

THE REPORT OF THE COMMITTEE TO STUDY FREEDOM OF EXPRESSION

AT YALE, 1989

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Dear President Schmidt:

Last fall you asked us to consider the relation between University policy with respect to freedom of expression, stemming from the Corporation's adoption of the Woodward Committee report in 1975, and three particular problems: the University's general policies protecting individuals against harassment in the context of its commitment to nondiscrimination; problems of invasion of privacy; and policies regarding symbolic expression, especially by physical structures on the campus. This is our report.

We have had sixteen private meetings of the committee during the seven months since your request. We also held two town meetings at which we heard many useful statements of position from segments of the Yale community, especially students. We also twice met with individuals speaking for themselves or groups. We advertised for written expressions and statements of views, and received many useful responses. We also met as a group with you to hear your concerns, and have individually consulted with a large number of students and faculty in the College and the various Schools with respect to our mission. Our deliberations have been enriched by all the submissions and policy positions.

We conclude that the Woodward Committee report is the proper anchor for the University's policies on those particulars. Accordingly, we recommend no fundamental changes in the relevant regulations set forth in the various applicable handbooks, such as the Undergraduate Regulations. We recommend that the University consider means of strengthening its commitment to a diverse community free to pursue its educational mission and its procedures for self-regulation, as discussed in this letter.

The Woodward report states at one point that "without sacrificing its central purpose, [the University] cannot make its primary and dominant value the fostering of friendship, solidarity, harmony, civility, or mutual respect." This statement clearly does not mean, however, that the University regulations (See Undergraduate Regulations, page 7) condone, or impose no penalty upon, personal harassment by students (or faculty) of other individuals on the basis of factors such as race, sex, sexual orientation, national origin, or religious faith. It also does not mean that University policy does not assign those factors a high priority.

The Woodward report goes on to stress that Yale's policies include the enhancement of mutual understanding, that "shock, hurt, and anger are not consequences to be weighed lightly," and that "no member of the community with a decent respect for others should use, or encourage others to use, slurs intended to discredit another's race, ethnic group, religion, or sex." To this we should add "sexual orientation."

That report was prepared in the context of the treatment of the presence on the campus of persons with unpopular views, or who personified unpopular government policies. In that context, we have no question that freedom of expression is the overriding value, and the University cannot permit other values, such as those listed above, to "override [the University's] central purpose," which requires providing "a forum for the new, the provocative, the disturbing, and the unorthodox." But you have asked us to address the matter of harassment among members of the community, in public and private encounters, and where attacks on personal characteristics or private behavior have been the source of offending speech. In this context, we believe that the University must give a very high priority to the fostering of mutual respect, tolerance, and civility.

We do not think, however, that the fostering of such values and habits of thought can best be achieved, or indeed be achieved at all, by making departure from them the subject of regulation beyond the ways already covered by the present regulations. They are values intertwined with and necessary to, the educational mission of the University — intertwined because mutual respect and civility among students is a part of that mission, and necessary because it is essential to the achievement of the mission that all students feel a sense of security, belonging, and place. It is therefore through the educational mission and the accompanying administrative apparatus that progress should be made and preventive measures taken.

Educational Mission and Sense of Place

To fulfill its primary mission of “discovering and disseminating knowledge,” a university community must be open to a diversity of opinions and beliefs. To encourage and foster this openness, members of the community have the responsibility of respecting the right of others to express opinions contrary to their own — in the explicit belief that from the dialogue of conflicting views a stronger knowledge and understanding emerges.

This commitment to freedom of expression is rooted deeply at Yale. In our discussions with community members we were struck by the high level of commitment against censorship in a university. Students and faculty, regardless of the content of their political views or personal values, generally seem to support the principles of the Woodward report, but they are afraid that a commitment to freedom of expression may shade into condoning harassment and discrimination.

The concern for personal, emotional, and intellectual security, which harassment threatens in the face of a commitment to openness to diversity, is the heart of the conflict this committee has encountered. A breadth of opinions exist on how the conflict ought to be resolved. On the one hand, there are those who feel that the University’s commitment to protect “freedom for the thought we hate” serves to condone harassment and make Yale a hostile place in which to work and live. On the other hand, there are those who feel that freedom of speech has been too narrowly defined and as a result they feel threatened with punishment for expressing views unpopular with the majority of the community.

