



**The Final Report of
the Commission on Academic Freedom
and Freedom of Expression**

Submitted to President Farnam Jahanian

Contents

Executive Summary	2
Commission Charge	2
Committee Structure for Achieving Mission	2
Closure	4
Committee Membership.....	5
Final Report.....	7
1. Introduction and Organization of this Report.....	7
2. Commission’s Origin, Charge and Organization	7
3. Affirmation of the Importance of Academic Freedom and Freedom of Expression....	8
4. Recommended Actions	11
5. Framework for Thinking About Relationship Between AF/FoE and DEI.....	12
6. Committee A Activities: Basic Education and Listening.....	16
7. Committee B Activities: Literature collection, moderated discussion, and education- based documentation	18
8. Committee C Activities: Recommendations for Policies, Procedures and Practices .	21
9. Closure.....	22
Appendices.....	23
Appendix A: Potential Revisions to CMU’s Hiring Policy.....	23
Appendix B: Suggested Text on AF/FoE in the Classroom	26
Appendix C: Suggested Revision to the Freedom of Expression Policy	28
Appendix D: Suggested Revised Policy on Separation of Individual’s and Institution’s Interests.....	36
Appendix E: Final Report of Committee C Working Group #2.....	38
Appendix F: Final Report of Committee C Working Group #3	45
Appendix G: Committee A Lecture Summaries	47
Appendix H: Committee Membership.....	50

Executive Summary

Commission Charge

In December 2020, Carnegie Mellon University (CMU) President Farnam Jahanian launched the Commission on Academic Freedom and Freedom of Expression (AF/FoE) with the following summarized charge ([full charge here](#)):

1. Create forums to discuss and explore the meaning and inherent value of both freedom of expression and academic freedom.
2. Engage the campus community in discussion about the tension between upholding freedom of expression and supporting a campus environment that is inclusive and respectful. After conducting such community discussions, provide recommendations (including any changes to the [Freedom of Expression Policy](#)) on how the university can promote civil discourse and manage conflict.
3. Explore how academic freedom as well as professional codes of conduct pertain to the expression of opinions in both professional and private capacities and evaluate the current language in CMU's [Code of Business Ethics and Conduct](#).
4. In addition to considering these macro issues, determine how they apply to the following questions related to university policies and practices while avoiding any political or ideological litmus tests:
 - a. Making appointments for positions such as fellows, artists-in-residence, entrepreneurs-in-residence, visiting faculty, professors of practice and the like; and
 - b. Hiring a highly visible public figure.
5. Share updates with the campus community and provide an interim report to the President.

Committee Structure for Achieving Mission

The Commission organized into three committees:

1. Committee A focused on basic education and listening;
2. Committee B focused on identifying key themes emergent from literature collection, moderated discussion and education-based documentation and identifying practices that would facilitate community understanding; and
3. Committee C focused on policies, procedures and practices.

Their activities are briefly summarized here.

Committee A Summary: Basic Education and Listening

Focused on outreach and educational efforts, Committee A discussed forums intended to engage the campus community in discussion about upholding freedom of expression and supporting a campus environment that is inclusive and respectful.

Committee A hosted four virtual lectures with notable authors and one in-person panel discussion with members from the Bipartisan Policy Center, all of whom shared their expertise in the realm academic freedom and freedom of expression.

1. [Keith E. Whittington, Ph.D.](#), William Nelson Cromwell Professor of Politics, Princeton University;
2. [Randall L. Kennedy, J.D.](#), Michael R. Klein Professor of Law, Harvard Law School;
3. [Sigal Ben-Porath, Ph.D.](#), Professor of Education, University of Pennsylvania; and
4. [Erwin Chemerinsky, J.D.](#), Dean, University of California Berkeley School of Law.
5. Bipartisan Policy Center, Author of [Campus Free Expression: A New Roadmap](#)

All five events included a speaker presentation, a Q&A discussion with a Commission moderator, and a student-only session with a student moderator from the Commission. All of these lectures were recorded and are accessible online at: [The Commission on Academic Freedom and Freedom of Expression — Leadership — Carnegie Mellon University \(cmu.edu\)](#). [Appendix G](#) presents a summary of each of these presentations.

Committee B Summary: Literature Collection, Moderated Discussion and Education-based Documentation

Committee B undertook activities to provide a foundation for informed discussion of AF/FoE within the CMU community through benchmarking existing literature, education-based documentation, and pertinent historical and legal cases. They identified key issues that lack consensus among community members and that indeed are difficult to resolve more generally, such as how to identify and whether and how to address the expression of blatant untruths. Their work provides initial resources to foster ongoing discussions and aid the community to delve more deeply where desired. Recommended actions include establishing a variety of activities to encourage engagement and prepare community members to meet divergent points of view respectfully and capably. AF/FoE content will be featured in activities such as new curricula, formal student credentials, orientation activities and university web presence.

Committee C Summary: Recommendations for CMU Policies, Procedures and Practices

Committee C divided into three working groups that covered hiring, speech in the classroom, and specific changes to current policies, respectively.

Working Group 1 produced three proposals to reduce the risk that Carnegie Mellon's current decentralized hiring approach could allow one unit to create harm to the entire university.

Working Group 2 produced several recommendations concerning policies and practices on AF/FoE as it relates to the classroom. These were based in part on focus group interviews conducted with key administrators that sought to characterize the nature of reported problems and existing avenues for resolution.

Working Group 3 reviewed existing policy documents pertaining to AF/FoE. They propose (1) A revised and expanded Freedom of Expression policy (proposed text in [Appendix C](#)), (2) A brief [addition](#) to the Code of Business Ethics and Conduct to clarify that "when working for the university" means while acting in a professional capacity, not merely having the status of being an employee, and (3) Updates and changes to the university Policy on Separation of Individual's and Institution's Interest (proposed text in [Appendix D](#)).

Closure

The Commission completed the majority of its activity in March 2022, completed and submitted this report to the President in April 2022, and had as their first recommendation the creation of an Implementation Committee to be led by the Provost so as to implement the other recommendations.

Committee Membership

Jim H. Garrett Jr., Chair, Provost and Chief Academic Officer

Jon Caulkins, Vice Chair, H. Guyford Stever University Professor of Operations Research and Public Policy, Heinz College

Bobby Klatzky, Vice Chair, Charles J. Queenan, Jr. University Professor of Psychology and Human-Computer Interaction, Dietrich College of Humanities and Social Sciences

Jonathan Aldrich, Professor, Institute for Software Research and Computer Science Department, School of Computer Science

Erica Cochran Hameen, Assistant Professor, Architecture, College of Fine Arts; Co-Director, Center for Building Performance & Diagnostics; Director of Diversity, Equity and Inclusion (DEI), College of Fine Arts

Lorrie Cranor, FORE Systems Professor, Director and Bosch Distinguished Professor in Security and Privacy Technologies, School of Computer Science

Phuong (Phoebe) Dinh, Doctoral student, Dietrich College of Humanities and Social Sciences

Scott Dodelson, Professor of Physics and Department Head, Mellon College of Science

Rebecca Doerge, Glen de Vries Dean of the Mellon College of Science

Evan Feder, Master's student, School of Computer Science

Holly Hippensteel, Associate Vice President for Community Standards & Diversity Initiatives, Office of the Dean of Students

Alex Jackson, Master's Student, Heinz College of Information Systems and Public Policy

Mark Kamlet, University Professor of Economics and Public Policy; Provost Emeritus; Heinz College and Dietrich College of Humanities and Social Sciences

David Kaufer, Mellon Distinguished Professor of English, Director of Rhetoric Program, Dietrich College of Humanities and Social Sciences

John Lehoczky, Faculty Senate Chair and Thomas Lord University Professor of Statistics, Dietrich College of Humanities and Social Sciences

Golan Levin, Director, Frank-Ratchye STUDIO for Creative Inquiry, Professor of Art, School of Art, Center for the Arts in Society

José M. F. Moura, Philip L. and Marsha Dowd University Professor, Electrical and Computer Engineering, College of Engineering

Megan Monaghan Rivas, Interim Head of School, Associate Professor, Dramaturgy, College of Fine Arts

Anne Skaja Robinson, Trustee Professor and Department Head Chemical Engineering, College of Engineering

Denise Rousseau, H.J. Heinz II University Professor of Organizational Behavior and Public Policy, Heinz College

Richard Scheines, Bess Family Dean of the Dietrich College of Humanities and Social Sciences

Julia Scherb, Undergraduate Student, Dietrich College of Humanities and Social Sciences

Alan Scheller-Wolf, Richard M. Cyert Professor of Operations Management, Tepper School of Business

Peter Spirtes, Marianna Brown Dietrich Professor and Head of Philosophy, Dietrich College of Humanities and Social Sciences

Molly Wright Steenson, Vice Provost for Faculty; Associate Professor, School of Design; K&L Gates Associate Professor of Ethics and Computational Technology

David Touretzky, Research Professor, Computer Science Department and Center for the Neural Basis of Cognition, School of Computer Science

Jeanne VanBriesen, Duquesne Light Company Professor, Civil and Environmental Engineering and Engineering and Public Policy, College of Engineering

Mary Jo Dively, Advisor to the Commission, Vice President and General Counsel

Patience Whitworth, Staff to the Commission, Associate Vice Provost for Operations and Strategic Initiatives

Final Report

1. *Introduction and Organization of this Report*

In December 2020, Carnegie Mellon University (CMU) President Farnam Jahanian launched the Commission on Academic Freedom and Freedom of Expression (AF/FoE). This document reports on the charge and activities of the Commission.

After summarizing our charge ([Section 2](#)), we begin with an affirmation of the principles of Academic Freedom and Freedom of Expression (AF/FoE) ([Section 3](#)), a list of recommended action items ([Section 4](#)), and a framework for thinking about potential tensions between AF/FoE and commitments to Diversity, Equity and Inclusion (DEI) ([4.0 Framework for Section 5](#)), before proceeding to describe the work and findings of the Commission's three Committees:

Committee A: Basic education and listening ([Section 6](#))

Committee B: Literature collection, moderated discussion, and education-based documentation ([Section 7](#))

Committee C: Policy, procedures, and practices ([Section 8](#))

The Committee Membership is shown in [Appendix H](#).

2. *Commission's Origin, Charge and Organization*

In President Jahanian's [December 3, 2020, letter to the community](#), the Commission on Academic Freedom and Freedom of Expression (henceforth referred to as the Commission) was charged to:

1. Create forums through which students, faculty and staff can discuss and explore the meaning and inherent value of both freedom of expression and academic freedom, including how they are distinct and the ways in which they collectively support our academic mission.
2. Engage the campus community in discussion about the rising tension between upholding freedom of expression and supporting a campus environment that is inclusive and respectful. After conducting such community discussions, provide the commission's recommendations on how the university can promote civil discourse and manage situations when these core values come into conflict, including how these considerations may affect the university's [Freedom of Expression Policy](#).

