

Remarks accepting
The Philip Merrill Award
for Outstanding Contributions to Liberal Arts Education

The Present Danger at Our Leading Universities: What is to be Done?

by The Honorable José A. Cabranes

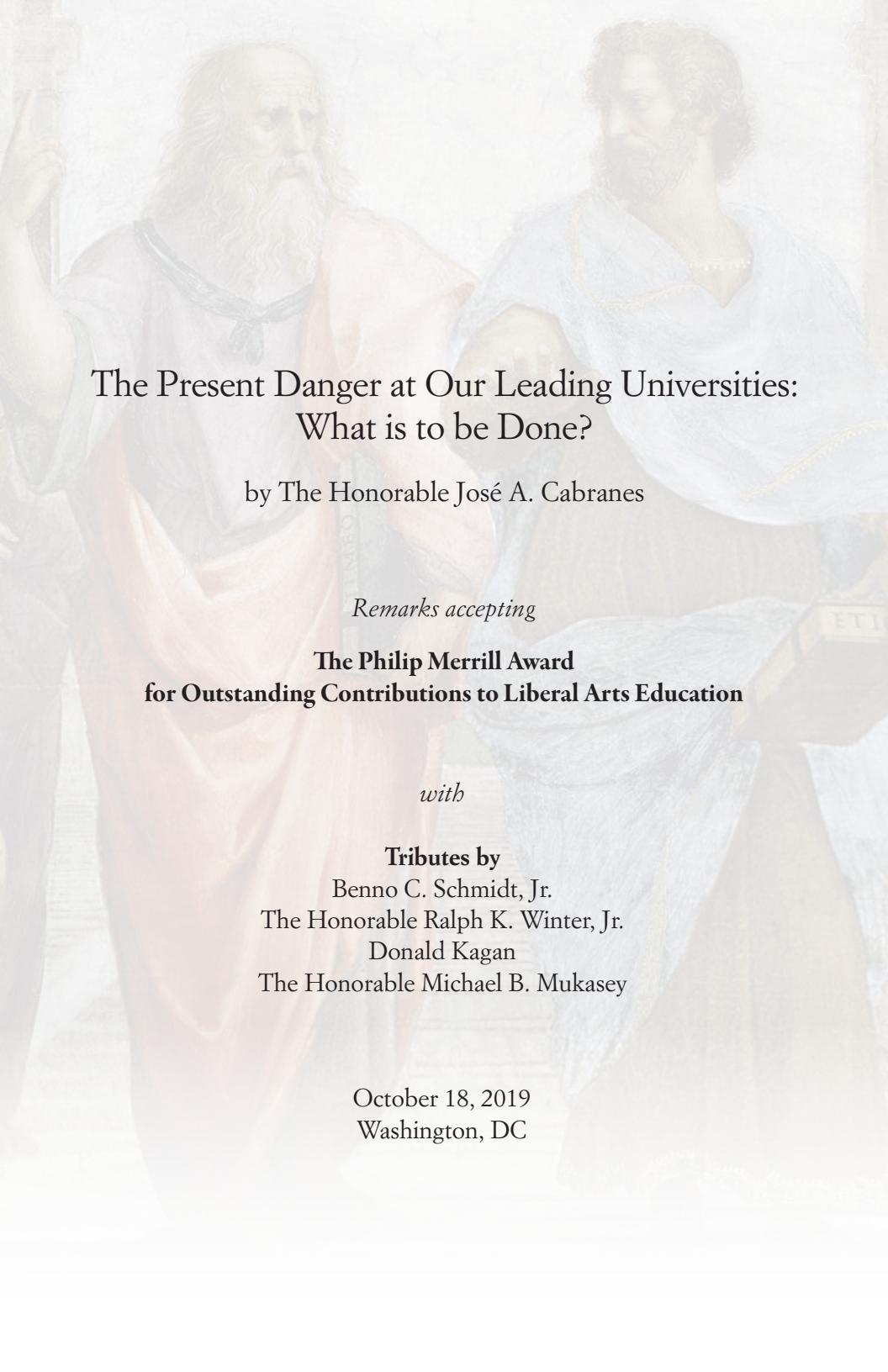
*Tributes by Benno C. Schmidt, Jr., The Honorable Ralph K. Winter, Jr.,
Donald Kagan, and The Honorable Michael B. Mukasey*



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October 18, 2019

Washington, DC

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Dear Friends: I am honored by your presence, and grateful to Dr. Poliakoff and his colleagues for the great work they do to make American liberal education truly liberal and truly an expression of the best of the Western tradition.

