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COUNCIL: 2014-2015 Year-End Report of the Committee on Open Expression

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Committee Charge

For nearly half a century, the University of Pennsylvania's Guidelines on Open Expression have upheld and protected "[t]he freedom to experiment, to present and examine alternative data and theories; the freedom to hear, express and debate various views; and the freedom to voice criticism of existing practices and values [as] fundamental rights" (*provost.upenn.edu/policies/pennbook/2013/02/15/guidelines-on-open-expression, I.A*). These rights are so foundational to the University's mission that they "shall take precedence" over any "other University policies" that conflict with them (I.A). In order to safeguard these rights, the Guidelines created the Committee on Open Expression as a standing committee of the University Council (I.C). Its standing charge and "major tasks [are]: [1] participating in the resolution of conflicts that may arise from incidents or disturbances implicating these Guidelines; [2] mediating among the parties to prevent conflicts and violations of these Guidelines; [3] interpreting these Guidelines; [4] advising administrative officers when appropriate; and [5] recommending policies and procedures for the improvement of all levels of communication" (I.C).

Meetings

While Penn has an admirable commitment to and culture of open expression, maintaining that culture requires vigilance and continued efforts to strengthen and improve it, both by responding to recent situations and by taking proactive measures to prevent problems that have arisen at other universities. Fulfilling that responsibility, the Committee was more active than it had been in recent years. It held eight meetings of the full Committee, plus two meetings of a subcommittee considering issues of open expression in cyberspace and new technologies, plus one public hearing soliciting comments on an interpretive rule. In addition, the chair and members of the Committee consulted widely with Penn administrators, faculty, staff, students and student groups across campus in an effort to understand the state of open expression at Penn and solicit areas for improvement and suggestions for reform.

Major Issues Addressed by the Committee

The Committee spent most of the year considering possible measures to address two issues: first, at a number of universities, invited speakers have recently been disinvited or withdrawn under pressure, jeopardizing students' and others' ability to hear and debate a wide range of viewpoints and perspectives. Second, since the Guidelines were last amended 22 years ago, email, the internet, social media and a wide range of new information technologies have become important venues for and means of open expression.

The Committee decided to address both issues by adopting two "rules to interpret or give more specific meaning to the Guidelines" (IV.B.1). Accordingly, the Committee proposed two rules in the March 3, 2015 issue (and again in the March 17, 2015 issue) of *Almanac*. On March 26, it held a series of three "open hearing[s] on the proposed rule[s] [to] receive the views of individuals or groups," receiving written and oral testimony from two Penn faculty members, one administrator and four leaders of student organizations, all of

whom supported the proposed rules as written. The Committee, at its final meeting, then unanimously adopted the two rules as proposed by a vote of 13-0. The rules thus satisfied all of the Guidelines' requirements for adopting interpretive rules, and the Guidelines' procedures for adopting them take precedence over any "other University policies" (I.D).

Under the Guidelines on Open Expression, "[t]he University shall publish [such validly adopted interpretive] rules...at least once each academic year in a manner that brings them to the attention of members of the University Community" (III.A.1). The University Council Steering Committee will consider in the fall of 2015 whether to incorporate these interpretive rules into the *PennBook* as a means of complying with the Guidelines' annual-publication requirement.

The speaker-invitation rule underscores Penn's history of never having disinvited a commencement speaker based upon the speaker's views or controversial nature. It forbids exerting any duress upon an event organizer or speaker to withdraw from speaking. The Guidelines already require consulting with the Committee before denying a room reservation for any other reason than a prior reservation (III.A.2.d), and the interpretive rule extends that procedure to denials of authorization for events or provision of logistical support. Finally, the speaker-invitation rule encourages bringing any complaints or alleged violations to the Office of the Vice Provost for University Life and the Committee.

The electronic-media rule notes that open expression in electronic media is "equally protected to the same extent, under the same principles and subject to the same limitations as non-digital forms of communication." The full text of both rules, as proposed and adopted, is at www.upenn.edu/almanac/volumes/v61/n25/open-expression.html

Topics to Address During the 2015-2016 Academic Year

Several topics warrant further study and possible improvements next year:

- 1) improving communication across Penn's various schools and departments, where open expression and the equal availability of room reservations may be issues;
- 2) increasing students' and others' correct awareness of the Guidelines, the new interpretive rules and the roles of the Committee on Open Expression and the Office of the Vice Provost for University Life;
- 3) improving means of learning about potential open-expression problems earlier, so that the Office of the Vice Provost for University Life and the Committee can mediate and resolve or defuse them at earlier stages;
- 4) clarifying and communicating more effectively to persons outside of Penn, especially abroad, when speakers speak only for themselves and not for Penn as an institution, and the relationship of that understanding to Penn's international and foreign outreach, centers and institutions; and
- 5) incorporating the values of free speech and open expression into Penn's New Student Orientation programming, including a possible web-orientation module, Penn Reading Project book and speaker events (perhaps in conjunction with the National Constitution Center).

2014-2015 Committee on Open Expression Members

Chair: Stephanos Bibas; **Administrative Liaisons:** Karu Kozuma, Katie Hanlon Bonner; **Faculty:** Stefan Both, J. Margo Brooks Carthon, Bruce Giantonio, Saurabh Jha, Lauren Ristvet, Bernard Shapiro, Jim Sykes; **Graduate Students:** Sai Lohith Gali Ramesh, Eleanor R. Marchant, Changru Tu; **Undergraduate Students:** Jane Meyer, Aaron Senior, Mikayla Vague; **Staff:** Donna Gladstone, Eisha Moore.

Ed. Note: The other University Council year-end reports for 2014-2015 were published in a supplement to
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and are available at <https://almanac.upenn.edu/archive/volumes/v61/n33/pdf/050515-supplement.pdf>

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