3. Explore how academic freedom as well as professional codes of conduct pertain to the expression of opinions in both professional and private capacities, with a particular focus on the contemporary context of social media and internet communication. In doing so, evaluate the current language in CMU's [Code of Business Ethics and Conduct](#), which specifically states that it is applicable to "individuals who are paid by the university when they are working for the university, including faculty, staff and students when working for the university."
4. In addition to considering these macro issues, determine how they apply to the following questions related to university policies and practices:
 - a. Does our current practice of affording wide discretion to the heads of departments, centers, and institutes to make appointments for positions such as fellows, artists-in-residence, entrepreneurs-in-residence, visiting faculty, professors of the practice and the like, without further substantive review, serve the university well, or should additional levels of review be required, and if so, in what circumstances?
 - b. Should there be an additional process established when considering the hire of a highly visible public figure, while ensuring that any such process should avoid including any type of political or ideological litmus test?
5. Share updates with the campus community on the progress of this commission as its work unfolds, as well as provide an interim report by the end of June 2021.

Please note that the Commission acknowledges that its deliberations were implicitly almost exclusively focused on the Pittsburgh campus.

3. Affirmation of the Importance of Academic Freedom and Freedom of Expression

3.1. Core Values of Academic Freedom and Freedom of Expression (AF/FoE)

Freedom of expression and academic freedom are core values that are essential to well-functioning democracies and well-functioning universities. Yet in present times, these core values are under attack from polarized political and ideological groups. A recent national poll reported that fewer than half of students believe free speech rights are secure, down from almost three-quarters as recently as 2016.¹ Another poll found that fully half of academics in the U.S. report feeling "the need to hide or self-censor my political beliefs

¹ https://knightfoundation.org/wp-content/uploads/2022/01/KFX_College_2022.pdf

when I am on campus.”² Public condemnation of actions by universities that support these values is increasingly common, swift and strident. Concerns are not limited to college campuses; the *New York Times* Editorial Board summarized it bluntly as, “America has a free speech problem.”³

At Carnegie Mellon, our commitment to defending AF/FoE is uniform and universal. As a community, we will defend the right of members of our community to free expression — even if the content is controversial, unpopular or perceived as hurtful. We also will defend the right of members of our community to protest or counter content that is controversial, unpopular or hurtful. At the same time, we strongly encourage members of our community to be mindful of shared university values and aware of how their speech might affect others. In particular, an essential component of academic freedom is for all members of our community (or invited visitors) to have the sense of being truly welcomed to contribute to discussions, even when they or their expressed ideas are in the minority within the campus community.

3.2. Limitations of Freedom of Expression and Academic Freedom

Not all speech is protected. Speech acts can violate the bounds of AF/FoE, for example, when they meet the legal standards of threat or harassment. The university may sanction or dismiss those whose statements violate the law.

Speakers who are acting as representatives of the university (e.g., those who hold senior administrative positions or act on the university’s behalf) generally are inherently presumed by others to be expressing its policies and norms. When in this role, they are constrained to appropriately reflect community standards and values. Inasmuch as AF/FoE is a community value, the rest of the community should not expect such individuals to denounce protected speech that is offensive, nor should a refusal to do so be misconstrued as an endorsement of that speech.

When members of our community speak independently of their university affiliation, they generally are not subject to such constraints. Notwithstanding the principle of shared governance, faculty who are not senior administrators should not be presumed to be speaking for the institution merely by virtue of being a faculty member. However, these same faculty should take care to ensure that their independence from the university is

² <https://li.com/wp-content/uploads/2022/01/Legatum-Institute-Is-Academic-Freedom-Under-Threat.pdf>

³ <https://www.nytimes.com/2022/03/18/opinion/cancel-culture-free-speech-poll.html?searchResultPosition=2>

clear and the nature of the forum does not cause confusion as to whose views they are expressing.

The classroom is a place where speech is intended to have legitimacy and relevance to pedagogy. It is not a platform or forum for the expression of personal ideologies unrelated to what is being taught. Students are a captive audience in most courses. Teachers should be aware that by virtue of their status, signaling their personal opinions can have a chilling effect on the speech of others with contrasting views. Classrooms should be places where students feel free to express views and values that are in the minority, meaning in the minority within broader society or within the minority on that campus, program, or classroom. That said, although students have legitimate expectations that some things will not be said in the classroom, they do not have a right to be taught only by people who avoid expressing offensive views outside of it.

3.3. Freedom of Speech and Academic Freedom are not Synonymous

Free speech, within legal boundaries, is protected by the First Amendment and extends to all citizens of the United States. Although a private institution, the university has extended broad First Amendment free speech protections to members of our community when on our campus or in connection with university activities, which would provide protection to speech on a wide range of issues, including matters of general public concern as well as academic issues. The university also has extended certain first amendment free speech protections to members of the public, when invited to or otherwise on campus. Since students are not captive audiences outside of the classroom, they cannot expect the university to intervene or punish professors, staff or fellow students for protected public speech.

Academic freedom refers to the right of members of the academic community to select the topics of their teaching and research and participate in university governance without being targeted for reprisal as a result of their views. AF is adopted by consensus and becomes formally binding via institutional policies and employment contracts, but it has limited scope, and may be subject to local constraints. Members of the community should not view AF as a platform that allows them unlimited expression, especially in the classroom (as described above).

3.4. Freedom of Speech and Academic Freedom and the Goals of Diversity, Equity and Inclusion (DEI)

AF/FoE fundamentally supports and protects DEI goals because it protects the rights to express views held by only a minority. Furthermore, AF and FoE comprise their own core values and are important in many instances that are simply independent of DEI considerations. Although AF permits the expression of views that are inconsistent with DEI values, such conflicts tend to be infrequent, in part because AF protections in the

classroom apply only to statements germane to the subject being taught. Nevertheless, while systematic suppression of minority views tends to be found most often where AF/FoE rights are not present, the right of free speech can also allow individuals to express views that may conflict with the university's efforts to create a diverse, equitable and inclusive environment.

When the core values of AF/FoE and DEI come in tension, the university will often follow the wisdom of the U.S. courts, but as a private institution it can in certain circumstances balance those twin values differently. In that regard, the commission recommends that the university policy be revised, to the extent consistent with applicable law, to say that those whose statements advocate physical violence against members of a particular group are not protected by the University's policies on AF/FoE.

The university also goes beyond protecting the expression of minority views. It embraces the goal of actively seeking to recruit values and views that are in the minority, either in the minority within society generally or in the minority within a particular campus community, in order that more diverse views are represented on campus.

4. Recommended Actions

The Commission has identified multiple action items for follow-up, including:

- Constitute an Implementation Committee headed by the Provost to follow through on the Commission's recommendations.
- Explore the hiring of an advocate for AF/FoE to serve as a resource on AF/FoE for the campus community.
- Following the procedures set out in the existing Policy on Policies, amend the three university policies for which suggested changes have been provided by the Commission (those on Freedom of Expression, the Policy on Separation of Individual's and Institution's Interests, and the Code of Business Ethics and Conduct in [Appendix C](#), [Appendix D](#), and Section 7.1 respectively).
- Articulate AF/FoE as core university values, along with the idea that AF/FoE is complementary to ensuring mutual respect and inclusion.
- Under the office of the Vice Provost for Education, formulate and implement activities for education and training, including:
 - A speaker series featuring AF/FoE and/or specifically incorporating multiple points of view;
 - New courses, formal and informal, highlighting or focusing on the importance of AF/FoE;

- Assessment of existing and new courses for significant content related to AF/FoE, formal identification of qualified courses by the Registrar, and potentially, creation of a credential for students who amass requisite credits;
- In collaboration with the library, create a website featuring resources related to AF/FoE; and
- Materials and speakers to orient newcomers with respect to CMU policies and guidelines related to AF/FoE, an example of which is given in [Appendix B](#).
- While reaffirming Carnegie Mellon’s culture of decentralized decision-making, the Implementation Committee will investigate the feasibility of making two narrowly tailored potential changes (as described in [Section 8](#)) to address situations in which hiring decisions made by one unit can create harm to the wider university:
 - Although most faculty-level hiring already involves multiple stakeholders with a constructive set of checks and balances, in rare cases, decision-making effectively rests with a single individual who can and does make appointments without serious input from anyone. The Provost, Vice Presidents, and Deans could work to address those situations proactively by creating processes which require multiple inputs on hiring decisions.
 - Create a university-level resource that can be called upon when a prominent potential hire’s record suggests they could put the university’s reputation, commitment to DEI, or some other core value at risk.

5. Framework for Thinking About Relationship Between AF/FoE and DEI

Academic freedom and freedom of expression are important values in their own right, and there are many AF/FoE-related debates that have nothing directly to do with Diversity, Equity and Inclusion (DEI). For example, the Commission’s deliberations took place amidst the COVID-19 pandemic. During that time, there were debates within the university and in society more broadly about whether it was right, necessary, or useful to suppress false or misleading statements (i.e., disinformation) about the origins of the virus (e.g., the “lab leak” question) and the efficacy of various preventive measures and treatments (e.g., masking, closing schools, vaccines, Chloroquine, etc.).

It is also the case that principles of DEI and AF/FoE can come into conflict, in that the First Amendment protects individuals who make statements inconsistent with the university’s DEI values. The hiring of such an individual was a principal impetus for creating this Commission, and potential tensions between AF/FoE and DEI were a recurring topic of the Commission’s deliberations.

There are no simple solutions when two cherished values come into conflict, but this section offers some perspectives that the Commission found helpful.

One is that without denying that principles of AF/FoE and DEI can come into conflict, it is important to recognize that upholding AF/FoE principles often supports the objectives of DEI by ensuring that minority views can be expressed. A commitment to advancing DEI does not per se militate against defending AF/FoE.

Another is that it is useful to recognize that issues can arise both with speech that does happen (e.g., “hate speech”⁴) and that does not happen (e.g., “chilled speech”).

Furthermore, three types of groups may need special attention:

1. Those who are vulnerable within society generally, such as protected minorities in the United States.
2. Those who are vulnerable within our campus community even if not in the broader world.
3. People who are vulnerable because of their position within differential power hierarchies (e.g., students relative to professors within the classroom, graduate students relative to thesis advisors, or staff relative to faculty and university leaders, and sometimes students).

Interfacing those two distinctions creates six categories of special concern within our campus community.

