

From: Dean, Jodi JDEAN@hws.edu
Subject: RE: Diversity of thought and the First Amendment Right to freedom of speech
Date: March 17, 2018 at 8:51 PM
To: Vincent, Gregory VINCENT@hws.edu, Crenner, James crenner@hws.edu
Cc: hwsemployees hwsemployees@hws.edu, Students Students@hws.edu, hwssodexo hwssodexo@hws.edu



All,

As were others on the faculty, I was puzzled by President Vincent's statement on free speech, especially with regard to the First Amendment. Was there some kind of strange new government regulation afoot that would require liberal arts colleges to take a stand? The First Amendment prevents Congress from making laws that prohibit free speech. Why, then, was it important to make a statement about it on the last day of classes before Spring break?

Subsequent emails have begun providing some context. I especially appreciate learning about the concerns of some of our students.

Further context might also help clarify some of the issues of stake. I find the article by Joan W. Scott, "On Free Speech and Academic Freedom," published last year in AAUP helpful (<https://www.aaup.org/JAF8/free-speech-and-academic-freedom#.Wq2osnwh2M8>). There is much to admire in the article. Here is a very brief excerpt:

"These days, free speech is the mantra of the Right, its weapon in the new culture war. Their invocation of free speech has collapsed an important distinction between the First Amendment right of free speech that we all enjoy in some circumstances and the principle of academic freedom that refers to teachers and the knowledge they produce and convey. In a recent article, the legal scholar Robert Post clarifies the distinction between the two. The First Amendment, he writes, consists of three core rules that apply to public discourse: (1) the state is prohibited from regulating speech; (2) the expression of all ideas is permitted (there is no such thing as a "false" idea); and (3) restraints on "the voluntary public expression of ideas" are prohibited. He points out that classic First Amendment doctrine "cannot apply to 'speech as such,'" but only to what seeks to express or inform public opinion. It is when we are acting as "sovereign agents of self-government" that we are protected by the First Amendment. Post insists, as well, that it is questionable whether the First Amendment applies to any speech at a university, since the education of students does not assume them to be such sovereign agents. Nor do professors have an unfettered right of free speech in the classroom--they are constrained by the need to teach their subject matter; their job as educators limits their rights of free speech.

They do, however, have academic freedom. "The scope of academic freedom is not determined by First Amendment principles of freedom of speech, but by the metrics of professional competence. Professors are free to teach in ways that are regarded as professionally competent." It is disciplinary associations that train and certify this competence, a form of expert knowledge we depend on for the advancement of knowledge in all fields. Post puts it this way, "Disciplines are grounded on the premise that some ideas are better than others; disciplinary communities claim the prerogative to discriminate between competent and incompetent work." And, "Disciplines do not create expert knowledge through a market place of ideas in which content discrimination is prohibited and all ideas are deemed equal." Although there are evident tensions within

disciplines about what counts as acceptable work—critical new ideas are not always granted validity and there have been long struggles by scholars (feminists, critical race theorists, queer theorists) to achieve legitimacy for their fields of study—still it is academic freedom and not free speech that informs these struggles.

These days the Right's reference to free speech sweeps away the guarantees of academic freedom, dismissing as so many violations of the constitution the thoughtful, critical articulation of ideas, the demonstration of proof based on rigorous examination of evidence, the distinction between true and false, between careful and sloppy work, the exercise of reasoned judgment. Their free speech means the right to one's opinion, however unfounded, however ungrounded, and it extends to every venue, every institution."

Scott's and Post's insights suggest to me that campus questions (especially in a private liberal arts college) are better understood in terms of academic freedom than they are free speech. They suggest as well the obligation educators have to discern between competent and incompetent work and not to yield to the pressure of well-financed purveyors of racism, sexism, and bigotry. Colleges are academic settings; they are not states. Therefore colleges and universities are under no obligation to invite to their campuses those who undermine the practice of academic freedom. Indeed, colleges may well determine that it is antithetical to their mission to host any who would denigrate members of their community.

Jodi Dean

Donald R. Harter '39 Chair of Humanities and Social Sciences

Director, Fisher Center for the Study of Women and Men

From: Vincent, Gregory
Sent: Friday, March 16, 2018 5:10 PM
To: Crenner, James <crenner@hws.edu>
Cc: hwsemployees <hwsemployees@hws.edu>; Students <Students@hws.edu>; hwssodexo <hwssodexo@hws.edu>
Subject: Re: Diversity of thought and the First Amendment Right to freedom of speech

Thanks James! I am a 1st Amendment purist.

Sent from my iPad

On Mar 16, 2018, at 12:15 PM, Crenner, James <crenner@hws.edu> wrote:

Hear! Hear!

Sent via the Samsung Galaxy S® 6, an AT&T 4G LTE smartphone

----- Original message -----

From: "Vincent, Gregory" <VINCENT@hws.edu>

Date: 3/16/18 12:05 PM (GMT-05:00)

To: hwsemployees <hwsemployees@hws.edu>, Students
<Students@hws.edu>, hwssodexo <hwssodexo@hws.edu>

Subject: Diversity of thought and the First Amendment Right to freedom of speech



HOBART AND WILLIAM SMITH
COLLEGES

Dear Members of the Hobart and William Smith Community,

As an institution of higher education, Hobart and William Smith are bound to foster, as our [Community Standards](#) note, “an environment in which all ideas can be reasonably proposed and critically examined.”

This means that students are challenged to examine assumptions, analyze arguments, assess facts, debate opinions and find themselves, by definition, outside their comfort zones. Because we value academic freedom and freedom of thought, we necessarily value diversity of thought and the First Amendment Right to freedom of speech. As president of these Colleges, an HWS graduate, a former law professor and a former civil rights attorney, I take the responsibility for fostering such an environment at HWS with the utmost seriousness.

In the past weeks and months, we have welcomed a number of speakers to campus to share their diverse experiences, knowledge, opinions and ideals with our community and our friends and neighbors in the region. Invited by our academic departments and student groups, these speakers offer us the opportunity to engage with, learn from and challenge their thinking. Such discourse is as essential to the vitality of our academic community on campus as it is to navigating the world beyond the Colleges.

We cannot pretend, however, that such discourse will not at times result in conflict. The Community Standards recognize that this kind of exchange “is an important element in the pursuit of knowledge,” while stressing that all community members, including campus guests, “are entitled to and responsible for maintaining an environment of civility that is free from disparagement, intimidation, harassment and violence of any kind.” Likewise, the Colleges acknowledge students’ prerogative “to dissent and demonstrate in a peaceful and non-disruptive manner

dissent and demonstrate in a peaceful and non-disruptive manner without unreasonable obstruction or hindrance,” with the expectation “that those who enjoy this privilege also accept the responsibility for their actions and for maintaining order.”

In our campus community, each and every one of us must strive for an atmosphere of reasoned discourse and intellectual honesty, with an understanding of mutual respect and shared openness to constructive change. To paraphrase the late Supreme Court Justice Oliver Wendell Holmes — and Oscar Wilde — and George Orwell — true freedom of speech and thought demands that we defend and uphold it for everyone, especially for those with whom we disagree.

Sincerely,

Gregory J. Vincent '83

President