligent students spot continuing racial injustice on campus as well as in broader society, fuel for racial unrest remains a constant campus phenomenon, awaiting only the spark of a catalyzing incident or charismatic leader. In the tradition of legal narrative and storytelling, Part IV delves deeply into the events of fall 2015, describing in detail multiple factors that contributed to bad results in Missouri. Specifically, this Part explains how top university leaders disliked each other and could not work together, how the university moved slowly during times that demanded speed, how top university leaders failed to speak with one voice at key moments, and how the president's office failed to tap potential sources of information. Part V pulls back to look beyond Missouri, offering advice for leaders of other institutions that may face similar challenges along with advice for students who desire change.

#### I. BACKGROUND: MIZZOU BEFORE FALL 2015, MIKE MIDDLETON, AND THE PROTESTORS

This Part provides context for the events of fall 2015 by discussing the university's history, its racial climate, and key events in the years immediately before the protests. It introduces the major players whose actions would drive events during and after the protests. And it raises questions—some initially posed by the UM president, who resigned following the protests, others inspired by conversations on campus among observers trying to process exactly what happened here—that the remainder of this Article attempts to answer.

*A. A Brief Review of Mizzou History from 1839 to Summer 2015**i. From the University's founding until World War II*

Missouri joined the United States in 1821 as the twenty-fourth state, and its very admission to the Union foreshadowed centuries of racial strife. Congress conditioned Missouri's statehood on the admission of Maine, which until then had been part of Massachusetts.<sup>11</sup> With the Compromise of 1820 (the "Missouri Compromise"), the Union gained Missouri as a slave state and Maine as a free state, maintaining for a bit longer the cold peace that would end in 1861.<sup>12</sup>

In 1839, the Missouri legislature passed the Geyer Act, which created the state's public school system and also provided for the establishment of a state university.<sup>13</sup> Rather than place the new university in one of the state's great cities, which sat on the easternmost and westernmost edges of the state, the commission, empowered by the General Assembly to locate the University of Missouri, chose the city of Columbia, in Boone County.<sup>14</sup> Columbia, while not a city of great consequence, had the advantage of its central location, equidistant from St. Louis and Kansas City, with reasonable proximity to the state capital in Jefferson City. More important, the citizens of Boone County offered a contribution of \$117,900—an impressive sum in 1839, particularly when one realizes that the county's population was less than 14,000.<sup>15</sup> The collection of land and money is largely credited to James S. Rollins, then a state representative, who made a large donation personally.<sup>16</sup>

Rollins personifies the conflicted nature of Missouri on questions of race. He owned slaves and operated a plantation in Columbia.<sup>17</sup> Later, however, he served in the United States Congress, and upon the personal request of Abraham Lincoln, Rollins provided a key vote for ratification of the Thirteenth Amendment, which abolished slavery in the United States.<sup>18</sup> He not only voted in favor of the amendment but also exhorted others to support it.<sup>19</sup> Rollins chose not to seek reelection in 1864, and he returned to Columbia.<sup>20</sup> He stayed relatively quiet on issues related to the treatment of former slaves and other black citizens, seeking to avoid offending any

---

<sup>11</sup> See ROBERT PIERCE FORBES, *THE MISSOURI COMPROMISE AND ITS AFTERMATH: SLAVERY AND THE MEANING OF AMERICA* 73 (2007).

<sup>12</sup> See generally *id.*

<sup>13</sup> CLAUDE A. PHILLIPS, *A HISTORY OF EDUCATION IN MISSOURI: THE ESSENTIAL FACTS CONCERNING THE HISTORY AND ORGANIZATION OF MISSOURI'S SCHOOLS* 171–72 (1911).

<sup>14</sup> *Id.* at 171.

<sup>15</sup> *Id.*

<sup>16</sup> See FRANK F. STEPHENS, *A HISTORY OF THE UNIVERSITY OF MISSOURI* 12–16 (1962).

<sup>17</sup> Richard Webner, *Descendent of MU Founder Atones for Family's Slave-owning Past*, COLUMBIA MISSOURIAN (Jan. 20, 2014), [https://www.columbiamissourian.com/news/descendant-of-mu-founder-atones-for-family-s-slave-owning/article\\_bc8748b0-af1b-5bb3-acd0-64607b7b9a01.html](https://www.columbiamissourian.com/news/descendant-of-mu-founder-atones-for-family-s-slave-owning/article_bc8748b0-af1b-5bb3-acd0-64607b7b9a01.html) [<https://perma.cc/TG53-PDE8>].

<sup>18</sup> See MICHAEL VORENBERG, *FINAL FREEDOM: THE CIVIL WAR, THE ABOLITION OF SLAVERY, AND THE THIRTEENTH AMENDMENT* 181–82 (2001).

<sup>19</sup> See *id.*

<sup>20</sup> See John V. Mering, *The Political Transition of James S. Rollins*, 53 MO. HIST. REV. 217, 223–24 (1959).

political faction that might jeopardize funding of the University of Missouri.<sup>21</sup> Rollins served on the university's Board of Curators from 1847 to 1849.<sup>22</sup> In 1869 he rejoined the Board and became its president.<sup>23</sup> Serving again in the state legislature, he secured additional funding for the university, and in 1872, the Curators gave Rollins the honorary title of "Father of the University of Missouri."<sup>24</sup> His bust enjoys prominent placement on Elm Street at Mizzou's north entrance,<sup>25</sup> and Rollins Road traverses campus.

The university that Rollins loved so well discriminated on the basis of race. Missouri's 1865 Constitution stated, "[s]eparate schools may be established for children of African descent."<sup>26</sup> After the Civil War, white abolitionist Richard Foster opened the Lincoln Institute in Jefferson City, which eventually became a state institution focusing on, among other things, educating teachers for the state's black elementary and secondary schools.<sup>27</sup> Both Lincoln University and the University of Missouri became land-grant universities.<sup>28</sup>

In the late 1930s, black applicants began suing the University of Missouri for admission. Both state and federal law allowed segregated universities at the time, and the lawsuits challenged the lack of an "equal" alternative for black students.<sup>29</sup> Lloyd Gaines sought admission to the School of Law,<sup>30</sup> and Lucile Bluford sought admission to the School of Journalism.<sup>31</sup> Neither would ever enroll at Mizzou.<sup>32</sup>

<sup>21</sup> *Id.*

<sup>22</sup> STEPHENS, *supra* note 16, at 58 & 72 n.61. "Curator" is the name UM gives to what other universities call regents or trustees. See MO. CONST. art IX, § 9(a).

<sup>23</sup> STEPHENS, *supra* note 16, at 249–50.

<sup>24</sup> *Id.* at 250.

<sup>25</sup> For thoughts on the legacy of Rollins, see Berkley Hudson, *A Look Inside Mizzou's Crucible of Race*, TIME (Nov. 20, 2015, 6:33 PM), <http://time.com/4119637/mizzou-race/> [<http://perma.cc/FYM3-9X68>].

<sup>26</sup> MO. CONST. of 1865, art. IX, § 2. For more on the university's history related to race, see UNIV. OF MO. RACE RELATIONS COMMITTEE, REPORT OF THE PROGRESS OF THE RACE RELATIONS COMMITTEE TO FACULTY COUNCIL 5–7 (2016) (on file with author).

<sup>27</sup> *Our History*, LINCOLN UNIV., <https://www.lincolnu.edu/web/about-lincoln/our-history> [<http://perma.cc/M4SN-WGGM>] (last visited Sept. 9, 2018).

<sup>28</sup> Lincoln Institute received its designation under the Morrill Act of 1890, 7 U.S.C. § 322. See *Our History*, *supra* note 27. Mizzou had received land-grant status under the Morrill Act of 1862, 7 U.S.C. § 301. See STEPHENS, *supra* note 16, at 174–75.

<sup>29</sup> See Brad Desnoyer & Anne Alexander, *Race, Rhetoric, and Judicial Opinions: Missouri as a Case Study*, 76 MD. L. REV. 696, 699–706, 710 (2017) (discussing cases of Lloyd Gaines and Lucile Bluford).

<sup>30</sup> JAMES W. ENDERSBY & WILLIAM T. HORNER, LLOYD GAINES AND THE FIGHT TO END SEGREGATION 2 (2016).

<sup>31</sup> Daniela Sirtori, *After Years of Struggle, African-American Journalist Lucile Bluford May Get Her Day in Missouri*, COLUMBIA MISSOURIAN (Mar. 19, 2015), [https://www.columbiamissourian.com/news/local/after-years-of-struggle-african-american-journalist-lucile-bluford-may/article\\_59998a7b-900f-520c-925d-a9c91f596f49.html](https://www.columbiamissourian.com/news/local/after-years-of-struggle-african-american-journalist-lucile-bluford-may/article_59998a7b-900f-520c-925d-a9c91f596f49.html) [<http://perma.cc/DHT6-EM24>].

<sup>32</sup> See *id.*



## ii. Integration and the Post-World War II era

In 1950, Gus T. Ridgel would become Mizzou's first black graduate student, pursuing a graduate degree in economics.<sup>33</sup> Ridgel had earned his undergraduate degree with honors at Lincoln University, and he entered graduate school only after suing Mizzou.<sup>34</sup> The court order compelling Mizzou to accept Ridgel did not desegregate Columbia businesses or force fellow students to welcome him. Ridgel said years later in a newspaper interview that "[t]here was segregation off-campus," and "[t]here was no place I could eat."<sup>35</sup> Ridgel recalled that when no white student agreed to live with him, Mizzou initially tried to charge him the full price of a double room but eventually relented and charged him only for his share.<sup>36</sup> He persevered, graduating in 1951 with a master's degree.<sup>37</sup> He subsequently earned a doctorate elsewhere and pursued a career in academia.<sup>38</sup> The university named the Gus T. Ridgel Fellowship in his honor in 1987, and in 2018 it named the Gus T. Ridgel Atrium, which is located in Lucile Bluford Residence Hall.<sup>39</sup>

Mizzou hired its first black faculty member, Arvarh E. Strickland, in 1969.<sup>40</sup> He taught history and retired after twenty-six years.<sup>41</sup> The university would eventually name in his honor the Arvarh E. Strickland Distinguished Professorship of African-American History and Culture (in 1999), as well as a classroom building (in 2007).<sup>42</sup> Although Strickland's legacy is positive, he was frustrated by what he perceived as insufficient progress related to diversity. He wrote to Mizzou's chancellor in 1978, "[y]ou have not availed yourself of the diversity and broadened perspective which black faculty members can bring."<sup>43</sup> Looking back at his career at the 2007 dedication of Strickland Hall, he said that he stayed at Mizzou so he could "try to fight to see that other African-Americans who came on the faculty and as staff would not have to refight those battles."<sup>44</sup>

---

<sup>33</sup> See Michael Wines, *A Real Missouri 'Concerned Student 1950' Speaks, at Age 89*, N.Y. TIMES (Nov. 10, 2015), <https://www.nytimes.com/2015/11/11/us/an-original-missouri-concerned-student-1950-speaks-at-age-89.html>; Keith Reid-Cleveland, *First MU African-American Graduate Student Speaks to Inspired Audience*, COLUMBIA MISSOURIAN (Aug. 31, 2012), [https://www.columbiamissourian.com/news/first-mu-african-american-graduate-student-speaks-to-inspired-audience/article\\_b75e9ab5-36a1-5602-a19a-1f6b4b354274.html](https://www.columbiamissourian.com/news/first-mu-african-american-graduate-student-speaks-to-inspired-audience/article_b75e9ab5-36a1-5602-a19a-1f6b4b354274.html) [<http://perma.cc/3KTA-QUB2>].

<sup>34</sup> Reid-Cleveland, *supra* note 33.

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

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Wines, *supra* note 33.

<sup>39</sup> Mará Rose Williams, *MU Dorm Named for Famous Kansas City African American*, KANSAS CITY STAR (Feb. 2, 2018, 11:58 AM), <https://www.kansascity.com/news/local/article198033709.html> [<http://perma.cc/T42Y-7X3Z>].

<sup>40</sup> See Jacob Kim, *Arvarh Strickland Was a Force for Change at MU and in Columbia*, COLUMBIA MISSOURIAN (May 2, 2013), [https://www.columbiamissourian.com/news/arvarh-strickland-was-a-force-for-change-at-mu-and/article\\_c45dfeef-a7cf-563e-91fe-f783ec91fd89.html](https://www.columbiamissourian.com/news/arvarh-strickland-was-a-force-for-change-at-mu-and/article_c45dfeef-a7cf-563e-91fe-f783ec91fd89.html) [<http://perma.cc/7CPC-EJPK>].

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

Michael Middleton, who received his bachelor's degree from Mizzou in 1968 and his juris doctorate from Mizzou Law in 1971, had lobbied the university to hire its first black professor, and, as a student activist, he had no shortage of targets.<sup>45</sup> Years later he recalled “fraternities wav[ing] Confederate flags at football games and h[olding] ‘slave parades’ at Homecoming.”<sup>46</sup> He said the “town was still segregated,” which was why he “didn’t go into Columbia very much.”<sup>47</sup> He would eventually help to found Mizzou’s chapter of the Legion of Black Collegians.<sup>48</sup> After serving in the U.S. Department of Justice and the Equal Employment Opportunity Commission as a civil rights lawyer, he returned to Columbia in 1985 to join the Mizzou Law faculty.<sup>49</sup> He became deputy chancellor in 1998, a role he held until August 2015.<sup>50</sup>

Meanwhile, as Mizzou made gradual progress on racial justice during the second half of the twentieth century, it also experienced other changes observed at many similar institutions. For example, in the post-World War II era, the federal government vastly increased its support of university research, and Mizzou benefited from those expenditures, as did other public and private universities across the country.<sup>51</sup> The university’s research expenditures have grown over time, and for fiscal year 2016, Mizzou reported that “total research expenditures ... generated more than \$248.3 million in research and development spending,” with the university receiving more than \$178 million in federal awards.<sup>52</sup> Well before the fall of 2015, the University of Missouri had become a serious, comprehensive research university. Despite concerns about how to keep up with powerhouses like Harvard and Michigan, it remained a member of the Association of American Universities, an elite club of the country’s major research institutions.<sup>53</sup> It ran expensive programs in medicine, nursing, agriculture, veterinary medicine, law, and engineering, in addition to the arts and sciences from poetry to psychology to physics.<sup>54</sup> Furthermore, it enrolled tens of thousands of students, had bigtime sports—moving

---

<sup>45</sup> See Jessica Karins, *Michael Middleton Shaped Black History for MU*, MANEATER (Feb. 28, 2014), <https://www.themaneater.com/stories/campus/michael-middleton-shaped-black-history-mu> [<http://perma.cc/WV82-JBDS>].

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See Alexa Ahern, *Deputy Chancellor Michael Middleton Announces Retirement*, COLUMBIA MISSOURIAN (May 21, 2015), [https://www.columbiamissourian.com/news/higher-education/deputy-chancellor-michael-middleton-announces-retirement/article\\_538203f0-ffeb-11e4-b6c7-2f44c8a3e3f1.html](https://www.columbiamissourian.com/news/higher-education/deputy-chancellor-michael-middleton-announces-retirement/article_538203f0-ffeb-11e4-b6c7-2f44c8a3e3f1.html) [<http://perma.cc/6PSC-4BB8>].

<sup>50</sup> *Id.*

<sup>51</sup> See generally COMM. ON CRITERIA FOR FED. SUPPORT ON RESEARCH AND DEV., ALLOCATING FEDERAL FUNDS FOR SCIENCE AND TECHNOLOGY 41–50 (1995).

<sup>52</sup> MARK A. MCINTOSH, OFFICE OF RESEARCH, GRADUATE STUDIES AND ECONOMIC DEVELOPMENT, RESEARCH AND PUBLIC SERVICE 2016: ANNUAL REPORT OF GRANTS AND CONTRACTS (2016), <https://research.missouri.edu/2016/> [<https://perma.cc/Z92Z-5L7Z>]; see also UNIV. OF MO.-COLUMBIA, RESEARCH DIVISION, SUMMARY OF GRANTS AND CONTRACTS: FISCAL YEAR 2000 2 (2000), <https://research.missouri.edu/about/files/ORAR2000.pdf> [<https://perma.cc/XZ7N-UK34>] (reporting “total extramural funding” of “\$118 million”).

<sup>53</sup> See, *University of Missouri, Columbia*, ASSOC. AM. U., <https://www.aau.edu/who-we-are/our-members/university-missouri-columbia> [<https://perma.cc/5V7R-MBLL>].

<sup>54</sup> See, *Degrees, Majors (Degree Programs), Emphasis Areas, Minors and Certificates*, U. MO. REGISTRAR, <http://catalog.missouri.edu/degreesanddegreeprograms/> [<https://perma.cc/2CR2-DJ5U>].

from the Big 12 to the SEC in 2011—and, in general, things looked pretty good by the standards of American higher education.

Like many other public universities, the University of Missouri enjoyed strong state financial support in the late twentieth century, and like many other public universities, that support weakened considerably in the new century.<sup>55</sup> From 2001 to 2012, Mizzou's state appropriation fell from \$193 million to \$166 million, a drop of 14 percent.<sup>56</sup> To balance the budget, the university accepted more students, who brought more tuition dollars. From 2001 to 2012, Mizzou's enrollment rose from 23,209 students to 33,805 students, an increase of 45 percent.<sup>57</sup> At a large university, the marginal cost of adding extra students is fairly low—the introductory economics professor gets no extra money when another student enters the lecture hall, and unless a dormitory is filled to capacity, offering an otherwise-empty bed to a student costs very little. To be sure, there are limits. Eventually one must hire additional faculty and build more buildings. But as a short-term response to decreasing state support, increasing enrollment, especially of out-of-state students, works. Universities across America have used this tactic in recent decades.<sup>58</sup> Relatedly, public university tuition has increased dramatically over the same period in many states.<sup>59</sup> Tuition hikes have been fairly moderate in Missouri because state law prevents public universities from increasing tuition above the rate of inflation.<sup>60</sup>

In August 2015, Mizzou issued a press release touting “Record Enrollment.”<sup>61</sup> Total enrollment was above 35,000 students, including 27,589 undergraduates, about 6,200 of whom were freshmen.<sup>62</sup> Maintaining, or even exceeding, this student body size was seen at the time as essential to the financial security of the university.

---

<sup>55</sup> See generally Jeffrey J. Selinger, *States' Decision to Reduce Support for Higher Education Comes at a Cost*, WASH. POST (Sept. 8, 2018), [https://www.washingtonpost.com/education/2018/09/08/states-decision-reduce-support-higher-education-comes-cost/?utm\\_term=.bf2cde73ff9a](https://www.washingtonpost.com/education/2018/09/08/states-decision-reduce-support-higher-education-comes-cost/?utm_term=.bf2cde73ff9a) [<https://perma.cc/RWE4-9559>].

<sup>56</sup> *As Enrollment Rises, State Funding Falls at Mizzou*, MIZZOU WEEKLY (Jan. 25, 2012), <http://mizzouweekly.missouri.edu/archive/2012/33-17/as-enrollment-rises,-state-funding-falls-at-mizzou/index.php> [<http://perma.cc/KZJ4-U4LA>].

<sup>57</sup> *Id.*

<sup>58</sup> Doug Lederman, *The (Out-of-)State University*, INSIDE HIGHER ED (Jan 28, 2015), <https://www.insidehighered.com/news/2015/01/28/study-finds-link-between-cuts-state-budgets-and-out-state-enrollment> [<https://perma.cc/NYX9-76BT>]; see also Thomas G. Mortenson, *State Funding: A Race to the Bottom*, THE PRESIDENCY (Winter 2012), <https://www.acenet.edu/the-presidency/columns-and-features/Pages/state-funding-a-race-to-the-bottom.aspx> [<http://perma.cc/F4SL-P8J6>].

<sup>59</sup> Mortenson, *supra* note 58 (reporting that since 1980, “[i]nflation-adjusted tuition and fee charges have increased by 247 percent at state flagship universities”).

<sup>60</sup> Ellen Cagle, *Missouri Higher Ed Continues to Fall Short in State Budget Priorities*, COLUMBIA MISSOURIAN (Feb. 15, 2017), [https://www.columbiamissourian.com/news/higher\\_education/missouri-higher-ed-continues-to-fall-short-in-state-budget/article\\_40069298-ea84-11e6-b979-23ccd2ab2349.html](https://www.columbiamissourian.com/news/higher_education/missouri-higher-ed-continues-to-fall-short-in-state-budget/article_40069298-ea84-11e6-b979-23ccd2ab2349.html) [<http://perma.cc/NT7X-M924>].

<sup>61</sup> Christian Basi, *MU Reaches Record Enrollment, Retention Rate, Number of High-Achieving Students on First Day of Fall Semester*, U. MO. C. ARTS & SCI. (Aug. 24, 2015), <https://coas.missouri.edu/news/mu-reaches-record-enrollment-retention-rate-number-high-achieving-students-first-day-fall> [<http://perma.cc/Z6BF-FDNY>].

<sup>62</sup> *Id.*

## iii. The Year Before the Fall 2015 Protests

In the year leading up to the fall of 2015, three factors combined to increase the odds of significant student protests. First, in August 2014, a white Ferguson, Missouri<sup>63</sup> police officer shot and killed Michael Brown, an 18-year-old black man.<sup>64</sup> A combination of peaceful protests and civil disorder ensued. Candlelight vigils were juxtaposed with scenes of looting and of heavy-handed responses by police geared up like an occupying army.<sup>65</sup> Then, the decision in November 2014 by the St. Louis County Prosecutor not to indict the officer for any crime inspired new protests that eventually involved violent clashes between demonstrators and police.<sup>66</sup>

At Mizzou, the 2014-2015 academic year brought racial tension, along with efforts to openly discuss issues that had long been kept quiet. In December 2014, Chancellor R. Bowen Loftin held a listening session for students affected by events in Ferguson.<sup>67</sup> Loftin also asked Professor Craig Roberts, then the chair of the MU Faculty Council, to help him respond to racial issues.<sup>68</sup>

The death of Michael Brown, along with reaction to it at Mizzou, occurred not in a vacuum but instead in a time of growing attention to police brutality, policing of minority communities, and white supremacy more generally. For example, during the 2014-2015 academic year, Freddie Gray died while in custody of Baltimore police, Sandra Bland died in her Texas jail cell, and Dylann Roof murdered nine black parishioners during Bible study in Charleston.<sup>69</sup> University campuses had their own series of racial incidents that received national attention. In that same academic year, Sigma Alpha Epsilon fraternity brothers at the University of Oklahoma were recorded singing a song using racial slurs, a noose was found hanging at Duke University, a student at SUNY-Purchase spray-painted swastikas and nooses on three dormitories, and Bucknell University expelled three students for using racial slurs during a campus radio broadcast.<sup>70</sup> When Payton Head, the head of Mizzou's undergraduate student government, posted on Facebook in September 2015 about racial slurs yelled at him on campus, the university's black community understood that Head did not report an isolated incident.<sup>71</sup>

<sup>63</sup> Ferguson is in St. Louis County, about 120 miles from Columbia, a drive of two hours. Many Mizzou students come from the St. Louis metropolitan area.

<sup>64</sup> Chico Harlan et al., *Ferguson Police Officer Won't Be Charged in Fatal Shooting*, WASHINGTON POST (Nov. 25, 2014) [https://www.washingtonpost.com/politics/grand-jury-reaches-decision-in-case-of-ferguson-officer/2014/11/24/de48e7e4-71d7-11e4-893f-86bd390a3340\\_story.html?noredirect=on&utm\\_term=.97c9ec2aedf5](https://www.washingtonpost.com/politics/grand-jury-reaches-decision-in-case-of-ferguson-officer/2014/11/24/de48e7e4-71d7-11e4-893f-86bd390a3340_story.html?noredirect=on&utm_term=.97c9ec2aedf5) [<https://perma.cc/K29B-NEFW>].

<sup>65</sup> *Michael Brown's Shooting and Its Immediate Aftermath in Ferguson*, N.Y. TIMES (Aug. 25, 2014), [https://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html?mtref=www.google.com/##time348\\_10366](https://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html?mtref=www.google.com/##time348_10366) [<https://perma.cc/QG2R-TEF8>].

<sup>66</sup> Harlan et al., *supra* note 64.

<sup>67</sup> UNIV. OF MO. RACE RELATIONS COMMITTEE, *supra* note 26, at 43.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 44.

<sup>70</sup> *Id.*

<sup>71</sup> Susan Svrluga, *What the Student Body President Did After He Was Called the N-Word—Again*, WASH. POST (Sept. 16, 2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/09/16/what-the-student-body-president-did-after-he-was-called-the-n-word-again/?noredir> [<http://perma.cc/6KHW-CGB4>]. For more detail about this incident, see *infra* Section I.B.

Meanwhile, the summer of 2015 brought two incidents seemingly unrelated to race relations that increased the odds of intense student protests related to racial justice. First, in June 2015, the university announced a new policy related to graduate student tuition waivers.<sup>72</sup> Under the previous policy, students with a quarter-time (0.25 FTE) appointment as graduate teaching assistants or as graduate research assistants received full tuition waivers.<sup>73</sup> Under the newly-announced plan, students with quarter-time assistantships would receive only half-tuition waivers.<sup>74</sup> Only students with half-time (0.50 FTE) appointments would receive full waivers.<sup>75</sup> In November, the university announced that it would not implement the new policy after all, but it had already served to galvanize graduate student organizers.<sup>76</sup>

On August 14, the university informed graduate students that the university subsidy for their health insurance was cancelled, with one day's notice.<sup>77</sup> Five hundred graduate students demonstrated on the Francis Quadrangle to protest the rescission of the subsidies, which the university blamed on an IRS interpretation of the Affordable Care Act that seemingly put the university at risk of severe fines if the subsidies continued.<sup>78</sup> One week later, on August 21, the university cancelled the cancellation, restoring the subsidies.<sup>79</sup> Again, graduate student protests had reversed an important administrative decision. During the next week, top administrators attended a Faculty Council meeting at which they apologized for mishandling the insurance issue.<sup>80</sup>

---

<sup>72</sup> Alexa Ahern, *MU Graduate School Increases Stipends, Cuts Tuition Waiver*, COLUMBIA MISSOURIAN (June 22, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/mu-graduate-school-increases-stipends-cuts-tuitionwaiver/article\\_82fb35d8-16bc-11e5-8133-fb2905698ffd.html](https://www.columbiainmissourian.com/news/higher_education/mu-graduate-school-increases-stipends-cuts-tuitionwaiver/article_82fb35d8-16bc-11e5-8133-fb2905698ffd.html) [http://perma.cc/2A3K-RSUU].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Erin Quinn & Ruth Serven, *Full Tuition Waivers Extended to Graduate Students Through Next Academic Year*, COLUMBIA MISSOURIAN (Nov. 5, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/full-tuition-waivers-extended-to-graduate-studentsthrough-next-academic/article\\_1d464e5c-8418-11e5-89a8-a32228345259.html](https://www.columbiainmissourian.com/news/higher_education/full-tuition-waivers-extended-to-graduate-studentsthrough-next-academic/article_1d464e5c-8418-11e5-89a8-a32228345259.html) [http://perma.cc/F3QD-29V3] (“Anahita Zare, outreach chair of the Forum on Graduate Rights, called it ‘a step in the right direction and proof that by standing together, we can produce results.’”).