Problematic speech that is expressed (“hate speech”):

- against those with minoritized identities within the relevant broader society
- against those who with minoritized identities within our community, but not society generally
- against anyone who is in a power-down relationship to the speaker

⁴ We recognize that there is no legal definition of “hate speech.” Here we use the term informally to mean speech that is *intended* to insult or do harm, whereas speech that merely conveys ideas that the hearer finds controversial, uncomfortable, or unpleasant would better be termed “disagreeable speech.” So hatefulness is — at least in theory — objectively discernible whereas disagreeableness is assessed by the listener, and hatefulness implies that harm was intended. With that distinction, CMU welcomes the chilling of true hate speech, but rues chilling of disagreeable speech.

Speech/expression that does not happen (“chilled speech”):

- by those who are historically minoritized identities within broader society
- by those who are minoritized within our community, but not society generally
- by anyone who is in a power-down relationship to the suppresser of that speech

Opinions vary as to the relative frequency and importance of these six types of problems, but the Commission heard anecdotal reports of all and, in the Commission’s view, all merit attention.

These six primary interests exist in tension. Actions taken to protect free speech create opportunities for harmful speech. Actions taken to muzzle harmful speech intrude on freedoms of expression. This tension has existed since the founding of the United States, with free speech protection literally written into the Constitution’s Bill of Rights. Within the United States, universities have traditionally been bastions of freedom of expression. The [American Association of University Professors \(AAUP\)](#) states that, “advancing and protecting academic freedom is the AAUP’s core mission,”⁵ and in the wake of the abuses of Senator Joseph McCarthy and the House Committee on Un-American Activities during the post-WWII Red Scare, the AAUP partnered with the American Civil Liberties Union (ACLU) to push back against campus loyalty oaths.

This tradition of universities as bastions of free speech is relatively recent. Until the 19th century, institutions of higher education were primarily involved in inculcating a particular set of values and transmitting an established view (e.g., many elite U.S. institutions trace their roots to colleges established by religious denominations for the purpose of educating people — particularly ministers — of that denomination and in that denomination’s creed).

Recent years have seen a retreat from commitments to defend freedom of expression that reached their apogee in the latter half of the 20th century. The New York Times has described how even the ACLU has — in the eyes of some of its traditional leaders — stepped back from former commitments to defending free speech (Powell, 2021). In the Commission’s own discussions, there were, at times, “generation gaps,” with more senior faculty reaffirming the central importance of free speech and younger faculty and

⁵ <https://www.aaup.org/our-work/protecting-academic-freedom>

particularly students more concerned with curbing the excesses of rigid commitment to free speech.

At a philosophical level, the university faces an overall choice. It can reaffirm the concept that the right of freedom of speech is so important to a democracy that it must be protected even when speech is objectionable to some others. Or it can embrace the view that the balance should be shifted to place greater emphasis on protecting people's rights to not hear speech which they find offensive, disagreeable or hurtful.

To an important degree this is in fact the university's choice. As a private institution it is not obligated to extend First Amendment protections to employees or to students. However, Carnegie Mellon is bound by its own policies to the extent that they define an employment contract. Those policies affirm academic freedom and free speech rights. At the same time, the university's commitment to [confronting racism and promoting equity and inclusion](#) does indicate an intolerance for racism, discrimination and bias. Thus, addressing some of these issues is likely important in order to address institutional norms.

There is clearly room for improving inconsistencies, omissions and outdated language in our policies, and concrete suggestions are given below. In particular, suggestions are made for clarifying distinctions between professional and private roles and associated speech rights and responsibilities, more forcefully articulating the idea that the university defends the right of individuals within the community to say things that are disliked by the majority or even hurtful, and clarifying that the university will at certain times strike a different balance point than do the U.S. courts. For example, the university can give greater consideration to the form of expression, permitting almost all ideas that are advanced in a reasoned scholarly manner in a forum that can be avoided by those who wish to avoid those ideas, but drawing different lines for angry outbursts or speech that cannot easily be avoided. These ideas are articulated in suggested revisions to the university's policy on Freedom of Expression, Code of Business Ethics and Conduct, and Policy on Separation of Individual's and Institution's Interests (details below).

Questions remain though about how these issues play out on Carnegie Mellon campuses outside the United States; the Commission and its deliberations were implicitly almost exclusively focused on the Pittsburgh campus. Not only do the laws and customs vary across countries and cultures, but which groups have historically been vulnerable also varies.

There is also abundant room for improving norms and practices, as opposed to policies. For example, staff who are caught in the middle when students complain about faculty actions in the classroom need help explaining and implementing current policies, and reconciling students' hopes and expectations with those policies. The Commission made a systematic effort to gather data on the perspectives of staff who wrestle with these

problems. There may also be an opportunity to share expectations in advance of “controversial” speakers or visitors on how students and faculty should engage in diplomatic discussions to reduce escalation to name-calling and disturbances.

Similarly, it is important that the community not have unrealistic expectations that the university as an institution will denounce controversial ideas articulated within or outside of the university, except in truly extreme circumstances. Whereas in most circumstances, individual faculty, staff, and students retain the right and the presumption to be speaking on behalf only of themselves as individuals, select senior officers of the university are generally presumed to be speaking in an official capacity. The official policy of the university is to welcome diverse and even controversial opinions, and an officer of the university has a responsibility to uphold those freedoms.

6. *Committee A Activities: Basic Education and Listening*

The Commission was charged to “create forums through which students, faculty and staff can discuss and explore the meaning and inherent value of both freedom of expression and academic freedom, including how they are distinct and the ways in which they collectively support our academic mission” and “engage the campus community in discussion about the rising tension between upholding freedom of expression and supporting a campus environment that is inclusive and respectful.” In response the Commission, through Committee A activity, undertook an ambitious effort to engage the Carnegie Mellon community in dialogue and deliberation on AF/FoE issues.

The overall plan for events included:

1. A few early events (spring 2021) with heterogeneous groups of stakeholders (e.g., administrators, faculty, staff and students) were conducted to help convey to these stakeholders the foundational concepts and scholarship in the space of free speech on campus and academic freedom and then discuss their questions, concerns and perspectives.
2. Several mid-term events (fall 2021) were held with heterogeneous groups of stakeholders (e.g., open lectures with Q&A similar to those in spring 2021, debates and student-led engagement with the speakers) to expose the larger CMU community to the foundational concepts and scholarship and then to discuss issues, challenges and recommendations to address such challenges.
3. After the Commission has completed its work, a number of town halls will be conducted to update the CMU community on the high-level recommendations of the Commission.

In spring 2021, the Commission hosted two virtual public lectures with notable authors who shared their expertise in the realm of academic freedom and free expression on campus. These events were created to engage students, faculty and staff on this important topic. The CMU community was invited to the main discussion that included a speaker presentation and a Q&A discussion with a moderator from the Commission. A student-only session followed during which a student from the Commission moderated the Q&A. Both speaker events were a success, with 96 and 119 attendees, respectively, and the post-event surveys showed that most participants believed they had learned more about freedom of expression and academic freedom as a result of attending the webinars. Overall, participants were satisfied with the event format, with some recommending there should have been more time.

- Wednesday, April 21: Erwin Chemerinsky, Dean at University of California Berkeley School of Law. He is also the author of *Free Speech on Campus* (Yale University Press, 2017). Professor Chemerinsky took part in a Q&A discussion with Commission members Mary Jo Dively, Vice President and General Counsel, and Secretary of the Corporation, and Evan Feder, Masters Student, School of Computer Science (during a student-only session).
- Thursday, April 29: Sigal Ben-Porath, Professor of Education at University of Pennsylvania. She is the author of *Free Speech on Campus* (University of Pennsylvania Press, 2017). Professor Ben-Porath took part in a Q&A discussion with Commission members Rebecca Doerge, Dean of the Mellon College of Science, Evan Feder, Masters Student, School of Computer Science, and Sarah Wenger, Student, Mellon College of Science (during a student-only session).

The Commission also invited Professor Keith Whittington of Princeton University, author of the book *Speak Freely*, to present on February 8, 2021, and to take questions from the entire Commission on the topics of Freedom of Expression and Academic Freedom.

In Fall 2021, the Commission hosted two additional presentations and discussions:

- Tuesday, September 14: Randall Kennedy, Michael R. Klein Professor at Harvard Law School. Professor Kennedy took part in a Q&A discussion with Dr. Wanda Heading-Grant, Vice Provost for Diversity, Equity and Inclusion, and attended a student-only discussion session.
- Thursday, September 23: Keith Whittington, William Nelson Cromwell Professor of Politics at Princeton University and author of *Speak Freely*. Professor Whittington took part in a Q&A discussion with Molly Wright Steenson, Vice Provost for Faculty and attended a student-only discussion session.

In spring 2022, the Commission hosted a Campus Free Expression Panel Discussion:

- Thursday, March 24: A Conversation with the Bipartisan Policy Center's Academic Leaders Task Force on Campus Free Expression. The panel consisted of several authors of the task force report, [Campus Free Expression: A New Roadmap](#).

All of these presentations were recorded and are accessible at: [The Commission on Academic Freedom and Freedom of Expression — Leadership — Carnegie Mellon University \(cmu.edu\)](#). [Appendix G](#) presents a summary of each of these presentations.

7. *Committee B Activities: Literature collection, moderated discussion, and education-based documentation*

Committee B of the Commission was charged to “collect and organize a body of high-quality and relevant scholarship, history and examples (at CMU and elsewhere) related to ... academic freedom and freedom of expression.” Over the course of its meetings, and with the aid of a website to gather cases, the group iteratively developed a set of issues that came to be called “points of discomfort,” in that the solutions are neither obvious nor likely to engender consensus. Briefly summarized, they are:

- When is a community member representing themselves in communication as an individual versus as a representative of the community, particularly when using social media?
- How can we identify the truth of communication, and how can we dispute statements deemed untrue?
- How do norms/mandates/policies vary with the role of a person in the community (e.g., student/faculty)?
- If consensus on norms/values is reached, how should it be communicated and enforced?

7.1 Legal Considerations and Pertinent Cases

This section offers thumbnail descriptions of several key insights and cases that members of Committee B have found important to remember in discussing AF/FoE matters. Part of the Implementation Committee’s agenda is determining how best to educate the community about these ideas in a sustained way as new cohorts of students, faculty and staff join our community.

- Private universities are not directly bound to respect First Amendment rights, but they can be by state law (e.g., California requires private universities to respect students free speech rights to the extent the First Amendment would) and can bind

themselves voluntarily (e.g., over 80 institutions have explicitly adopted the University of Chicago's 2015 [statement on freedom of expression](#)⁶).