It is especially gratifying to be in the presence tonight of several of my heroes in the academic and public life of our country—Judge Michael B. Mukasey, Judge Ralph K. Winter, Professor Donald Kagan and President Benno C. Schmidt. I have observed each of them at close hand—and I know that each is an exemplar of rectitude in the face of dishonest challenges.

To each of these personal heroes, my thanks for the honor of your friendship, and for providing an example of courage in difficult places and difficult times.

Introduction

I am a mere lawyer. I cannot offer you theory or philosophical insights. But as Holmes famously observed, “the life of the law has not been logic; it has been experience.” So I can offer some comments based on decades of observation of major private universities, to which we have entrusted the future of our civilization.

I had long believed, and often argued, that true power in a university lies—and should lie—with its tenured faculty. My job as general counsel,

and as a trustee, was to protect the faculty as the continuing embodiment of the university.

Over the last decade, however, a shift has occurred in university governance. Increasingly, policy is dictated by two new groups: one is a burgeoning non-faculty bureaucracy—including professionals allegedly endowed with the expertise to adjudicate inter-personal conduct. The other group consists of a growing number of full-time students who favor activism over education.

Today, these groups—rather than faculty—are driving some of the most dangerous developments in university life. These developments, of which we are all aware, include:

- The ascension of narrow, ideological fields of study—usually at the expense of the study of the great events and ideas of world history.
- The erosion of the due process rights of faculty and students.
- The rise of a pedagogy of grievance and denigration of America in place of an appreciation for America, warts and all.
- The proliferation of trigger warnings, and ever-more-dangerous efforts to regulate the “permissible limits” of classroom discussion.
- The condemnation of unwelcome ideas as “hate speech.”

The confluence of these challenges, and the rise of the groups that have promoted them, is no accident. They are, I think, symptomatic of a single malady: a deep confusion about the university’s purpose.

Once we recognize that confusion, we can try to counteract its effects. Tonight, I would like to offer a diagnosis and also suggest some pragmatic remedies within the reach of concerned alumni and trustees.

A Dangerous Symbiosis

The dual trends I have identified—a burgeoning non-faculty bureaucracy coupled with the recent surge of a new student activism—reflect

a powerful symbiosis: Ever-needy student activists assert demands that require expansion of the bureaucracy. In turn, this new bureaucracy encourages and facilitates the student agitation. Rinse and repeat.

There is a profound historical irony embedded in this cycle. Previous generations of student activists demanded *freedom* from curricular requirements and parietal restraints. The current era of student activists, however, agitate for *increased* adult supervision. And so they demand—and yes, it is almost always “demand”—new “student life” coordinators, more “equity” officers, more “diversity” deans, and more “sexual climate” professionals. Especially in elite institutions flush with cash, university leaders are all too happy to yield to students’ demands. After all, the creation of new offices and titles provides the simplest way to respond to constituent unrest.

Is there a racial controversy on campus? Create still another “diversity and inclusion” initiative.

Are students protesting perceived failures in the “sexual climate” of the university? Expand the functions and size of the Title IX office.

Once embedded within the university, these insurgent bureaucrats return the favor to the students who invited them in. Through influence over academic evaluations and disciplinary processes, they shield student activists from the consequences of their own actions. Through anonymous leaks to student journalists—who imagine themselves the new Woodward or Bernstein—they maintain controversy at a boil. And through influence over admission decisions and a barrage of ever-growing orientation programs, the insurgent non-faculty bureaucrats ensure a pipeline of new activists.

Sometimes, the new bureaucrats even promote activist causes directly. Consider, for instance, the astonishing jury verdict recently returned against a well-known midwestern college and its “vice president and dean of student life.” This administrator was formerly the college’s “special assistant to the president for diversity, equity, and inclusion[,] and Title IX coordinator.” She was found to have been directly involved

in a student effort to libel and injure a local business on fabricated charges of racism.

Seeking to escape liability, the college insisted that student activists acted without the college's imprimatur. Upon hearing the evidence, the jury disagreed. It delivered a verdict of more than \$40 million.

The Confusion at the Root

How did we get here? How did this new alliance of student activists and allied functionaries supplant the faculty?

The answer reflects a far-reaching intellectual confusion.

Today, too many are either unwilling or unable to maintain a distinction that lies at the core of the liberal democratic project, and at the core of the intellectual tradition of the West. I refer to the distinction between *inquiry* and *action*, between *speech* and *conduct*.