<sup>77</sup> Evan Cobb et al., *MU Graduate Students Get Health Insurance*, COLUMBIA MISSOURIAN (Aug. 21, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/mu-graduate-students-get-health\\_insurance/article\\_67cb1a8c-4829-11e5-bf88-332c7401e11d.html](https://www.columbiainmissourian.com/news/higher_education/mu-graduate-students-get-health_insurance/article_67cb1a8c-4829-11e5-bf88-332c7401e11d.html) [http://perma.cc/G689-VL77] (describing August 14 “email notifying graduate students that MU would no longer subsidize health insurance for graduate students, effective the following day”).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* It turned out that, like other universities, Mizzou was able to continue its subsidies despite the ACA.

<sup>80</sup> Emma Vandelinder, *MU Administrators Apologize for Mishandling Grad Insurance Communication*, COLUMBIA MISSOURIAN (Aug. 27, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/mu-administrators-apologize-for-mishandling-gradinsurance-communication/article\\_2be3b5ca-4cf1-11e5-893c-630a21482f2e.html](https://www.columbiainmissourian.com/news/higher_education/mu-administrators-apologize-for-mishandling-gradinsurance-communication/article_2be3b5ca-4cf1-11e5-893c-630a21482f2e.html) [http://perma.cc/H7YG-AHVP] (“[Leona] Rubin, who is associate vice chancellor for graduate studies, joined Chancellor R. Bowen Loftin and Provost Garnett Stokes in answering council members’ questions about the decision to pull the subsidies . . .”). Faculty complained at the time that the graduate student policy changes were announced by administrators without consultation with faculty, violating norms of shared governance. Ruth Serven & Sarah Wynn, *MU Faculty Council Discusses Grad Students, Physician Privileges, Ellis Library*, COLUMBIA MISSOURIAN

In September, MU Health Care announced an impending change to its system of providing hospital privileges to doctors that some observers believed was designed to end the availability of abortion services in Columbia.<sup>81</sup> By eliminating its “refer and follow” privileges, the change would have ended the privileges of a St. Louis doctor who worked with Planned Parenthood in Columbia to perform abortions.<sup>82</sup> Under Missouri law at the time, the privileges were necessary for Planned Parenthood to maintain legal permission to continue offering abortions at that facility.<sup>83</sup> The Mizzou rule change followed intense political pressure from the state Senate Interim Committee on the Sanctity of Life, and the state senator who chaired the committee called the Mizzou decision a “victory for the unborn.”<sup>84</sup> The decision inspired protests and litigation,<sup>85</sup> and it fomented suspicion on campus that top administrators had denied women access to health care in response to right-wing political demagoguery.<sup>86</sup> A federal judge later enjoined the state from revoking Planned Parenthood’s ambulatory surgical center license, basing her finding in part on “the political intimidation directed at the University of Missouri Health System.”<sup>87</sup> Relatedly, Missouri politics had become substantially more conservative

---

(Oct. 8, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/mu-faculty-council-discusses-grad-students-physician-privileges-ellis-library/article\\_5521e756-6e14-11e5-b05c-cf325e619be3.html](https://www.columbiainmissourian.com/news/higher_education/mu-faculty-council-discusses-grad-students-physician-privileges-ellis-library/article_5521e756-6e14-11e5-b05c-cf325e619be3.html) [<http://perma.cc/5U7Z-DTLF>].

<sup>81</sup> Elise Schmelzer, *Planned Parenthood to File Claim Against MU After University Discontinues Abortion Doctor’s Privileges*, COLUMBIA MISSOURIAN (Sep. 25, 2015), [https://www.columbiainmissourian.com/news/local/planned-parenthood-to-file-claim-against-mu-after-universitydiscontinues/article\\_40fb35f4-63c2-11e5-af30-efd6ba9689aa.html](https://www.columbiainmissourian.com/news/local/planned-parenthood-to-file-claim-against-mu-after-universitydiscontinues/article_40fb35f4-63c2-11e5-af30-efd6ba9689aa.html) [<http://perma.cc/G2XS-9M24>] (quoting Planned Parenthood leader stating, “We were outraged that an institution of higher learning would cow to such obvious political tactics”).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Ellen Cagle & Elise Schmelzer, *Planned Parenthood Supporters Rally to Urge MU to Reconsider Doctor’s Hospital Privileges*, COLUMBIA MISSOURIAN (Nov. 30, 2015), [https://www.columbiainmissourian.com/news/local/planned-parenthood-supporters-rally-to-urge-mu-to-reconsider-doctor/article\\_f87bec70-97b9-11e5-943c-4739b3640b51.html](https://www.columbiainmissourian.com/news/local/planned-parenthood-supporters-rally-to-urge-mu-to-reconsider-doctor/article_f87bec70-97b9-11e5-943c-4739b3640b51.html) [<https://perma.cc/9QF4-TSNB>]; Hannah Sturtecky, *Federal Judge Allows Planned Parenthood to Keep License to Perform Abortions*, COLUMBIA MISSOURIAN (Dec. 28, 2015), [https://www.columbiainmissourian.com/news/local/federal-judge-allows-planned-parenthood-to-keep-license-to-perform/article\\_9e3777bc-ada2-11e5-a67a-6f59cf02964c.html](https://www.columbiainmissourian.com/news/local/federal-judge-allows-planned-parenthood-to-keep-license-to-perform/article_9e3777bc-ada2-11e5-a67a-6f59cf02964c.html) [<http://perma.cc/KJ5R-H65A>].

<sup>86</sup> See Barbara Shelly, *Stand up to Kurt Schaefer’s Dishonest Attack on Missouri’s University System*, KANSAS CITY STAR (Sept. 17, 2015, 8:36 PM), <https://www.kansascity.com/opinion/opn-columns-blogs/barbara-shelly/article35637024.html> [<https://perma.cc/9KK5-CBWB>].

<sup>87</sup> *Planned Parenthood of Kansas and Mid-Missouri, Inc. v. Lyskowski*, No. 2:15-cv-04273-NKL, 2015 WL 9463198, at \*4 (W.D. Mo. Dec. 28, 2015).

over the past several years,<sup>88</sup> causing some unease on campus. This shift concurrently contributed to greater suspicion of the university among state legislators.<sup>89</sup>

In sum, in early October 2015, the following factors contributed to a heightened risk that racial protests led by Mizzou students could be especially intense in the coming months: (1) Missouri's black community was still reeling from the shooting of Michael Brown, the decision not to prosecute his killer, and the behavior of police during related protests; (2) Americans more generally were paying heightened attention to how police interact with black people; (3) university students nationwide were chronicling incidents of racism and discussing them online; (4) left-leaning Mizzou students perceived the university as caving to right-wing pressure on abortion; and (5) graduate student protests related to tuition waivers and health insurance subsidies had won complete victories. At the same time, the university had enrolled a record number of students—despite decreasing numbers of college-aged Missourians—and was dependent on maintaining or increasing the amount of tuition dollars collected for the foreseeable future.

*B. The Story of the Protests, in Brief, along with Ugly Questions—Asked Aloud at Last*

In September and October 2015, incidents of racist behavior directed at Mizzou students roiled the University of Missouri campus. On September 11, 2015, Patyon Head, a black senior and the president of the Missouri Students Association, was walking near campus when someone shouted racial slurs at him from a passing pickup truck.<sup>90</sup> His Facebook post the next day described the event, along with further discussion of exclusion faced by minority students at Mizzou and in Columbia. He wrote:

I really just want to know why my simple existence is such a threat to society. For those of you who wonder why I'm always talking about the importance of inclusion and respect, it's because I've experienced moments like this multiple times at THIS university, making me not feel included here.<sup>91</sup>

---

<sup>88</sup> Missouri was once a bellwether (or “swing”) state in national politics, voting with the winner from John F. Kennedy's election through both victories of Bill Clinton and George W. Bush. Barack Obama lost Missouri narrowly in 2008 and soundly in 2012. In 2016, Donald Trump would win 56.8 percent of the Missouri vote, compared to Hillary Clinton's 38.1 percent, despite losing the popular vote nationally by millions of votes. MO. SEC'Y OF STATE, *State of Missouri - General Election, November 08, 2016* (last updated Dec. 12, 2016), <https://enrarchives.sos.mo.gov/enrnet/default.aspx?eid=750003949> [<https://perma.cc/9WBJ-P8XJ>]. Missouri is now substantially to the right of whatever counts as “average” in American politics.

<sup>89</sup> Shelly, *supra* note 86.

<sup>90</sup> Ruth Serven, *MSA President Speaks Out About Racist Incident*, COLUMBIA MISSOURIAN (Sept. 14, 2015), [https://www.columbiamissourian.com/news/higher\\_education/msa-president-speaks-out-about-racistincident/article\\_ac4ebc2c-5b3e-11e5-b4bd-af55f13bae45.html](https://www.columbiamissourian.com/news/higher_education/msa-president-speaks-out-about-racistincident/article_ac4ebc2c-5b3e-11e5-b4bd-af55f13bae45.html) [<http://perma.cc/Y4UK-R8DC>].

<sup>91</sup> *Id.*

On October 1, students marched through the MU Student Center, shouting, “White silence is violence, no justice no peace.”<sup>92</sup> A graduate student involved in the protest expressed his frustration that less confrontational tactics had captured no attention. He shouted: “I don’t like to scream, I don’t like to yell. But nobody wants to listen. Nobody listens on the forum, nobody listens on the email.”<sup>93</sup> The protestors listed various things they wanted from university administration, including “a hate crime policy” and a formal acknowledgement that “we do have a racial problem here on campus and that [administrators] are seeking to make sure it gets addressed properly.”<sup>94</sup>

Late on the night of October 4, members of the Legion of Black Collegians who were rehearsing on “Traditions Plaza” for a homecoming performance reported to police that a man directed a racial slur at them.<sup>95</sup> LBC leaders posted a detailed description of the event online, along with their reaction.<sup>96</sup> The Mizzou Chancellor spoke out in a video posted online: “It’s happened again. Just last night, on Traditions Plaza. Hate and racism were alive and well at Mizzou.”<sup>97</sup> The person who uttered the slur was identified the next day as a white Mizzou student.<sup>98</sup>

On October 6, students assembled in Jesse Hall, the main campus administration building, for a “#BLMStudyHall,” which featured studying as well as chants.<sup>99</sup> Students also held a group prayer at Traditions Plaza, the site of the incident involving the homecoming rehearsal.<sup>100</sup> Students at the study hall criticized the university’s response to racial incidents on campus,<sup>101</sup> and supporters of the LBC used the Twitter hashtag #StandWithLBC.<sup>102</sup> A flier promoting student action in

<sup>92</sup> Nana Naskidashvili, *Students March Through MU Student Center in Protest of Racial Injustice*, COLUMBIA MISSOURIAN (Oct. 1, 2015), [https://www.columbiamissourian.com/news/higher\\_education/students-march-through-mu-student-center-inprotest-of-racial/article\\_4b8e3458-688b-11e5-8412-9b38a4d41eb8.html](https://www.columbiamissourian.com/news/higher_education/students-march-through-mu-student-center-inprotest-of-racial/article_4b8e3458-688b-11e5-8412-9b38a4d41eb8.html) [<http://perma.cc/C6H2-5D6W>].

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Maya McDowell, *MU Chancellor Loftin Responds to Report of Racial Slurs Used on Campus*, COLUMBIA MISSOURIAN (Oct. 5, 2015), [https://www.columbiamissourian.com/news/higher\\_education/mu-chancellor-loftin-responds-to-report-of-racial-slurs-used/article\\_38c31300-6b76-11e5-bf31-cf8f3d5cd67b.html](https://www.columbiamissourian.com/news/higher_education/mu-chancellor-loftin-responds-to-report-of-racial-slurs-used/article_38c31300-6b76-11e5-bf31-cf8f3d5cd67b.html) [<http://perma.cc/ZP3P-JPE9>].

<sup>96</sup> See Lindsay Deutsch, *Mizzou President Resigns: How Did We Get Here?*, USA TODAY (Nov. 9, 2015), <https://www.usatoday.com/story/news/nation-now/2015/11/09/timeline-university-of-missouri-racism-protests-resignation/75467354/> [<http://perma.cc/JE65-QKKV>].

<sup>97</sup> McDowell, *supra* note 95 (Youtube video embedded within article).

<sup>98</sup> Megan Favignano, *MU Student ‘Moved From Campus’ After Racist Incident*, COLUMBIA TRIBUNE (Oct. 6, 2015, 1:00 PM), <http://www.columbiatribune.com/article/20151006/News/310069933> [<http://perma.cc/28TK-5K2T>].

<sup>99</sup> Veronike Collazo, “*MU Students Assemble in Solidarity at #BLMStudyHall, Prayer Event After Racial Incident*,” COLUMBIA MISSOURIAN (Oct. 6, 2015), [https://www.columbiamissourian.com/news/higher\\_education/mu-students-assemble-in-solidarity-at-blmstudyhallprayer-event-after\\_article\\_be639eb0-6c63-11e5-a593-7368e3604aa4.html](https://www.columbiamissourian.com/news/higher_education/mu-students-assemble-in-solidarity-at-blmstudyhallprayer-event-after_article_be639eb0-6c63-11e5-a593-7368e3604aa4.html) [<http://perma.cc/ZQ3E-V3XL>].

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> McDowell, *supra* note 95.



response to the racist incidents urged students, “Take a stand against administrators who seek to silence our voices and refuse to protect our identities.”<sup>103</sup>

On October 7, LBC walked through campus and downtown Columbia to raise awareness of police brutality.<sup>104</sup> On October 8, Chancellor Loftin announced a new campus requirement of diversity and inclusion training.<sup>105</sup>

Then, on October 10, a group of students calling themselves “Concerned Student 1950” blocked the MU Homecoming Parade, standing in front of the car carrying UM President Tim Wolfe.<sup>106</sup> The group’s name referred the year in which Mizzou first admitted black students, and members denounced “lackluster efforts to combat racism at MU.”<sup>107</sup> Protestors blocked Wolfe’s car for about fifteen minutes, and police eventually moved them from the parade route.<sup>108</sup> Wolfe remained in his car, which at one point bumped into a protestor, and he did not speak to the protestors.<sup>109</sup>

On October 20, Concerned Student 1950 issued a list of demands, which included “the immediate removal of Tim Wolfe as UM system president.”<sup>110</sup>

On November 2, graduate student Jonathan Butler announced a hunger strike. In a letter to the Board of Curators, he said, “During this hunger strike, I will not consume any food or nutritional sustenance at the expense of my health until either Tim Wolfe is removed from office or my internal organs fail and my life is lost.”<sup>111</sup> About 100 students promptly planned a protest that involved camping out on Mel

<sup>103</sup> *Id.*

<sup>104</sup> Julia Quade, *LBC Holds Walk to Raise Awareness, Remember Loved Ones*, COLUMBIA MISSOURIAN (Oct. 7, 2015), [https://www.columbiainmissourian.com/news/local/lbc-holds-walk-to-raise-awareness-remember-lovedones/article\\_266a1a50-6d51-11e5-b990-47d07b5197b4.html](https://www.columbiainmissourian.com/news/local/lbc-holds-walk-to-raise-awareness-remember-lovedones/article_266a1a50-6d51-11e5-b990-47d07b5197b4.html) [http://perma.cc/V5B8-2XRM].

<sup>105</sup> Kasia Kovacs, *Diversity and Inclusion Training to be Required Campuswide*, COLUMBIA MISSOURIAN (Oct. 8, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/diversity-and-inclusion-training-to-be-required-campuswide/article\\_b4d4a55a-6dbd-11e5-9988-c3fe4ec3e844.html](https://www.columbiainmissourian.com/news/higher_education/diversity-and-inclusion-training-to-be-required-campuswide/article_b4d4a55a-6dbd-11e5-9988-c3fe4ec3e844.html) [http://perma.cc/CCH4-YKRQ].

<sup>106</sup> Ruth Serven & Ashley Reese, *In Homecoming Parade, Racial Justice Advocates Take Different Paths*, COLUMBIA MISSOURIAN (Oct. 10, 2015), [https://www.columbiainmissourian.com/news/in-homecoming-parade-racial-justice-advocates-take-different-paths/article\\_24c824da-6f77-11e5-958e-fb15c6375503.html](https://www.columbiainmissourian.com/news/in-homecoming-parade-racial-justice-advocates-take-different-paths/article_24c824da-6f77-11e5-958e-fb15c6375503.html) [http://perma.cc/K3JL-UA3V].

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *See id.*; Mará Williams, *University of Missouri System President Says He Handled Student Protests Poorly*, KANSAS CITY STAR (Nov. 06, 2015), <https://www.kansascity.com/news/politics-government/article43438974.html> [http://perma.cc/4DNQ-RG48]. For more detail about this incident, see *infra* Subsection IV.B.ii.

<sup>110</sup> MICHAEL T. MILLER & DAVID V. TOLLIVER III, *STUDENT ACTIVISM AS A VEHICLE FOR CHANGE ON COLLEGE CAMPUSES: EMERGING RESEARCH AND OPPORTUNITIES* 32 (2017).

<sup>111</sup> Kasia Kovacs, *Update: MU Student Embarks on Hunger Strike, Demands Wolfe’s Removal from Office*, COLUMBIA MISSOURIAN (Nov. 2, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/update-mu-student-embarks-on-hunger-strike-demands-wolfe-s/article\\_35ab864a-8186-11e5-902b-6f136a45260b.html](https://www.columbiainmissourian.com/news/higher_education/update-mu-student-embarks-on-hunger-strike-demands-wolfe-s/article_35ab864a-8186-11e5-902b-6f136a45260b.html) [http://perma.cc/3DUN-Q2V9].

Carnahan Quadrangle in support of Butler's effort.<sup>112</sup> The encampment included about ten structures for sleeping, along with others for storing food and water.<sup>113</sup>

On November 6, Wolfe was in Kansas City for a university event, and protestors confronted him.<sup>114</sup> Video of the confrontation showed Wolfe flummoxed by questions related to "systematic oppression."<sup>115</sup> Wolfe had issued an apology that day for his handling of the homecoming protest.<sup>116</sup>

On November 7, black players on the MU football team announced that they would "no longer participate in any football related activities until President Tim Wolfe resigns or is removed due to his negligence toward marginalized students' experiences."<sup>117</sup> The team was scheduled to play Brigham Young University one week later.<sup>118</sup> On November 8, head football coach Gary Pinkel tweeted his support of the boycott, writing, "The Mizzou Family stands as one. We are united. We are behind our players. #ConcernedStudent1950 GP."<sup>119</sup>

On the morning of November 9, Tim Wolfe announced his resignation, and that afternoon, Chancellor Lofin resigned too.<sup>120</sup>

Soon after news of Wolfe's resignation reached the quad, MU Professor Melissa Click argued with a student who was attempting to interview protestors. She pushed the camera the student was holding, and she called for "muscle" to assist with removing the student from the area.<sup>121</sup>

<sup>112</sup> See Kasia Kovacs, *Student Activists Camp Out to Protest Wolfe and Support Hunger Strike*, COLUMBIA MISSOURIAN (Nov. 2, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/student-activists-camp-out-to-protest-wolfe-and-support-hunger/article\\_b204b8b4-81dc-11e5-a4a0-cb305bb09bed.html](https://www.columbiainmissourian.com/news/higher_education/student-activists-camp-out-to-protest-wolfe-and-support-hunger/article_b204b8b4-81dc-11e5-a4a0-cb305bb09bed.html) [http://perma.cc/ND3A-UXXH]; Jacob Bogage, *Two Hours In a Cold, Dark Tent on the Carnahan Quadrangle*, COLUMBIA MISSOURIAN (Nov. 6, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/two-hours-in-a-cold-dark-tent-on-the-carnahan/article\\_88592650-844b-11e5-ac04-4b54bb2c4f40.html](https://www.columbiainmissourian.com/news/higher_education/two-hours-in-a-cold-dark-tent-on-the-carnahan/article_88592650-844b-11e5-ac04-4b54bb2c4f40.html) [http://perma.cc/B7QF-7HW9].

<sup>113</sup> Bogage, *supra* note 112 ("The largest is a [sic] made of two tailgating pavilions shoved together and covered on all sides with tarps.").

<sup>114</sup> Missouri Staff, *Update: Protesters Meet UM System Resident Outside Kansas City Fundraiser*, COLUMBIA MISSOURIAN (Nov. 6, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/update-protesters-meet-um-system-president-outside-kansas-city-fundraiser/article\\_ecbd2628-84d2-11e5-8979-2f08eccf644a.html](https://www.columbiainmissourian.com/news/higher_education/update-protesters-meet-um-system-president-outside-kansas-city-fundraiser/article_ecbd2628-84d2-11e5-8979-2f08eccf644a.html) [http://perma.cc/M6DH-AUP8].

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Missouri Staff, *Update: Black Missouri Football Players Plan to Join Wolfe Protest Through Boycott*, COLUMBIA MISSOURIAN (Nov. 7, 2015), [https://www.columbiainmissourian.com/sports/mizzou\\_football/update-black-missouri-football-players-plan-to-join-wolfe-protest/article\\_3af86734-85c4-11e5-95a7-b7f5cd4cfb9e.html](https://www.columbiainmissourian.com/sports/mizzou_football/update-black-missouri-football-players-plan-to-join-wolfe-protest/article_3af86734-85c4-11e5-95a7-b7f5cd4cfb9e.html) [http://perma.cc/5LLX-M3GW].

<sup>118</sup> *Id.*

<sup>119</sup> @Gary Pinkel, TWITTER (Nov. 8, 2015, 9:39 AM) <https://twitter.com/GaryPinkel/status/663410502370856960> [http://perma.cc/5LLX-M3GW].

<sup>120</sup> Susan Svrluga, *U. Missouri President, Chancellor Resign Over Handling of Racial Incidents*, WASH. POST (Nov. 9, 2015), [https://www.washingtonpost.com/news/grade-point/wp/2015/11/09/missouri-student-government-calls-for-university-presidents-removal/?utm\\_term=.13021745fce6](https://www.washingtonpost.com/news/grade-point/wp/2015/11/09/missouri-student-government-calls-for-university-presidents-removal/?utm_term=.13021745fce6) [http://perma.cc/4NT2-7N9U].

<sup>121</sup> Austin Huguelet & Daniel Victor, *'I Need Some Muscle': Missouri Activists Block Journalists*, N.Y. TIMES (Nov. 9, 2015), <https://www.nytimes.com/2015/11/10/us/university-missouri-protesters-block-journalists-press-freedom.html> [http://perma.cc/P3VP-D9LN]. For more detail about this incident, see *infra* Subsection IV.B.ii.

The university appointed an interim president and chancellor,<sup>122</sup> and—after a couple of additional harrowing incidents in which outsiders fomented panic and racial discord on campus<sup>123</sup>—Columbia had mostly calmed down by mid-November 2015.

Let's move ahead briefly to January 2016 when, about two months after resigning as President of the UM System, Wolfe sent email to dozens of friends and supporters.<sup>124</sup> Despite the subject line “CONFIDENTIAL,” at least one recipient promptly leaked the message to the media.<sup>125</sup> The message included criticism of former Chancellor Loftin.<sup>126</sup> State Senator Kurt Schaefer, head football coach Gary Pinkel, various Curators, and Athletic Director Mack Rhoades all faced sharp reproach.<sup>127</sup> Perhaps the most bitter words were directed toward Michael Middleton, whom the Curators appointed as Interim President to replace Wolfe:

Why did the Board of Curators decide to hire the leader who had failed miserable [sic] in his capacity as the long time leader on diversity issues on the MU Campus? Why did Michael Middleton choose not to stop the growing protest in spite of his relationship with [student activist] Jonathan Butler and the minority students on the MU campus?<sup>128</sup>

These two questions, posed starkly—and clumsily—by Wolfe, shed light on the problems facing the University, the state of Missouri, and the United States. The publication of Wolfe's letter exposed him to widespread ridicule, not only because of his comments on race relations but also because he asked recipients to lobby the

---

<sup>122</sup> See Emma Vandellinder, *Hank Foley and Michael Middleton Address MU's Problems at Faculty Council Meeting*, COLUMBIA MISSOURIAN (Nov. 19, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/hank-foley-and-michael-middleton-address-mu-s-problems-at/article\\_58d64350-8f21-11e5-8416-bfb7380b48e4.html](https://www.columbiainmissourian.com/news/higher_education/hank-foley-and-michael-middleton-address-mu-s-problems-at/article_58d64350-8f21-11e5-8416-bfb7380b48e4.html) [<http://perma.cc/QR2K-V4LU>].