- Free speech and academic freedom are distinct ideas. A bedrock principle of free speech is that speech cannot be banned based on its content; whereas academics in their professional roles constantly judge speech based on its content (e.g., giving one student an A grade and another a C or accepting one paper and rejecting another). In this sense, AF is a more limited protection than FS, although faculty retain FS protections outside of their professional roles.
- A clear example of speech that should be constrained is the “heckler’s veto,” where speech of another is prevented. That refers to drowning out disfavored speech, effectively denying listeners the chance to hear that speech, as distinguished from the “old” heckler’s veto (e.g., threat of violence).
- Certain individuals may be deemed to be operating in their professional roles 24/7 (e.g., the president and the provost), and shared governance creates a loophole through which faculty could be seen as representing their institutions 24/7, but Princeton scholar Keith Whittington, among others, urges resisting that slippery slope. It may be difficult in the social media era to distinguish between private and professional speech, but that distinction does matter and needs to be wrestled with.⁷ One aspect to consider is encouraging faculty to add a note indicating their views are their own, for example, in social media.
- The law is a blunt tool, primarily addressing extremes. A culture of expectations can be more useful than explicit sanctions.
- There is no legal definition of hate speech. In essentially every case involving campus speech codes, such codes have been struck down by the courts. Hate

⁶ <https://www.goacta.org/wp-content/uploads/ee/download/The-Chicago-Principles.pdf>

⁷ An interesting case is Yale firing a psychiatrist (after repeated warnings) for tweeting about the mental health problems of Trump and his supporters because that violates the APA's Goldwater Rule which enjoins psychiatrists from commenting on a public figure's mental health without giving that person a proper medical evaluation.

speech can only be criminalized when it directly incites criminal activity or comprises specific threats of violence.⁸

- A legal doctrine called “captive audience doctrine” recognizes that audiences have a greater right not to hear when they have few options to avoid the speech (e.g., in their own homes). This doctrine is not well-developed legally, but its spirit could be applicable to university residences and to students in required courses deserving greater protection than in other contexts on campus.
- A requirement that speech be “truthful” becomes complicated. With certain exceptions, such as false advertising claims, free speech rights protect false statements by the lay public as long as that speech is not libelous (e.g., one cannot be punished for reporting a UFO sighting or endorsing astrology.) There is intuitive appeal to demanding more when faculty speak within their professional roles, but that could be problematic; many important scientific advances were initially rejected as “untrue” by keepers of the old scientific view that was then replaced.
- A central division within our community and society more generally concerns whether harms caused by speech are comparable to harms from physical violence. The law and traditional defenders of free speech draw a distinction that some, especially in younger generations, do not.
- As a broad generalization, the law does not sharply distinguish based on the form or nature of speech, but the university could do so in its balancing tests. A footnoted, analytical essay opposing immigration might offend just as much as a racial epithet hurled in anger, and it may be protected no more and no less under the law, but the university might expect the former to be rebutted with more speech even if the latter is suppressed.
- Some of the most celebrated and/or infamous cases involving free speech on campus pertained to external speakers, but many tensions pertain to speech between members within the university community (e.g., students offended by

⁸ From Chemerinsky: “Every effort by the government to regulate hate speech has been declared unconstitutional. Over 25 years ago, more than 350 colleges and universities adopted hate speech codes. But every court to consider such a hate speech code declared it to be unconstitutional. The codes inevitably were far too vague in terms of what speech was permitted and what was prohibited. Of course, free speech is not absolute and can be punished when it incites illegal activity, constitutes a “true threat” that causes a person to fear imminent harm to his or her physical safety, or rises to the level of prohibited harassment.”

faculty statements or faculty offended by other faculty statements) and chilled speech.

7.2 Next Steps for Education and Engagement

The original charge to Committee B was to provide materials that would help “members of our community (existing and new) to be able to be quickly exposed to the foundations of these issues, go more deeply where desired, and be better prepared to participate in future discussions of emergent events.” As the Committee’s work evolved, it became clear that there were excellent existing resources for exposure to issues, and that discussions would need to be ongoing. No static repository of materials would be sufficient for engagement. The Commission did converge on a set of activities that seemed promising to pursue, as delineated in [Section 4](#), Action Items. We note further that existing university resources can be harnessed to implement these actions, including the Simon Initiative, Open Learning Initiative, student led courses, faculty orientation programs, residence hall activities, University Libraries web resources, and Office of the Registrar for credentialing of educational components.

In addition to these outreach activities, discussions pointed to the need for infrastructure where those affected by speech, whether articulated or suppressed (e.g., “chilled speech”), could bring matters to the attention of the administration.

No clear consensus was reached within the Commission about the feasibility or advisability of “vetting” potentially contentious speakers before they were invited or arranging for rebuttal activities in conjunction with their speaking events.

8. *Committee C Activities: Recommendations for Policies, Procedures and Practices*

Committee C divided into Working Groups that took up three sets of AF/FoE issues: hiring, contact with students in the classroom and through advising, and AF/FoE policies.

As directed in its charge, the Commission as a whole extensively discussed issues surrounding hiring, particularly whether there should be additional deliberate review either of decentralized hiring decisions or of certain job candidates’ statements (or actions) beyond their professional qualifications narrowly construed (hereinafter referred to as “vetting”). Further focus of the Commission’s efforts was led by Committee C’s Working Group #1. The key findings and recommendations of their report are summarized in [Appendix A](#).

Working Group 2 focused on student issues related to the classroom and through advising. Classrooms are a challenging context for conflict between commitment to AF/FoE and commitment to maintaining an inclusive and respectful campus, as is the somewhat parallel situation of interactions between students and their research advisors. It is

precisely within the classroom and in the conduct of research, including advising, that the university's commitment to Academic Freedom is greatest. And yet there is an asymmetric power relationship between the professor and student, including the fact that professors assign grades and advisors write advisee recommendation letters. Furthermore, the student is to a degree a captive audience, with restricted opportunity to look away from offensive speech. As part of its effort, the Working Group reviewed cases of AF/FoE in-classroom conflicts that involved a faculty member, barriers to meaningful resolution of these cases, and suggestions for improved resolution strategies. Their report is in [Appendix E](#).

The Commission was asked to engage the community in discussions and then to “provide recommendations (including any changes to the Freedom of Expression Policy) on how the university can promote civil discourse and manage conflict” and to “evaluate the current language in CMU’s [Code of Business Ethics and Conduct](#), which specifically states that it is applicable to ‘individuals who are paid by the university when they are working for the university, including faculty, staff and students when working for the university.’” In the course of that work, it became clear that revisions to the university Policy on Separation of Individual’s and Institution’s Interests are also in order. Discussion of policies on Freedom of Expression was the focus of Working Group 3. Their report is in [Appendix F](#).

9. Closure

With these materials describing its processes, deliberations and recommendations, the Commission herewith submits its final report and recommends the creation of an Implementation Committee to be led by the Provost so as to implement the other recommendations. We look forward to the further activities that will realize the ideals of Academic Freedom and Freedom of Expression at Carnegie Mellon.

Appendices

Appendix A: Potential Revisions to CMU's Hiring Policy

The Commission considered revisions to CMU's Hiring Policy, most centrally whether the current policy is "broken", and if there were feasible alternatives that would be an improvement. As the overwhelming majority of our hires over the past several decades⁹ have been issue-free with respect to speech, the Commission recommends a minimalist approach to any policy change.

In considering alternatives, including the status quo, we evaluated how well different policy alternatives met the interests that we think any policy ought to try to satisfy:

1. Avoid hiring people who are discriminatory, hateful, or intentionally untruthful.
2. Remain nimble and flexible with respect to hiring.
3. Minimize the resources (time and money) spent on "vetting" new hires.
4. Incentivize/encourage intellectual and other types of diversity in hiring.
5. Avoid conflicts of interest between hiring and vetting.
6. Avoid chilling the hiring environment -- people's past needn't be perfect.
7. Minimize invasions of the candidate's privacy.

The alternative policies that the Commission considered seriously were:

1. The Status Quo
2. The Status Quo + avoid single decision makers that act with no input
3. A minimal "vetting" approach

CMU's current policy, that is, the "Status Quo," is highly decentralized and varies across units, but in general has been exceedingly successful. Over the last several decades, many hundreds of faculty, many thousands of visitors, and tens of thousands of staff have been hired or appointed, with no more than a handful posing any serious problem with respect to speech.

A minimal addition to the Status Quo is alternative #2, a policy in which more than one person is required to have meaningful input on hiring decisions. To implement this policy,

⁹ Carnegie Mellon currently hires a little over 1,000 people each year: 40-50 regular track faculty, 200 special faculty/instructional staff, and 800 staff.

the Provost, the Vice Presidents, and the Deans could implement procedures specific to their units that require multiple inputs on hiring decisions.

The third policy option, which is to “vet” some candidates for hire, may be able to meet interest #1 above, but may not be compatible with interests 2-7. That is, any benefit in terms of avoiding problematic hires might be overwhelmed by the costs and potential for abuse in any policy that vets candidates. Since a vetting procedure has been implemented with some success by the Kennedy School at Harvard¹⁰ in 2017, the Commission did consider this option.

Any hiring policy that does involve “vetting” would involve several “choice points”:

1. Which jobs might we vet (e.g., regular faculty, post-docs, staff, visitors)?
2. What other criteria might we use to trigger vetting (e.g., fame)?
3. What should we vet for (e.g., hate speech, intentional misinformation)?
4. Who should do the vetting (e.g., a faculty committee, a staff committee, an external committee)?
5. How should the vetting information be incorporated into the decision?

In conclusion, the Commission recommends policy option #2: The Status Quo + avoid single decision makers that act with no input.

¹⁰ According to the Dean of the Kennedy School, Douglas Elmendorf, the process has been a successful response to the controversy surrounding his decision to revoke an appointment offered to Chelsea Manning in 2017. Approximately 10% of more than 500 appointments were considered controversial enough to vet, and of those approximately ½ were hired, some number were offered a different appointment, and some number were deferred for a full year. Vetting is done by a separate staff committee, with results given to the Dean.

Appendix B: Suggested Text on AF/FoE in the Classroom

A considerable amount of preventable hurt and disappointment stems from parties to a dispute not understanding the strengths and limitations of AF/FoE. The Commission urges that orientation training for students, faculty, and staff include a primer on AF/FoE. This appendix contains suggested language for that document.

Academic Freedom in the Classroom at Carnegie Mellon University

Academic freedom (AF) is an essential part of freedom of expression within modern universities. Whereas free speech is a general right enjoyed by all that protects against actions by the government, AF is a right enjoyed specifically by faculty — and in extensions, to others in the academic community. It covers only certain types of speech,¹¹ is rooted primarily in employment contracts and university policy, and protects faculty against actions by others within the academic community, notably by the university itself.