Our First Amendment, of course, is built on that distinction. Long before our Constitution, Socrates stood before the people of Athens and swore that he would “never cease from the practice and teaching of philosophy” but also disclaimed any involvement in politics and the struggle for power.

At one time, not so long ago, it was obvious that universities were the embodiment of Socrates’ distinction: dedicated to reflection, not political action. We understood their purpose was to teach students in methods and habits of free inquiry—in deliberation, assessment of evidence, and the expansion of knowledge.

It was equally clear what universities were *not*: Universities did *not* exist to implement the conclusions of our social, cultural, moral or economic debates.

Maintaining that distinction between inquiry and action has always been crucial to “academic freedom.” It is difficult, after all, to obtain the truth while you are being bludgeoned into submission.

In our time, it is the totalitarian who rejects this distinction, who insists that a society may regulate opinion as it regulates action; that society may control minds as it controls bodies.

And today, the idea that some “speech is violence”—the very conflation of inquiry and action, speech and conduct—is no longer merely an obscure (and obscurantist) academic slogan. Today, that idea threatens the entire project of higher education.

The Confusion Takes Hold

Consider, for instance, the rather remarkable recent change in Yale University’s so-called mission statement. Before 2016, the statement asserted, “Yale has a tripartite mission: to create, preserve, and disseminate knowledge.” The statement is banal enough, but it is just about right.

But in 2016, the current President of Yale announced a new, longer statement. Here are two representative sentences:

Yale is committed to *improving the world* . . . Yale educates *aspiring leaders* worldwide who serve all sectors of society . . .

These two new sentences reveal new priorities. The focus on knowledge is gone, replaced by leadership, practice and world-improvement.

We are witnessing an evolution in the self-understanding of universities—a shift from institutions of *inquiry* and *deliberation*, to institutions of assertiveness and action.

The Rise of Bureaucracy

This shift is, at once, both a cause and an effect of the astonishing rise of the non-academic bureaucracy.

To be sure, universities always retained a small number of professional staff. But this staff understood its role as a supporting role: someone must ensure that the campus is secure, that the papers are in order, and that laws and university rules are obeyed, *so that* the university can perform its function as a place of inquiry.

Indeed, when I served as a university professional, as the legal adviser to three great university presidents—Kingman Brewster, Hanna Holborn

Gray, and A. Bartlett Giamatti—I was pleased to think that my job was to protect our faculty from undue risks and assault.

But now the ambitions of our university staff are greater: the achievement of diversity, inclusion and equity. And so it is the non-faculty professionals—who, unlike the faculty, are dedicated to *doing* rather than *deliberating*—who have taken the lead.

The expansion of the Title IX bureaucracy provides a useful illustration of this strange process. At first, universities treated Title IX as a matter of legal compliance. Perhaps a lawyer or two would, among other things, review the allocation of athletics funds to ensure parity between the sexes.

Now, however, Title IX has metastasized into a vast bureaucracy central to a university's identity. Title IX and related offices oversee orientations, investigations, and mandatory “bystander training”—amounting to the “re-education” of the faculty that I once imagined were the heart of the university.

Title IX compliance is no longer a regulatory detail to be dealt with *so that* the university can get on with its core business. Surveillance and re-education are now *a part* of the university’s business.

And so the university was pulled from its day job as a place of inquiry, and conscripted into the service of social change.

“Rebels Without a Cause”

A similar conceptual confusion has facilitated the rise of today’s student activists.

It may surprise some of you to learn that the faculty plays almost no role in the admissions process at our great universities. Instead, that process has been handed to professional “admissions departments.” Relegated to toothless advisory committees, a faculty member is lucky if she is invited briefly as a spectator to glimpse the making of the sausage.

Unsurprisingly, these “admissions professionals” are less interested in traditional academic criteria—qualities such as scholastic talent and

intellectual openness. Instead, they gravitate toward flashier virtues—virtues such as “the need for change,” “activism,” “leadership,” or “overcoming adversity.”

Predictably, the use of such narcissistic and irrelevant criteria produces a student body ill-fitted to intellectual life.

Students now arrive on campus having been instructed to promote themselves as “social entrepreneurs” or “change-makers.” It is now widespread, if not universal, for applicants to claim to have “founded” some shiny-sounding program or “platform” devoted to beneficent acts.

Upon arrival, these first-year students encounter a fawning president or dean expounding on the fabulous records and unprecedented achievements of these future leaders of America. Compare that obeisant attitude to the simple, self-confident greeting of Yale President Kingman Brewster at the Freshman Assembly—“Welcome to the privilege of Yale.”