<sup>123</sup> In one incident, a student in Rolla, Missouri used the now-defunct social media platform Yik Yak to pose as someone in Columbia, posting late on November 10, “Some of you are alright. Don't come to campus tomorrow ... I'm going to stand my ground tomorrow and shoot every black person I see.” See Anna Sutterer, *Former Rolla Student Given Probation for Yik Yak Threats Against Blacks*, COLUMBIA MISSOURIAN (Jun. 16, 2016), [https://www.columbiainmissourian.com/news/local/former-rolla-student-given-probation-for-yik-yak-threats-against/article\\_4cefa958-3405-11e6-a1ee-93b14cd8adf2.html](https://www.columbiainmissourian.com/news/local/former-rolla-student-given-probation-for-yik-yak-threats-against/article_4cefa958-3405-11e6-a1ee-93b14cd8adf2.html) [<http://perma.cc/Z33S-SPC8>]. Then, on November 11, posts on Twitter stated falsely, “The cops are marching with the KKK [in Columbia]!” The Mizzou student government president was fooled by the posts—which now appear connected to a Russian “dezinformatsiya” (disinformation) campaign and included an image of a black child's bruised face—and spread the fake news further. Katy Bergen, *Russian Twitter Trolls Stoked KKK Fears at Mizzou During 2015 Protests, Report Says*, KANSAS CITY STAR (Feb. 14, 2018, 10:24 AM), <https://www.kansascity.com/news/local/article200011139.html> [<http://perma.cc/PTJ7-W9QJ>].

<sup>124</sup> See *Text of Tim Wolfe's Letter Criticizing University of Missouri Leaders*, KANSAS CITY STAR (Feb. 14, 2018) [hereinafter *Wolfe Letter*], <http://www.kansascity.com/news/local/article56868723.html> [<http://perma.cc/5B5M-8U56>] (email from Tim Wolfe, dated Jan. 19, 2016, to undisclosed supporters).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

Curators to give him some sort of job or “compensation.”<sup>129</sup> Missourians who felt bad for Wolfe, believing him to have been scapegoated (at least in part) for problems beyond his control, had less sympathy for him after reading his embarrassing note.<sup>130</sup> Regardless of one’s view of Wolfe, however, his questions deserve an answer.

### C. *Loving Mizzou so much it Hurts*

As Wolfe correctly noted, the protests that roiled Mizzou during the fall of 2015 will end up costing the University millions of dollars.<sup>131</sup> This is something that well-meaning people who sympathize with many of the concerns raised by the protestors hate to admit. But it is true all the same. Yes, the drop in freshman enrollment<sup>132</sup> can be attributed to many causes, including decreasing numbers of Missouri high school graduates<sup>133</sup> and financial problems at the University of Illinois.<sup>134</sup> That said, in September 2015, Mizzou’s enrollment experts projected a far larger Fall 2016 entering class than the university ultimately welcomed that year,<sup>135</sup> and pretending that the protests—and the University’s poor response to them—did not adversely affect enrollment is unsound. Demographics and the

<sup>129</sup> He wrote, “My call to action for each of you is to pick up the phone, or at a minimum send an email, to the board members below and express your concern over the current situation and tell them to resolve my contract negotiation so that I can continue to play a significant positive role in the future.” *Id.*

<sup>130</sup> See, e.g., Mary Sanchez, *Tim Wolfe’s Letter Shows a University Leader Who Did Not Lead and Resigned Out of Fear*, KANSAS CITY STAR (Jan. 29, 2016, 8:54 AM), <https://www.kansascity.com/opinion/opn-columns-blogs/mary-sanchez/article56950948.html> [<http://perma.cc/45KA-JZXJ>] (“Wolfe’s lengthy letter is a temper tantrum in prose. Paragraph after paragraph shows why he deserved the boot.”).

<sup>131</sup> In Wolfe’s words: “In hindsight, the \$1 million penalty associated with forfeiting the game against BYU would have paled in comparison to the more than \$25 million in lost tuition and fees MU will realize with reduced enrollment this Fall.” *Wolfe Letter*, *supra* note 124. The potential forfeit was averted when, after Wolfe resigned, striking football team members agreed to play. See *infra* notes 260-262 and accompanying text.

<sup>132</sup> Mizzou enrolled 6,515 first-time college degree-seeking students in fall 2014 (its highest total ever) and 6,191 in 2015 (about the same as in 2013). The number then dropped to 4,772 in 2016 and further to 4,134 in 2017 (a drop of 33 percent from fall 2015). *Table E3-E. Degree Seeking First-Time College Enrollment by Gender and Ethnicity, Fall Semesters*, U. MO. INSTITUTIONAL RES. & QUALITY IMPROVEMENT (Jan. 26, 2018), <https://missouri.app.box.com/v/enrollment-se-ftc> [<https://perma.cc/5VFP-R8PX>].

<sup>133</sup> Simina Mistreanu, *Decrease in High School Graduates Plays Out Differently Across Missouri*, COLUMBIA MISSOURIAN (Nov. 9, 2011), [https://www.columbiainmissourian.com/news/decrease-in-high-school-graduates-plays-out-differently-across-missouri/article\\_a13a5bda-8893-5608-92c2-99bc7ecc3f66.html](https://www.columbiainmissourian.com/news/decrease-in-high-school-graduates-plays-out-differently-across-missouri/article_a13a5bda-8893-5608-92c2-99bc7ecc3f66.html) [<http://perma.cc/M4VJ-UNY7>].

<sup>134</sup> In response to its own budget problems, Illinois admitted more in-state students than usual, and it is likely that some of those students would otherwise have matriculated at Mizzou and paid out-of-state tuition. See Sarah Brown, *As Illinois Budget Impasse Ends, So Does a ‘Nightmare of Total Uncertainty’ for Its Public Colleges*, CHRONICLE OF HIGHER EDUC. (July 6, 2017), <https://www.chronicle.com/article/As-Illinois-Budget-Impasse/240553> [<https://perma.cc/P9JX-TARM>] (noting that Illinois public “universities have strategically increased enrollment over the last couple of years” in response to “a historic state-budget standoff” that included “one nearly 10-month period, [in which] colleges didn’t receive any state money”).

<sup>135</sup> See ROBERT MULLEN & KARLA DOWD, *FALL 2015 – FALL 2019 ENROLLMENT PROJECTIONS UNIVERSITY OF MISSOURI SYSTEM 4* (2015) [https://www.umsystem.edu/media/Enr\\_Proj15.pdf](https://www.umsystem.edu/media/Enr_Proj15.pdf) [<https://perma.cc/69GU-BYL3>] (showing 2015 projection of 6,682 degree seeking first-time freshman enrolling at Mizzou in Fall 2016).

financial woes of neighboring states simply cannot explain anything close to the total drop in enrollment.<sup>136</sup>

Why then do those who sympathize with the protests—the faculty who brought coffee and donuts to Carnahan Quad, the Columbia residents who know that racism is a real problem here, the black collegians nationwide who drew inspiration from Mizzou’s events for their own struggle<sup>137</sup>—seek to deny that the protests have cost the University so much money?<sup>138</sup> Why not admit, even trumpet, the power of protests to hit Mizzou in the wallet? After all, when factory workers strike, they don’t downplay the economic damage they impose on management; that’s the point of the strike.<sup>139</sup> When black citizens boycotted the public buses of Montgomery, Alabama, they announced loudly and clearly their intention to force change by imposing financial hardship upon the bus system.<sup>140</sup>

Perhaps the answer is that the student protestors—and those who supported them—love Mizzou, and they want the University to thrive,<sup>141</sup> making it unappealing

<sup>136</sup> For a forthright analysis of the enrollment situation, see statements by Pelema I. Morrice, who became Vice Provost for Enrollment Management at MU on September 15, 2016. Rudi Keller, *University of Missouri Enrollment to Decline More than 7 Percent; 400 Jobs to be Eliminated*, COLUMBIA DAILY TRIBUNE (May 15, 2017, 8:19 PM), <http://www.columbiatribune.com/news/20170515/university-of-missouri-enrollment-to-decline-more-than-7-percent-400-jobs-to-be-eliminated> [<http://perma.cc/5XSM-TF3R>] (“It is clear from what we learned thus far that the vast majority of our undergraduate enrollment concerns are closely tied to our public perception issues throughout the state and throughout the country.”).

<sup>137</sup> See, e.g., NAACP Georgia Southern (@NAACPegles), TWITTER (Nov. 12, 2015, 8:10 AM), <https://twitter.com/NAACPegles/status/664837604291043329> [<http://perma.cc/9ZQZ-9KA2>]; @Lucid\_Canon, TWITTER (Nov. 12, 2015, 9:20 AM), [https://twitter.com/Abels\\_Masochist/status/664855183512444928](https://twitter.com/Abels_Masochist/status/664855183512444928) [<http://perma.cc/3HHX-5EB4>] (posting statement of solidarity from students at Saint John’s University); @MaceandCrown, TWITTER (Nov. 12, 2015 1:21 PM), <https://twitter.com/MaceandCrown/status/664915918665961473> [<http://perma.cc/QNY7-SL5V>] (posting an image of Old Dominion University students convening in solidarity with Mizzou protesters); Stanford University (@Stanford), TWITTER (Nov. 12, 2015, 1:27 PM), <https://twitter.com/Stanford/status/664917450899783680> [<http://perma.cc/MM3A-7MS6>]. Further examples abound.

<sup>138</sup> I have been told by several on campus that faculty should resist the “narrative” that student protestors are “to blame” for the lost revenue. For further discussion of narrative and counter-narrative, see *infra* notes 201 and 270 and accompanying text.

<sup>139</sup> See MARY RITTER BEARD, *A SHORT HISTORY OF THE AMERICAN LABOR MOVEMENT* 21–22, 52–53, 64–65 (1920); NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 48–51 (2002) (explaining a historical example of how union workers at General Motors factories went on strike and imposed economic damage on management).

<sup>140</sup> See, e.g., JO ANN GIBSON ROBINSON, *THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT: THE MEMOIR OF JO ANN GIBSON ROBINSON* 82 (David J. Garow ed., 1987).

<sup>141</sup> This sentiment may not have been universal among protestors, but it certainly existed. In a press conference held soon after Wolfe’s resignation, MU senior Deshaunya Ware said, “We criticize Mizzou because we love Mizzou. That’s why we’re critiquing this, because we want change, we want progression, we want inclusivity.” *Concerned Student 1950 Lays Out Goals for Post-Wolfe Mizzou*, KCUR (Nov. 10, 2015), <http://kcur.org/post/concerned-student-1950-lays-out-goals-post-wolfe-mizzou#stream/0> [<http://perma.cc/282S-XZRM>]. Ian Simon, a MU football player who helped to organize his teammates’ strike, said one year later, “I love Mizzou with all my heart. M-I-Z ‘til I D-I-E. . . . But I don’t want my kids to have to play a sport to go to college. And if they do go, I don’t want to see them have to go to a school where they would be subject to this.” Peter Baugh, *Athletics and Activism: Looking Back on a Historic Football Boycott*, MANEATER (Oct. 22, 2016),

for them to be seen threatening its finances or reveling in its fiscal woes. But factory workers, whether they love their employers or not, often take pride in the organizations for whom they labor, and they certainly understand that the long-term success of the company is closely linked to their future job prospects. Bankrupt, shuttered factories pay the worst wages of all. Similarly, the housecleaners who boycotted the Montgomery buses depended on public transit to get to work; they did not seek to destroy the system but to improve it through the eradication of discriminatory seating regulations.

Another explanation is that opponents of the protestors, both local and those observing from far away, have celebrated the University's loss of tuition revenue and have used the resulting budget cuts to argue that the University is getting what it deserves for caving to outrageous demands of petulant children.<sup>142</sup> When obnoxious anti-anti-racists<sup>143</sup> delight in Mizzou's misfortune and assert that student protestors are "to blame," it is easy for well-meaning anti-racists to reject the underlying premise and accordingly to argue that the protests did not cause the revenue losses.<sup>144</sup> The weak version of this argument asserts that the protests' impacts have been overstated, and the strong version asserts that no causality can be demonstrated. These claims, while understandable, should be avoided because unbiased third parties know the events of 2015—and the statewide and national media attention they received—have indeed cost Mizzou a lot of money. Arguing the contrary is bad for one's credibility, much like it would be for a union leader to deny that her striking workers have slowed the assembly line.

A more useful inquiry is: How did things get so far out of hand? With so many other universities managing to weather racial protests without suffering major institutional damage, how did Mizzou fail?

<https://www.themaneater.com/stories/sports/athletics-and-activism-looking-back-historic-foot> [http://perma.cc/HT5V-C3MG].

<sup>142</sup> See, e.g., David French, *Missouri Update: Crazy Campus Radicals Are Financially Crippling the University*, NAT'L REV. (Mar. 10, 2016, 2:26 AM), <https://www.nationalreview.com/corner/missouri-update-crazy-campus-radicals-are-financially-crippling-university/> [http://perma.cc/4L8V-K5ZN] ("[T]he chickens are truly coming home to roost."); Jillian Kay Melchior, *Mizzou Pays a Price for Appeasing the Left*, WALL ST. J. (Aug. 20, 2017, 3:48 PM), <https://www.wsj.com/articles/mizzou-pays-a-price-for-appeasing-the-left-1503258538> [http://perma.cc/AY54-HF2M]; Jeff Poor, *Limbaugh on Mizzou: 'Institutions of Higher Victimization' Getting Exactly What They Deserve*, BREITBART (Nov. 9, 2015), <http://www.breitbart.com/video/2015/11/09/limbaugh-on-mizzou-institutions-of-higher-victimization-getting-exactly-what-they-deserve/> [http://perma.cc/VRK4-TE5J]. The *Wall Street Journal* returned to this theme in June 2018. Editorial Board, *More Misery in Missouri: The University Continues to Struggle With Fallout From the 2015 Protests*, WALL ST. J. (June 15, 2018, 6:59 PM) <https://www.wsj.com/articles/more-misery-in-missouri-1529103599> [http://perma.cc/U46W-NKGG ] ("Indulging protesters can be expensive, as the University of Missouri is discovering . . .").

<sup>143</sup> That is, folks who may not espouse racism but nonetheless seem upset by robust anti-racism efforts.

<sup>144</sup> Such arguments are also sometimes motivated by analyses of state politics. The theory is that legislators (and their constituents) will want to punish the protestors for harming the University and will, unable to hurt the protestors directly, instead attack the University (perhaps through decreased appropriations) if the protestors are deemed "responsible" for Mizzou's problems. (Or, similarly, that they will punish administrators or Curators for "caving in" to demands.) I cannot speculate whether the legislators think or act in this way. Regardless, I doubt they can be convinced that the protests did not cost the University money, and I suspect they will find such claims insult their intelligence.

## II. BRIEF LESSONS FROM THE THEORY AND PRACTICE OF NEGOTIATION

This Part explains how the theory of negotiation sheds light on the problems presented by campus protests. First, it discusses how students struggle to decide what offers by university leaders could persuade them to end their protests, which complicates the jobs of administrators wondering what to propose. Second, it discusses how protestors and administrators alike can find themselves wondering with whom they can really bargain. For protestors, the problem is that much of what they want—particularly when racial justice is at stake—cannot be provided by even the most cooperative university administrators. For administrators, the problem is that student protestors often lack recognizable leaders empowered to make deals on behalf of fellow group members, and even well-organized groups can be supplanted by new groups that object to what they perceive as an inadequate agreement.

### *A. Why We Can't "Get to Yes"—What Does "Yes" Even Mean?*

The invocation above of striking trade unionists and civil rights boycotters reveals one of the key difficulties facing Mizzou's protestors, along with similar student advocates nationwide. Because no one has the power to give them what they really want, they cannot easily decide when to declare victory. Absent recognized wins, they risk either acknowledging failure and defeat or instead becoming perpetual protestors, unable to focus on their studies and otherwise enjoy the benefits offered by the University. In addition, as is discussed more fully below, even if some authority figure were prepared to negotiate in good faith toward some sort of agreement, the chancellor or president would not know with whom to bargain.

When workers strike, there is inevitably some concession by management—higher wages, better work rules, something—capable of getting labor back on the job. The Montgomery bus boycott concerned a redressable demand for equal treatment. And the desired concession was no secret; the powers that be could easily determine whether an offer is acceptable and needed to decide only if they were willing to make it. Unions have leaders and negotiating teams ready to articulate what "yes" looks like, and the Montgomery Improvement Association had a president named Martin Luther King, Jr. whose clarity of expression is in little doubt.

By contrast, the ultimate demand of the Mizzou protestors was for a more just—and less racist—university, city, state, and nation. Neither the UM president, the mayor of Columbia, the governor of Missouri, nor the President of the United States possessed the power to deliver. De jure segregation, for all its horrors, at least created a list of specific policy changes that activists could demand and that public officials—eventually—could provide. For example, after the Supreme Court so

ordered,<sup>145</sup> the bus drivers of Montgomery ceased discriminating on the basis of race, and the boycott ended.<sup>146</sup>

Student protestors did, of course, issue specific demands,<sup>147</sup> some of which the administration had the power to grant. For example, students demanded that MU “increase[ ] funding and resources for the University of Missouri Counseling Center for the purpose of hiring additional mental health professionals[:] particularly those of color, boosting mental health outreach and programming across campus, increasing campus-wide awareness and visibility of the counseling center, and reducing lengthy wait times for prospective clients.”<sup>148</sup> This was possible and has indeed been accomplished.<sup>149</sup>

Other demands were less practical, such as the demand that UM force Tim Wolfe to deliver a groveling apology, and that the University fire him.<sup>150</sup> Convincing him to deliver the apology on his way out the door, while not technically impossible, would have been quite difficult. Similarly, the demand that the University increase the percentage of black faculty and staff to 10 percent by the 2017-2018 academic year was essentially impossible, even if one were free to ignore state and federal employment law.<sup>151</sup> Substantial ink has been spilled mocking the demands, and I have no interest in piling on. First, if some of the demands seem excessive, perhaps

<sup>145</sup> See *Browder v. Gayle*, 142 F. Supp. 707, 717 (M.D. Ala. 1956) *aff’d per curiam*, *Gayle v. Browder*, 352 U.S. 903 (1956), (“We hold that the statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States.”).

<sup>146</sup> See ROBINSON, *supra* note 140, at 167 (describing the general social climate following desegregation of Montgomery’s busses).

<sup>147</sup> For a list of demands presented by “Concerned Student 1-9-5-0” to the University on October 20, 2015, see Rose M. Brewer, *Capitalism, Racism, and the Neoliberal University: The Case of the University of Missouri (Mizzou)*, in *TEACHING ECONOMIC INEQUALITY AND CAPITALISM IN CONTEMPORARY AMERICA* 291, 292–93 (Kristin Haltinner & Leontina Hormel eds., 2018) (reprinting group’s demands).

<sup>148</sup> *Id.* at 292.

<sup>149</sup> See Alex Edwards, *Impact of Bias on Access to Mental Health Services Gets Attention*, COLUMBIA MISSOURIAN (July 7, 2016), [https://www.columbiainmissourian.com/news/higher\\_education/impact-of-bias-on-access-to-mental-health-services-gets/article\\_813cabf0-2811-11e6-a6fc-230e6a5de6bc.html](https://www.columbiainmissourian.com/news/higher_education/impact-of-bias-on-access-to-mental-health-services-gets/article_813cabf0-2811-11e6-a6fc-230e6a5de6bc.html) [<http://perma.cc/KJW4-PQGG>]; Kasia Kovacs, *Race Initiatives at MU and UM: A Missourian Guide*, COLUMBIA MISSOURIAN (Apr. 25, 2016), [https://www.columbiainmissourian.com/news/higher\\_education/race-initiatives-at-mu-and-um-a-missourian-guide/article\\_3dbba6c8-05d7-11e6-a1f5-578f82d8606f.html](https://www.columbiainmissourian.com/news/higher_education/race-initiatives-at-mu-and-um-a-missourian-guide/article_3dbba6c8-05d7-11e6-a1f5-578f82d8606f.html) [<http://perma.cc/3YEH-S97B>].

<sup>150</sup> Brewer, *supra* note 147, at 292. Wolfe was to read the “handwritten” apology aloud at a press conference. *Id.* In it he was to “acknowledge his white male privilege” and “to admit to his gross negligence.” *Id.*

<sup>151</sup> In 2015, 2.8 percent of the MU faculty was black. Emma Vandelinder, *Competition and Misconceptions: Challenges MU Faces in Diversifying its Faculty*, COLUMBIA MISSOURIAN (May 11, 2016), [https://www.columbiainmissourian.com/news/higher\\_education/competition-and-misconceptions-challenges-mu-faces-in-diversifying-its-faculty/article\\_d323ca02-11b6-11e6-8552-6b9cab3f9977.html](https://www.columbiainmissourian.com/news/higher_education/competition-and-misconceptions-challenges-mu-faces-in-diversifying-its-faculty/article_d323ca02-11b6-11e6-8552-6b9cab3f9977.html) [<http://perma.cc/2NJE-QB7T>] (discussing commonly-cited impediments to greater faculty diversity); see also Letter from Chuck Henson, Interim Vice Chancellor for Inclusion, Diversity and Equity, to Concerned Students (Feb. 25, 2016), <https://assets.documentcloud.org/documents/2722544/ConcernedStudentLetter.pdf> [<http://perma.cc/A9E6-WD8V>] (“[T]here are things, like hiring faculty or staff, or admitting students based on protected characteristics to meet a numerical target, [that] will not and cannot be done. It is against state and federal law.”).



they should be viewed as a “first offer” rather than something the students actually expected to receive in full. Second, the students are just that—students—not experienced union negotiators, much less Dr. King. So, their communications should be read charitably, in the spirit of finding good ideas that could improve the University for everyone.

Putting aside demands that have inspired tongue-clucking from jaded liberals and anger from frustrated conservatives, consider the demand for a strategic plan “that will increase retention rates for marginalized students, sustain diversity curriculum and training, and promote a more safe and inclusive campus.”<sup>152</sup> Here we have an item that most readers of goodwill can likely support. Student retention rates could certainly stand to be higher, especially for students from underrepresented backgrounds.<sup>153</sup> Further, today’s world demands cultural competency from those who seek the sorts of jobs college graduates tend to desire. Journalists, scientists, social workers, lawyers, doctors, teachers, and entrepreneurs all must interact with persons of diverse backgrounds if they are to succeed, and a modern university should teach relevant skills. And safety and inclusion are laudable goals; the statement that “safety is our #1 priority” is so common as to hardly attract notice or comment.

The difficulty is that while a Mizzou chancellor can appropriate additional funds for the Counseling Center and can even ensure that a more diverse counseling staff is hired, he cannot provide safety and inclusion anytime soon, at least not as the student activists desire. At protests, activists repeatedly stressed the need for white students to acknowledge their privilege and for the University to respond more vigorously when black students are called racial slurs.<sup>154</sup> But no university administrator can force white students to recognize themselves as “privileged,” whatever that term may mean.<sup>155</sup> Indeed, even some left-leaning whites can be heard

---

<sup>152</sup> Brewer, *supra* note 147, at 292.

<sup>153</sup> This provides a nice example of how change desired by black students often would benefit other students as well. At Mizzou many students from underrepresented backgrounds are white. Missouri is home to some struggling mostly-white towns, and some Mizzou students come from these places. They too would benefit from more robust academic advising programs, among other “student success” initiatives. See Samantha Koester, *MU Chancellor Promotes Affordability, Student Success to Mark First 100 Days*, COLUMBIA MISSOURIAN (Nov. 15, 2017), [https://www.columbiaindianian.com/news/higher\\_education/mu-chancellor-promotes-affordability-studentsuccess-to-mark-first-days/article\\_b4e84f64-ca3c-11e7-b827-f3ba1937ec8d.html](https://www.columbiaindianian.com/news/higher_education/mu-chancellor-promotes-affordability-studentsuccess-to-mark-first-days/article_b4e84f64-ca3c-11e7-b827-f3ba1937ec8d.html) [<http://perma.cc/CFL2-FEUD>].

<sup>154</sup> See, e.g., Roger McKinney, *Black Students Protest Racial Climate on Campus at MU Student Center*, COLUMBIA DAILY TRIB. (Oct. 2, 2015, 1:00 PM), [http://www.columbiatribune.com/news/education/black-students-protest-racial-climate-on-campus-at-mu-student/article\\_b936fcb8-5048-5dfa-8d57-7677241be650.html](http://www.columbiatribune.com/news/education/black-students-protest-racial-climate-on-campus-at-mu-student/article_b936fcb8-5048-5dfa-8d57-7677241be650.html) [<http://perma.cc/AAH8-NKYJ>] (“Danielle Walker, another student organizer, said the march was a reaction to what she said was the administration’s lackluster response to Missouri Student Association President Payton Head being called a racial slur last month.”).

<sup>155</sup> A 2016 study of Mizzou’s campus climate revealed the anger felt by some white students related to talk of privilege and the sense that they are viewed as racist. RANKIN & ASSOCS. CONSULTING, UNIVERSITY OF MISSOURI-COLUMBIA: CAMPUS CLIMATE RESEARCH STUDY 123–24 (2017) (reporting comments of students objecting to being “targeted by racial protestors” or “being called a racist by all the protestors” or attacked “because apparently I have ‘white privilege’”); see also *id.* at 326 (reporting

complaining that demands for “privilege checking” are used by some on the left to derail arguments,<sup>156</sup> and more conservative whites find the demands enraging.<sup>157</sup>

If we focus instead on a goal that nearly every person of goodwill must deem worthy, whatever one’s politics—the reduction of hateful slurs directed at students—administrators possess no greater power here than they do to enforce the acknowledgement of privilege.<sup>158</sup> When drunken morons, or bigots of the stone-sober variety, address students with words appropriate for a Klan rally, the host university’s sad response is utterly predictable. A formal statement will be issued, perhaps emailed to everyone on campus, reiterating the institution’s commitment to tolerance and hatred of bigotry.<sup>159</sup> Affected students will be directed to resources such as the Counseling Center and the office responsible for compliance with Title IX and other civil rights law, and they may be reminded that in an emergency, they should call the police.<sup>160</sup> Perhaps a vigil will ensue in a prominent location.<sup>161</sup> Then,

allegations of “reverse discrimination,” including objections to “singling out white people as ‘privileged’ [which] actually makes whites victims of racism”).

<sup>156</sup> See, e.g., Julia Fisher, *Check Your Usage of “Check Your Privilege,”* NEW REPUBLIC (May 6, 2014), <https://newrepublic.com/article/117665/princeton-essay-check-your-privilege-raises-legitimate-gripes> [<http://perma.cc/HNV2-CYSB>] (“Calling out privilege often isn’t intended to make someone consider his advantages in life so much as to dismiss his perspective.”).