AF confers very strong protections not enjoyed by most employees, including for statements made in the classroom.¹² AF is not, though, unlimited. For example, it does not protect unlawful speech such as harassment, threats, or libel. Crucially, within the classroom, AF protections only apply to statements germane to the subject being taught. In the language of the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure: "*Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.*"¹³ Given the university's commitment to providing a respectful and inclusive environment, faculty should be particularly careful not to introduce extraneous and potentially controversial or harmful speech related to any of the legally protected classes (race, ethnicity, religion/creed, national origin or ancestry, sex/gender/identity or orientation, age, disability, veteran's status) or, in the contemporary climate, speech related to political or partisan divisions.

That caution does not apply to controversial ideas that are central to the subject being taught, only to extraneous ideas. With regard to course-relevant material, AF grants faculty the right to say things that are disliked, controversial, even hurtful.

¹¹ For simplicity this document refers to "speech" and "saying" things, but that should be understood to encompass a wide range of means of expression, including writing, websites, artistic media, etc., that are either produced or assigned by a faculty member in a class.

¹² Within the classroom should be broadly construed to include readings, materials provided via course management software, and other course-related documents.

¹³ <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

Nonetheless, Carnegie Mellon's community norms recognize two important reasons why faculty should as a matter of good citizenship be thoughtful in choice and presentation of materials in the classroom. The first reason is the power imbalance between faculty and students. One argument for free speech is the belief that the best ideas will prevail in the marketplace of ideas when all can be expressed equally. But there is not equal power within the classroom. Hence, when leading discussions of controversial topics on which there are multiple views, faculty should take care to avoid signaling their own views or affiliations, directly or indirectly. Doing so risks swaying students' expressions in anticipation of approval or more lenient grading.

The second reason parallels the legal concept of "captive audience doctrine." The Supreme Court holds that when people do not want to hear certain speech, it is generally their responsibility to avert their eyes and ears, not the speakers' responsibility to keep quiet. However, there are exceptions when the burden of averting eyes and ears is too great. The courts have not recognized the classroom as such a place, but Carnegie Mellon does recognize that the balancing of speakers' and listeners' rights are different in the classroom than in public spaces elsewhere on campus. Within the classroom, that balancing should place particular emphasis on the tone and scholarship with which controversial ideas are presented. (Almost) any idea presented in a scholarly way is protected. So too are questions and attempts to explore the implications of controversial ideas; faculty as well as students need to be permitted to explore ideas that they then reject without fear of punishment for having first entertained ideas that they do not hold to in the end. However, there is no protection in the classroom for speech that is angry or abusive, whether it is offensive to particular groups or simply rude.

On the other hand, it is important to note that AF also protects so-called "intramural or extramural speech" — meaning statements made on campus (intramural) or off (extramural) as citizens or members of society about general matters of public concern. Since students are not captive audiences of statements made outside of the course, students generally cannot expect the university to intervene or punish professors, staff, or fellow students for such speech. Students have some rights not to hear certain things in the classroom, but they do not generally have a right to only be taught by people who never say such things elsewhere in life.

Appendix C: Suggested Revision to the Freedom of Expression Policy

C.1 Freedoms of speech, thought, expression, and assembly are core values of the university

Carnegie Mellon University values the freedoms of speech, thought, expression and assembly — in themselves and as part of our core educational and intellectual mission. If individuals are to cherish freedom, they must experience it. The very concept of freedom assumes that people usually choose wisely from a range of available ideas and that the range and implications of ideas cannot be fully understood unless we hold vital our rights to know, to express, and to choose. The university must be a place where all ideas may be expressed freely and where no alternative is withheld from consideration. The only limits on these freedoms are those dictated by law and those necessary to protect the rights of other members of the university community and to ensure the normal functioning of the university.

Guiding Principles

Carnegie Mellon's 2021 Commission on Academic Freedom and Freedom of Expression endorsed the views that Keith Whittington and Erwin Chemerinsky expressed in their books¹⁴ and presentations to the Commission and set them forward as guiding principles, including that:

- Restrictions on expression should be as narrow as possible.
- Expression of even unpopular opinions must be protected.
- University policy should prohibit harassment or credible threats and neither the institution of tenure nor other faculty privileges related to academic freedom should impede investigation of harassment or credible threats.
- While it is possible to harass or credibly threaten not just individuals but also groups, that bar should be set high; for speech to meet the standard of harassment or credible threat against a group it must be specific, and that often includes being directed at a specific collection of individuals, such as a family. Broad, generalized statements do not meet this threshold.
- University policy should prohibit speech that is unlawful (e.g., libel or incitement to riot).

¹⁴ Specifically, Whittington's *Speak Freely* and Chemerinsky and Gillman's *Free Speech on Campus*.

- Policy need not cover everything in every circumstance. It is appropriate to leave some room for discretion and interpretation.

In addition, the Commission endorses the idea that the university should take positive steps to bring to each of its campuses people who will thoughtfully present, embody, and defend perspectives and ideas that would otherwise be underrepresented on that campus.

Guidance for Discretion, Interpretation, and Common Sense

The last bulleted principle merits elaboration. There are limits to the extent to which policy can anticipate all scenarios or spell out all contingencies in contractual language. At some point common sense and good will must come into play. As such, the following mitigating or extenuating circumstances may be considered when balancing the rights of the speaker and the rights of the listener/reader at Carnegie Mellon:

- The university gives greater deference to speech that takes the form of a reasoned, well-developed argument or work of art at one end of a spectrum than to an angry outburst or insult at the other end. The former can be responded to in kind, with an expectation that the response be a reasoned rebuttal rather than censoring.
- The university expects all of its members to treat each other professionally, and with a degree of civility. There is a policy against disorderly conduct that proscribes abusive language or gestures, and the AAUP's 1940 Statement on Academic Freedom and Tenure recognizes that faculty "should at all times be accurate, should exercise appropriate restraint, [and] should show respect for the opinion of others." Even short of truly disorderly conduct, there is an expectation that members of the community will not be mean-spirited or insult others gratuitously. Our community norms reject personal attacks and the hurling of angry, abusive, or hostile insults that invoke specific terms that can be hurtful to specific groups and also attacks and angry, abusive, or hostile insults that do not invoke such terms. Protections of the right to civilly advance controversial or unpopular theses need not provide an umbrella for insults. The line is not easy to draw, particularly in a legalistic manner, but an intuitive recognition of the difference can be part of the balancing of speakers' and listeners' rights. As a private institution our policies may draw that line at a different place than the courts would for public free speech. As an institution committed to protecting free speech, in most cases we would allow anything that the courts would, but we do not allow any form of threat of physical violence against a group or against a member of a group because of their membership in that group.
- The university gives greater deference to speech that is presented in a way that is easy to avoid by audiences who would be offended by it. For example, if a book's

text is offensive, those who would be offended by it can choose not to read it.¹⁵ That is different from speech that is shouted at unwilling listeners in public spaces.

- Related, and amplifying that point, the university recognizes that elements of “captive audience doctrine” are relevant to the balancing of interests between speaker and unwilling listener. This concept has at least two important domains of application at a university. First, residence halls are homes, and captive audience doctrine already recognizes that listeners’ rights to not hear are greater in their homes than in public generally. Second, students in the classroom are not fully free to leave without consequence. So, the ability of the unwilling listener to “avert their eyes” or “close their ears” is reduced and, commensurately, the responsibility of the speaker not to offend is greater. Similar arguments apply to graduate students vis a vis their advisor or lab group members, given the substantial cost and difficulty of changing advisors in the middle of one’s course of study.
- The university is a place of learning, growth, and development. It is also a place of patience, grace, and forgiveness. The goal of the university’s response to uncharacteristic and isolated violations of norms should be reconciliation, learning, and non-recurrence. Shunning and expulsion are not generally the preferred first recourse and should be reserved for repeat offenders, except in the most severe cases of violation.
- Though social media options provide a powerful vehicle to share news and opinions, several guidelines for behavior consistent with the university’s Code of Business Ethics and Conduct rely on discretion and common sense (e.g., confidential or proprietary information about the university, its faculty, its students, its schools and units, its alumni or its employees should not be posted). Since posts are likely to be viewed by non-university parties, anyone posting in an official capacity should ensure that their messages, if reposted or taken out of context, reflect a professional face of the university. When posting as a private individual, if it might be unclear whether one is speaking in an official capacity, an appropriate disclaimer should be included.

Consequences of Principles and Guidance

It is important to make explicit some of the consequences of these policies and choices.

¹⁵ This example refers to a book written by someone whose presence on campus is deemed controversial — as in the case of Charles Murray and Middlebury College — not a book that is required for a class.

- People join the university community with a clean slate; they are not in jeopardy for statements made before coming to CMU.
- Members of the campus community cannot be penalized by the university for statements — including on social media — that are made outside of CMU, when not speaking in an official capacity, and that are not directed at members of the CMU community.
- People cannot be penalized by the university for expressing opinions contrary to the university's values or official positions if it is clear they are not representing the university, and provided that their speech does not constitute harassment or threats directed at specific individuals or university-affiliated groups.
- People cannot be penalized for using offensive language, provided that their speech does not constitute harassment or threats directed at specific individuals or university-affiliated groups, and does not fall under the “captive audience” considerations outlined above.
- Non-academic visitors to campus — e.g., a politician, artist, social activist, or comedian — should not have to relinquish their usual practices or views to come and contribute to the intellectual diversity of our campus. As long as they refrain from overt threats, harassment, libel, and other illegal speech throughout their affiliation with the university, they are free to remain themselves and not have to convert to the communication style of dispassionate scholars.
- Protections against a “hostile environment” are limited. Hostility directed at specific individuals because of their membership in a protected class is prohibited. But there is no general right at Carnegie Mellon to be protected from hearing controversial ideas or offensive opinions.

However, faculty and other members of the CMU community can be penalized when there is evidence of repeated misbehavior in circumstances where there is abuse of authority or power imbalance, and that behavior treats an individual in an unprofessional manner, particularly members of a protected group because of their membership in that group. This abuse will be considered particularly problematic when repeated violations are reported. The university needs to approach resolving such situations in a manner that does not chill true speech that is legitimately protected by AF/FoE.

C.2 Implications for Academic Freedom in the Classroom

Academic freedom (AF) is an essential part of freedom of expression within modern universities. AF is a right enjoyed specifically by faculty — and in extensions, to others in

the academic community. It covers only certain types of speech,¹⁶ is rooted primarily in employment contracts and university policy, and protects faculty against actions by others within the academic community, notably by the university itself.