The contemporary admissions process thus reflects and advances a transformation of the university from a place of thought to an instrument for social action.

Is it any wonder that students arrive on campus searching for windmills at which to tilt?

The Consequences of the Confusion

As bureaucrats and student activists have come to dominate the university, they have reshaped it in their image. Wherever possible, they have sought to muddle the distinction between intellectual deliberation and political action—thus making certain thoughts, like certain deeds, crimes (“thought crimes,” as prefigured by George Orwell).

When looked at in this light, many seemingly disconnected maladies of today’s university appear plainly as products of a single affliction.

Consider the proliferation of “trigger warnings.” What are these if not the *actualization* of the notion that ideas can be violence?

Or consider the ubiquitous appeals to the authority of “identity” and “lived experience.” I refer, of course, to the classroom comment or essay that begins “As a Puerto Rican . . .” and declares that *I* know things *you* cannot possibly know, that *I* understand things *you* cannot possibly understand, and therefore that *I* must be agreed with. *I* am, after all, the leading authority on *me*.

Such statements are not a form of persuasion. They may be verbal, but like a judge’s ruling from the bench, they embody an act of force—not a moment of inquiry or conversation.

Consider as well the turn toward social ostracism and condemnation in campus controversies—even banishments for a time; Siberia without the *gulag*. And the related phenomenon of forced public “confessions”; struggle sessions without Chairman Mao. Here too, we are witnessing a preference for those tools that will bludgeon one’s opponents, rather than those that persuade.

Or consider the excesses that accompany the ever-expanding anti-harassment efforts. Here too, universities have sought to expand our definitions of actionable conduct. What was once protected speech—expressions of personal warmth, humor, political opinion, even the direct quotation of the title of an essay by James Baldwin—are now causes for an inquisition, apologies, and (of course) for re-education.

Or consider the obsession with sexual and ethnic diversity—and contrast the apparent lack of interest in diversity of opinion. The contrast is no accident; it reflects a vision of the university as a vehicle for implementing social change, rather than as a forum for deliberation.

There is a pattern here. Each of these failures reflects a blurring of the line between inquiry and activism, between speech and conduct, between the process of understanding the world and the attempt to impose our will on it.

What is to be Done?

With clarity about the nature of the disease may come clarity about how to fight it.

First, the current moment calls for a sustained effort to dislodge—to scrape off—these non-faculty barnacles on the backside of the university.

In doing so, we should recognize that the present dangers offer opportunities as well as challenges. The absurd growth in university non-faculty bureaucracies presents a threat first and foremost to faculty. Yale, for instance, recently revised its faculty handbook to expand the authority of administrators in university disciplinary proceedings at the expense of the faculty.*

With the faculty’s core interests threatened, the current moment presents an opportunity to enlist important allies. Besieged faculty and concerned alumni, regardless of differences on other matters, share the goal of eliminating this bureaucratic bloat. And if faculty are not interested in defending their historic centrality in serious universities, no amount of help by trustees and alumni can rescue them.

It is sadly true, of course, that too much of today’s faculty is oblivious to the danger or is simply hiding in place—when they are not actively collaborating in their own disempowerment.

But while faculty power has been eroded, I still believe that the faculty can exercise substantial influence, even if only in self-defense. If they would only wake up.

I remember vividly my concern, years ago, when a great Yale president faced the prospect of a no-confidence vote from an unrepresentative, but active, band of disaffected faculty. I need not have worried. Minutes before the faculty meeting, a troop of science and engineering professors entered, alerted to the danger of that moment by Professor Donald Kagan.

*See e.g., Yale University Faculty Handbook, 25 n19 (Aug 22, 2019) (“If the Provost decides that a matter can be resolved by a responsible administrator or through another University process, the Provost may refer the matter for appropriate disposition.”).

Although rarely attentive to issues of university governance, these science faculty members could still recognize facts—and when called, they were still willing to rise to the defense of the university.

Of course, there is no one quite like Donald Kagan. But perhaps there are some in this next generation who can follow his example.

Trustees must also awaken to the threat and recall their considerable legal authority. It is worth remembering, for example, that, unlike faculty, the coteries of deputy deans, associate provosts, associate vice presidents and assistant directors lack the protections of tenure. Trustees should therefore demand detailed justifications for each and every one of these positions.

Administrators are especially skilled at masking the accurate figures; trustees must remain wary of obfuscation.