<sup>157</sup> See, e.g., Bill O’Reilly, *Bill O’Reilly: The Truth About White Privilege*, FOX NEWS (Aug. 26, 2014), <http://www.foxnews.com/transcript/2014/08/27/bill-oreilly-truth-about-white-privilege/> [<http://perma.cc/SQC8-EZS8>] (reiterating that he “does not, does not believe in white privilege” and that the underlying message “is the big lie that is keeping some African-Americans from reaching their full potential”); Matt Walsh, *I’ll Check My White Male Privilege Right After You Check Your Arrogant Liberal Assumptions*, MATT WALSH BLOG (July 9, 2014), <https://themattwalshblog.com/ill-check-privilege-check-assumptions/> [<https://perma.cc/3AWC-VW4A>].

<sup>158</sup> See Nick Anderson & Susan Svrluga, *Can Colleges Protect Free Speech While Also Curbing Voices of Hate?*, WASH. POST (Nov. 10, 2015), [https://www.washingtonpost.com/local/education/can-colleges-protect-free-speech-while-curbing-voices-of-hate/2015/11/10/daac2b8c-87ca-11e5-be39-0034bb576eee\\_story.html?utm\\_term=.b20d07a6dc8d](https://www.washingtonpost.com/local/education/can-colleges-protect-free-speech-while-curbing-voices-of-hate/2015/11/10/daac2b8c-87ca-11e5-be39-0034bb576eee_story.html?utm_term=.b20d07a6dc8d) [<http://perma.cc/RC8Z-WTJ6>] (quoting author of this article observing: “In the U.S., it is not a crime to be a racist moron. So the university cannot punish students simply for being bigoted.”).

<sup>159</sup> For a review of several such statements from different campuses, see Eddie R. Cole & Shaun R. Harper, *Race and Rhetoric: An Analysis of College Presidents’ Statements on Campus Racial Incidents*, 10 J. DIVERSITY IN HIGHER EDUC. 318, 326 (2017) (“College presidents are oftentimes willing to address the racist but rarely the racism.”).

<sup>160</sup> See Tobias Salinger, *University of Missouri Fraternity Suspended After Black Students Report Members Hurling Racial Slurs*, N.Y. DAILY NEWS (Sept. 28, 2016), <http://www.nydailynews.com/news/national/mizzou-frat-suspended-students-members-hurled-slurs-article-1.2810718#> [<http://perma.cc/9WJZ-D77R>] (quoting statement of interim chancellor, “We have zero tolerance for actions like this”). An MU statement in response to a racist incident noted that “Counseling Center staff have been alerted and will be reaching out to affected students to offer support today.” Christian Basi, *Statement*, U. MO. NEWS BUREAU (Sept. 28, 2016), <http://munews.missouri.edu/news-releases/2016/0928-statement-13/> [<http://perma.cc/4WJ8-3GYH>].

<sup>161</sup> Following the incident described in the prior footnote, MU’s chapter of the Legion of Black Collegians organized a town hall. The LBC tweeted, “There is also prayer scheduled after the Town hall this evening. You are more than welcome to stay and join us.” University of Missouri Legion of Black Collegians (@MizzouLBC), TWITTER, (Sept. 28, 2016, 8:44 AM), <https://twitter.com/MizzouLBC/status/781157768300470272> [<http://perma.cc/383R-63TG>].

life soon returns to “normal.”<sup>162</sup> One can only imagine how desperately Hank Foley, appointed Interim Chancellor at MU after Loftin’s resignation, wished to prevent racist incidents in Columbia. The damage they cause to the university’s reputation is immense, and on a personal level he finds such behavior horrific.<sup>163</sup> That the incidents continued as before suggests he lacked any lever by which he might move the hearts of the perpetrators, much less change their behavior

*B. Why We Can’t “Get to Yes”—Who Can Agree?*

Beyond the substantive question of what an agreement would look like, that is, what a university could provide or promise that could satisfy student protestors and their sympathizers, administrators face a practical problem seemingly plucked straight from a treatise on negotiation theory. Put simply, there is no one with authority to execute an agreement.

Scholars of negotiation, as well as others with actual negotiating experience, understand the difficulty a party faces when the person with whom she is bargaining lacks the power to seal a deal.<sup>164</sup> Here you are, happy with a seeming agreement, when your counterparty reveals that she needs to confirm the terms with her boss. Naturally, this confirmation process provides an opportunity (for her, not for you) to extract extra concessions. This opportunity is so valuable that shady negotiators have been known from time to time to misrepresent the level of authority they possess.<sup>165</sup> To avoid such bamboozlement, savvy players may demand the presence of “the principal” at key meetings.<sup>166</sup>

Who, for student protestors, can act as principal? Like other modern protest movements such as Occupy Wall Street, the Concerned Student 1950 group at Mizzou lacked an elected CEO with authority to bind the group.<sup>167</sup> The group did have eleven original members who played an important leadership role,<sup>168</sup> but it does not appear that they held formal authority to make agreements. Indeed, occasionally

<sup>162</sup> During the weekend immediately after the incident involving the suspension of the Missouri fraternity, Mizzou football played LSU as scheduled in Baton Rouge, and Columbia hosted the annual Roots N Blues N BBQ Festival. The search for a new UM System president continued.

<sup>163</sup> See Basi, *supra* note 160 (quoting Foley as stating, “I am outraged and saddened to hear of this!”). Foley also expressed his opinions to me quite clearly in the wake of multiple similar events.

<sup>164</sup> See ROGER FISHER & WILLIAM URY, *GETTING TO YES* 83 (2d ed. 1991). (“[I]f each negotiator has a constituency or has to clear a position with a higher authority, the task of adopting positions and then changing them becomes time-consuming and difficult.”)

<sup>165</sup> *Id.* at 133. (“The other side may allow you to believe that they, like you, have full authority to compromise when they don’t.”)

<sup>166</sup> A discussion of the pros and cons of direct versus representative negotiation is beyond the scope of this essay. For a more detailed discussion, see Jeffrey Z. Rubin & Frank E. A. Sander, *When Should We Use Agents? Direct vs. Representative Negotiation*, 4 *NEGOT. J.* 395 (1988).

<sup>167</sup> In addition, Concerned Student 1950 was not the only student group organizing protests during fall 2015. See Koran Addo & Samantha Liss, *University of Missouri Grad Students Threaten Walkout If Demands Are Not Met*, *ST. LOUIS POST-DISPATCH* (Aug. 19, 2015), [https://www.stltoday.com/news/local/education/university-of-missouri-grad-students-threaten-walkout-if-demands-are/article\\_ffd9301c-ed5b-511b-b21c-55657445cceb.html](https://www.stltoday.com/news/local/education/university-of-missouri-grad-students-threaten-walkout-if-demands-are/article_ffd9301c-ed5b-511b-b21c-55657445cceb.html) [<https://perma.cc/PZS9-FYXX>].

<sup>168</sup> See Thomas Oide, *Concerned Student 1950 Plants to Continue to Educate Students, Raise Awareness*, *MANEATER* (Dec. 7, 2015), <https://www.themaneater.com/stories/uwire/concerned-student-1950-plans-continue-educate-stud> [<https://perma.cc/VR8N-CVYX>].

confusion arose about whether a particular action—such as a protest—was genuinely approved or authorized by CS1950.<sup>169</sup> When graduate student Jonathan Butler began a hunger strike, announcing that he would not eat until Wolfe resigned or was fired, he did not seek prior approval from CS1950.<sup>170</sup> And when Wolfe eventually did resign, surviving administrators harbored continuing fears that the protestors sleeping in Carnahan Quadrangle might not depart.<sup>171</sup> After all, Butler had no authority over the rest of Mizzou’s black community. Movements have been known to turn on erstwhile leaders who accept compromises.<sup>172</sup>

### III. WHAT DO THEY WANT? JUSTICE. WHEN DO THEY WANT IT? SOON.

Now the bind in which administrators and protestors have become trapped is clearly illustrated. The student protestors want results that administration cannot provide, and to make things more difficult, no recognized authority can approve a university-proposed deal. Yet administrators cannot bring themselves to throw up their hands and dismiss the protestors as unworthy of engagement. First, refusal to engage, in effect, invites disruptive protests, which administrators fear deeply. Second, and more importantly, administrators know in their hearts that the protestors speak on the side of justice.<sup>173</sup> Their demands may occasionally seem unreasonable, their tactics annoying, and their appreciation of state politics lacking. But when they assert that racial injustice pervades our campuses, our state, and our country, they speak truth. As has been amply documented by so many university researchers, the injustice our students protest exists on campus and extends well beyond it.

#### *A. The Underlying National Grievance—A Justice Deficit*

Despite black people having been allowed to vote in all fifty states for about fifty years,<sup>174</sup> the United States has not yet leveled the playing field that was made so

<sup>169</sup> The CS1950 Twitter account once reminded readers: “We love everyone resisting on campus. However, only members of the original 11 will speak on the stance of #ConcernedStudent1950.” Concerned Student 1950 (@CS\_1950), TWITTER, (Jan. 29, 2016, 1:40 PM), [https://twitter.com/CS\\_1950/status/693186879676637185](https://twitter.com/CS_1950/status/693186879676637185) [<http://perma.cc/GH2H-GJVH>].

<sup>170</sup> See Thomas Oide, *Students Camp Out In Support of #MizzouHungerStrike*, MANEATER (Nov. 3, 2015), <https://www.themaneater.com/stories/uwire/students-camp-out-support-mizzouhungerstrike> [<http://perma.cc/9SW7-56WP>] (reporting that according to member Ayanna Poole, “the rest of Concerned Student 1950 had no idea that Butler was going to carry out a hunger strike”).

<sup>171</sup> Administrators shared these concerns with me at the time.

<sup>172</sup> Consider, for example, the Irish Civil War, fought by two groups who had formerly been allied against British occupiers. One side consisted of those ready to make painful compromises, such as the partition of Ireland that even today leaves part of the island under the Crown. The other side took up arms to protest the deal. See generally MICHAEL HOPKINSON, *GREEN AGAINST GREEN: THE IRISH CIVIL WAR* (2d ed. 2004).

<sup>173</sup> Some of the administrators were once student protestors, issuing their own demands.

<sup>174</sup> See The Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437. Before the passage of the VRA, Dallas County, Alabama (which contains Selma) was home to about 15,000 black citizens of voting age, only 335 of whom were registered to vote. See Kelsey Williamson, *Gainesville Woman Recounts Selma March for Civil Rights*, GAINESVILLE TIMES (Mar. 29, 2015, 1:00 AM), <https://www.gainesvilletimes.com/life/life-top-stories/gainesville-woman-recounts-selma-march-for>

uneven during the centuries before “one person, one vote” became a close approximation of reality.<sup>175</sup> Black incomes remain below those of whites, even when one accounts for educational attainment and similar factors.<sup>176</sup> The wealth possessed by black families trails that possessed by white families even further.<sup>177</sup> Redlining, promoted by federal housing policy and enforced by state courts in the decades following World War II—during which time so many white families purchased property that has massively increased in value—denied opportunities to black families.<sup>178</sup> The resulting residential segregation remains entrenched today.<sup>179</sup> The GI Bill that sent so many white veterans to college—building human capital that still enriches future generations—was intentionally designed to discriminate against blacks.<sup>180</sup>

And despite the University of Missouri having admitted black students since 1950—that is, for about half as many years as those during which the University openly discriminated on the basis of race<sup>181</sup>—the demographics of the student

civil-rights? [<http://perma.cc/N84G-4PQ4>] (“On the flip side, 9,000 of the 14,000 eligible whites were registered . . .”).

<sup>175</sup> Even now, various hurdles disproportionately affect the ability of black citizens to vote. *See, e.g., Shelby County v. Holder*, 570 U.S. 529, 559, 564–66 (2013) (Ginsburg, J., dissenting) (recounting robust congressional findings of discrimination continuing in this century); *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) (finding that new North Carolina voting rules “target African Americans with almost surgical precision”); CHARLES STEWART III & STEPHEN ANSOLABEHRE, *Waiting in Line To Vote*, in CALTECH/MIT VOTER TECHNOLOGY PROJECT 11–13 (2013), [vote.caltech.edu/documents/27/WP\\_114.pdf](http://vote.caltech.edu/documents/27/WP_114.pdf) [<http://perma.cc/74VF-SAMH>] (documenting that white voters spend less time in line than do minority voters).

<sup>176</sup> VALERIE WILSON & WILLIAM M. RODGERS III, *ECON. POLICY INST., BLACK-WHITE WAGE GAPS EXPAND WITH RISING WAGE INEQUALITY 1* (2016), <http://www.epi.org/files/pdf/101972.pdf> [<http://perma.cc/WA3E-8Q3H>] (“As of 2015, relative to the average hourly wages of white men with the same education, experience, metro status, and region of residence, black men make 22.0 percent less, and black women make 34.2 percent less. Black women earn 11.7 percent less than their white female counterparts.”).

<sup>177</sup> *See* LAURA SULLIVAN ET AL., *THE RACIAL WEALTH GAP: WHY POLICY MATTERS 1* (2016), [http://www.demos.org/sites/default/files/publications/RacialWealthGap\\_2.pdf](http://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf) [<http://perma.cc/Y8XF-HMKY>] (reporting that “in 2011 the median white household had \$111,146 in wealth holdings, compared to just \$7,113 for the median Black household and \$8,348 for the median Latino household”).

<sup>178</sup> *See* Ta-Nehisi Coates, *The Case for Reparations*, *ATLANTIC* (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<http://perma.cc/CHE9-CQOK>].

<sup>179</sup> *See generally* MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016); PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* (2013); Rigel C. Oliveri, *Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis*, 80 *MO. L. REV.* 1053 (2015).

<sup>180</sup> *See generally* IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2006) (describing discrimination embedded in New Deal and Fair Deal programs of the 1930s and 1940s); DEBORAH E. WARD, *THE WHITE WELFARE STATE: THE RACIALIZATION OF U.S. WELFARE POLICY* (2005).

<sup>181</sup> The University was founded in 1839. After losing a 1938 Supreme Court case filed by a black would-be law student, the University opened an all-black law school in St. Louis, which it ran until 1955. *See* ENDERSBY & WILLIAM T. HORNER, *supra* note 30. The story of Lucile Bluford is if anything more egregious. The University closed its graduate program in journalism to avoid admitting her. *See* Donald Bradley, *Lucile Bluford Fought for Decades to Help African-American Community in Kansas City*, *KANSAS CITY STAR* (Oct. 18, 2016, 11:40 AM), <https://www.kansascity.com/news/local/article108519227.html> [<https://perma.cc/G8LM-XXAE>].

population do not match those of the state's college-aged population. About 15 percent of Missouri's college-aged residents are black, compared with about 8.2 percent of Mizzou undergraduates.<sup>182</sup> These statistics have many causes, only some of which under are the control of university administrators. It is well recognized, for example, that black elementary and secondary students attend inferior schools in Missouri and nationwide.<sup>183</sup> Further, the black students who manage to matriculate at Mizzou—overcoming inadequate K-12 education and possessing less family wealth and social capital—report that somehow, despite having been forced by the Supreme Court to accept black students, the University has not entirely eliminated various impediments to their success. Mizzou should feel no special shame about these reports. Black students make similar observations at public and private colleges and universities across the country.<sup>184</sup> Unless they are experiencing some sort of mass delusion or are engaged in a colossal conspiracy of deceit, it seems only fair to conclude that American higher education has not yet achieved the goals of racial justice to which our institutions ought to aspire. Overt and subtle discrimination remain real problems. This should be no surprise; the nation as a whole has work to do too.

### *B. The Campus Context and the Power of Education*

Meanwhile, because black students live this reality, they are aware of the information reported in the preceding paragraphs. They know their families lack access to what white families have, either because of present discrimination or ancient wrongs not yet righted. They know that some of their fellow students—and,

---

<sup>182</sup> Anna Maria Barry-Jester & Ben Casselman, *Mizzou's Racial Gap is Typical on College Campuses*, FIVETHIRTYEIGHT (Nov. 13, 2015, 12:52 PM), <http://fivethirtyeight.com/features/mizzous-racial-gap-is-typical-on-college-campuses/> [<http://perma.cc/Q7LV-7FMZ>].

<sup>183</sup> See Emma García, *Poor Black Children Are Much More Likely to Attend High-Poverty Schools than Poor White Children*, ECON. POL'Y INST. (Jan. 13, 2017), <https://www.epi.org/publication/poor-black-children-are-much-more-likely-to-attend-high-poverty-schools-than-poor-white-children/> [<https://perma.cc/TW88-D8VG>] (discussing a study showing that black children are more likely to attend high-poverty schools than white children, and that “attending a high-poverty school lowers math and reading achievement”). Indeed, the presence of a large black student population is itself seen as evidence of a “bad school.” See Alia Wong, *In Pursuit of Integration*, ATLANTIC (Sept. 12, 2016) <https://www.theatlantic.com/education/archive/2016/09/in-pursuit-of-integration/499505/> [<https://perma.cc/5YEW-JMKR>] (quoting a reporter as stating, “When you talk about a ‘bad’ school, we can close our eyes and we know what color the kids are in those seats”).

<sup>184</sup> For an analysis of the “bargain” between minority students and the institutions that formerly excluded them entirely, see Steven W. Bender, *Campus Racial Unrest and the Diversity Bargain*, 5 *IND. J. L. & SOC. EQUALITY* 47, 48-50 (2016).

alas, some of the faculty<sup>185</sup>—think they don't belong on campus.<sup>186</sup> They know the predominantly white fraternities and sororities bought land near campus when the getting was good; that is, before black students were admitted.<sup>187</sup> They know that police departments treat them differently than their white peers, and they possessed this knowledge before cell phone videos began convincing the mostly-disbelieving white citizenry.

And they want justice. Who wouldn't? In grade school they read the same hagiographic retellings as white students did of the American revolutionaries and their demands for accountable government. They watched the presentations each February about Rosa Parks and Jackie Robinson. They heard Dr. King tell about his dream, and they wonder for how long it must remain deferred. In short, they are sick and tired of being sick and tired.<sup>188</sup>

Asked why he joined Concerned Student 1950 as an original member, then-sophomore political science major Marshall Allen put it this way:

I've always seen the problems that my people have to face in society. (It's) small things from being called the n-word blatantly to your face to systems of oppression. I've always seen that there's been some type of injustice in regards to my people, some sort of unlevel playing field. So for me, it's always been, I can deal with it and be complacent, or I can fight. And I've always chosen to fight.<sup>189</sup>

Black collegians are the pride of their people, the hope of their families and neighborhoods, told since they learned to tie their shoes of the special responsibilities

<sup>185</sup> See Kia Breaux, *View: For One Mizzou Grad, Recent Events Are a Reminder of Work to Be Done*, POYNTER (Nov. 20, 2015), <http://www.poynter.org/2015/view-for-one-mizzou-grad-recent-events-are-a-reminder-of-work-to-be-done/386082/> [<http://perma.cc/V3RF-SPT7>] (“My prayer is that my sons don't have to endure some of the things that my sister and I did in order for me to add their names to our family's brick on the Mizzou Legacy Walk.”).

<sup>186</sup> Consider, for example, that black students have access to transcripts of Supreme Court oral arguments, and the late Justice Antonin Scalia suggested in 2015 that instead of attending schools like the University of Texas, black students might be better off at “slower-track,” “less-advanced” schools. See Transcript of Oral Argument at 67, *Fisher v. University of Texas at Austin*, 136 S.Ct. 2198 (2016) (No. 14-981), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2015/14-981\\_onjq.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2015/14-981_onjq.pdf) [<http://perma.cc/7QDF-7B6T>]. A Mizzou student body president disclosed similar views from Columbia. See Payton Head (@MSAPresident), TWITTER (Nov. 5, 2015, 11:34 AM), <https://twitter.com/MSAPresident/status/662352241823715328> [<http://perma.cc/S9AZ-WCLZ>].

<sup>187</sup> See, e.g., EDWARD T. MATHENY, JR., XI XI OF SIGMA CHI: A HISTORY 23–25, 55–56.

<sup>188</sup> As Fannie Lou Hamer said in 1964 while demanding the ballot: “And you can always hear this long sob story: ‘You know it takes time.’ For three hundred years, we've given them time. And I've been tired so long, now I am sick and tired of being sick and tired, and we want a change.” Fannie Lou Hamer, *I'm Sick and Tired of Being Sick and Tired*, (Dec. 20, 1965), in *THE SPEECHES OF FANNIE LOU HAMER: TO TELL IT LIKE IT IS 57–64* (Maegan Parker Brooks & Davis W. Houck eds., 2011); see also KAY MILLS, *THIS LITTLE LIGHT OF MINE: THE LIFE OF FANNIE LOU HAMER* (2007).

<sup>189</sup> Madison Feller, *A Conversation with Marshall Allen, Original Member of Concerned Student 1950*, VOX MAG. (Nov. 8, 2015), [http://www.voxmagazine.com/news/mizzou/a-conversation-with-marshall-allen-original-member-of-concerned-student/article\\_2d8d8a2d-6d3a-556b-8471-f4f04f2970a5.html](http://www.voxmagazine.com/news/mizzou/a-conversation-with-marshall-allen-original-member-of-concerned-student/article_2d8d8a2d-6d3a-556b-8471-f4f04f2970a5.html) [<http://perma.cc/25JR-4FYS>].

borne by the “Talented Tenth” to uplift black America.<sup>190</sup> And they have heard that God is “urgent about justice, for on justice the world depends.”<sup>191</sup>

Marshall Allen continued:

When I came to the University of Missouri, it didn’t change just because I was in higher education. If anything, the passion was stronger because institutions like this are where minoritized and marginalized students are told they can come to make the best of themselves and fulfill their dreams and live the ‘American Dream’ and a bunch of other useless rhetoric that really does not apply to them.<sup>192</sup>

Again, these students are quite savvy and are aware of how things work in “the real world.” They understand policing better than most criminal procedure professors. The price of ignorance is too high for them. They therefore realized that Interim President Mike Middleton and Interim Chancellor Hank Foley could not wave magic wands to solve racism at Mizzou, no more than Barack Obama could cure racism in America through his historic election. Notwithstanding the old chant about justice—“When do we want it? Now!”—it is more accurate to say that our students want justice “soon.”

“Now” would be great, but “soon” is pretty good. “When we get around to it” is frustrating and risks campus unrest. “Never” invites disaster.<sup>193</sup>

Consider the football players who went on strike.<sup>194</sup> Normal workers hate strikes because when they strike they forgo wages. This immediate financial consequence discourages frivolous labor action and inspires compromise. College athletes, however, already compete for free, risking lifelong disability for scrip redeemable only at the company store. Yes, the University could “fire” the strikers and cut their scholarships, essentially throwing them out of school. This strategy—which was recommended by some observers in 2015<sup>195</sup>—risks its own negative consequences.

<sup>190</sup> W.E.B. DuBois, “The Talented Tenth” Speech (Sept. 1903), <http://teachingamericanhistory.org/library/document/the-talented-tenth/> [<http://perma.cc/MJ2A-ZHXU>]. (“The Negro race, like all races, is going to be saved by its exceptional men. The problem of education, then, among Negroes must first of all deal with the Talented Tenth.”)

<sup>191</sup> *Exodus Rabbah Mishpatim*, 30:19, 24, [https://www.sefaria.org/Pirkei\\_Avot.3?lang=bi](https://www.sefaria.org/Pirkei_Avot.3?lang=bi) [<https://perma.cc/YUS4-SXDL>].

<sup>192</sup> Feller, *supra* note 189.

<sup>193</sup> See Hersey, *supra* note 1 (noting, in context of Vietnam-era protests at Yale, “[c]ampus tantrums can bring historic institutions down in ruins.”).

<sup>194</sup> See *supra* notes 117–19 and accompanying text.

<sup>195</sup> See, e.g., Kurt Erickson, *Sponsor Withdraws Mizzou Athlete Strike Proposal*, ST. LOUIS POST-DISPATCH (Dec. 16, 2015), [https://www.stltoday.com/news/local/govt-and-politics/sponsor-withdraws-mizzou-athlete-strike-proposal/article\\_d3417e6d-9d01-5633-b3cc-88dccc3de3a7.html](https://www.stltoday.com/news/local/govt-and-politics/sponsor-withdraws-mizzou-athlete-strike-proposal/article_d3417e6d-9d01-5633-b3cc-88dccc3de3a7.html) [<https://perma.cc/Y7UG-3UEY>]; Nick Visser, *Missouri Lawmaker Wants To Revoke Scholarships If Athletes Protest*, HUFFINGTON POST (Dec. 15, 2015, 12:29 AM), [https://www.huffingtonpost.com/entry/missouri-scholarships-athletes-protest\\_us\\_566f6c0ee4b0fcee16fa1a3](https://www.huffingtonpost.com/entry/missouri-scholarships-athletes-protest_us_566f6c0ee4b0fcee16fa1a3) [<https://perma.cc/5DYW-JLBD>]. A Twitter search for “Missouri football scholarships” yields many tweets from early November 2015 calling for the cancellation of scholarships. See, e.g., @GarciaJason, TWITTER (Nov. 8, 2015, 10:13 AM), <https://twitter.com/GarciaJason/status/663419207330086913> [<http://perma.cc/W6R8-A6GF>] (“The president at Missouri needs to suspend [Coach] Gary Pinkel and revoke the scholarships of any player not participating in football activities.”).



If Mizzou ejects dozens of black athletes for participating in a civil rights movement, its coaches may well find recruitment difficult down the road.<sup>196</sup>

The protesting athletes held a strong hand. And other protestors had no athletic scholarships to rescind; they protested in their spare time and could work in shifts. Mizzou has few avenues, if any, to prevent future protestors from costing the University millions of additional tuition dollars. But students love the University and depend on it to better themselves and serve their communities. They wish it well and hate to see it harmed.

#### IV. GOING FORWARD: TELLING MISSOURI'S STORY

So now what? Protestors—should they return to the quad—can impose grievous wounds on the University but mostly do not wish to do so. They concurrently have real grievances and cannot tolerate indefinite indifference to their plight. The University has limited power to solve their problems and lacks confidence in anyone's ability to enforce a binding agreement. Where do we go from here?