AF confers very strong protections not enjoyed by most employees, including for statements made in the classroom.¹⁷ AF is not, though, unlimited. For example, it does not protect unlawful speech such as harassment, threats, or libel. Crucially, within the classroom, AF protections only apply to statements germane to the subject being taught. In the language of the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure: "*Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.*"¹⁸ Given the university's commitment to providing a respectful and inclusive environment, faculty should be particularly careful to avoid introducing extraneous and potentially controversial or harmful speech related to any of the legally protected classes (race, ethnicity, religion/creed, national origin or ancestry, gender identity or sexual orientation, age, disability, veteran's status) or, in the contemporary climate, speech related to political or partisan divisions.

That caution does not apply to controversial ideas that are central to the subject being taught, only to extraneous ideas. With regard to course-relevant material, AF grants faculty the right to say things that are disliked, controversial, even hurtful.

Nonetheless, Carnegie Mellon's community norms recognize two important reasons why faculty should as a matter of good citizenship be thoughtful in choice and presentation of materials in the classroom. The first is the power imbalance between faculty and students. One argument for free speech is the belief that the best ideas will prevail in the marketplace of ideas when all can be expressed equally. But there is not equal power within the classroom. Hence, when leading discussions of controversial topics on which there are multiple views, faculty should take care to avoid signaling their own views or affiliations, directly or indirectly. Doing so risks swaying students' expressions in anticipation of approval or more lenient grading.

The second is the concept of "captive audience doctrine" outlined above. Carnegie Mellon recognizes that the balancing of speakers' and listeners' rights is different in the classroom

¹⁶ For simplicity this document refers to "speech" and "saying" things, but that should be understood to encompass a wide range of means of expression, including writing, websites, artistic media, etc., that are either produced or assigned by a faculty member in a class.

¹⁷ Within the classroom should be broadly construed to include readings, materials provided via course management software, and other course-related documents.

¹⁸ <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

than in public spaces elsewhere on campus. Within the classroom, that balancing should place particular emphasis on the tone and scholarship with which controversial ideas are presented. (Almost) any idea presented in scholarly way is protected. So too are questions and attempts to explore the implications of controversial ideas; faculty as well as students need to be permitted to explore ideas that they then reject without fear of punishment for having first entertained ideas that they do not hold to in the end. However, there is no protection in the classroom for speech that is angry or abusive, whether it is offensive to particular groups or simply rude.

On the other hand, it is important to note that AF also protects intramural or extramural speech — meaning statements made on campus (intramural) or off (extramural) as citizens or members of society about general matters of public concern. Since students are not captive audiences of statements made outside of the course, students generally cannot expect the university to intervene or punish professors (or fellow students or staff) for such speech. Students, faculty, and staff have some rights not to hear certain things in the classroom, but they do not generally have a right to only be taught by people who never say such things elsewhere in life.

C.3 Rules pertaining to speakers, announcements, and related expression

Rights to Speak

On Carnegie Mellon's campus, anyone sponsored by a university organization may distribute printed or publicly-available material, including social media posts, offer petitions for signature, make speeches, and hold protests or demonstrations outside university buildings — with partial exceptions for residence halls as discussed under the captive audience doctrine above. All such activities must be peaceful, avoiding acts or credible threats of violence and preserving the normal operation of the university. No event shall infringe upon the rights or privileges of anyone not in sympathy with it, and no one will be permitted to harm others, damage or deface property, block access to university buildings, or disrupt classes, co-curricular activities, or day to day activities of those living and working on campus. The enforcement of these conditions will not depend in any way on the message or sponsorship of the act or event.

Rights to Hear (vs. Heckler's Veto)

When guests are invited by a recognized campus organization, they must be allowed to express their ideas not because they have a right to do so, but because members of the campus community have a right to hear, see, and experience diverse intellectual and creative inquiry. Likewise, members of the campus community have a right to hear, see, and experience diverse ideas that come from speakers from within our own community.

Suppression of expression via a “heckler’s veto” will not be tolerated at Carnegie Mellon. Audiences who can avert their eyes and ears have no right to disrupt speech they dislike or find offensive, and the university should not disinvite or otherwise suppress speech because of anticipated actions by such hecklers.

As Chemerinsky has observed:

“Freedom of speech, on campuses and elsewhere, is rendered meaningless if speakers can be shouted down by those who disagree. The law is well established that the government can act to prevent a heckler’s veto — to prevent the reaction of the audience from silencing the speaker. There is simply no 1st Amendment right to go into an auditorium and prevent a speaker from being heard, no matter who the speaker is or how strongly one disagrees with his or her message.”¹⁹

Defending that right to hear is a fundamental obligation of the university. Controversy cannot be permitted to abridge the freedoms of speech, thought, expression or assembly. They are not matters of convenience, but of necessity.

Responsibilities

Freedom of expression must be at once fiercely guarded and genuinely embraced. Those who exercise it serve the Carnegie Mellon community by accepting the responsibilities attendant to free expression. University organizations that sponsor invited guests to campus are expected to uphold Carnegie Mellon’s educational mission by planning carefully to create safe and thoughtful experiences for those involved. Hosts are responsible for the behavior of their guests and should exercise due care to ensure that all participants abide by relevant university policies.

Security Responsibilities when Planning Campus Events

University hosts must follow all applicable policies related to space reservation, use, safety and security, keeping in mind the responsibility to have campus police present for any event with 100 or more persons in attendance. In addition, hosts have an obligation to consider whether further plans or provisions — including for events smaller than 100 attendees — may be necessary to provide adequate security before, during, and after events. These plans should be managed in coordination with the University Police. Any non-university security personnel must have their allowable duties clearly delineated, in

¹⁹ <https://www.latimes.com/archives/la-xpm-2010-feb-18-la-oe-chemerinsky18-2010feb18-story.html#:~:text=Freedom%20of%20speech%2C%20on%20campuses,audience%20from%20silencing%20the%20speaker>

partnership with the University Police, with their role generally limited to personal security and not space management.

At times, members of the campus community or their invited guests may have a legitimate basis for being accompanied by independent security personnel. It is incumbent upon the host of such an individual to ensure that the University Police approve in advance the presence and scope of involvement of any such security personnel.

Additional Considerations for Planning Campus Events

Holding events that constructively address difficult subjects is an important contribution to the intellectual life of the university. Many factors contribute to the overall success of such events, including how they are publicized, what sort of audience engagement is provided for, and guests' clear understanding of university policies regulating behavior on campus. Event organizers are encouraged to make use of informational resources provided by the Office of Student Activities and the Dean of Student Affairs to ensure that their event is successful and results in positive outcomes.

Appendix D: Suggested Revised Policy on Separation of Individual's and Institution's Interests

Carnegie Mellon University applauds and encourages the interest of individuals and groups who wish to work as citizens through broader public channels for the betterment of society. However, the university as a university is and must remain neutral on political issues.

In the light of the active political and partisan concerns of the members of the university community, the following guidelines are issued to avoid the improper use of the institution's resources, reputation, and facilities for political or partisan purposes. This is vital for two reasons: (a) to preserve the university's neutrality on political or partisan matters and its function as a center for freedom of thought and (b) to assure that its tax-exempt status is protected.

All members and groups of the Carnegie Mellon University community like other citizens have the right to express their thinking on controversial public issues. In doing so, however, they have the responsibility to make clear that they are expressing their individual views and to guard against giving the impression that they are speaking for the university.

For most members of the university community when speaking "off campus" and outside of their professional roles, the default assumption should be that they are speaking privately. They merely need to refrain from mentioning the university or their affiliation in order to avoid creating the appearance of speaking on behalf of the university. But if their affiliation is stated, directly or in their introduction or byline, then they should include a disclaimer clarifying that they are speaking for themselves, as individuals.

A very few individuals may be inherently assumed to represent the university, unless a disclaimer is given. That short list includes the president, provost, deans and — depending on the circumstances — department heads, in addition to other persons during special events such as recruiting fairs. Those individuals should clarify that they are speaking for themselves as individuals even when their introduction and statements do not make their link to the university explicit.

When individuals in either group present their views to the public, they may identify themselves by their academic title and the name of the institution if they wish to do so, but the fact that they are expressing personal views should then be made obvious.

The scope of this policy is broad with respect to the form or format of expression. It applies not only to presentations, speaking engagements, op-eds, and papers, but also when addressing the public via social media, video electronic media, and other forms.

The scope of this policy is narrow with respect to context. It does not apply to professional or personal presentations that are not aligned with a particular political or partisan interest. In no sense should these guidelines be interpreted as in any way restricting the scholarly and educational pursuits of members of the university community, nor in any way restricting the freedom of expression or exposure to ideas of any member of the university community. Nonetheless, individuals are urged to take caution when posting on social media: posts that may not violate university policies can nonetheless cause long-lasting reputational damage. With respect to intent or purpose, the policy clearly applies to the solicitation of funds and/or votes for a political candidate or party. In particular, the name or seal or mark of the university or any of its divisions should not be used in the soliciting of funds and/or votes for a candidate or political party. Similarly, university office, faculty, or staff member's office, or student activity office should not be used as a return mailing address for such solicitations. But the scope is not limited to political fundraising and electioneering. It also applies to other activities that are identifiable as advancing a political or partisan interest.

University facilities (e.g., bulletin boards, campus mail, duplicating machines and other administrative services, and office supplies) are provided for the conduct of university business. Occasionally an individual may wish to present their private views about a subject on which they feel deeply. In such cases, they may use university facilities to express them to others in the campus community, but not to the public.

- a) If this use makes only minor demands on these facilities and does not hold up regular university business, it is quite acceptable.
- b) If substantial use of these facilities is involved, the individual should schedule this work so that its interference with regular business is minimal and should reimburse the university for the cost of materials and services.
- c) If large numbers of messages are planned, and especially if they are to be sent to groups of the public, the work should be done by an outside commercial organization.

In any case, the writer should distinguish such messages from regular university communications in an appropriate way and identify themselves as the sender.

Note: The four explanatory and interpretive guidelines governing the application of Organization Announcement 228-B that now appear on the website listing of the university policy on separation of individual's and institution's interests would no longer be necessary as their content has been incorporated into the edits above.

Appendix E: Final Report of Committee C Working Group #2

Working Group #2 addressed AF/FoE in the Classroom and Advising (Holly Hippensteel, Phuong (Phoebe) Dinh (co-chairs), Scott Dodelson, Anne Skaja Robinson). Classrooms are a challenging context for conflict between commitment to AF/FoE and commitment to maintaining an inclusive and respectful campus, as is the somewhat parallel situation of interactions between students and their research advisors. It is precisely within the classroom and in the conduct of research, including advising, that the university's commitment to Academic Freedom is greatest.

E.1 Principles Concerning AF/FoE in the Classroom

The Commission's recommended revisions to the Freedom of Expression policy (described below) add language that speaks to these complicated issues, and [Appendix B](#) includes a concise primer on AF/FoE in the classroom to help clarify expectations for students and faculty in ways that may reduce conflict and discontent. (Lack of clarity was a central finding from interviews the Commission conducted with college administrators, as is described below.)