Freedom of thought must be rooted in a sense of security, belonging, and place in one’s community. Harassment explicitly threatens that necessary sense of place. (In the committee’s purposes, invasion of privacy is a form of harassment.) It is the opinion of this committee that university officers must work actively to preserve this security and to reduce the sense of exclusion which is both harassment’s cause and effect. Moreover, though harassment for any reason must be effectively proscribed, we are especially concerned with those who as a result of harassment on the basis of their race, sex, sexual orientation, religion, ethnic origin, or handicap perceive themselves to be insecure at Yale.

The administration must foster a sense of responsibility and value in the community by leadership, example, and policy. It is the opinion of this committee that the University officers should consider ways in which to build further “public trust” in the University’s commitment to equity and concomitant trust in the grievance procedures. As we listened to various individuals and groups explain their outrage over censorship of their opinions or values we were impressed by how efforts to guarantee freedom of speech and expression collided with other important principles of our society. For example, when conflicts center on questions of expressing personal life-style and sexuality, one person’s rights of free speech may conflict with another’s right to privacy or right to be free from harassment. There is no obvious principle that can apply to all such cases of “private speech” as the Woodward report did for the public speech of Professor Shockley and General Westmoreland. Thus, the need is not for the committee to specify which principle universally takes precedence over others, but for the University officers and the community to consider how to guarantee free expression of competing, often antagonistic, views and still guarantee its commitment to due process. In a community such as Yale, where by necessity much of our work is individual and isolating, it is perhaps of special importance that those who establish policy for the entire community regularly reassess whether existing procedures assure those who feel aggrieved that their views will be heard.

Grievance Procedures

The University's commitment to protect its members from harassment is demonstrated in part through its grievance procedures. In the course of its work, the committee found that many members of the community perceived those procedures [see Undergraduate Regulations, pages 46-47] to be dauntingly complicated, incomplete, and inconsistent. Such a perception is in itself a problem that should be addressed. The committee suggests that some revision of the description of those procedures as well as a review of their completeness is in order. Moreover, the publication of these procedures as a part of the Undergraduate Regulations and elsewhere has not effectively brought them to the attention of the community. An annual circulation of a pamphlet dedicated to a description of grievance procedures should be considered.

The formal grievance procedures, albeit essential for major infractions, cannot address all significant levels of harassment. Since the formal procedures can result in serious punishment, the procedures are, and must be, conducted through processes which properly protect the

accused. However, such processes — and the attendant publicity — inevitably place a burden on the *accuser* that he or she may not wish to accept. With the cost of addressing an offense seemingly so high, the accuser may feel impotent and frustrated. Moreover, in cases where the values of civility and the accuser's perception of harassment are overridden by priority given to the freedom of speech, the conflict may be aggravated, rather than resolved, by the passing of a judgment.

Thus, in situations where victims feel the cost of formal procedures is excessive or where conflicts between commitment to free speech and commitment to maintaining a sense of safety and place undermine the efficacy of formal grievance procedures, procedures less formal than the standard grievance procedures, perhaps akin to counseling, are important. We note that the Yale College Deans and the Yale College Grievance Board for Student Complaints of Sexual Harassment have often done this type of work well in the past. We therefore recommend that the informal procedures for handling grievances that now exist should be supported and strengthened when necessary on a University-wide level and such procedures should be put in place where they are now lacking.

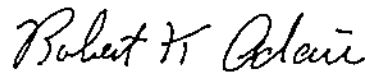
Symbolic Structures

You instructed the committee "to review Yale's policies with respect to symbolic expression, especially such expression that takes a physical form and that occupies open spaces on the campus." We were asked specifically to consider the conflict of principles these structures apparently present.

However, in the face of the existence of the anti-apartheid memorial on the Hewitt quadrangle and the history of that structure, we have not found it possible to confine our deliberations on the place of symbolic structures at Yale to purely abstract terms. Despite disclaimers we might make, any general recommendations we could present might be applied to the anti-apartheid structures in ways that we might not agree are appropriate. Hence, we issue no additional recommendations concerning the regulation of structures.

In spite of our reluctance to propose either specific principles or regulations concerning symbolic structures at Yale, we agree on some broad positions. Although the University's legal entitlements in the matter of structures are clear, we consider that Yale's commitment to the freedom of expression requires discretion in the exercise of statutory "rights" and that any curtailment of expression must be justified.

For the Committee



Robert K. Adair, Sterling Professor of Physics (Chairman)

Patrick S. Cheng, Yale College, 1990

Deborah Davis, Associate Professor of Sociology

Christopher Koller, Graduate Student in Divinity and SOM

Burke Marshall, Nicholas de B. Katzenbach Professor of Law

Alexander Purves, Associate Professor of Architectural Design

H. Andrew Romanoff, Yale College, 1989

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