Alumni must also become wiser in their philanthropy. In our flagship institutions, bureaucratic bloat is made possible by immense endowments and endless fundraising “campaigns.” For too long, the exchange has been simple: donors provide funds, and in return, they receive recognition and celebration—but little influence, much less control. This should come to an end.

Alumni should decline to provide single-lump gifts. Instead, donors should provide annual support for specific programs—but only as long as certain criteria are met. Earmarked gifts—that is, gifts with “strings attached”—and gifts renewed periodically, are to be encouraged, not denigrated.

Importantly, we must also insist that state officials actually enforce the restrictions on charitable gifts that now cannot be enforced by a donor’s lawsuit.

Next, concerned trustees and alumni should focus their efforts on the admissions processes.

Some concrete suggestions include: the elimination of the narcissistic “personal essay”; greater faculty involvement in admissions decisions; and the requirement that admissions directors publicly announce a reduced emphasis on “leadership” and “activism” in favor of an increased focus on intellectual virtues.

Even such relatively modest steps would transform the expectations and priorities of incoming students—and thus help to reshape the culture of the campus.

Above all, concerned trustees and alumni must get over their inferiority complexes when dealing with academic leaders. They should not shy away from using all available levers, including financial and political pressure, to reassert the university's true mission.

Universities have long enjoyed a somewhat rarified position in American social and political life. Invoking principles of “academic freedom,” academic leaders have successfully resisted attempts by governments, courts, and even trustees to influence their internal affairs.

But as the university wanders from its mission, this deference will evaporate—and it has begun to evaporate. In a series of recent rulings, for instance, courts have declined to defer to politicized university disciplinary decisions and employment decisions. At this same moment, legislative deference to our universities is also rapidly dissipating—as reflected, for example, in new proposals to tax university endowments.

To be clear, I comment on these legal developments simply as a descriptive matter. I intimate no views on any particular case.

But as a citizen, I cannot help but draw a lesson from these legal trends: The farther universities venture from their traditional role as incubators of knowledge, the less deference they will be shown—whether by legislators, by judges, or by trustees and alumni.

Now, then, is the time for those who once hesitated to second-guess the decisions of academic leaders to recover their voices and to speak with confidence.

After all, the reforms I have suggested today are not an infringement on the rights and responsibilities of the faculty. Rather, they are aimed at supporting faculty by clearing *out* the mass of activism and bureaucracy that threaten to overwhelm the intellectual mission of the university.

In essence, I suggest we begin, with tenacity and appropriate circumspection, to remove the barnacles, and allow this ship to sail.

Reasons for Hope

Allow me to end on a note about what is, in many ways, the central target of the new bureaucrats and the new student activists: that target is America itself.

Those who seek to politicize the university, to collapse the distinction between inquiry and action, are undermining a foundational principle of our democracy. And they are doing so in the service of dismantling the American project, turning scholars into soldiers to advance their cause.

They claim, of course, that America—and America’s institutions—are so irrevocably tainted that we must abandon all we have inherited.

The taint is so great and the cause so urgent, we are told, that we cannot bother with niceties like due process, free speech, or the idea of the university as a place for inquiry and deliberation—which are, in any case, merely shields for the privileged. We are instructed that the demand for “justice” is paramount.

Indeed, the new activists and new bureaucrats who seek to transform our universities *also* seek—with the help of confederates in the media—to reframe our country’s past in the service of morose self-loathing, to recast our constitutional and academic principles in the service of their enlightened power.

These efforts will fail.

Beyond the echo chambers of elite academia, the hope of millions around the world demonstrates the lunacy of American self-loathing. Consider, for instance, the continuing testimony of millions of immigrants and would-be immigrants. They are anxious to vote—anxious to vote with their feet—in favor of America and in favor of our storied educational institutions.

To be sure, those who denigrate America and its traditions simultaneously claim to be the champions of America’s newest ethnic minorities. But our newest arrivals, like the generations that preceded them, are eager to learn and embrace our national traditions, not destroy them.

Indeed, it is a form of bigotry to suggest that those of us who are newly-arrived (some of us from the very fringes of the American empire—the empire Jefferson described as the “American empire of liberty”) are irrevocably different, that we must be protected from debate, that we have no choice but to denigrate the very institutions that drew us here in the first place.

But of course, we newly-arrived flock to American universities for the same reason we flock to America—not because America’s principles and institutions are beyond repair, but precisely because they are a source of hope.

So, let the example of the newcomers be a source of strength. Let us proceed with courage and confidence—with the assurance that our efforts to defend the true purposes of the university are part of the defense of the country we love.

* * *

Tributes

The following are tributes given in honor of Judge José A. Cabranes at the presentation of the Philip Merrill Award on October 18, 2019.