One key to resolving some of these conflicts is recognizing the topical limitations of AF. The [AAUP's 1940 statement on academic freedom](#) states: "Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject."²⁰ That is very different from a blanket protection entitling faculty to say whatever they like in the classroom. According to the AAUP document's view, when faculty make offensive, unwelcoming, or controversial statements unrelated to their subject, they do so without justification or protection from AF.

It is unclear, however, how often students are disturbed or offended by faculty speech that is unrelated to the course content versus related speech or speech that falls in a muddied gray area in between. If most cases pertain to speech that is unrelated to the course, then a remedy may be simply reminding faculty that their audience is essentially captive and in a vulnerable, power-down relationship, and that AF cannot be used to defend the expression of irrelevant statements within the classroom.

If most problems are course-related but that content is optional or peripheral, then the problem might be addressed by asking faculty to consider altering course coverage. In times that are highly polarized, it may be wise to reconsider the inclusion of certain topics within an environment that inherently has sharply unbalanced power relationships.

²⁰ <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

Universities can encourage students to learn about those topics in other ways besides graded classes and advising relationships. Yet if most of the problems are related to course material that is considered core knowledge, then other remedies must be sought.²¹

Based on the very wide range of concerns voiced to the Commission, probably all three situations occur (unrelated, related but peripheral, and related and core material for that course).

Furthermore, there are multiple other dimensions along which the cases of concern vary, including ones that are easy to overlook if one focuses exclusively on the stereotypical instances. For example, the Commission heard complaints about speech that was bigoted, prejudiced, or insensitive toward groups that are historically marginalized within broader society but also complaints about comments that were bigoted, prejudiced, or insensitive toward groups that are minoritized within our community, but not society generally.²²

Likewise, concerns were voiced about what is said in the classroom (e.g., “hate speech”) and also what is not said (e.g., “chilled speech”). Faculty have a responsibility not to offend or harass, and they also have a responsibility not to signal their personal views on topics in ways that deter students from voicing contrary views for fear that doing so might adversely affect their grades or recommendations.

It is also unclear what proportion of students’ concerns pertain to statements by the faculty as opposed to statements made by teaching assistants (TAs), fellow students, outside speakers, or statements in required readings or other course materials. There are also complaints from faculty about students, not just from students about faculty, although that is less common.

Without better understanding of the incidence, nature, and severity of these varied manifestations of the problem, it is difficult to judge how to strike the right balance between the twin core values of preserving AF/FoE and maintaining an inclusive and

²¹ To clarify this distinction by example, some issues related to IQ tests and assessment of intelligence are inherently controversial, and the Commission received complaints about professors’ classroom statements on those topics. One view would be that it is impossible to confer a degree in psychology based on a curriculum that had little or no classroom discussion of those topics. Another is that there is little harm and much benefit in reducing or eliminating classroom discussion of IQ testing since there are other equally valuable topics to cover, and students could instead be encouraged to read about IQ testing and its controversies on their own.

²² A concrete example of the former would be disparaging comments about a racially underrepresented group. A concrete example of the latter would be disparaging comments about young Earth creationists or those on the conservative end of the political spectrum.

respectful environment. Hence, the university may wish to consider investing in systematic data collection.

E.2 Qualitative Study of AF/FoE Conflicts in the Classroom

In the meantime, Working Group #2 (WG2) undertook an informal qualitative study of cases of AF/FoE conflicts in the classroom that involve a faculty member, barriers to meaningful resolution of these cases, and suggestions for improved resolution strategies. WG2 interviewed eight participants from seven colleges, all of whom hold some advocacy role in their administrative position at the college or departmental level. Seven hold administrative positions, and one is a tenured faculty member who works on issues around Diversity, Equity, and Inclusion.

The resulting data reflect staff perspectives of student and faculty experiences as reported to them. While limitations exist with this indirect method of data collection, college-level administrators are able to aggregate across multiple cases over multiple years to more effectively surface themes, whereas individual student's perspectives may be shaped by one or a few salient instances.

A full description of the data collection, analysis and results have been prepared as a separate document,²³ but the central findings are summarized here.

Frequency of Cases

The interviews did not press for specifics on frequency and the participants were not precise, but it appears that each college generally receives "a couple" of reports per year on student-faculty interactions that can be characterized as pertaining to AF/FoE. That may not reflect the full scale of issues involving faculty and students have other concerns, not related to faculty. For example, interview subjects mentioned students challenging the choice of a speaker at a collegewide event and a college's choice of which companies were invited to a college career fair.

Still, the guesstimate of a couple of such cases per year in each college involving faculty in the classroom suggests that such AF/FoE conflicts severe enough to come to college-level administrators' attention are not frequent. Two per year in each of the seven colleges works out to "only" one in every 245 courses, given that the university offers about 3,425 courses per year.

²³ CMU Commission on Academic Freedom and Freedom of Expression Committee C Working Group 2 Report on Data Collection.

However, the overall tenor of the interviews is that these problems are substantial despite being rare, and some problems were recurring or unresolved from students' points of views. In some cases, the problems arose in required courses for a major, which also is problematic. The harm to individual students can be considerable, as is their anger and disillusionment with the process of seeking relief. Grappling with these issues can be exhausting, even demoralizing, for the students, for the faculty, and for the administrators trying to arbitrate between them.

Nature of Cases

The Working Group's report contains anonymized thumbnail descriptions of the nine cases discussed. Although almost all involve professor-student interactions, they run the gamut on other dimensions. The nature of the offending speech varies, including using outdated cases and materials that are disparaging toward Black communities, repeatedly using the wrong pronoun, making a comment in class and on Twitter that was insensitive about anti-Black violence in the policing system, exam questions drawing on examples of a sexual nature, and lack of representation of Black voices in class materials, among others. One involved absence of speech: Many students in one college were frustrated and concerned during the 2016 elections, but many of their faculty did not want to talk about this topic for fear of breaching classroom conduct.

There was no attempt to systematically gather information about whether faculty hold back (e.g., "chill speech"), either by avoiding important topics that might be controversial or keeping interactions with students narrowly "professional." It is clear that some faculty now see freewheeling discussions as risks to be avoided, but unclear how pervasive those concerns are.

The resolutions also vary. A faculty member who used a gendered curse word ("bitch") apologized to the class in-person and in writing, and the students were satisfied that the course improved after that. The (adjunct) faculty who made insensitive comments in class and on Twitter about police killings of Black people was not rehired. The administrative staff do not get to comment directly on tenure decisions, but in at least one college can funnel their comments into the process through the dean, and there are plans in at least one college to use delay of tenure review as an enforcement mechanism.

Challenges to Resolution of Cases

The Working Group identified several recurring themes in the focus groups' descriptions of challenges that college administrators feel in resolving these cases.

1. The university lacks clear definitions, policies, and protocols surrounding AF and FoE. Respondents were not always clear what the university policy or desire was

overall, or in regard to any particular case. Most cases were “mediated” not “adjudicated,” and effective mediation depends on all parties understanding what the outcome would likely be if the case were “taken to court” (figurately). Lack of common understanding contributes to dissatisfaction. To caricature, if an offended student expects the administration to act quickly and decisively, and the faculty thinks the administration has no right whatsoever to “interfere” in classroom matters, then even a Solomonic decision will leave both parties feeling short-changed. Without better guidance, college and departmental administrators were often put in a reactive position and left to find solutions on their own.

2. The tenure system offers protections to faculty members that administrators cannot challenge, which makes it difficult to hold faculty accountable for their actions. The difference between tenured and non-tenured faculty makes it more difficult to develop consistent policies and resolutions; adjunct professors are hired through contract, and those who exhibit problematic behaviors may be more easily removed or not hired back.
3. The resolution pathway is opaque to students and even to administrators, and resolutions are one-offs. The intricacies and idiosyncrasies of each case require custom-tailored solutions. Such flexibility both stems from and contributes to the lack of clarity and consensus mentioned above. Resolutions also often come about too slowly (e.g., after students have already graduated). This erodes trust between the students and their college. Almost all participants noted the heavy emotional burden associated with resolving conflicts or doing advocacy work around AF and FoE.
4. Students feel disempowered; they perceive that nothing happens to a faculty member who misuses AF and FoE to justify questionable practices. Respondents believe this perception is correct especially for tenured faculty. Some of the disempowerment reflects universities’ slow pace of change. An intervention that prevents any future recurrence might seem like a win to the administrator but offers nothing directly to the aggrieved student. There are no monetary awards for damages or other tangible compensation for enduring the difficult and draining process of pressing forward with a grievance. Airlines may (grudgingly) reward mistreated passengers with a voucher for a free flight; universities do not give students vouchers for a free course, let alone refund tuition for the semester marred by offense and indignity. But some frustration with the process is remediable. Presently, students do not know how or to whom complaints should be presented, or what remedy they can realistically expect. That could be clarified.

Participants vary greatly in the level of support that they receive to resolve conflicts on AF and FoE that involve a faculty member.

Recommendations

Participants made several suggestions for improved resolutions of AF/FoE cases, especially those involving faculty in their teaching, research, and mentorship roles.

The university should clarify principles, policies and definitions around AF and FoE.

Participants wanted clear examples of what concrete disciplinary actions might be taken in response to violations. Importantly, these consequences need not be all punitive and aimed at removing a faculty member or a student from their station for an alleged or actual violation of AF and FoE policies. Being clear about consequences can guide practice and decision-making and help everyone (including and especially faculty) feel more comfortable with sharing their thoughts and supporting new policies.

Training and collaboration between different divisions and colleges.

Because these are relatively low-volume, high-stakes disputes that are painfully mediated in the face of divergent understandings of the parties' rights, the responsible administrators need help. Administrative teams who see themselves as in charge of resolving conflicts around AF and FoE thought they could benefit from training sessions on frameworks and techniques relevant to conflict resolution and also more collaboration and sharing of resources and how-to knowledge across colleges. One participant suggested small workshop meetings (within or across colleges) to brainstorm next steps for real cases (e.g., cases that they are working through, informative cases from other institutions), or to share resolution strategies and debrief on previous resolutions.

Gather systematic data to move beyond anecdotes and impressions.

At present, understanding is limited to the relatively small number of cases which are so severe that they reach administrators, but those cases may be a small and unrepresentative set. For example, it seems plausible that reported cases are more likely to involve statements made rather than statements withheld ("chilled speech"), and statements by faculty rather than by fellow students. A survey might give a better sense of the extent and nature of "hidden" issues. That said, surveys often do not offer the level of detail required to follow up and identify next steps, so qualitative methods could also be employed. For example, one participant heard "through the grapevine" that a faculty member was using anti-Black stereotypes in their materials and put forth a call for students to come chat about their experiences in their program, without any leading question about what topic they were looking for. As such, students came to share about these experiences, and that provided the participant with the information needed to hold a conversation with said faculty member.