Similar questions can be asked about Black Lives Matter protestors and the police. Black residents crave good policing in their cities and know better than anyone the costs of under-policing.<sup>197</sup> When homicides in Los Angeles and Chicago's ghettos go unsolved, black residents suffer from the ensuing lawlessness.<sup>198</sup> But at the same time they cannot abide overpolicing—the indignity of “stop and frisk” performed without reasonable suspicion, the disproportionate killings of their children, the sense of being occupied by a foreign army—forever.<sup>199</sup> Protestors can shut down cities, scare mayors, and harry police officers. They know better than I the costs of such bold action. Concurrently, mayors and police chiefs know that they cannot provide, at least not quickly, the equal treatment that black residents justifiably demand. And they too lack anyone with whom they can strike a lasting bargain.

---

<sup>196</sup> See Bender, *supra* note 184, at 52 & n.27 (placing threat to cancel scholarships in context of other tactics, in which university leaders “are at least complicit,” that remind “minority students of their subordinate status”).

<sup>197</sup> See JILL LEOVY, *GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA* 6–8 (2015) (describing failure of Los Angeles police to clear homicide cases in black neighborhoods, leading to rampant crime).

<sup>198</sup> See *id.*

<sup>199</sup> See, e.g., Michael E. Miller, *Cop Accused of Brutally Torturing Black Suspects Costs Chicago \$5.5 Million*, WASH. POST (Apr. 15, 2015) [https://www.washingtonpost.com/news/morning-mix/wp/2015/04/15/closing-the-book-on-jon-burge-chicago-cop-accused-of-brutally-torturing-african-american-suspects/?utm\\_term=.181f9febb070](https://www.washingtonpost.com/news/morning-mix/wp/2015/04/15/closing-the-book-on-jon-burge-chicago-cop-accused-of-brutally-torturing-african-american-suspects/?utm_term=.181f9febb070) [<https://perma.cc/M9XL-NAF3>].

Drawing on the tradition of legal narrative and storytelling,<sup>200</sup> and bringing that genre's benefits to the study of higher education policy and administration,<sup>201</sup> this Part narrates a portion of Missouri's past in an effort to inform the future.

### A. *Reconsidering Wolfe's Questions about Missouri*

Consider again President Tim Wolfe's question: "Why did Michael Middleton choose not to stop the growing protest in spite of his relationship with Jonathan Butler and the minority students on the MU campus?"<sup>202</sup>

Wolfe was not wrong when he suggested that Mike Middleton was expected to prevent racial unrest at Mizzou. For a prominent black university administrator, regardless of one's formal title or primary duties, helping the campus avoid embarrassing events that highlight the institution's racial injustice is part of the job. This is not fair, and black academicians have appropriately objected to this extra assignment they have received for no extra pay. For now, however, it remains a reality in higher education.<sup>203</sup> When problems arise, the mostly white leadership will turn to black colleagues for advice, and in quieter times, black students will seek those leaders for mentorship, as well as for the airing of grievances to a sympathetic ear.<sup>204</sup> (Similarly, the mostly male leadership will turn to women colleagues when problems arise related to gender, and members of other historically-oppressed groups will receive calls related to their lived experience.)

The same is true of those leading and staffing offices devoted to inclusion, diversity, and equity, regardless of their own backgrounds. Whereas in the recent past such offices were mostly small operations with limited influence and resources,

<sup>200</sup> See generally, Jean C. Love, *The Value of Narrative in Legal Scholarship and Teaching*, 2 J. GENDER RACE & JUST. 87, 89 (1988); Richard A. Matasar, *Storytelling and Legal Scholarship*, 68 CHI.-KENT L. REV. 353 (1992) ("I end with a call for including narratives . . . to make legal scholarship more interesting, relevant, and valuable . . ."); Kim Lane Schepple, *Foreward: Telling Stories*, 87 MICH. L. REV. 2073 (1989).

<sup>201</sup> One important benefit of storytelling is that it gives a platform to marginalized voices often absent in legal scholarship. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2414 (1989) ("[S]tories can shatter complacency and challenge the status quo."); Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1106–07 (2017) (discussing "the importance of narrative to shaping and countering collective understandings about race"). Higher education policy debates could also benefit from hearing more such voices. See, e.g., Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511, 1513–14 (1991).

<sup>202</sup> *Wolfe Letter*, *supra* note 124.

<sup>203</sup> See KERRY ANN ROCKQUEMORE & TRACEY LASZLOFFY, *THE BLACK ACADEMIC'S GUIDE TO WINNING TENURE—WITHOUT LOSING YOUR SOUL* 3 (2008) (discussing, among other obstacles, how the shortage of black professors leads to increased, and unrecognized, service burdens); Kirby Wilson, *Lack of Diversity Leads to Burden on Professors of Color*, DUKE CHRON. (Feb. 11, 2015), <https://www.dukechronicle.com/article/2015/02/lack-diversity-leads-burden-professors-color> [<https://perma.cc/E4WR-65N3>] ("Professors of color are often additionally charged with mentoring minority students at predominantly white institutions.")

<sup>204</sup> See DAMON A. WILLIAMS & KATRINA C. WADE-GOLDEN, *THE CHIEF DIVERSITY OFFICER* 97 (2013) ("During diversity crisis moments, the CDO is often the primary communicator with disgruntled communities of color and other diverse groups threatening to mobilize political energy and media attention.")

universities are beginning to realize that proactive efforts will be more effective than alternating periods of neglect and crisis management.<sup>205</sup> Diversity officers have a tricky assignment. They must advocate within administration for marginalized people and concurrently—although this task appears in no formal job description—do their best to prevent such people from making trouble. Maintaining credibility in both directions requires exceptional abilities.<sup>206</sup> Chancellors who make things easier for their CDOs will find their own lives made easier.

Wolfe's error was his misdiagnosis of why Middleton could not accomplish his task. Just like everyone remembers the Challenger but few can name any NASA space shuttles that returned safely to the earth, Wolfe has forgotten the decades during which Middleton served in administration and the University enjoyed relative racial harmony. (Relative in that, as has been discussed above, the University exhibited the same injustice seen on other American campuses,<sup>207</sup> and no black alumni would describe Mizzou as some sort of egalitarian utopia.) While Middleton served as Deputy Chancellor and in other posts for years and years, he provided advice on racial issues to a parade of chancellors, presidents, and Curators.<sup>208</sup> The University made sporadic progress, and when situations became tense, Middleton worked to restore calm. Then, in 2013, under Wolfe's leadership, the University of Missouri hired Bowen Loftin as Chancellor of the Columbia campus.<sup>209</sup> Soon afterward, Loftin eased Middleton into retirement.<sup>210</sup> When CS1950 took center stage in the fall of 2015, Middleton no longer sat in an office a few yards from the Chancellor. Loftin had eliminated the post of Deputy Chancellor entirely; no successor played the role Middleton once had.<sup>211</sup>

Meanwhile, although Middleton provided some continuing services in his retirement—a role that increased in prominence during the protests—Wolfe's own performance worsened an already difficult situation. Reasonable minds may differ about how Wolfe should have handled the blockage of his car at the October 10,

---

<sup>205</sup> See Stephanie Saul, *Campuses Cautiously Train Freshman Against Subtle Insults*, N.Y. TIMES (Sept. 6, 2016) <https://www.nytimes.com/2016/09/07/us/campuses-cautiously-train-freshmen-against-subtle-insults.html> [<https://perma.cc/9BMC-RTPQ>] (reporting that about 75 chief diversity officers were hired at colleges and universities in an 18-month period during and after the Mizzou protests).

<sup>206</sup> See WILLIAMS & WADE-GOLDEN, *supra* note 204, at 79–80; Monica L. Nixon, *Experiences of Women of Color University Chief Diversity Officers*, 10 J. DIVERSITY IN HIGHER EDUC. 301, 312, 315 (2017).

<sup>207</sup> See, e.g., Janese Heavin, *Two Arrested in Cotton Ball Incident*, COLUMBIA DAILY TRIB. (Mar. 3, 2010, 7:33 AM) <http://www.columbiatribune.com/article/20100303/News/303039595> [<http://perma.cc/JEX5-YC5B>].

<sup>208</sup> Middleton also managed a broad portfolio mostly unrelated to this Article's subject, such as summarizing tenure applications and student discipline appeals for chancellors, advising on relations with Curators, liaising with state politicians, and standing in for chancellors at all sorts of campus events. His responsibilities did not primarily relate to race relations.

<sup>209</sup> Jacob Bogage, *Loftin to Become Chancellor*, MANEATER (Dec. 5, 2013), <https://www.themaneater.com/stories/uwire/loftin-become-chancellor> [<https://perma.cc/H8LQ-EBAH>].

<sup>210</sup> Middleton announced in May 2015 that he would retire at the end of that August. Ahern, *supra* note 50.

<sup>211</sup> Vice Provost Handy Williamson, another of the very small number of high-ranking black MU administrators, also retired somewhat suddenly as of August 31, 2015. See Letter from Handy Williamson, Vice Provost for International Programs, to colleagues (Aug. 24, 2015) (on file with author).

2015 Homecoming Parade.<sup>212</sup> It is hard, however, to defend Wolfe’s subsequent actions. In particular, he waited too long to meet student protestors, and his eventual meetings went badly. After a prolonged delay in even acknowledging the incident, much less meeting the protestors, Wolfe finally hosted a group of black students in University Hall on October 26.<sup>213</sup> By all available accounts, the meeting was a disaster. One student attendee told me afterward that he entered the meeting prepared to find common ground with Wolfe but was treated with such transparent disrespect that he left determined to see Wolfe fired.<sup>214</sup> Jonathan Butler described it as follows: “Being in a meeting with Tim Wolfe ... he doesn’t acknowledge our humanity, he doesn’t acknowledge that we exist, we’re nothing to him.”<sup>215</sup> Butler began his hunger strike on November 2, one week after the meeting.<sup>216</sup>

Barely knowing Wolfe personally, and not being privy to his conversations with Curators and members of his administrative team, I cannot know why he performed so poorly at the October 26 meeting or why he was unable to act more decisively in the weeks following Homecoming. Perhaps his unfamiliarity with academia—he had no experience in university leadership before becoming the UM President<sup>217</sup>—prevented him from recognizing how students would perceive his words and actions (and inactions). The ongoing feud between Wolfe and Loftin certainly cannot have helped Wolfe manage a growing crisis on Loftin’s campus.<sup>218</sup> In any event, Wolfe failed the test, and he paid with an ignominious exit from his office. The University will continue to pay the price for quite some time.

<sup>212</sup> For a description of the parade incident, see *infra* Subsection IV.B.ii.

<sup>213</sup> Kovacs, *supra* note 111; see also *infra* Subsection IV.B.ii (describing how delay served to escalate tension).

<sup>214</sup> This student was not Jonathan Butler.

<sup>215</sup> Kasia Kovacs, *Answered: Common Questions About Jonathan Butler’s Hunger Strike*, COLUMBIA MISSOURIAN (Nov. 8, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/answered-common-questions-about-jonathan-butler-s-hunger-strike/article\\_40c94356-84f0-11e5-a07e-536bff6722fa.html](https://www.columbiainmissourian.com/news/higher_education/answered-common-questions-about-jonathan-butler-s-hunger-strike/article_40c94356-84f0-11e5-a07e-536bff6722fa.html) [http://perma.cc/T3V7-FW66].

<sup>216</sup> For more on the role of disrespect in fanning the flames at Mizzou, see Bill Connelly, *The Missouri Football Strike Was About a lot of Things, But Mostly About Respect*, SB NATION (Nov. 9, 2015, 11:25 AM), <http://www.sbnation.com/college-football/2015/11/9/9695416/missouri-university-football-tim-wolfe-strike> [http://perma.cc/VD4E-67WF].

<sup>217</sup> See Press Release, University System of Missouri, University of Missouri Board of Curators Names High-Tech Industry Executive, Alumnus and Missourian as 23rd President (Dec. 13, 2011), [https://www.umsystem.edu/ums/news/leadership\\_news/121311\\_news](https://www.umsystem.edu/ums/news/leadership_news/121311_news) [https://perma.cc/AT3Q-UKYK] (“Wolfe, formerly Novell’s president of the Americas and a 20-year IBM executive, went to Rock Bridge High School in Columbia, where he led the football team to a state championship as its quarterback.”); Mará Rose Williams, *Wolfe is New University of Missouri System President*, KANSAS CITY STAR (Dec. 13, 2011, 5:00 AM), <https://www.kansascity.com/news/local/article300038/Wolfe-is-new-University-of-Missouri-System-president.html> [http://perma.cc/VV2F-PJF4 ] (reporting that Wolfe “had not thought about pursuing a position as a university president” until called by a Curator about the Missouri search).

<sup>218</sup> See *infra* Part IV.B.1 (describing how animosity among top administrators hindered university’s ability to function effectively, especially in time of crisis).

*B. What Exactly Went Wrong? Specific Lessons from Missouri's Experience*

To understand how other universities can avoid the fate of Mizzou—millions of tuition dollars lost, statewide and national reputation harmed, relations with the legislature damaged—one must consider specific factors that made Mizzou susceptible to such bad results. Universities all over America have struggled with race relations, and students have held protests on countless campuses, yet somehow Mizzou suffered harms well beyond those commonly observed at other institutions. University leaders who observe what went wrong in Columbia will have a better chance of reaching better outcomes at home.

Although each campus is unique, and with luck no campus will possess the same perfect constellation of dangerous conditions that tempted fate in Columbia, university leaders everywhere will recognize at least some of the problems identified below. Even at campuses enjoying effective leadership, improvement in some of these areas is almost certainly possible.

Factors that increased the odds of significant institutional damage at Mizzou included: (1) the system president, the campus chancellor, and several deans exhibited personal animosity toward one another and could not collaborate effectively; (2) when situations demanded quick action, the university and its leaders moved slowly; (3) top university leaders spoke with dissonant voices about important matters; and (4) neither the Curators nor the system president's office made effective use of available information from a broad array of sources. Each of these failures upped the odds of bad results. Together, they made bad results unavoidable.

i. The President, the Chancellor, and Several Deans Disliked One Another and Could Not Work Together

On October 9, 2015, one day before Tim Wolfe entered the Homecoming Parade that propelled him to national fame, Wolfe met with nine MU deans who asked him to fire Chancellor Bowen Loftin.<sup>219</sup> Four days later, on October 13th, they met with Wolfe again and aired their grievances to Loftin directly.<sup>220</sup> In other words, in the weeks following the Homecoming Parade, during which Wolfe and Loftin should have been coordinating their response to student protests and crafting a strategy to promote diversity and inclusion at the university, the president was considering whether to fire the chancellor. And the chancellor knew it.

Several of the deans had disliked Loftin for some time, and a few were openly contemptuous of him in conversations they had every reason to believe would be reported back to the chancellor's office.<sup>221</sup> Deans did not find Loftin's jokes about

---

<sup>219</sup> The Tribune's Staff, *Deans, Faculty Members Call for Loftin's Dismissal*, COLUMBIA DAILY TRIB. (Nov. 9, 2015, 1:40 PM), <http://www.columbiatribune.com/article/20151109/News/311099982> [<http://perma.cc/EKS6-E8PS>].

<sup>220</sup> *See id.*

<sup>221</sup> For example, the author knows of one dean in particular who would bad-mouth Loftin in front of large groups of faculty, many of whom owed no loyalty to the dean and could not be expected to keep the conversation confidential.

his authority to fire deans to be especially funny,<sup>222</sup> nor did they appreciate his description of deans as “middle management.”<sup>223</sup> Further, the idea that Loftin might fire deans was not theoretical. In September 2015, the medical school dean resigned, and surviving deans quickly concluded that Loftin had forced him out.<sup>224</sup> For purposes of this Article, we need not resolve the disagreements among Loftin and the deans about Loftin’s leadership style and his stewardship of the university. It is enough to realize that while students protested on the quad and complained with increasing fervor that university leaders were ignoring them, the deans were in open revolt against their boss. Indeed, as it became increasingly likely that Wolfe would resign before he had the chance to act on the deans’ plea that he fire Loftin, the deans jointly sent a letter to Wolfe and the Curators reiterating their request.<sup>225</sup> Their letter became public on November 9, as the Curators decided what to do in the wake of Wolfe’s resignation.<sup>226</sup>

Beyond conflict fomented by the deans, Loftin and Wolfe disliked and distrusted one another. Wolfe became convinced, for example, that Loftin had “shifted the focus of Concerned Student 1950 to” Wolfe once Loftin “discovered his job was in jeopardy.”<sup>227</sup> While it seems difficult to imagine how Loftin could have duped the student protestors into attacking Wolfe rather than Loftin, it is easy to imagine how, once Wolfe suspected Loftin of this treachery, it would be impossible for the two men to work together effectively. In addition, before the fall 2015 protests began, Loftin already thought very little of Wolfe.<sup>228</sup>

<sup>222</sup> See Jack Stripling, *How Missouri’s Deans Plotted to Get Rid of Their Chancellor*, CHRON. OF HIGHER EDUC. (Nov. 20, 2015), <https://www.chronicle.com/article/How-Missouri-s-Deans-Plotted/234283> [<https://perma.cc/72S6-NG8H>].

<sup>223</sup> See *id.*

<sup>224</sup> See *id.*; Megan Favignano, *Loftin: ‘Issues’ Led to Med School Dean’s Resignation*, COLUMBIA DAILY TRIB. (Oct. 15, 2015), <http://www.columbiatribune.com/article/20151015/News/310159921> [<https://perma.cc/J6FU-KMNA>]; Megan Favignano, *MU Medical School Dean Resigns After Less than a Year*, COLUMBIA DAILY TRIB. (Sept. 15, 2015), <http://www.columbiatribune.com/article/20150915/News/309159912> [<https://perma.cc/KZ89-KQFU>]. Evidence that the dean was forced out was not hard to find. The ousted dean himself was telling people on campus what had happened, and medical faculty began a campaign for his reinstatement, which eventually proved successful under Interim Chancellor Hank Foley, who reappointed the dean in February 2016. See Koran Addo, *Mizzou Reinstates Medical School Dean*, ST. LOUIS POST-DISPATCH (Feb. 18, 2016), [https://www.stltoday.com/news/local/education/mizzou-reinstates-medical-school-dean/article\\_0d53c29c-bf8f-52df-bf75-c00464956706.html](https://www.stltoday.com/news/local/education/mizzou-reinstates-medical-school-dean/article_0d53c29c-bf8f-52df-bf75-c00464956706.html) [<http://perma.cc/N892-52BS>].

<sup>225</sup> See Tribune’s Staff, *supra* note 219 (describing letter alleging that Loftin had created a “toxic environment through threat, fear and intimidation”).

<sup>226</sup> Koran Addo, *Missteps, Not Student Revolt, Led to Mizzou Chancellor’s Demise*, ST. LOUIS POST-DISPATCH (Nov. 12, 2015), [https://www.stltoday.com/news/local/education/missteps-not-student-revolt-led-to-mizzou-chancellor-sdemise/article\\_f955e9cf-6fc8-5fb0-b2cc-1b798d53fcc.html](https://www.stltoday.com/news/local/education/missteps-not-student-revolt-led-to-mizzou-chancellor-sdemise/article_f955e9cf-6fc8-5fb0-b2cc-1b798d53fcc.html) [<http://perma.cc/AG3P-UMDL>].

<sup>227</sup> *Wolfe Letter*, *supra* note 124.

<sup>228</sup> For descriptions of Wolfe that raise similar issues to those mentioned by Loftin now and again, see, e.g., Arthur G. Jago, *How Three Bad Decisions Signaled Doom at Mizzou*, CHRON. OF HIGHER EDUC. (Nov. 19, 2015), <https://www.chronicle.com/article/How-Three-Bad-Decisions/234278> [<https://perma.cc/9KWX-TUSF>]; Bruce Joshua Miller & Ned Stuckey-French, *In Missouri, the Downfall of a Business-Minded President*, CHRON. OF HIGHER EDUC. (Nov. 11, 2015), <https://www.chronicle.com/article/In-Missouri-the-Downfall-of-a/234164> [<https://perma.cc/43PC-ZEUU>].

In short, when students began camping out on the quad in support of a graduate student who had launched a hunger strike in an effort to remove Wolfe from office, university leadership was as follows: Wolfe, the system president, who believed that the chancellor of his flagship campus had directed black student protestors toward him in hope of saving the chancellor's own job. Loftin, the campus chancellor, presided over a group of deans busy lobbying Wolfe to fire Loftin. The Curators, who had authority to fire Wolfe, retained confidence in his leadership until the day of Wolfe's resignation.<sup>229</sup> It should surprise no one that this leadership team responded slowly and inadequately to crises.

Although an analysis of organizational theory is beyond the scope of this article, the paragraph above presents a useful example of how much ambiguity exists whenever one states that "the university" or "the company" has acted in a certain way. If a customer says, "United Airlines treated me badly," she is referring to the actions of specific persons, for which the corporate entity is in some sense responsible.<sup>230</sup> Similar ambiguity is presented by statements like "the United States increased tensions with Canada." Observers outside of leadership are especially likely to be confused about who speaks and acts for the organization, making it difficult for them to know whom to trust in a negotiation. Uncoordinated leaders therefore increase the complexity—and the risks—of crises.

## ii. The University Moved Slowly in Situations that Demanded Quickness

On at least two important occasions, the university moved slowly when quick, decisive action was necessary, and these delays both inflamed internal tensions and fed external attacks on the university. First, after protestors stopped Tim Wolfe's car during the October 10, 2015 Homecoming Parade, Wolfe waited far too long before meeting with aggrieved students. Whatever he thought of their tactics and demands, his delay increased frustration and hindered efforts to negotiate a constructive solution. Second, after Professor Melissa Click was caught on video arguing with a Mizzou student, pushing the student's camera as the student tried to film protestors, and calling for "muscle" to help remove the student from the area, the university moved too slowly to resolve her case. The delay contributed to the perception that faculty and administrators approved of Click's conduct or—at a minimum—were hoping to avoid taking any real action to address it.

*The Parade and its Aftermath.* In early October 2015, Mizzou geared up for its annual homecoming celebration. The university claims to have invented the concept of college homecomings<sup>231</sup>—an idea subsequently copied by universities across the

---

<sup>229</sup> See Addo, *supra* note 226 ("Multiple people with knowledge of the situation say the curators were ready to stand behind Wolfe . . ."). In a sense, the Curators supported a president presiding over a "team of rivals," but their president was not Abraham Lincoln. See generally DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* (2006) (discussing President Lincoln's divided cabinet during the Civil War).

<sup>230</sup> Cf. MODEL RULE OF PROF'L CONDUCT r. 1.13 (AM. BAR ASS'N 2018) (noting that an organization acts "through its duly authorized constituents").

<sup>231</sup> Stephanie Detillier, *History of Homecoming*, MIZZOU ALUMNI, <https://www.mizzou.com/s/1002/alumni/interior.aspx?sid=1002&gid=1001&pgid=569> [http://perma.cc/295V-SCJR].

country—and it takes the event quite seriously. The 2015 theme was “A Show-Me State of Mind,” and events included a surprise concert by alumna Sheryl Crow, recognition of the fiftieth anniversary of the “Golden Girls” dance squad, a lecture by historian David McCullough, a tough loss to Florida on the gridiron, and the annual parade through campus and downtown Columbia.<sup>232</sup>

At some point during the parade, a group of student protestors blocked the parade route, impeding the red convertible in which UM President Tim Wolfe was riding with his wife.<sup>233</sup> A newspaper report published that day said that, according to multiple Mizzou students who saw the incident, Wolfe’s car “bumped one of the protestors.”<sup>234</sup> One student witness was reported to have said that “the driver was getting impatient and kept revving the engine, but she didn’t think the protester was intentionally hit.”<sup>235</sup> In retrospect, the *Columbia Missourian* article foreshadowed much of what was to come at Mizzou. In addition to reporting about the car incident, the article notes that while “some spectators supported the protestors, some people began chanting ‘MIZ’ to drown out the bullhorn speeches.”<sup>236</sup> At university events, a common call-and-response chant involves one group shouting “M-I-Z” and a second group replying “Z-O-U.” The ubiquitous M-I-Z-Z-O-U chant is known to every student, and its perceived use to taunt protestors converted a unifying campus tradition into a tool for othering certain members of the community.<sup>237</sup> The article also quoted graduate student Jonathan Butler, who said, “All we get is emails and empty promises. And we’re here to say we’re not going to be OK with just emails or empty promises anymore.”<sup>238</sup> Butler explained that protestors had tried getting attention in less confrontational ways: “We disrupted the parade specifically in front of Tim Wolfe because we need him to get our message. We’ve sent emails, we’ve sent tweets, we’ve messaged but we’ve gotten no response back from the upper officials at Mizzou to really make change on this campus.”<sup>239</sup> In addition, the article highlighted debate over the protestors’ tactics, quoting a bystander who said she supported the message but disliked seeing activists “being so aggressive with children around.”<sup>240</sup> The student reporters deserve credit for spotting so early so many of the issues that would dominate future discussion of the protest and its aftermath.

---

<sup>232</sup> See *2015 Homecoming and Campaign Kickoff*, MIZZOU (Aug. 19, 2015), <https://mizzoumag.missouri.edu/2015/08/2015-homecoming-and-campaign-kickoff-events/> [<http://perma.cc/LF37-QCBP>]; *Homecoming 2015*, MIZZOU, <https://mizzoumag.missouri.edu/tag/homecoming-2015/> [<http://perma.cc/AJU5-LVCT>].

<sup>233</sup> See Serven & Reese, *supra* note 106.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> A month later, when protestors on the Carnahan Quad learned of the resignation of Tim Wolfe, I saw a group of celebrating students (mostly white) begin chanting “MIZ” “ZOU” to show their excitement and support. A black woman asked them to stop, saying that while she understood their good intentions, the chant had been used to attack black students and would be perceived as hostile if it continued.