Benno C. Schmidt, Jr.

Former President of Yale University and former Chairman of the City University of New York Board of Trustees

It is a distinct pleasure and honor for me to join in this presentation of the Philip Merrill Award for Outstanding Contributions to Liberal Arts Education to an old and treasured friend and staunch ally in battles to protect academic freedom, José Cabranes. The evening has a special meaning for me as I recall with pleasure, and no little pride, my own receipt of the Merrill Award a few years ago in Philadelphia.

One of the wisest moves I made early in my presidency at Yale was to arrange for José to be elected to Yale's governing board, The Yale Corporation. At that time, José was not a close friend of mine. But I knew him by his reputation as a strong and insightful general counsel of the university under Kingman Brewster's time as president, as a federal judge noted for the power of his intellect, and the strength of his commitment to the rule of law.

José was the quintessential university trustee. He understood that the most important responsibility of a trustee is not a cheerleader for the institution or fundraiser for its needs; the most important responsibility of a trustee is to protect the university's values. Of those, the most critical, José understood, was the commitment to academic freedom. Again and again, José was my strongest ally in defending freedom of thought and expression at Yale. José understood that political correctness, group thinking, and conformity of thought are the enemy of the search for truth.

José as a trustee was the embodiment of the principles of Yale’s Woodward Report on Freedom of Expression, one of the greatest documents in the history of American higher education. That report concluded: “The history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable.” That means, in the words of Justice Holmes, “not only free thought for those who agree with us, but freedom for thought that we hate.”

As José wrote in the *Washington Post* after some regrettable backsliding at Yale and other institutions: “Our universities today must pay more than lip service to free expression. They must develop and maintain procedures that protect professors’ ability to teach without fear of retaliation. . . . The choice remains the same: academic freedom or civilizational decline.”

I can think of no one more deserving of the Merrill Award than my old friend and mentor, José Cabranes.

The Honorable Ralph K. Winter, Jr. (by video)

United States Circuit Judge of the United States Court of Appeals for the Second Circuit

Good evening. It’s an honor to be asked to deliver a tribute to José Cabranes, although it is difficult in the three or four minutes allotted to me to describe someone who has such a multifaceted personality, and such a vast knowledge of the events. We first met in 1963 when he was a student at the Yale Law School. Our relationship grew and became close after he returned to Yale as general counsel, and as we both ventured into the judicial realm. When he returned to Yale, I was at the time a faculty member who was called upon to represent conservative students and faculty in internal Yale procedures, in which there was a claim of university course of action against people because of their political views.

After José became general counsel, my role in this regard decreased, because instead of representing people in internal university procedure, I simply made a call to José Cabranes and the matter quietly disappeared. José has a voracious appetite for knowledge of current events in universities, and a deep understanding of the history of American universities, and how they operate. He's a reformer, not a bomb thrower; he's a believer in assimilation, not separation; and he is an American Patriot in the most profound sense of the term. The best description I've ever been able to make of him is what I delivered at an event in which his portrait was presented to the Yale Law School.

At that event, I described José Cabranes as one with whom one had a conversation that was like dealing with a combination of Edmund Burke, Karl Rove, and Cindy Adams. His deep understanding of universities has released him from the need to make nuanced or tortured arguments regarding the need for a university to allow free expression and to have fair and orderly proceedings and evidence before disciplining students. He regards this as so obvious that nuanced arguments tend to serve only as a way of changing the subject to avoid tough responsibilities. He believes universities should ask hard questions and offer a multitude of answers. All too often today, universities provide a mandatory answer and leave the audience to guess, like a contestant on Jeopardy, "What was the question?"

I want to congratulate José Cabranes.

Donald Kagan

Sterling Professor Emeritus of Classics & History at Yale University

I have some stuff about José's legal activities and I decided to . . . You've heard all that. So, let me begin my account of my experiences with him. In the year 1971, which was only a couple of years after I arrived at Yale, he turned to the world that would shape such a great part of his engagement and interest, the world of higher education, accepting an appointment as associate professor of law at Rutgers Law School in Newark. And

when he taught courses in administrative law and international law, he continued to live in New York City. Almost at once, New York City's Mayor Lindsay appointed the young man to the board of directors of the newly created public corporation, the New York City Health and Hospital Corporation.