Appendix F: Final Report of Committee C Working Group #3

Working Group developed Freedom of Expression Policies (Erica Cochran Hameen, Dave Touretzky (co-chairs), Govind Menon, Anne Skaja Robinson). The Working Group began by articulating some guiding principles, including the need for common sense and discretion in the application of these principles. It then identified distinctions that are relevant in the exercise of that common-sense discretion and made explicit some consequences of these principles and aspects of common sense. These principles and distinctions were presented in the 2021 interim report and are (with some updates and editing) set out in the opening pages of the proposed revised Freedom of Expression Policy ([Appendix C](#)). That proposed text goes on to elaborate on considerations pertinent to two important contexts: (1) AF in the classroom and (2) FoE rights pertaining to outside speakers and related activities, including rejection of rights to suppress speech via a “Heckler’s Veto.”

The Commission reviewed the Code of Business Ethics and Conduct and believes that its limitations can be addressed by inserting two sentences into this policy’s applicability clause clarifying that the phrase “when employed by the university” means when acting in the capacity of a university employee, not merely having the status of being an employee. Those sentences are underlined and italicized in this proposed revised applicability clause:

Applicability

This Code applies to individuals who are paid by the university when they are working for the university, including faculty, staff, and students when working for the university. *“When working for the university” means when acting in the professional capacity of a university employee or student. It does not pertain to the entire duration of one’s employment, including personal time.* These individuals are referred to in this code as “members of the university community.”

Concerning the Policy on Separation of Individual’s and Institution’s Interests, the AAUP’s 1940 Statement on Academic Freedom and Tenure states that when college and university teachers “speak or write as citizens, they should be free from institutional censorship or discipline, but ... they should make every effort to indicate that they are not speaking for the institution” (among other clauses and obligations). The existing CMU Policy is consistent with the AAUP Statement and is largely sound, but it should be updated. A suggested revision can be found in [Appendix D](#). The goals of the proposed revisions are to:

- Replace gendered language with gender-neutral wording.
- Broaden the scope from overtly political activity to any statement to the broader public that is political, partisan, or clearly aligned with partisan divisions.
- Broaden the scope to include not only classic written forms, but also video electronic communication and social media.

- Retain and amplify assurance that individuals are free to publicly express their personal opinions when not representing the university (and add language clarifying that few professional roles intrinsically imply representation of the university, with the notable cases being the provost, deans, and department heads, plus other persons during special events such as recruiting fairs).
- Retain the requirement that individuals who mention their CMU affiliation in statements to the general public that do not flow from their research or disciplinary expertise must also make clear that they are speaking for themselves and not for the university.
- Add language cautioning individuals that social media posts that may not violate university policies can nonetheless cause long-lasting reputational damage.

Appendix G: Committee A Lecture Summaries

Keith E. Whittington, Ph.D., William Nelson Cromwell Professor of Politics, Princeton University:

Professor Whittington's presentation touched upon the distinction between academic freedom and freedom of speech. He defines academic freedom as grounded in professional expertise and responsibility, bounded by professional competence, free speech with a limited scope, and protected primarily by contracts and norms. He defines freedom of speech as grounded in democratic egalitarianism, no assumption of competence or knowledge, bounded by legal limits and protected by law with certain contexts.

Professor Whittington underlines that academic freedom has traditionally been recognized for having three different components to it: academic freedom for teaching, academic freedom for scholarship, and intramural and extramural speech. Freedom for teaching states that teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Freedom for scholarship states that teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution. Lastly, intramural and extramural speech highlights that college and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.

Randall L. Kennedy, J.D., Michael R. Klein Professor of Law, Harvard Law School:

Professor Kennedy presented and highlighted the interconnectedness between race and freedom of expression. He touched upon two historical events that led to students having constitutional rights on campus. One of the events mentioned was the case of *Dixon v. Alabama State Board of Education* in which black students in the south fought racial segregation. Professor Kennedy emphasized that it was black students in the deep south fighting racial oppression that opened the door for constitutional protections for all students.

The second half of his presentation then shifted focus to current events and how ideologies around critical race theory and The 1619 Project are being attacked. He compared the recently proposed and enacted legislations to curb critical race theory to the '50s and '60s when racial justice champions were attacked as being communists and ultimately

banished. He stressed that the attacks on critical race theory are very dangerous and that colleges and universities should hold academic freedom and freedom of expression values dear. Professor Kennedy said that educators should continue to do what they are doing because ideas, knowledge, science, and history matter. He ended by remarking that across the breadth of American history it has usually been the case that the champions of racial justice walked arm in arm with champions of freedom of expression. He said the tension between the two in recent years is often needless and that we should move forward drawing out this tension and have candid discussions with each other.

Sigal Ben-Porath, Ph.D., Professor of Education, University of Pennsylvania:

Professor Ben-Porath presented and analyzed the polarization around free speech in recent years. She emphasized the importance of campuses setting their own rules around open expression policies and practices that align with the university's mission. The mission of colleges and universities should be to search for knowledge, educate diverse students, and prepare students for their civic roles in society. Professor Ben-Porath touched upon what she calls "inclusive freedom" which is the idea that open expression and missions to be inclusive on college campuses are not in opposition but are two parts in the same approach. She noted that this is an educational and relational stance not a legal stance. This inclusive freedom approach includes expanding and protecting speech, recognizing unequal burdens placed on students, faculty and staff, and ultimately creating an inclusive climate.

Professor Ben-Porath states that as an institution when we protect open expression we have to also make sure that we are carrying these unequal burdens that we place on our students, faculty and staff. In other words, we have to create an inclusive climate where people are not burdened unequally as a result of our protection of open expression — a climate in which not only can people know that they are protected by the legal guidance regarding open expression, but that they can actually speak and participate in the conversation

Erwin Chemerinsky, J.D., Dean, University of California Berkeley School of Law:

Professor Chemerinsky touched upon five basic principles during his presentation to CMU faculty, staff and students. The first principle he touched upon was that the First Amendment only applies to the government and not private institutions. Private institutions must create their own handbooks for protections of free speech. The second principle reflects that the core of free speech is that all ideas and viewpoints can be expressed. The government cannot restrict speech based on ideas or viewpoints. The third principle he noted is that free speech is not absolute. There are three categories of unprotected speech, including: incitement of illegal activity (with substantial evidence), true

threats, and harassment that is directed at someone or pervasive. The fourth principle is that colleges and universities can have time and place manner restrictions with regard to speech. For colleges and universities this is particularly important so as to protect campus operations and education. Lastly, Professor Chemerinsky noted the importance of the duty to create an inclusive learning environment for all students. He states that universities have a duty to create a safe environment and one that allows students to feel a sense of inclusion and belonging. If hateful speech does occur on campus, it is essential campus leaders speak out against it and remember silence itself is a message.

Appendix H: Committee Membership

Name	Title
Jim H. Garrett Jr., Chair	Provost and Chief Academic Officer
Jon Caulkins, Vice Chair	H. Guyford Stever University Professor of Operations Research and Public Policy, Heinz College
Bobby Klatzky, Vice Chair	Charles J. Queenan, Jr. University Professor of Psychology and Human-Computer Interaction, Dietrich College of Humanities and Social Sciences
Jonathan Aldrich	Professor, Institute for Software Research and Computer Science Department, School of Computer Science
Erica Cochran Hameen	Assistant Professor, Architecture, College of Fine Arts; Co-Director, Center for Building Performance & Diagnostics; Director of Diversity, Equity and Inclusion (DEI), College of Fine Arts
Lorrie Cranor	FORE Systems Professor, Director and Bosch Distinguished Professor in Security and Privacy Technologies, School of Computer Science
Phuong (Phoebe) Dinh	Doctoral student, Dietrich College of Humanities and Social Sciences
Scott Dodelson	Professor of Physics and Department Head, Mellon College of Science
Rebecca Doerge	Glen de Vries Dean of the Mellon College of Science
Evan Feder	Master's student, School of Computer Science
Alex Jackson	Master's Student, Heinz College of Information Systems and Public Policy
Holly Hippensteel	Associate Vice President for Community Standards & Diversity Initiatives, Office of the Dean of Students
Mark Kamlet	University Professor of Economics and Public Policy; Provost Emeritus; Heinz College and Dietrich College of Humanities and Social Sciences
David Kaufer	Mellon Distinguished Professor of English, Director of Rhetoric Program, Dietrich College of Humanities and Social Sciences
John Lehoczky	Faculty Senate Chair and Thomas Lord University Professor of Statistics, Dietrich College of Humanities and Social Sciences
Golan Levin	Director, Frank-Ratchye STUDIO for Creative Inquiry, Professor of Art, School of Art, Center for the Arts in Society

José M. F. Moura	Philip L. and Marsha Dowd University Professor, Electrical and Computer Engineering, College of Engineering
Megan Monaghan Rivas	Interim Head of School, Associate Professor, Dramaturgy, College of Fine Arts
Anne Skaja Robinson	Trustee Professor and Department Head Chemical Engineering, College of Engineering
Denise Rousseau	H.J. Heinz II University Professor of Organizational Behavior and Public Policy, Heinz College
Richard Scheines	Bess Family Dean of the Dietrich College of Humanities and Social Sciences
Julia Scherb	Undergraduate Student, Dietrich College of Humanities and Social Sciences
Alan Scheller-Wolf	Richard M. Cyert Professor of Operations Management, Tepper School of Business
Peter Spirtes	Marianna Brown Dietrich Professor and Head of Philosophy Dietrich College of Humanities and Social Sciences
Molly Wright Steenson	Vice Provost for Faculty; Associate Professor, School of Design; K&L Gates Associate Professor of Ethics and Computational Technology
David Touretzky	Research Professor, Computer Science Department and Center for the Neural Basis of Cognition, School of Computer Science
Joe Trotter	Giant Eagle University Professor of History and Social Justice, Dietrich College of Humanities and Social Sciences
Jeanne VanBriesen	Duquesne Light Company Professor Director, Center for Water Quality in Urban Environmental Systems, College of Engineering
Jason Wagner	Chair, Staff Council and Senior Associate Director, MBA Student Services, Tepper School of Business
Keith Webster	Dean of University Libraries
Laurie Weingart	Richard M. and Margaret S. Cyert Professor of Organizational Behavior and Theory, Tepper School of Business
Sarah Wenger	Undergraduate Student, Mellon College of Science
Mary Jo Dively, Advisor to the Commission	Vice President and General Counsel
Patience Whitworth, Staff to the Commission	Associate Vice Provost for Operations and Strategic Initiatives