<sup>238</sup> Serven & Reese, *supra* note 106.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*



So far, the events were not that different from student protests at other campuses. Activists had disrupted a major campus event, but the delay was fairly brief,<sup>241</sup> no one was hurt, no property was damaged, and the student protestors had captured some attention, allowing them to raise concerns similar to those raised by groups across America. It is possible that had university leaders responded quickly to the homecoming protest—even with an uninspiring response of chatting respectfully with protestors and then appointing a “blue ribbon” panel to suggest how the university could promote racial justice<sup>242</sup>—that tensions could have been reduced.

Instead of moving quickly, university leaders hunkered down, and students noticed. A student tweeted on October 13, “3 days and no response from @bowtieger or @UMPrez would lead you to believe black voices don’t matter... #ConcernedStudent1950.”<sup>243</sup> “@bowtieger” was (and remains) the *Twitter* handle of Mizzou Chancellor Bowen Loftin, who often wore bow ties.<sup>244</sup> Jonathan Butler<sup>245</sup> tweeted that day, “3 DAYS. 3 DAYS. 3DAYS. 3DAYS. And still no response from @UMPrez #concernedstudent1950,” and embedded a video of the parade protest.<sup>246</sup> The next day, Butler tweeted, “\*\*\*\*4 DAYS\*\*\*\* since I was hit by @UMPrez’s car in the homecoming parade & STILL NO RESPONSE. #ConcernedStudent1950.”<sup>247</sup> One day later, Butler responded to someone who tweeted the question “Did @UMPrez ever issue a statement, apologize or anything?,” tweeting back, “5 days later and STILL NO RESPONSE. He doesn’t care. #ConcernedStudent1950.”<sup>248</sup> After two more days passed, Butler tweeted, “7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. 7 DAYS. No response. @UMPrez #ConcernedStudent1950.”<sup>249</sup> Similar comments by Butler and others

<sup>241</sup> See *id.* (“The protesters blocked the street for about 15 minutes . . .”).

<sup>242</sup> For examples of “blue ribbon” panels tackling racial issues, see Resolution of May 2, 2016, Ordinances and Resolutions of Charlottesville, VA (creating the *Blue Ribbon Commission on Race, Memorials and Public Spaces*), <http://www.charlottesville.org/home/showdocument?id=43143> [<http://perma.cc/CK5B-K44V>], and ISN Staff, *Santa Clara University Announces Blue Ribbon Commission to Advance Diversity*, IGNATIAN SOLIDARITY NETWORK (May 17, 2016), <https://ignatiansolidarity.net/blog/2016/05/17/santa-clara-university-commission-diversity/> [<http://perma.cc/3GTL-W5GC>].

<sup>243</sup> Simone Rainer (@Monie Rai), TWITTER (Oct 13, 2015, 1:48 PM), [https://twitter.com/Monie\\_Rai/status/654036067419615232](https://twitter.com/Monie_Rai/status/654036067419615232) [<http://perma.cc/9X4X-R4U6>].

<sup>244</sup> R. Bowen Loftin (@bowtieger), TWITTER, <https://twitter.com/bowtieger> [<http://perma.cc/T365-AFKJ>].

<sup>245</sup> Jonathan Butler’s twitter page, @JonathanButler, was deleted between the Author’s original draft and the publication of this Article. The *Kentucky Law Journal* was unable to verify these tweets during the editing process.

<sup>246</sup> [https://twitter.com/\\_JonathanButler/status/654093689170587649](https://twitter.com/_JonathanButler/status/654093689170587649).

<sup>247</sup> [https://twitter.com/\\_JonathanButler/status/654316390581559296](https://twitter.com/_JonathanButler/status/654316390581559296). Responses to the tweet exhibit some skepticism concerning whether Butler “was hit” by Wolfe’s car. See, e.g., Dakota (@Pooker Brock), TWITTER (Nov. 12, 2015, 9:21AM), [https://twitter.com/Pooker\\_Brock/status/664855615949393920](https://twitter.com/Pooker_Brock/status/664855615949393920) [<http://perma.cc/M537-2TZJ>] (stating in a reply to @PopcornSutton\_ and tagging @JonathanButler, “my word he’s lucky to be alive after that collision” and then mocking Butler with the face-with-tears-of-joy emoji).

<sup>248</sup> [https://twitter.com/\\_JonathanButler/status/654710004004466688](https://twitter.com/_JonathanButler/status/654710004004466688).

<sup>249</sup> [https://twitter.com/\\_JonathanButler/status/655377022794014720](https://twitter.com/_JonathanButler/status/655377022794014720).

commemorated “9 days,”<sup>250</sup> “10 days,”<sup>251</sup> “11 days,”<sup>252</sup> and so on. On October 26, the Student Coalition for Critical Action tweeted, “Day 16 & NO public acknowledgement for #ConcernedStudent1950 or the @Mizzou community @UMPrez is modeling @mizzou organizational culture!!!”<sup>253</sup>

This delay was the backdrop for an October 26 meeting that Wolfe hosted at University Hall with black students.<sup>254</sup> Soon after that meeting, instead of counting the days of Wolfe’s silence, observers counted the days of Jonathan Butler’s hunger strike.<sup>255</sup> Wolfe issued an apology on November 6, writing: “I regret my reaction at the MU homecoming parade when the ConcernedStudent1950 group approached my car. I am sorry, and my apology is long overdue.”<sup>256</sup> He continued: “My behavior seemed like I did not care. That was not my intention. I was caught off guard in that moment. Nonetheless, had I gotten out of the car to acknowledge the students and talk with them perhaps we wouldn’t be where we are today.”<sup>257</sup> By then, Butler’s hunger strike was four days old,<sup>258</sup> and student protestors supporting Butler had spent four nights camping out on the Carnahan Quadrangle.<sup>259</sup> The next evening, November 7, brought an announcement by Mizzou football players that they would “no longer participate in any football related activities until President Tim Wolfe resigns or is removed due to his negligence toward marginalized students’ experiences.”<sup>260</sup> The football strike was inspired in part by players who heard about

<sup>250</sup> [https://twitter.com/\\_JonathanButler/status/656107839598014464](https://twitter.com/_JonathanButler/status/656107839598014464).

<sup>251</sup> @DevaSTating\_14, TWITTER (Oct. 20, 2015, 8:58 AM), [https://twitter.com/DevaSTating\\_14/status/656499809260441600](https://twitter.com/DevaSTating_14/status/656499809260441600) [<http://perma.cc/CK79-RRRY>].

<sup>252</sup> Reuben Faloughi (@Big\_Reub), TWITTER (Oct. 21, 2015, 5:42 AM), [https://twitter.com/Big\\_Reub/status/656812720877015042](https://twitter.com/Big_Reub/status/656812720877015042) [<http://perma.cc/W4DY-NPP3>] (“#WolfeShould know its [sic] been 11 days since the homecoming incident with NO PUBLIC ACKNOWLEDGMENT #ConcernedStudent1950 poor leadership or nah?”).

<sup>253</sup> @MizzouSCCA, TWITTER (Oct. 26, 2015, 4:19 AM), <https://twitter.com/MizzouSCCA/status/658603939475009536> [<http://perma.cc/YCB7-QJ3X>].

<sup>254</sup> See *supra* notes 213–214 and accompanying text.

<sup>255</sup> See, e.g., Carbonated.TV (@CarbonatedTV), TWITTER (Nov. 5, 2015, 12:00 PM), <https://twitter.com/CarbonatedTV/status/662358867158786048> [<http://perma.cc/ZDU5-D6HD>]; Elise Schmeizer (@EliseSchmeizer), TWITTER (Nov. 6, 2015, 2:32 PM), <https://twitter.com/EliseSchmeizer/status/662759502089949185> [<http://perma.cc/L9RZ-WL3B>].

<sup>256</sup> Missourian Staff, *supra* note 114.

<sup>257</sup> *Id.*

<sup>258</sup> See *id.* (reporting that Butler had begun his hunger strike on Monday, with Wolfe issuing his statement on Friday).

<sup>259</sup> Kovacs, *supra* note 112 (quoting student who said, “We’re camping out, first of all, to push for the removal of Tim Wolfe as UM System’s president, and also in support of Jonathan Butler and his endeavors to generate change.”).

<sup>260</sup> *Black Mizzou Players Say They’ll Strike Until President Tim Wolfe Resigns*, ESPN (Nov. 8, 2015), [http://www.espn.com/college-football/story/\\_/id/14078494/missouri-tigers-football-players-strike-embattled-tim-wolfe-resigns](http://www.espn.com/college-football/story/_/id/14078494/missouri-tigers-football-players-strike-embattled-tim-wolfe-resigns) [<http://perma.cc/SG65-XBVZ>]; University of Missouri Legion of Black Collegians (@MizzouLBC), TWITTER (Nov. 7, 2015, 6:14 PM), [https://twitter.com/MizzouLBC/status/663177684428566532?ref\\_src=twsrc%5Etfw](https://twitter.com/MizzouLBC/status/663177684428566532?ref_src=twsrc%5Etfw) [<http://perma.cc/B6UQ-N6ZD>]. Wolfe was recorded that same evening arguing with students about “systematic oppression.” See Missourian Staff, *supra* note 114.

the hunger strike and spoke to Butler.<sup>261</sup> Wolfe's resignation would come on November 9.<sup>262</sup>

*The Viral Video of Melissa Click.* After Tim Wolfe announced his resignation shortly after 10 o'clock on a Monday morning, students on the Carnahan Quad erupted in celebrations.<sup>263</sup> Protestors sang "We Shall Overcome," and football players announced that their strike was over.<sup>264</sup> Jonathan Butler said he would soon be eating.<sup>265</sup> The weather was pleasant and the mood jubilant.

Tensions soon arose, however, when members of the news media—who had converged on Columbia from across the country—began seeking interviews with student protestors.<sup>266</sup> Some of the protestors had been sleeping outdoors for days.<sup>267</sup> Many had been awake most of the night.<sup>268</sup> A group of students attempted to create a "no media" zone on the quad, asking members of the press to respect the privacy of tired students who wanted some time to themselves.<sup>269</sup> Beyond lack of sleep and a general desire to be left alone, students expressed their wish that "the place where people live, fellowship, & sleep . . . be protected from twisted insincere narratives."<sup>270</sup> Some members of the press—perhaps concluding that no good

<sup>261</sup> See Tod Palmer, *One Goal of Missouri Football Players Was to Save Protester's Life*, KANSAS CITY STAR (Nov. 10, 2015, 1:48 PM), <https://www.kansascity.com/sports/college/sec/university-of-missouri/article43830921.html> [<https://perma.cc/T48L-QVTD>] (describing sophomore wide receiver who heard about hunger strike, went to the quad to meet Butler, and then told other players).

<sup>262</sup> Douglas Belkin & Melissa Korn, *University of Missouri System President Tim Wolfe Resigns*, WALL ST. J. (Nov. 9, 2015, 8:18 PM), <https://www.wsj.com/articles/university-of-missouri-system-president-tim-wolfe-resigns-1447086505> [<http://perma.cc/4KRP-YYNY>].

<sup>263</sup> See Missouri Staff, *UM President Out: Wolfe Resigns as UM System President Amid Campus Uproar*, COLUMBIA MISSOURIAN (Nov. 9, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/wolfe-resigns-as-um-system-president-amidcampus-uproar/article\\_ed75afb0-86fb-11e5-9e17-df8eb9362f14.html](https://www.columbiainmissourian.com/news/higher_education/wolfe-resigns-as-um-system-president-amidcampus-uproar/article_ed75afb0-86fb-11e5-9e17-df8eb9362f14.html) [<https://perma.cc/7LNB-KSF5>]; Emma Vandelinder, *Racial Climate at MU: A Timeline of Incidents this Fall*, COLUM. MISSOURIAN (Nov. 6, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/racial-climate-at-mu-a-timeline-of-incidents-this-fall/article\\_0c96f986-84c6-11e5-a38f-2bd0aab0bf74.html](https://www.columbiainmissourian.com/news/higher_education/racial-climate-at-mu-a-timeline-of-incidents-this-fall/article_0c96f986-84c6-11e5-a38f-2bd0aab0bf74.html) [<https://perma.cc/M5ZB-E44W>].

<sup>264</sup> See Missouri Staff, *supra* note 263.

<sup>265</sup> See Vandelinder, *supra* note 263 ("At 10:36 a.m. Butler posted on Facebook that the hunger strike was 'officially over.'").

<sup>266</sup> See e.g. Justin Wm. Moyer et al., *Mass Media Professor Under Fire for Confronting Video Journalist at Mizzou*, WASH. POST (Nov. 10, 2015), [https://www.washingtonpost.com/news/morning-mix/wp/2015/11/10/video-shows-u-of-missouri-protesters-and-journalism-professor-barring-media-coverage/?tid=ss\\_mail&utm\\_term=.8159d8303765](https://www.washingtonpost.com/news/morning-mix/wp/2015/11/10/video-shows-u-of-missouri-protesters-and-journalism-professor-barring-media-coverage/?tid=ss_mail&utm_term=.8159d8303765) [<https://perma.cc/67XA-MRBY>].

<sup>267</sup> See Bogage, *supra* note 112.

<sup>268</sup> See *id.*

<sup>269</sup> See Moyer et al., *supra* note 266. Questions about how Mizzou regulates public space on campus, along with other issues related to free speech, press freedom, and protests would eventually be addressed by the Ad Hoc Joint Committee on Protests, Public Spaces, Free Speech, and the Press, which was created in January 2016 and dissolved in June 2017. See *Ad Hoc Joint Committee on Protests, Public Spaces, Free Speech, and the Press*, U. MO., <https://committees.missouri.edu/protests-free-speech/> [<http://perma.cc/55NP-JE4G>] (describing work of committee and its proposals related to new and amended university regulations).

<sup>270</sup> See Moyer et al., *supra* note 266 (quoting tweet from account of student group). The students' fear of "twisted insincere narratives" echoes the call for scholarly narratives that tell the stories of marginalized members of the academic community. See, e.g., Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039, 1043 (2018) (using

interviews would be available from students shouting, “Hey hey, ho ho, reporters have got to go!”<sup>271</sup>—stayed outside of the makeshift no-media area.

Not everyone, however, respected the “no-media” signs posted on public land.<sup>272</sup> When a few reporters approached the students, supporters of the protestors formed a human wall to block them.<sup>273</sup> Tim Tai, a Mizzou student photojournalist working as a stringer for ESPN, was among those blocked.<sup>274</sup> He said, “You’re pushing me.”<sup>275</sup> When someone replied, “You don’t have the right to take our photos,” he said he had the right because of “the same First Amendment that protects you standing here.”<sup>276</sup> The group that stood between journalists and student protestors included some of the protestors themselves, and it also included university faculty and staff.<sup>277</sup>

Kayla Schierbecker,<sup>278</sup> a Mizzou student who captured the Tim Tai incident on video, approached Mizzou faculty member Melissa Click. She said, “Hi, I’m media. Can I talk to you?”<sup>279</sup> The exchange that followed is ugly to watch.

Click said, “No, you need to get out. You need to get out.”<sup>280</sup>

Schierbecker said, “No, I don’t.”<sup>281</sup>

Click then reached for Schierbecker’s camera and jostled it.<sup>282</sup>

Click said, again, “You need to get out.”<sup>283</sup>

Schierbecker said, again, “No, I don’t.”<sup>284</sup>

Then, in a quote that soon would be famous across the world, Click said, “All right. Who wants to help me get this reporter out of here? I need some muscle over here.”<sup>285</sup>

Although the “muscle” quote captured public attention, another statement by Click was comparably cringeworthy. In response to Schierbecker saying, “This is public property,” Click said in a mocking tone of voice: “Yeah, I know, that’s a really

“strains of psychological research that help explain several narrative accounts of law professors of color engaging students”); sources cited *supra* note 201.

<sup>271</sup> Moyer et. al., *supra* note 266.

<sup>272</sup> *See id.*

<sup>273</sup> *See id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.* (quoting from embedded video of Tai incident).

<sup>276</sup> *Id.* (quoting from embedded video of Tai incident).

<sup>277</sup> *See id.*

<sup>278</sup> I refer to Schierbecker by the first name “Kayla,” along with female pronouns such as “she,” because Schierbecker currently does so. *See Kayla Schierbecker*, PHOTOGRAPHY IS NOT CRIME, <https://photographyisnotacrime.com/author/mark-schierbecker/> [http://perma.cc/Z787-T4MB]. At the time of the incident described in this Article, she used the name “Mark,” along with male pronouns, and reports written around the time of the November 2015 events do so as well. *See, e.g.*, Moyer et al., *supra* note 266.

<sup>279</sup> Moyer et. al., *supra* note 266 (quoting from embedded video of Tim Tai incident).

<sup>280</sup> *Id.* (quoting from embedded video of Schierbecker incident).

<sup>281</sup> *Id.* (quoting from embedded video of Schierbecker incident).

<sup>282</sup> *Id.* The question of how exactly Click touched Schierbecker would become contentious. Schierbecker called it assault. *See* Peter Holley, *Missouri Student Says He Doesn’t Accept Professor’s Apology for Confrontation*, WASH. POST (Nov. 11, 2015), [https://www.washingtonpost.com/news/grade-point/wp/2015/11/11/mizzou-student-says-he-doesnt-accept-professors-apology-for-confrontation/?utm\\_term=.656f87e3d6f1](https://www.washingtonpost.com/news/grade-point/wp/2015/11/11/mizzou-student-says-he-doesnt-accept-professors-apology-for-confrontation/?utm_term=.656f87e3d6f1) [http://perma.cc/6ZGX-VDX4].

<sup>283</sup> Moyer et. al., *supra* note 266.

<sup>284</sup> *Id.* (quoting from embedded video of Schierbecker incident).

<sup>285</sup> *Id.* (quoting from embedded video of Schierbecker incident).

good one; I'm a communication faculty, and I really get that argument. But you need to go. You need to go. You need to go."<sup>286</sup>

University leaders—along with Click, who was an Assistant Professor of Communication in the College of Arts & Science and also held a courtesy appointment at the School of Journalism<sup>287</sup>—knew the video was embarrassing. The next day, Click resigned her Journalism courtesy appointment and issued a written apology “to the MU campus community, and journalists at large” in which she stated that she had called Tai and Schierbecker to apologize to them directly.<sup>288</sup>

Tai accepted her apology.<sup>289</sup> He told the *Washington Post*, “I don’t have and never had ill feelings toward her or the others in the video, and never took their actions personally—as a journalist, they were simply part of the scene I was documenting and not the enemy, so to speak.”<sup>290</sup> He added, “But being a journalist is often an intrusive role, and I understand that everyone was acting on adrenaline and high emotions, even if both sides had good intentions.”<sup>291</sup> Schierbecker, however, did not accept Click’s apology, calling it “curt and insincere.”<sup>292</sup> Schierbecker suggested that she might become convinced of Click’s sincerity if Click “goes on air, on record, and says it in front of everyone.”<sup>293</sup>

Beyond Schierbecker, Click faced criticism from media outlets across the country,<sup>294</sup> as well as from angry and hateful people who contacted her directly by phone and email.<sup>295</sup> In addition, State Senator Kurt Schaefer, who was then a candidate to be Missouri’s Attorney General, issued a November 11 statement seeking Click’s termination by the university.<sup>296</sup> Schaefer, who had for months been

<sup>286</sup> *Id.* (quoting from embedded video of Schierbecker incident).

<sup>287</sup> *See id.*

<sup>288</sup> Holley, *supra* note 282; Statement, Melissa Click, Statement Regarding Carnahan Quad Protests (Nov. 10, 2015), [https://communication.missouri.edu/sites/default/files/news/click\\_apology.pdf](https://communication.missouri.edu/sites/default/files/news/click_apology.pdf) [<http://perma.cc/L8PZ-JQ3N>].

<sup>289</sup> Holley, *supra* note 282.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *See, e.g.*, Callum Borchers, *Why Missouri Professor Melissa Click is Public Enemy No. 1 for Conservatives Right Now*, WASH. POST (Nov. 10, 2015), [https://www.washingtonpost.com/news/the-fix/wp/2015/11/10/why-missouri-professor-melissa-click-is-public-enemy-no-1-for-conservatives-right-now/?utm\\_term=.4d7642c30078](https://www.washingtonpost.com/news/the-fix/wp/2015/11/10/why-missouri-professor-melissa-click-is-public-enemy-no-1-for-conservatives-right-now/?utm_term=.4d7642c30078) [<http://perma.cc/M2BU-LL7H>] (collecting examples). For a scholarly analysis of reaction to Click as an example of “anti-PC backlash,” see Heidi Kitrosser, *Free Speech, Higher Education, and the PC Narrative*, 101 MINN. L. REV. 1987, 2053–55 (2017).

<sup>295</sup> *See* Steve Kolowich, *Melissa Click’s Inbox*, CHRON. OF HIGHER EDUC. (Jan. 13, 2016), <https://www.chronicle.com/article/Melissa-Click-s-Inbox/234891> [<https://perma.cc/2TJ9-92JQ>] (reporting on contents of Click’s university email account obtained by newspaper through public-records law request). In addition to “rape and death threats,” the *Chronicle*’s trawl through Click’s mail unearthed comparisons of Click to North Korea, Nazi goons, and “the Ayatollah’s Iran, Mao’s China, Stalin’s Russia, Putin’s Russia, and George Wallace’s Alabama.” *Id.* One correspondent expressed hope that Click’s mother would die of brain cancer, and another speculated gleefully that Click might be stabbed or set on fire. *Id.* Another wrote, “I hope you’re gang-raped by some of the very animals with whom you’re so enamored.” *Id.* That last message was not unusual in its thinly-veiled racial subtext. *See infra* note 340.

<sup>296</sup> Jason Hunsicker (@jhunsicker\_kde), TWITTER (Nov. 11, 2015, 1:39 PM), [https://twitter.com/jhunsicker\\_kde/status/664527778331541504](https://twitter.com/jhunsicker_kde/status/664527778331541504) [<http://perma.cc/A37Q-VSCK>]

picking fights with the university during his statewide campaign,<sup>297</sup> would eventually be joined by other legislators in seeking Click's ouster.<sup>298</sup> On January 4, 2016, ninety-nine Republican members of the state House of Representatives signed a letter calling on university leaders "to take immediate action" and to "remove Click from her current position as assistant professor . . . and to deny her pending application for tenure."<sup>299</sup> An accompanying letter from eighteen Republican state senators made similar demands.<sup>300</sup>

These letters put the university in a very difficult spot. On the one hand, few people on campus actually supported Click's conduct. While some faculty signed a letter supporting Click more generally, which they released in response to the letters from the representatives and senators, even that letter referred to Click's "actions on November 9" as "a regrettable mistake."<sup>301</sup> On the other hand, universities are not supposed to fire faculty members in response to demands from politicians.<sup>302</sup> Indeed, "freedom from political interference" is often invoked as a pithy summary of what "academic freedom" means,<sup>303</sup> and academic freedom is a cornerstone of the modern

(depicting statement issued by Schaefer). Schaefer also sought the firing of another MU employee who had formed part of the human wall blocking reporters. *Id.*

<sup>297</sup> See, e.g., Yael T. Abouhalkah, *Missouri Sen. Kurt Schaefer's Bullying on Abortion Rights Wears Thin*, KANSAS CITY STAR (April 19, 2016 1:57 AM), <https://www.kansascity.com/opinion/op-columns-blogs/yael-t-abouhalkah/article72580207.html> [http://perma.cc/87B8-QQPZ] (identifying Schaefer's "targets" as "Planned Parenthood and the University of Missouri"); Dave Helling, *Dispute in Missouri Attorney General's Race May Get Legal Scrutiny*, KANSAS CITY STAR (April 27, 2016), <https://www.kansascity.com/news/politics-government/article74305497.html> [http://perma.cc/BZB3-GREJ] (discussing allegations that Schaefer pressured university to stop law professor Josh Hawley from competing against Schaefer in Republican primary and attempted to interfere with Hawley's tenure application). Based on conversations I had with top administrators when Hawley's request for unpaid leave was granted and his tenure application was pending, I can confirm that Schaefer tried to keep Hawley out of the race. Hawley eventually crushed Schaefer in the primary. See Rudi Keller, *Hawley Victorious over Schaefer in Republican Primary for Attorney General*, COLUMBIA TRIBUNE (Aug. 3, 2016, 1:00 PM), <http://www.columbiatribune.com/3862a334-17d0-5922-9c6d-f0e6dc3db265.html> [http://perma.cc/CZR5-3XUG] ("Hawley scored a landslide victory with 64 percent of the vote . . . Schaefer aired relentless attacks, using his \$5 million campaign fund to paint Hawley as a friend of terrorists.").

<sup>298</sup> See Austin Huguélet & Jack Witthaus, *Missouri Republicans Want Click, Basler out of MU*, COLUMBIA MISSOURIAN (Jan. 4, 2016), [https://www.columbiamissourian.com/news/local/missouri-republicans-want-click-basler-out-of-mu/article\\_0381d8ee-b332-11e5-b3e4-b35ea10439bd.html](https://www.columbiamissourian.com/news/local/missouri-republicans-want-click-basler-out-of-mu/article_0381d8ee-b332-11e5-b3e4-b35ea10439bd.html) [https://perma.cc/V23N-3CFE].

<sup>299</sup> *Id.* (embedding legislators' letter).

<sup>300</sup> *Id.* (embedding legislators' letter).

<sup>301</sup> See Hannah Sturtecky, *Letter of Support for Click Released after Lawmakers Call for Dismissal*, COLUMBIA MISSOURIAN (Jan. 5, 2016), [https://www.columbiamissourian.com/news/local/letter-of-support-for-click-released-after-lawmakers-call-for/article\\_cab27ccc-b3e9-11e5-b4d2-0718d4f5d878.html](https://www.columbiamissourian.com/news/local/letter-of-support-for-click-released-after-lawmakers-call-for/article_cab27ccc-b3e9-11e5-b4d2-0718d4f5d878.html) [http://perma.cc/57HC-R3NU] (embedding faculty letter).

<sup>302</sup> See Am. Ass'n of Univ. Professors, *AAUP Issues Investigative Report on University of Missouri Melissa Click Case*, AAUP (May 19, 2016), <https://www.aaup.org/media-release/aaup-issues-investigative-report-university-missouri-melissa-click-case#.W410npNKhmB> [http://perma.cc/2PU2-ZQLW].