The next important move, the one most important to me, came in 1975 when Kingman Brewster, president of Yale University, appointed José Cabranes to be Yale's first general counsel, a position he continued to hold under President Hanna Gray, and also Bart Giamatti. Great as his talents are, they could not be confined to New Haven. Among many other commitments to public service, including one as consultant to Secretary of State Cyrus Vance, he rose to positions of ever greater eminence in his judicial capacity. In 1979, he was appointed to a seat on the United States District Court for the District of Connecticut.

I pass over the multitude of public service activities, honors, and expressions of gratitude for his many contributions, public and private, legal, political, and judicial that demonstrate the extraordinary impact he has made in every aspect of public service in which he has taken part. To remember the part of his contribution that has meant the most to me, the commitment to the special importance of higher education, and the need to make certain of its proper role in the democratic environment. I conclude my introductory remarks by taking the liberty of quoting slightly edited things from one of my favorite Cabranes essays that he wrote some years ago in the *Washington Post* under the title, "If colleges keep killing academic freedom, civilization will die, too." And here is what he wrote.

"Recent attempts to shame professors for unpopular views and to curtail the due process rights of those accused of misconduct are cause for alarm. . . . Academic freedom and the tenure system that protects it can seem unnecessary, even perverse, to the many Americans who lack job security. Why should professors be harder to fire than anyone else? The short answer is that academic tenure is essential to democracy

itself. A free society ‘depends upon the free search for truth and its free exposition,’ as the American Association of University Professors noted in 1940. Tenure allows professors to pursue the truth and teach it without fear of retaliation. . . . Until recently, attacks on tenure came mostly from the political right. . . . The tables have turned. Academic freedom now attracts opposition largely from the left, while conservative organizations . . . defend it most vigorously.

“Certainly, today’s critics of academic freedom rarely deny that professors should be able to write and teach freely. But they nonetheless insist that professors should exercise such liberty in the shadow of other values, such as civility, sex equality and social justice. While these are worthy ideals, they can become tools for suppressing free expression—just as anti-communism once was. No one can doubt that we should strive for civility, but problems arise when we are told that ‘uncivil’ speech has made a campus ‘unsafe’—and that university officials should make a campus safe again by punishing uncivil speakers.

“To combat these threats to ‘safety,’ campus administrators have morphed into civility police. On some campuses, ‘bias response teams’ investigate professors’ online comments. . . . One can easily imagine dueling ‘watchlists’ compiled by liberal and conservative activists with the shared aim of chilling unwanted speech. . . .

“Nobody can doubt that sexism, along with other forms of pernicious discrimination, can create problems on campuses. But universities can fight these evils without sacrificing the due process rights that have long guarded professors’ freedom to teach and write. . . . In the 1960s and 1970s, student activists demanded that Yale exclude noxious speakers from campus, including the segregationist governor George Wallace of Alabama. In response, Yale’s president appointed a committee chaired by the eminent historian C. Vann Woodward to examine freedom of expression at Yale.”

Of course, you’ve all known about that.

“The Woodward Committee issued a report that celebrated freedom of expression as a university’s primary obligation. Yale can and should create an inclusive campus, the report argued, but never at the cost of intellectual freedom.”

For some time, my good friend José Cabranes and I, our students, and our confreres enjoyed the great gift of the benefits provided to us all by the Woodward Report. But in recent years, the principles on which it stood have come under increasing challenge, now threatened from a different political direction. By his characteristic wisdom and courage, he has warned us that “Our universities today must pay more than lip service to free expression. They must develop and maintain procedures that protect professors’ ability to teach and learn without fear of retaliation. While political alignments may have flipped, the choice remains the same: academic freedom or civilizational decline.”

Thank you Judge Cabranes for your wisdom and courage and for all you have done to preserve the academic freedom that is so crucial and essential an element in the creation and defense of a democratic society.

The Honorable Michael B. Mukasey

Former Attorney General of the United States

Good evening. I’ve been told that I have between three and four minutes to deliver these remarks about Judge Cabranes. If you consider that in 1863 Abraham Lincoln took less than three minutes to deliver at Gettysburg what I think is generally regarded as the greatest speech in American political history, you might be tempted to reach the facile conclusion that I have enough time. But Lincoln didn’t have to deal with the range and depth of Judge Cabranes’s intellect, his understanding of American political history, or the qualities of mind and character that turn every conversation with him into a feast for the mind. In fact, I’ve never had a conversation with Judge Cabranes that’s lasted for less than 20 minutes, and I’ve never wanted to.

All Lincoln had to discuss were the foundational principles of the United States, and their relationship to the sacrifice and violence of the Civil War, a comparatively modest challenge. However, having been given a job to do and a short time in which to do it, and having already wasted close to a minute of my allotted time complaining about how tough the job is, I think I should probably turn to the task at hand.