<sup>303</sup> See Policy Statement, Int'l Ass'n of Univs., *Academic Freedom, University Autonomy and Social Responsibility* (April 1998), [https://iau-aiu.net/IMG/pdf/academic\\_freedom\\_policy\\_statement.pdf](https://iau-aiu.net/IMG/pdf/academic_freedom_policy_statement.pdf) [http://perma.cc/YY5G-SGPK] (recalling that "at the International Conference convened by UNESCO in 1950, in Nice, the Universities of the World stipulated three indissociable principles for which every

university.<sup>304</sup> Justice Felix Frankfurter noted, back in 1957, “the dependence of a free society on free universities,” and observed wistfully that a “plea on behalf of continuing the free spirit of the open universities of South Africa has gone unheeded.”<sup>305</sup> Justice Frankfurter quoted approvingly from a report setting forth “‘the four essential freedoms’ of a university,” which were described as: “[T]o determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”<sup>306</sup> The case giving rise to Justice Frankfurter’s commentary involved efforts by the New Hampshire legislature to investigate “subversive activities,” such as the membership by a college professor in an unpopular political party.<sup>307</sup>

Administrators and faculty members, sensibly upset at seeing legislators demand the firing of a state university professor, did not wish to cave to political pressure. Faculty members who supported seeing some kind of university discipline imposed on Click—whether firing or something less serious—were undermined by the legislators’ letters.<sup>308</sup> The politicians, however, did not care that their letters put the university in a jam. Indeed, as the 2016 elections approached, attacking the university was quite popular with many Missouri voters, and office-seekers obliged.

The question for university leaders is not why the Republican politicians signed the letters released in early January 2016. Instead, a more useful inquiry concerns how the University of Missouri failed to act on the Click case between mid-November 2015 and the end of that year. Had university leaders acted more quickly to bring charges against Click, it is possible that legislative pressure would have been less intense.<sup>309</sup> In retrospect, university leaders—including me—misjudged the situation. We saw the video, and while we found it embarrassing, we didn’t see a horrible crime. No one was hurt, and none of the aggrieved students had filed a

---

university should stand,” one of which was “the tolerance of divergent opinion and freedom from political interference”).

<sup>304</sup> *Id.*; Paul Boyle, *How Should Universities Respond When Academic Freedom Is Under Threat?*, TIMES HIGHER EDUC. (May 13, 2017), <https://www.timeshighereducation.com/blog/how-should-universities-respond-when-academic-freedom-under-threat> [<http://perma.cc/RE9E-UESN>] (“The message is clear that, across Europe, we take university autonomy and academic freedom for granted at our peril.”); see also *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967) (“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.”).

<sup>305</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957) (Frankfurter, J., concurring).

<sup>306</sup> *Id.* at 263.

<sup>307</sup> *Id.* at 236–38, 241, 243 (plurality opinion).

<sup>308</sup> I know this from conversations I had at the time. Many faculty members told me they wanted to see Click suspended or at least reprimanded. And a few told me they thought Click should be fired. Some of these same faculty, however, said they resented seeing Click’s case used as a cudgel by the same legislators who had recently attacked the university in silly ways to engage in political grandstanding. See sources cited *supra* note 297.

<sup>309</sup> See, e.g., William Schmitt, *Senator’s Charge Won’t Initiate Disciplinary Action Against Melissa Click*, COLUMBIA MISSOURIAN (Feb. 19, 2016), [https://www.columbiaindian.com/news/higher\\_education/senator-s-charge-won-t-initiate-disciplinary-action-against-melissa/article\\_f2676f86-d732-11e5-b2db-43fd16a2ec88.html](https://www.columbiaindian.com/news/higher_education/senator-s-charge-won-t-initiate-disciplinary-action-against-melissa/article_f2676f86-d732-11e5-b2db-43fd16a2ec88.html) [<http://perma.cc/HX8S-8YWC>] (reporting on attempt by State Senator Paul Wieland, upon learning that no one had filed a charge against Click, to file one himself, only to learn that because he had “no affiliation with the university, [he had] no standing to file a complaint against a faculty member”).

university complaint against Click, despite being informed of how to do so.<sup>310</sup> We believed that if the university went about its business, with the protestors gone from the quad and the interim chancellor and president mending fences in Jefferson City, the Melissa Click issue would receive less and less attention over time. Faculty also knew that Click had suffered terrible abuse after being demonized in national media, which while perhaps not technically relevant to the prospect of potential university discipline was nonetheless a factor that convinced many Columbia observers that Click already had been punished sufficiently for her bad acts—by death threats and other harassment.<sup>311</sup> Further, few on campus could stomach the prospect of filing a disciplinary complaint against Click, lest they become part of the national media circus.<sup>312</sup>

I wrote “few on campus” rather than “no one on campus” advisedly. On November 10, 2015, Professor Michael Sykuta emailed Provost Garnett Stokes, writing, “I certainly understand the tense circumstances surrounding the encounter; however, Professor Click’s behavior violates her professional obligations as a member of our faculty community.”<sup>313</sup> He concluded his message, “I do not see an appropriate grievance mechanism to address this situation in our current policies, so I am sending this email to request your action to address this behavior in whatever manner our policies may dictate.”<sup>314</sup> Sykuta speculated later about what could have happened had Stokes acted upon his suggestion in November 2015: “[P]erhaps the channels of due process and resulting internal hearing would have resulted in Dr. Click’s dismissal before invoking the political wrath of the State legislature. Or perhaps it would have resulted in a less severe form of discipline that might have deflected the political opposition given the process would have been documented

---

<sup>310</sup> See William Schmitt, *MU Faculty Say Melissa Click Deserves Due Process, Fair Treatment from Administrators*, COLUMBIA MISSOURIAN (Feb. 17, 2016) [https://www.columbiamissourian.com/news/higher\\_education/mu-faculty-say-melissa-click-deserves-due-process-fair-treatment/article\\_951e7026-d58f-11e5-9242-cfa8863882e9.html](https://www.columbiamissourian.com/news/higher_education/mu-faculty-say-melissa-click-deserves-due-process-fair-treatment/article_951e7026-d58f-11e5-9242-cfa8863882e9.html) [<http://perma.cc/T7J4-Z6HV>] (“Schierbecker said via text message that he had not filed a complaint against Click through academic channels.”). Schierbecker did file an assault complaint to the police. *Id.*

<sup>311</sup> See *supra* note 295 and accompanying text (describing rape and death threats received by Click, along with other hateful communication). In addition to electronic communication, Click also received unwelcome visitors at her home and office. I learned at the time that university police and facilities leaders developed plans for her security.

<sup>312</sup> Under the MU Faculty Bylaws in force at the time, a “faculty irresponsibility” complainant could become embroiled in a prolonged process. See UNIV. OF MO. SYSTEM, RULES AND REGULATIONS 300.010.L.5 (2018), [https://www.umsystem.edu/ums/rules/collected\\_rules/faculty/ch300/300.010\\_faculty\\_bylaws\\_umc](https://www.umsystem.edu/ums/rules/collected_rules/faculty/ch300/300.010_faculty_bylaws_umc) [<http://perma.cc/EPN5-SR2Z>] (“The department chairperson shall discuss the alleged violation informally with the accused and with the accuser . . .”). One faculty member told me his wife stopped him from filing a charge against Click. The “faculty irresponsibility” rules have been superseded as of spring 2017 by new “Standards of Faculty Conduct.” See UNIV. OF MO. SYSTEM, RULES AND REGULATIONS 330.110.L.1 (2018), [https://www.umsystem.edu/ums/rules/collected\\_rules/personnel/ch330/330.110\\_standards\\_of\\_faculty\\_conduct](https://www.umsystem.edu/ums/rules/collected_rules/personnel/ch330/330.110_standards_of_faculty_conduct) [<http://perma.cc/YR3S-CSCE>] (allowing provost’s office to take charge of process after complaint is filed).

<sup>313</sup> E-mail from Michael Sykuta, Assoc. Prof. of Agric. and Applied Econ., Univ. of Mo., to Garnett Stokes, Provost, Univ. of Mo. (Nov. 10, 2015, 9:55 AM) (on file with author).

<sup>314</sup> *Id.*



and the outcome rationalized.”<sup>315</sup> Stokes, who received hundreds of messages on November 10, 2015, said she “did not interpret [Sykuta’s] November 10 message as one that was bringing a formal charge of faculty irresponsibility under our faculty bylaws.”<sup>316</sup> In any event, no campus process ensued,<sup>317</sup> and the issue did not disappear.

Hindsight suggests that Mizzou would have been better off had someone arranged for a faculty member to file a formal charge. I did not wish to do so personally because as chair of Faculty Council I represented faculty with divergent views on the case, and I believed that personal involvement in Click’s case would hinder my ability to lead the Council on other issues. The Chancellor and the Provost similarly could not file charges themselves without creating the perception that the process would be unfair; the “faculty irresponsibility” rules vested the final decision with the Chancellor.<sup>318</sup> Many university leaders had good excuses for not sticking our necks out.<sup>319</sup> In retrospect, however, our collective inaction contributed to institutional failure, and we should have found someone willing to file a charge, even without Professor Sykuta’s prompt encouragement.

The wait-and-see plan became less and less tenable over time. On January 25, 2016, Columbia’s city prosecutor charged Click in municipal court with simple assault, a misdemeanor.<sup>320</sup> Immediately, observers in Columbia and beyond began speculating about whether the charge would affect the university’s treatment of Click.

<sup>315</sup> E-mail from Michael Sykuta, Assoc. Prof. of Agric. and Applied Econ., Univ. of Mo., to Garnett Stokes, Provost, Univ. of Mo. (Feb. 25, 2016, 6:33 PM) (on file with author).

<sup>316</sup> E-mail from Garnett Stokes, Provost, Univ. of Mo., to Michael Sykuta, Assoc. Prof. of Agric. and Applied Econ., Univ. of Mo. (Feb. 26, 2016, 1:29 PM) (on file with author) (noting also that she has “asked that a form or template be created for filing charges of irresponsibility so that constituents with complaints can more easily understand and have access to the process”); see also Will Schmitt, *MU Changes how it Handles Complaints in post-Melissa Click Era*, K.C. STAR (Aug. 5, 2016), <https://www.kansascity.com/news/state/article93925102.html> [<http://perma.cc/E6UV-9PXM>] (reporting on the email exchange between Stokes and Sykuta). Stokes also said later that she had asked a senior associate provost in her office to draft a reply to Sykuta, and that the reply was never sent, “probably due to the quantity of emails coming in and being circulated, as well as other serious disruptions in everyday activities following the events of Nov. 9.” *Id.*

<sup>317</sup> Provost Stokes did send a letter of reprimand to Click in December. William Schmitt, *Curators’ Report, Melissa Click’s Response Contradict on Context and Comments*, COLUMBIA MISSOURIAN (Feb. 26, 2016), [https://www.columbiainmissourian.com/news/higher\\_education/curators-report-melissa-click-s-response-contradict-on-context-and/article\\_8ccd1e70-dcb2-11e5-af78-875fcfd69b6.html](https://www.columbiainmissourian.com/news/higher_education/curators-report-melissa-click-s-response-contradict-on-context-and/article_8ccd1e70-dcb2-11e5-af78-875fcfd69b6.html) [<http://perma.cc/ZTK5-UZ63>]. But no process began under which more serious discipline was considered.

<sup>318</sup> See UNIV. OF MO. SYSTEM, RULES AND REGULATIONS 300.010.L.9 (2018).

<sup>319</sup> The collective failure to act exemplifies a “diffusion of responsibility,” a phenomenon whereby persons are less likely to act in response to a problem when they perceive many others who are capable of doing so. See Alex Lickerman, *The Diffusion of Responsibility*, PSYCH. TODAY (Jun. 14, 2010), <https://www.psychologytoday.com/us/blog/happiness-in-world/201006/the-diffusion-responsibility> [<http://perma.cc/A5UV-86J7>] (“Simply put, when a task is placed before a group of people, there’s a strong tendency for each individual to assume someone else will take responsibility for it—so no one does.”).

<sup>320</sup> Jack Waddell, *Plea of Not Guilty Entered for Melissa Click in MU Incident*, COLUMBIA MISSOURIAN (Jan. 26, 2016), [https://www.columbiainmissourian.com/news/plea-of-not-guilty-entered-for-melissa-click-in-mu/article\\_05343cec-c45b-11e5-8c99-af16fc7ecc23.html](https://www.columbiainmissourian.com/news/plea-of-not-guilty-entered-for-melissa-click-in-mu/article_05343cec-c45b-11e5-8c99-af16fc7ecc23.html) [<http://perma.cc/63KQ-N7EV>].

### iii. Top University Leaders Did Not Speak with One Voice about Important Matters

Whatever action the university would take in response to the misdemeanor assault charge, it was important that the decision be expressed clearly on behalf of a united leadership team. Unfortunately, the Curators and top administrators did not coordinate their message, and the ensuing confusion undermined the ability of the interim chancellor and the interim president to perform effectively.

Hours after the city prosecutor entered his charge against Click, Interim Chancellor Hank Foley announced at a press conference that Click would keep her job during the spring 2016 semester and that the university would continue to evaluate her tenure application, a process that would end later that spring or summer.<sup>321</sup> Foley said he would not immediately suspend Click because she was not a danger to the university community.<sup>322</sup> He stated, “We are confident, that she does not, of course, present any danger to anyone.”<sup>323</sup> In response to a question, he said, “I think she had a moment of heated anger that day on November 9<sup>th</sup>, and I doubt very much that she would do anything like that again.”<sup>324</sup> He said that he had asked lower-level administrators to decide whether Click should teach classes during spring 2016, mentioning concerns about the “learning environment.”<sup>325</sup> Foley reiterated the importance of following traditional university processes, stating that hasty decisions often cause mistakes.<sup>326</sup>

Two days later, on January 27, the Board of Curators suspended Click and ordered the UM General Counsel to arrange for an investigation of her conduct.<sup>327</sup> Earlier that afternoon, Foley had delivered a “State of the University” address that focused on moving on from the events of fall 2015.<sup>328</sup> Interim President Mike Middleton introduced Foley before his address, and both of them exuded optimism about the university’s future.<sup>329</sup> Then, Foley and Middleton dashed from the “State of the University” event to discuss Click with the Curators, who were meeting in closed session. The next day’s news coverage focused on Click, not on Foley’s

<sup>321</sup> See Liv Paggiarino & Allison Colburn, *Update: MU Chancellor Says Melissa Click Will Keep Her Job Pending Tenure Process*, COLUMBIA MISSOURIAN (Jan. 25, 2016), [https://www.columbiaindianian.com/news/local/update-mu-chancellor-says-melissa-click-will-keep-her-job/article\\_a5e408cc-c378-11e5-af29-ab52fe77885e.html](https://www.columbiaindianian.com/news/local/update-mu-chancellor-says-melissa-click-will-keep-her-job/article_a5e408cc-c378-11e5-af29-ab52fe77885e.html) [<http://perma.cc/N72S-XECT>].

<sup>322</sup> *Columbian Missourian, Press Conference of Interim Chancellor Hank Foley Regarding Melissa Click Assault Charges*, FACEBOOK (Jan. 25, 2016), <https://www.facebook.com/ColumbiaMissourian/videos/10154709514574625/> [<http://perma.cc/QZ4N-US54>].

<sup>323</sup> *Id.* at 2:15.

<sup>324</sup> *Id.* at 3:15.

<sup>325</sup> *Id.* at 17:25.

<sup>326</sup> *Id.* at 1:30.

<sup>327</sup> Megan Favignano & Rudi Keller, *UM Curators Suspend MU Professor Melissa Click Pending Investigation*, COLUMBIA DAILY TRIBUNE (Jan. 28, 2016, 1:00 PM), <http://www.columbiatribune.com/article/20160128/News/301289917> [<http://perma.cc/EG6X-5VTD>].

<sup>328</sup> See Megan Favignano, *MU to Increase Minimum Stipend for Doctoral Students*, COLUMBIA DAILY TRIBUNE (Jan. 28, 2016, 1:00 PM), <http://www.columbiatribune.com/c542b312-8ac5-51fc-81ef-fdd94a8e93c8.html> [<http://perma.cc/XU3T-E4LH>]; *Bold New Mizzou*, MIZZOU NEWS (Jan. 28, 2016), <https://news.missouri.edu/2016/bold-new-mizzou/> [<http://perma.cc/3QRJ-46JP>].

<sup>329</sup> See Favignano, *supra* note 328.

remarks.<sup>330</sup> I can see how the Curators might have believed that they needed to suspend Click. Perhaps, despite university policies concerning faculty discipline, they deemed the political situation in Missouri to be so hostile that once Click was charged criminally, suspending her was unavoidable.<sup>331</sup> It is difficult to understand, however, why the Curators needed to step on Foley's media coverage. And it is even more difficult to understand why they allowed him to state on Monday that Click was no danger to campus and would not be suspended, only to vote on Wednesday to suspend her.<sup>332</sup> After the suspension, Foley was weakened because everyone on campus knew that the Curators had not respected the decision that Foley announced with such confidence in front of television cameras.

Click's prospects at the university became even dimmer in mid-February 2016, when Columbia police released video footage showing Click arguing with police during the October 2015 Homecoming Parade.<sup>333</sup> In the video, Click is seen shouting profanity at police who were trying to move student protestors away from the parade route.<sup>334</sup> When asked about the video, Click told reporters, "I'm sorry for the language I used, but I'm also sorry I felt I needed to put myself between the students and the officers to keep the students safe."<sup>335</sup> The new video—of an older incident—once again put Click in a national media spotlight.<sup>336</sup> Within two weeks,

---

<sup>330</sup> See e.g., Favignano & Keller, *supra* note 327; ; Michael E. Miller, *Mizzou Suspends Professor Charged with Assaulting Journalist as School Sinks into Turmoil*, WASH. POST (Jan. 28, 2016), [https://www.washingtonpost.com/news/morning-mix/wp/2016/01/28/mizzou-suspends-professor-charged-with-assaulting-journalist-as-school-sinks-into-turmoil/?utm\\_term=.ee9cd79a608e](https://www.washingtonpost.com/news/morning-mix/wp/2016/01/28/mizzou-suspends-professor-charged-with-assaulting-journalist-as-school-sinks-into-turmoil/?utm_term=.ee9cd79a608e) [<https://perma.cc/KV7C-QSPT>]; Mará Rose Williams, *MU Professor Melissa Click Is Suspended Days After Assault Charges*, KANSAS CITY STAR (Jan. 28, 2016, 10:25 AM), <https://www.kansascity.com/news/politics-government/article56962298.html> [<http://perma.cc/RE6C-BRXQ>].

<sup>331</sup> As a former Faculty Council chair, this is not a possibility I enjoy putting into print. But Missouri politics are what they are, and one job of the Board of Curators is to maintain good relations between the university and the state's elected leaders. That said, if the Curators desired to start the normal university discipline process for faculty at any time on or after Click made national news, any Curator could have filed a charge. See Statement, Exec. Comm. of the MU Faculty Council, Suspension of Professor Melissa Click by the Univ. of Mo. Bd. of Curators (Jan. 28, 2016), <https://dcer237tfveol.cloudfront.net/raw/komu/files/clickstatement.pdf> [<http://perma.cc/CV9T-3TEP>]. ("Accordingly, if members of the Board believe that a formal investigation of Professor Click's conduct is appropriate, the faculty respectfully suggest that the Board bring a charge against her under CRR 300.010 . . .").

<sup>332</sup> The Curators' order suspending Click purported to bar Click from the MU campus. I learned this when Click contacted me seeking help gaining permission to attend the 2016 True/False Film Fest. The festival included a March 5 showing of "Concerned Student 1950," a movie about the events of fall 2015, which was screened at the Missouri Theater, on university property. I relayed the request, which Foley granted, presumably without asking the Curators.

<sup>333</sup> Rem Rieder & Aamer Madhani, *Missouri Professor Melissa Click Seen Cursing at Cop in New Video*, USA TODAY (Feb. 15, 2016, 6:58 PM), <https://www.usatoday.com/story/news/2016/02/15/mizzou-professor-melissa-click-seen-cursing-cop-new-video/80401802/> (embedded video) [<http://perma.cc/2RLD-82CB>].

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> See, e.g., *id.*; Nicole Hensley, *Police Video Shows Missouri Professor Melissa Click Facing off with Cops During 2015 Homecoming Parade Protest*, N.Y. DAILY NEWS (Feb. 15, 2016), <http://www.nydailynews.com/news/national/mo-prof-melissa-click-faced-cops-new-video-article-1.2531729> [<http://perma.cc/B34H-QJFW>].

the Curators, who had already received a February 12 report from outside counsel about the November 9, 2015 incident on the quad, voted to fire Click.<sup>337</sup>

The Curators voted 4-2 in favor of Click's termination, with Board Chair Pam Henrickson voting against the decision.<sup>338</sup> Henrickson then had the delicate task of defending a Board decision she had personally opposed.<sup>339</sup> Concurrently, faculty leaders had the delicate task of explaining that opposition to the process used by the Board to fire Click was not the same as support of Click's behavior<sup>340</sup>—which Click herself had acknowledged as regrettable and for which she had apologized on multiple occasions.<sup>341</sup>

#### iv. The University's Governing Board and the President's Office did not Make Use of Potential Sources of Information

Another factor that contributed to the university's inadequate response to student protests was that the office of UM System President Tim Wolfe made limited efforts to gain information about what was happening on campus, sometimes going so far as to refuse information when it was offered.

<sup>337</sup> Koran Addo, *Board of Curators Fires Mizzou Assistant Professor Melissa Click*, ST. LOUIS POST-DISPATCH (Feb. 25, 2016), [https://www.stltoday.com/news/local/education/board-of-curators-fires-mizzou-assistant-professor-melissa-click/article\\_d334e896-f16e-52f1-96a4-171da43590ef.htm](https://www.stltoday.com/news/local/education/board-of-curators-fires-mizzou-assistant-professor-melissa-click/article_d334e896-f16e-52f1-96a4-171da43590ef.htm) [<https://perma.cc/64LY-633H>]; Rudi Keller, *University of Missouri Curators Vote to Fire Melissa Click*, COLUMBIA DAILY TRIB. (Feb. 25, 2016, 12:50 PM), <http://www.columbiatribune.com/article/20160225/News/302259956> [<http://perma.cc/5M8N-B6CQ>]. Based on conversations I had before the release of the video in February, it seemed likely at the time that Click would be suspended without pay or would receive some other punishment short of termination. (Consider that even with the video public, the Board voted 4-2.) It also seemed likely that she subsequently would be denied tenure, would remain at MU for an additional year, and would then no longer have employment at the university. After the video's release, however, sympathy for Click evaporated, and outside demands for her firing intensified.

<sup>338</sup> Keller, *supra* note 337; see also Kitrosser, *supra* note 295, at 2053–54.

<sup>339</sup> For greater detail of the process used by the Board of Curators in Click's case, as well as of the normal "faculty irresponsibility" procedures the Curators chose not to use, see Am. Ass'n. of Univ. Professors, *Academic Freedom and Tenure: University of Missouri (Columbia)*, BULL. OF THE AMERICAN ASS'N OF U. PROFESSORS, May 2016, 25, 25–42, <https://www.aaup.org/sites/default/files/UMColumbia.pdf> [<http://perma.cc/4H6G-2Q7A>].

<sup>340</sup> See Anonymous, Editorial, *Show Me Free Speech*, WALL STREET J., Feb. 27, 2016, at A10 (mocking faculty complaints about Board's process). My public statements related to Click's case resulted in me receiving the smallest taste of the hate that had been visited upon Click. One email correspondent informed me that his "son is a police officer" and offered to "hash it out like men" when he next visited my area. Various messages suggested that Click and I were involved sexually. Another message said MU should "cut out the cancer that exists within their [sic] own faculty" and that I "would be a great place to start." A voicemail left on my office phone said I "must be a real idiot" for supporting Click. The caller said, "I'm glad she got fired" and said, "she should . . . go on welfare—that's the kind of people she supports anyway." He added that I "should probably be fired too," that "people like [me] make [him] sick," and that he was inspired to call because he "read about [my] comments on Fox News." For more on the harassment of professors generally, see Statement, Am. Ass'n. of Univ. Professors, Targeted Online Harassment of Faculty (Jan. 31, 2017), [https://www.aaup.org/file/2017-Harassment\\_Faculty\\_0.pdf](https://www.aaup.org/file/2017-Harassment_Faculty_0.pdf) [<http://perma.cc/WEL2-SUK3>].

<sup>341</sup> See *supra* notes 288–96 and accompanying text.

When I was elected chair of the MU Faculty Council in April 2015,<sup>342</sup> Wolfe had been president for a bit more than three years. My first one-year term as chair would begin on July 30, 2015. As far as I can remember, I did not meet Wolfe until I attended a Mizzou football tailgate on September 19, 2015 at Providence Pointe, the president's residence. This was a large event which was attended by, among others, donors, administrators from various campuses, Curators, and faculty leaders. I said hello to Wolfe and chatted with him for about one minute. I next saw Wolfe when the Intercampus Faculty Council (IFC)—which has three members from each of the UM campuses—met for a retreat at the Lake of the Ozarks from September 24 to 25. Wolfe had breakfast with the IFC one morning.<sup>343</sup> I do not recall speaking with Wolfe again before the protests. I use myself as an example because I have good data about my own schedule and interactions, not because I was a potential font of brilliant insight for the president, much less to suggest that he owed me his time. I was however, the Faculty Council chair at Wolfe's largest campus, which has about half of the entire System's students and faculty. It seems at least possible that I might have had some information now and again that Wolfe could have used. More important, unless I was unique in being largely ignored by Wolfe, he was missing many other good sources of data.

In addition, when dealing with student protests, intelligence about student concerns is especially valuable. I am told that Wolfe did not seek opportunities to meet with student government leaders during the protests, and further that he declined to meet when student leaders requested to see him. He therefore not only avoided seeing the protestors directly, as described above,<sup>344</sup> but also missed chances to learn whether the concerns raised by the protestors were broadly shared among the student body.

Wolfe also lacked administrators who could help him communicate with protestors informally. Middleton no longer worked as deputy chancellor, and neither the UM System nor the Columbia campus had a chief diversity officer (CDO).<sup>345</sup> In times of crisis, a CDO often serves as a liaison between top management and

---

<sup>342</sup> Timoshanae Wellmaker, *Law Professor Ben Trachtenberg Elected MU Faculty Council Chair*, COLUMBIA MISSOURIAN (Apr. 16, 2015), [https://www.columbiamissourian.com/news/local/law-professor-ben-trachtenberg-elected-mu-faculty-council-chair/article\\_667a1aa5-d188-57b3-a7c2-5097456b6ab5.html](https://www.columbiamissourian.com/news/local/law-professor-ben-trachtenberg-elected-mu-faculty-council-chair/article_667a1aa5-d188-57b3-a7c2-5097456b6ab5.html) [<http://perma.cc/WJ85-WCTF>].

<sup>343</sup> His performance at that breakfast did not inspire confidence. I asked him a straightforward question, and in response he lied to me in front of the IFC. Another administrator approached me afterward to apologize.

<sup>344</sup> See *supra* Subsection IV.B.ii (describing long delay between the protest which occurred at MU's Homecoming Parade and Wolfe's meeting with protestors).

<sup>345</sup> See Nancy Coleman, *Chuck Henson Announced as Interim Vice Chancellor for Inclusion, Diversity and Equity*, MANEATER (Nov. 10, 2015), <https://www.themaneater.com/stories/uwire/chuck-henson-announced-interim-vice-chancellor-inc> [<http://perma.cc/HQ9N-B6KW>] (reporting appointment of interim chief diversity officer for campus, filling a post which was created in October but until then unfilled); Nancy Coleman, *UM Board of Curators Announces New Diversity Initiatives*, MANEATER (Nov. 9, 2015), <https://www.themaneater.com/stories/uwire/um-board-curators-announces-new-diversity-initiati> [<http://perma.cc/KT8L-FTRT>] (reporting that Curators promised on day of Wolfe's resignation to hire "a first-ever chief diversity, inclusion and equity officer that will be appointed for the UM System").

aggrieved constituents.<sup>346</sup> Wolfe—whose direct communication with protestors was less than fully successful—could have used such assistance.

Further, Wolfe discouraged Curators from speaking to employees on the four campuses, telling them instead to obtain information through his office. I would occasionally receive calls from Curators, who would sheepishly remind me that they were not supposed to be contacting me. Similarly, Loftin had been told not to call the Curators, and when he wanted to chat with one of them, he resorted to texting and suggesting that the Curator call him. Although a university governing board can engage too robustly with students and faculty—a university’s day-to-day operations are appropriately delegated to the president and other employees—Wolfe’s restriction of Board communication with major constituencies went too far in the other direction.<sup>347</sup> Effective university boards communicate with faculty,<sup>348</sup> and the Curators did so very rarely during Wolfe’s presidency.

The Curators have since adopted practices to encourage better communication between the Board and leaders on the four campuses. For example, the Board agreed to send two Curators twice annually to meetings of the Intercampus Faculty Council, which represents faculty on all four UM campuses. The Board also now has occasional meals with student and faculty leaders, scheduled around the time of regular meetings.<sup>349</sup>

## V. BEYOND MISSOURI: FUTURE CHAPTERS OF HIGHER EDUCATION POLICY

Tolstoy wrote that “[a]ll happy families resemble one another, each unhappy family is unhappy in its own way.”<sup>350</sup> Similarly, while I imagine that all universities without problems would be identical, real-world institutions each have their own special struggles. It nonetheless seems likely that studying Mizzou’s experiences could help leaders of other universities to avoid some of Mizzou’s difficulties. After all, many problems manage to recur again and again at academic institutions of all kinds. This Part offers advice to administrators based on Mizzou’s lessons, and it also offers a few suggestions to students seeking institutional change. Along the way, it tries to dispel a few myths about 2015 in Missouri.

---

<sup>346</sup> See WILLIAMS & WADE-GOLDEN, *supra* note 204, at 97.

<sup>347</sup> See Ass’n of Governing Bd. of Univs. and Colls., *Board Responsibilities*, AGB, <https://www.agb.org/briefs/board-responsibilities> [<http://perma.cc/QX9Z-T4MK>] (listing, under “Basic Responsibilities of Governing Boards,” a bullet point indicating that a board should “[i]n concert with senior administration, engage regularly with the institution’s major constituencies”).

<sup>348</sup> See Rick Legon, *The 10 Habits of Highly Effective Boards*, TRUSTEESHIP MAG. (Mar./Apr. 2014) <https://www.agb.org/trusteeship/2014/3/10-habits-highly-effective-boards> [<http://perma.cc/4BLK-6NGJ>] (“The quality of our academic programs also mandates that boards understand and engage with academic administrators and faculty members in more meaningful discussions.”).

<sup>349</sup> See, e.g., Univ. of Mo. Bd. of Curators, *Minutes of the Board of Curators Meeting*, U. MO. SYS. (Feb. 1–2, 2018), <https://www.umsystem.edu/media/curator/1802.pdf> [<http://perma.cc/3TTC-78SW>].

<sup>350</sup> LEO TOLSTOY, *ANNA KARENINA I* (Louise & Aylmer Maude trans., Oxford University Press 1995) (1918).

*A. The Big Picture—Implications for Your Campus and the Country*

I can only hope that few university leaders recognized their own institutions when reading about the dysfunctional relations between the deans, chancellor, and president tasked with responding to the Mizzou protests. Similarly, I hope that most universities can react more quickly than Mizzou did when the situation demands it. That said, personality conflict is not some rare problem observed only in Missouri, and institutional inertia causes many academic institutions to move more slowly than is advisable. After correcting some common inaccuracies about Mizzou's experience, I respectfully offer a few guideposts to trustees and administrators seeking to avoid our problems.

i. Dispelling some Popular Misconceptions about Events in Missouri

Having recited the fall 2015 events at the University of Missouri at some length,<sup>351</sup> I now have an opportunity to correct the record with respect to a few popular misconceptions.

**MYTH #1:** Wolfe and Loftin were fired because the university caved to unreasonable demands of student protestors who played the “race card,” offering “further proof that political correctness on university campuses has a stranglehold on common sense.”<sup>352</sup>

**REALITY:** Loftin was under attack from deans with grievances totally unrelated to racial politics, and his position was precarious before any protests began.<sup>353</sup> Wolfe was inexperienced and unsuited for his position, which the protests revealed.<sup>354</sup> Had Wolfe handled the protests better—as happens on campuses nationwide every year—he likely could have avoided resigning.

**MYTH #2:** Mizzou has a terrible racial climate unusual for American universities.

**REALITY:** Mizzou has had its share of racist incidents,<sup>355</sup> but the magnitude of the 2015 protests and the resulting fallout are better explained by how poorly the

<sup>351</sup> See *supra* Subsection IV.B.ii.

<sup>352</sup> Svrluga, *supra* note 120; see also Seth Merenbloom, *Race-Based Ultimatums Get Tim Wolfe and R. Bowen Loftin Fired from the University of Missouri*, SPORTSHAX (Nov. 9, 2015) <http://archives.sportshax.com/2015/race-based-ultimatums-get-tim-wolfe-and-r-bowen-loftin-fired-from-the-university-of-missouri/> [<http://perma.cc/2KTW-BVVR>].

<sup>353</sup> See *supra* Subsection IV.B.i.

<sup>354</sup> See Mará Rose Williams & Mike Hendricks, *Finding the Right System Leader Will Be Crucial in Fixing a Broken Mizzou*, KANSAS CITY STAR (Feb. 6, 2016, 5:20 PM), <https://www.kansascity.com/news/state/missouri/article58871643.html> [<http://perma.cc/XX86-9M2Q>] (describing process by which Wolfe was chosen and quoting Curator David Steelman calling it “a failed search”).

<sup>355</sup> See Matt Ferner & Nick Wing, *It Shouldn't Be So Hard To Accept That Racism Is A Problem At Mizzou*, HUFFINGTON POST (Dec. 28, 2016), [https://www.huffingtonpost.com/entry/mizzou-racist-incidents\\_us\\_5644f33ce4b045bf3dee583d](https://www.huffingtonpost.com/entry/mizzou-racist-incidents_us_5644f33ce4b045bf3dee583d) [<http://perma.cc/B9L9-5DFG>].

university handled the protests, not by concluding that Mizzou is especially unfriendly to students of color. The grievances raised at Mizzou could have been aired at nearly any university.<sup>356</sup>

MYTH #3: Mizzou is a hotbed of political correctness at which white students are under attack and face constant demands to acknowledge—or “check”—their privilege.<sup>357</sup>

REALITY: Mizzou is engaged in the same diversity and inclusion efforts now in progress across American academia; efforts which were launched in response to real injustices resulting from literally centuries of discrimination. Some white students will feel aggrieved, but the programs designed to promote cultural competency at Mizzou, for example, are similar to those at other institutions.<sup>358</sup>

The boring truth is that rather than being a notable hotbed of either white supremacy or anti-white “reverse racism,” Mizzou has the same racial problems as much of America. We just managed to become famous by handling a few racially-charged incidents in an exceptionally poor way. The good news for Mizzou is that better management in the future can help us avoid repeating our mistakes. The bad news for leaders of other institutions is that because our underlying situation is not unique but is instead all too common, you can suffer the same bad results if you fail to learn from Mizzou’s errors.

## ii. Taking Missouri’s Lessons to other Institutions

Going forward, performing the complex dance that went so poorly at Mizzou will become yet another skill demanded of a successful university president or chancellor. In addition to overseeing subordinates from medical school deans to student affairs directors to chief budget officers, on top of public speaking, fundraising, deciding tenure cases, and managing crises,<sup>359</sup> a campus leader will be expected to provide

<sup>356</sup> See Brandon Griggs, *Do U.S. Colleges Have a Race Problem?*, CNN (Nov. 10, 2015, 8:38 PM), <https://www.cnn.com/2015/11/10/us/racism-college-campuses-protests-missouri/index.html> [<http://perma.cc/54UV-R9AH>] (“The current unrest at the University of Missouri . . . is just the latest and most high-profile in a recent string of racially charged incidents.”).

<sup>357</sup> For examples of such arguments, see RANKIN & ASSOC., *supra* note 155, and Chris Stafford, *Ben Shapiro Slams Political Correctness at MU After Recent Protests*, COLUMBIA MISSOURIAN (Nov. 19, 2015) [https://www.columbiaindian.com/news/local/ben-shapiro-slams-political-correctness-at-mu-after-recent-protests/article\\_8bddae02-8ef7-11e5-96c5-ef3bf7b7a216.html](https://www.columbiaindian.com/news/local/ben-shapiro-slams-political-correctness-at-mu-after-recent-protests/article_8bddae02-8ef7-11e5-96c5-ef3bf7b7a216.html) [<http://perma.cc/2WN5-NCCL>] (discussing conservative commentator stating, among other things, “Wolfe was removed from office for being white and doing nothing wrong.”).

<sup>358</sup> See Griggs, *supra* note 356.

<sup>359</sup> For a discussion of the manifold talents expected of modern university leaders, see generally WILLIAM G. BOWEN, *LESSONS LEARNED: REFLECTIONS OF A UNIVERSITY PRESIDENT* (2011), and STEPHEN JOEL TRACHTENBERG ET AL., *PRESIDENCIES DERAILED: WHY UNIVERSITY LEADERS FAIL AND HOW TO PREVENT IT* (2013) (providing case studies and offering advice to presidents and boards).



enough progress on racial justice to avoid the sort of debilitating events seen at Mizzou in 2015.<sup>360</sup>

If one accepts that the Mizzou protests resulted from a shortage of justice, another myth concerning Mizzou in 2015 is exposed:

**MYTH #4:** The Mizzou protestors deserve “blame” for the financial hardships the university suffered in the years immediately following the protests.<sup>361</sup> The university is paying for the students’ bad behavior, or perhaps for the foolishness of Curators who “caved” to the demands of students.<sup>362</sup>

**REALITY:** The conditions that the students protested were the true cause of the lost tuition and had university leaders addressed them earlier or with greater tact, things likely would have gone differently.<sup>363</sup>

University administrators will need to build and maintain close ties to leaders of their campus minority communities, made up of an ever-shifting group of students, faculty, staff, and alumni. If properly nurtured, these relationships will allow top administrators to understand how they can make their universities more genuinely inclusive, more capable of providing a welcoming educational environment for students of all backgrounds, and an engaging workplace for all employees. No, they cannot eliminate injustice at a stroke, or even during a lengthy career. They would do well to heed the old saying, “It is not your duty to complete the work, nor are you free to desist from it.”<sup>364</sup> Because part of the job is public relations,<sup>365</sup> it will be important to focus not merely on actual progress but also on the appearance of progress. If administrators can communicate that certain concrete improvements have resulted from healthy dialogue with student leaders,<sup>366</sup> those leaders will have greater faith in the system, as well as increased ability to build support among their peers for cooperative engagement as opposed to reflexive opposition.<sup>367</sup> Trust is a

<sup>360</sup> See Freeman A. Hrabowski III, *Go Far Together: Creating a Healthy, Inclusive Culture for Faculty and Staff*, in *LEADING COLLEGES AND UNIVERSITIES* (Stephen Joel Trachtenberg et al., eds. 2018).

<sup>361</sup> See *supra* Section I.C.

<sup>362</sup> See sources cited *supra* note 142 (collecting commentary advancing this myth).

<sup>363</sup> Cf. President Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865) (expressing hope that Civil War would end speedily yet opining that “if God wills that it continue until all the wealth piled by the bondsman’s two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said ‘the judgments of the Lord are true and righteous altogether’”). Lincoln’s reference was to *Psalms* 19:9 (King James).

<sup>364</sup> A RABBINIC ANTHOLOGY 214 (C.G. Montefiore & H.M.J. Loewe eds., 1938) (compilation of Jewish maxims regarding ethics, quoting Rabbi Tarfon from *Pirkei Avot*).

<sup>365</sup> Attention to public relations has importance well beyond issues related to race. Universities should establish emergency response teams—with membership that changes depending on the particular crisis—that include top administrators as well as senior public relations officers.

<sup>366</sup> Another way to describe these successes could be “visible wins.” There must always be some answer to “What have you done for me lately?” The answer need not refer to monetary expenditures, but there must be an answer all the same.

<sup>367</sup> I would offer similar advice to mayors, governors, and presidents. Just as the New Deal was offered by President Roosevelt to save American capitalism from its own excesses—to provide tangible benefits

currency that rivals money in value. Administrators should remember too that one cannot make withdrawals from a bank without having previously paid deposits. If a crisis arises, administrators who have built real relationships can draw upon accumulated goodwill; those who have not will have no luck.

Naturally, however, the time, attention, and money one might direct to such projects will be eagerly sought by all sorts of competing claimants. Plant Sciences will want new greenhouses, the School of Music needs renovations, the School of Nursing requires more space to perform its vital work. Graduate students want day care, family housing, better stipends, and a little more recognition of their importance to the university's teaching and research missions. Some professor in Engineering has filed another grievance, and eventually the chancellor may have to sit for a deposition. A cheating scandal may erupt in the athletic department, and meanwhile the AD needs money to resurface the tennis courts. Updated guidance from the U.S. Department of Education has the Title IX office frantic, and some other federal agency has imposed who knows what new regulatory burden on grant recipients, or doctors conducting clinical trials, or some other already-busy group of people. The temptation will exist to ignore racial justice matters when things on that front seem quiet. This impulse must be resisted. As Dr. King observed in the Birmingham Jail, campaigns for racial justice are inevitably criticized as "untimely," and activists always receive exhortations to "wait."<sup>368</sup> He answered, "There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of injustice where they experience the bleakness of corroding despair. I hope, sirs, you can understand our legitimate and unavoidable impatience."<sup>369</sup> The successful university administrator of the future (and the present) will be one who can reduce the impatience of legitimately aggrieved groups, all while recognizing that their problems will never fully be solved, and that all piecemeal efforts must be executed and financed in a world of limited resources and unlimited plausible requests for effort and money.

### *B. Some Advice for Students*

The bulk of this Article is directed to university administrators, but it would never have been written had Mizzou students not stood up to demand institutional change. I hesitate to advise students about tactics, especially when they protest in search of racial justice.<sup>370</sup> After all, pretty much every civil rights protestor is disliked in her own time, and advice from the "white moderate" is often about the moderate's own comfort.

Nonetheless, events at Mizzou provide some reason for student protestors elsewhere to be cautious, even as the victories of the Mizzou protestors inspire

---

to citizens and thereby decrease the appeal of fascism and communism—governmental leaders must provide "wins" to marginalized communities to prevent their anger from fermenting into hopelessness.

<sup>368</sup> KING, JR., *supra* note 2, at 3, 5.

<sup>369</sup> *Id.* at 6.

<sup>370</sup> *Cf.* FERGUSON, *supra* note 8, at 81–98 (offering advice from an academic perspective that encourages greater radicalism from student activists).

students elsewhere to issue their own demands.<sup>371</sup> Among other dangers, student protestors risk having their efforts coopted by parties with competing interests. For example, the Mizzou protestors became fodder for Republican politicians who attacked the university and threatened to cut its funding.<sup>372</sup> In addition, media attention concurrently helps protestors—by putting pressure on university officials to reach deals—and risks long-term damage to the institutions that protestors seek to improve. If coverage of protests convinces the parents of prospective students that your campus is some kind of racist nightmare, even the best administrators will have trouble recruiting a diverse student body. And if coverage reduces enrollment more generally, then the resulting financial pain will ripple throughout the campus.

I would respectfully urge student protestors to use every method at their disposal to keep dialogue open and to seek constructive engagement with administrators, using highly confrontational tactics only as a last resort. The problem at Mizzou was not that protestors failed in this task.<sup>373</sup> It was instead that university leaders did not respond to the entreaties to talk, which then prompted frustrated students to increase the intensity of their protests. Nonetheless, a focus on engagement is likely to serve student activists well.

I would also encourage student activists to use great care in crafting their demands and other public statements. The scrutiny to which student statements are subjected strikes me as unfair; it seems unreasonable that the occasional silly demand is posted online and mocked nationwide. But the same internet that makes protestors powerful concurrently makes them vulnerable. In the end, even the most perfect statement can be attacked by haters, and respectability politics may be a fool's game. Yet the allies of student activists within the faculty and administrative ranks have far more ammunition when carrying a well-written student statement than when carrying documents with unreasonable demands or lousy grammar. Universities are in the business of transmitting knowledge to the next generation. When demanding change, students should use that knowledge to make their efforts as effective as possible.

Finally, I urge students everywhere to follow the example of Mizzou protestors in promoting non-violence. Mizzou's protestors—both the organizers and the rank-and-file participants—deserve great credit for maintaining peace during times of great stress. The protests involved large crowds, some of whom slept outside for days. Strangers, including national media, supporters, opponents, and random curious citizens, wandered through the quad at will. Protestors were tired and

---

<sup>371</sup> See sources cited *supra* note 137.

<sup>372</sup> See, e.g., Julia Craven, *Here's Yet Another Campaign Ad Implying Police Brutality Protests Are A Bad Thing*, HUFFINGTON POST (June 21, 2016, 5:34 PM), [https://www.huffingtonpost.com/entry/catherine-hanaway-police-ad\\_us\\_57698630e4b099a77b6e6e9c](https://www.huffingtonpost.com/entry/catherine-hanaway-police-ad_us_57698630e4b099a77b6e6e9c) [<https://perma.cc/LCZ3-6JY2>] (describing advertisement of gubernatorial hopeful Catherine Hanaway—a former Missouri Speaker of the House—that referred in the same breath to “riots” in Ferguson and “lawlessness at Mizzou”).

<sup>373</sup> For a thoughtful reflection on Butler's hunger strike from a minister in Columbia, see Molly Housh Gordon, *Grappling with Mizzou Student Hunger Strike*, UNITARIAN UNIVERSALIST CHURCH, COLUMBIA, MO. (Nov. 6, 2015), <https://uuchurch.net/blog/2015/11/06/grappling-with-mizzou-student-hunger-strike/> [<http://perma.cc/CW3J-ED4Q>] (“I must be disturbed not by Jonathan's tactics, but by the moral crisis from which they arise.”).

sometimes afraid.<sup>374</sup> Yet despite the intense scrutiny placed upon the students, it was a handful of faculty and staff who ended up looking bad in viral videos. Even those unfortunate moments involved harsh words and minor scuffles that left no one hurt. I thank Mizzou’s students for modeling how activists can boldly call for change in a peaceful way.

#### CONCLUSION

At the University of Missouri, a new system president and campus chancellor have succeeded the interim administrators appointed in the wake of the November 2015 resignations.<sup>375</sup> Enrollment numbers are rising, with officials expecting an increase of about 14 percent for new freshmen in 2018 compared to the previous year.<sup>376</sup> The budget problems on campus now look more like the usual financial struggles of an American state university than some special set of circumstances unique to Columbia. In a sense, Mizzou has returned to normal, and it is working toward improvement with strategies similar to those of peer institutions.

Chances are, a “new normal” has also arrived in American higher education. Minority students have again awakened to their power, and the very education that universities provide helps them to understand just how much injustice there is to protest. Absent a remarkable and unexpected national racial reconciliation, campuses will continue to be home to intelligent, motivated activists for racial justice. Dr. King observed during the March on Washington for Jobs and Freedom, “In a sense we’ve come to our nation’s capital to cash a check.”<sup>377</sup> He noted that while the beautiful words of the Declaration of Independence and the Constitution promised liberty for all Americans,<sup>378</sup> “Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked insufficient funds.”<sup>379</sup> Like the Declaration, the founding documents of American universities similarly proclaimed their plans to provide the bounty of education to all qualified students. And they too

---

<sup>374</sup> See Mariah Brannan & Jack Witthaus, *At Protest Site, Defeat and Determination Among Signs of Support*, COLUMBIA MISSOURIAN (Nov. 8, 2015), [https://www.columbiainmissourian.com/news/higher\\_education/at-protest-site-defeat-and-determination-among-signs-of-support/article\\_67dcab4c-8665-11e5-92d2-0fd607837438.html](https://www.columbiainmissourian.com/news/higher_education/at-protest-site-defeat-and-determination-among-signs-of-support/article_67dcab4c-8665-11e5-92d2-0fd607837438.html) [<http://perma.cc/HY8J-2QKY>] (reporting on mood one day before Wolfe’s resignation).

<sup>375</sup> See Rudi Keller, *Choi, Cartwright Pitch Plans for University of Missouri to State Lawmakers*, COLUMBIA DAILY TRIB., (Jan. 10, 2018, 8:23 PM), <http://www.columbiatribune.com/news/20180110/choi-cartwright-pitch-plans-for-university-of-missouri-to-state-lawmakers> [<http://perma.cc/7ATH-Q9WL>].

<sup>376</sup> See Katy Bergen, *Mizzou’s Freshmen Enrollment Is on the Rise, and Officials Say it Could Continue to Grow*, KANSAS CITY STAR (May 2, 2018, 4:48 PM), <https://www.kansascity.com/news/local/article210303384.html> [<http://perma.cc/2EZN-MUPQ>] (reporting good news about deposits paid and other indicators).

<sup>377</sup> Dr. Martin Luther King, Jr., *Speech at the March on Washington: I Have a Dream...* (Aug. 28, 1963), <https://www.archives.gov/files/press/exhibits/dream-speech.pdf> [<http://perma.cc/RK5F-YEWQ>].

<sup>378</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776), <https://www.archives.gov/founding-docs/declaration-transcript> [<https://perma.cc/HM9A-87ZS>] (“[A]ll men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”); U.S. CONST. pmbl., <https://www.archives.gov/founding-docs/constitution-transcript> [<https://perma.cc/28HV-D2QH>] (establishing that “We the People of the United States” ordained the Constitution to “secure the Blessings of Liberty to ourselves and our Posterity.”).

<sup>379</sup> King, Jr., *supra* note 377.

bestowed their blessings upon only some Americans, leaving others behind. Administrators should expect continued efforts to cash checks drawn upon the promises universities have made.

There is an old saying in labor relations circles that a union unwilling to strike has no power to help workers, and management unable to take a strike will get rolled every time. Similarly, minority students must maintain the ability to credibly threaten costly unrest, even if they—like workers who know the strike fund has precious little money—generally have no desire to occupy lawns, boycott games, or otherwise miss out on their normal college experiences. Meanwhile, university leaders must have the backbone needed to say no to unreasonable demands, and even to say “not now” to some perfectly reasonable demands that cannot be satisfied in this year’s budget. Yet administrators must also strive to say yes when they can, even when it seems hard and when other priorities intrude. They can tell student activists to “wait” only for so long.

APPENDIX A: *DRAMATIS PERSONAE*

- Jonathan Butler Graduate student in education, University of Missouri. Announced hunger strike in Nov. 2015, demanded ouster of Tim Wolfe. Received master's degree from MU College of Education, 2016.
- Melissa Click Assistant Professor of Communication, University of Missouri. Fired by the Board of Curators Feb. 2016. During 2016–2017 and 2017–2018, Lecturer of Communication Studies, Gonzaga University. Since fall 2018, Assistant Professor of Communication Studies, Gonzaga University.
- Henry C. “Hank” Foley Interim Chancellor, University of Missouri, Nov. 2015–May 2017. Previously served as administrator at UM System and MU campus. Became President, New York Institute of Technology, June 2017.
- R. Bowen Loftin Chancellor, University of Missouri, Feb. 2014–Nov. 2015. Now a member of the MU faculty in the department of physics.
- Michael Middleton Deputy Chancellor, University of Missouri. Retired August 2015. Appointed Interim President of University of Missouri System in November 2015, following resignation of Tim Wolfe. Subsequently the Interim President of Lincoln University. Currently retired.
- Garnett Stokes Provost, University of Missouri, Feb. 2015–Feb. 2018. President, University of New Mexico, as of March 1, 2018.
- Ben Trachtenberg Chair, MU Faculty Council, 2015–2017. Author of this Article. Associate Professor of Law, University of Missouri.
- Timothy Wolfe President, University of Missouri System, Feb. 2012–Nov. 2015.