My credential for taking on this job is that I first got to know Judge Cabranes well in 1964 at Yale Law School, where his studies focused on international law, or public order of the world community, as it was then called by Professor Myres McDougal. My introduction to his wisdom came during the opening day cocktail party when we were approached by a Taiwanese judge who was studying for an LL.M.

He came over and José asked him how he was enjoying Yale, and the judge smiled and responded, “International law.” And José smiled back at him and said, this time very slowly, “No, I meant, how do you like it here at the Yale Law School?” And the judge smiled again and replied, “Professor McDougal.” It became clear that “International Law” and “Professor McDougal” were the only English words that that judge knew, but José was quick to explain to me how deft a practitioner of international relations Professor McDougal was, and how important it was that this judge receive an LL.M. from Yale and return to his country so that he could espouse and stand for the values of our country, whatever he was able to assimilate here.

That was my introduction to Judge Cabranes and indirectly to Professor McDougal’s subtle understanding of international politics. More seriously, and despite the limitations of time, I can at least try to follow the example that Judge Cabranes sets in the discipline with which he has addressed the issues he’s dealt with, from free speech, to sentencing in criminal cases, to what actually constitutes international law, to the proper role of judges, particularly when their decisions have implications for our relations with other countries. One place to start

might be with a brief recitation of some things that he is against. In a time when public discourse seems to tend more toward narratives than toward objective facts and rules of general application, he rejects political and legal cant at every turn.

So, for example, he has stood against the idea that we must balance free speech against how that speech might make some people feel or claim they feel; against the idea that the pronouncements of international bodies or professors of international law can and should provide the basis for deciding cases and controversies in our courts; against using our courts as the forum to adjudicate controversies that arise in foreign countries by applying expansive views of federal jurisdiction.

But it would do him an injustice to suggest that he is best appreciated by what he is against. That misses the point. The reason he has spoken out against those things is that he believes strongly, as did Pascal, that the first rule of morality is to think clearly, that the values of Western culture are the patrimony of anyone who takes the trouble to study them, and in the values of Western Civilization exemplified, but by no means limited to, the United States. He has noted, as have others, that the liberal world order is not the natural order of things. It isn't just there. It has to be protected by the might of the United States and its authority as the indispensable nation; exercised principally by the political branches of government rather than by the judicial branch. Those are ideas that have fewer defenders these days than they used to. And we're fortunate that Judge Cabranes has been and will continue to be one of them.

Well, as the estimable Joe Biden said during a debate not long ago, "My time is up."

Of course, I haven't really succeeded in doing justice to our honoree, but there's one redeeming feature for these inadequate remarks, and that is that we have among us the man himself, and I shouldn't delay any further the time in which you get to hear Judge Cabranes, who richly deserves this award. Thank you very much.

The Honorable José A. Cabranes



José A. Cabranes was appointed United States Circuit Judge of the United States Court of Appeals for the Second Circuit in 1994. At the time of his appointment, he was Chief Judge of the United States District Court for the District of Connecticut, where he had served since 1979 as the first Puerto Rican appointed to the federal bench in the continental United States. In 2013, he was appointed by Chief Justice Roberts to serve on the three-judge United States Foreign Intelligence Surveillance Court of Review (FISCR) and, in 2018, as Presiding Judge of the FISCR. Previously, he served as general counsel of Yale University; practiced in a New York City law firm; taught law on the full-time faculty of Rutgers University Law School and the adjunct faculty of Yale Law School; and served as Special Counsel to the Governor of Puerto Rico and as head of the Commonwealth of Puerto Rico's office in Washington, DC. He has also served as chairman of the board of directors of Aspira of New York, a national organization that helps inner-city Hispanic youth prepare for college.

As a former trustee of Yale, Columbia, and Colgate universities, Judge Cabranes promoted academic freedom, challenged restrictive speech codes and bias intervention training, and defended the academic tenure and due process rights of professors. His work to republish the C. Vann Woodward Report and exhort Yale to return to its national role of defending the First Amendment has made a powerful difference for academic freedom and freedom of expression at America's colleges and universities.

Judge Cabranes received his B.A. from Columbia College, his J.D. from Yale Law School, and his M.Litt. in International Law from the University of Cambridge.

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Throughout his career, Mr. Merrill was an outspoken proponent of academic excellence and an articulate spokesman for the importance of historical literacy in a free society. Mr. Merrill was a founding member of ACTA's National Council.



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