

MEETING OF FEBRUARY 23, 2018

President Lee Bollinger, the chairman, called the Senate to order in the 7th-floor event space in the new Nursing School building, 560 West 168th Street. Fifty of 98 senators were present during the meeting.

Minutes and agenda. The minutes of February 2 and the agenda were adopted as proposed.

New business.

Resolution in Support of Freedom of Expression on Campus (External Relations, Student Affairs). External Relations Committee chairman Howard Worman (Ten., P&S) introduced the resolution. He said External Relations took up this issue for reasons somewhat different from those of the Faculty Affairs Committee in developing its resolution on academic freedom for the previous plenary. External Relations took the approach it did because freedom of expression involves not only what takes place in the classroom but also people and ideas external to the campus. Another important dimension of this issue involves the freedom to pursue research wherever it leads, without limitations, unless the research is completely unreasonable. Finally, Sen. Worman said, the outside world is very interested in how Columbia and its peers approach the issue of freedom of expression.

Prompted by Sen. Worman, Eli Noam (Ten., Bus.) carried on the presentation. He said External Relations had worked closely with its student members and with the Student Affairs Committee in search of agreement. He said it has long been understood that universities should be places for debate and vigorous speech, and they were for a long time an archipelago of free expression in a sometimes repressive environment. He said the goal of this resolution was to maintain this state of affairs. But there are increasing attempts to restrict speech of all kinds, whether it's right-wing speakers like Ben Stein or Ann Coulter, or Palestinian activists or Kurds or Armenians or pro-marijuana groups or university newspapers considered disrespectful of the authorities.

Sen. Noam offered some historical perspective. He recalled that after the terrorist attacks of 9/11/2001 passions ran high and some students were deemed insufficiently patriotic. As a corrective, the Student Affairs Committee presented a resolution to the Senate at the October plenary, just a few weeks after September 11. The accompanying report said, in part:

The Student Affairs Committee proposes that the University Senate, in this time of loss, conflict and change across the nation, reaffirm a principle long held at Columbia University, that of free and open dissent and debate. The Columbia student body is now confronted with challenges unlike any previously experienced in American life. Emotions are vehement and opinions can be fierce. During recent weeks some student members of the Columbia community have felt pressure to curtail their opinions of the national response to the September 11 attacks. Yet the continuous practice of free and open discourse produces a cacophonous, vibrant, creative community. This resolution

reaffirms open discourse as a prime value in our community and encourages diverse participation in it.

Sen. Noam considered this statement as true in 2018 as in 2001, and said the Senate should not be too pragmatic and current-affairs-oriented in upholding freedom of expression on campus.

As for the present resolution, Sen. Noam said that of course everyone favors free speech, except for the exceptions, and everybody seems to have some. He said some universities have adopted an abomination called Free Speech Zones in which people can speak freely in small designated areas, but nowhere else on campus. The more typical university response around the country has been a series of statements like the one from the University of Chicago that Faculty Affairs presented to the Senate in September 2016. Sen. Noam said these are high-minded, nice-sounding, spirited, affirmative statements. The problem is that they offer no mechanism or decision process when the chips are down, and that is the purpose of the present resolution.

Sen. Noam said the resolution has two resolved statements and numerous whereas statements. The first resolved clause provides standards. Real cases in the real world in real situations are always hard and there are always good arguments on both sides. And so one must weigh and balance limitations, applications, and circumstances. When the University Senate first discussed the academic freedom resolution from Faculty Affairs last September, people legitimately asked, What does it exactly mean? Who does the defining? How do we define what is imminent danger and time, place and manner, etc.? Leaving aside the unworkable option of developing a separate court system for the university, there have to be some standards. He said the present resolution proposed that the standards should presumptively be the ones developed in First Amendment jurisprudence in American courts, including the Supreme Court. The standard would be only presumptive because circumstances in a university can vary widely, and might require modifications of presumptions.

Sen. Noam said the second resolved clause proposed a mechanism for discussing controversial issues or speakers in a town hall meeting. Such an arrangement would provide groups—particularly student groups—that are vehemently opposed to some point of view or speaker a venue, an institutional setting for discussing their frustrations in a debate. There would be no votes at such a forum, whose purpose would also not be to present official university positions. It would be a setting in which all university constituencies--students, faculty, staff, alumni--could come together. The idea is that instead of shutting down unpopular speech through violence or disruption, there could be better speech, more speech, to counter it. And so the resolution proposed that the Senate establish a board that would organize such town halls.

Sen. Noam said the resolution envisioned such town halls not as a regular practice, but as a response to extraordinary circumstances. He did not see Senate town halls as replacing the program of town hall meetings that EVP for University Life Suzanne Goldberg had already set up, but as complementing it.

Sen. Noam said the resolution also includes several whereas clauses designed to clarify and address various concerns. The whereases address the educational mission of the University, the present resolution's relationship to the academic freedom resolution adopted by the Senate three weeks earlier, the Rules of University Conduct, the need to respect the needs of all groups

including historically marginalized groups and the holders of unpopular views, the importance of civility, diversity and safety and more. Sen. Noam said it was important, 50 years after the events that disrupted the Columbia campus and provided the impetus for the creation of this University Senate, to reaffirm freedom of expression as a governing principle of the University, just as the Senate had done three weeks earlier with the principle of academic freedom. He expressed satisfaction that the Student Affairs Committee had joined External Relations in this effort, and had helped to improve the resolution.

Sen. James Piacentini (Stu., GSAPP) said he had enjoyed working closely with colleagues in both the External Relations and Student Affairs committees. He stressed the importance of establishing beliefs—to be able to hold any belief, to share that belief, and to disagree with another person’s belief. He said it is also important to recognize that the principles of freedom of expression are not always exercised fairly and equally in our society. Sen. Piacentini said it is still essential to uphold these principles, as well as the goal of assuring that they apply equally to all members of this campus. He said the present resolution provides a way to reaffirm and reestablish what members of the Columbia community strive to do, and the accompanying proposal for town hall meetings can provide more opportunities for student groups across the campus to express themselves.

Sen. Sonya Nanda (Stu., Bus.), co-chair of Student Affairs, said she had nothing to add.

Sen. Noam said he wanted to accept an amendment offered by Faculty Affairs Committee co-chairs Robert Pollack (Ten., A&S/Natural Sciences) and Letty Moss-Salentijn (Ten., CDM). He read it aloud: “Whereas having recently passed the Academic Freedom Resolution to govern venues of teaching and learning, we now seek to address issues of freedom of expression in other University activities and venues.” Sen. Noam said the amendment clarified the jurisdictional range of the two resolutions.

President Bollinger offered some comments. He said it was important for the University Senate to be discussing these two resolutions, trying to articulate in different ways how to think about academic freedom and freedom of expression on campus. He said these are complex and emotional questions, and the way to make progress with them is to have lots of discussions. He wholeheartedly applauded this effort of the Senate and its committees.

The president focused on the consequences of the new resolution. First, he said that, like the previous resolution, it is not a proposal to amend the University Statutes. He said the Statutes are the laws of this institution, while the resolutions are expressions of views. Nevertheless, what the Senate says is always important.

The president said his second point was more of a quibble. While he wholeheartedly agreed with the idea in the second resolved clause of supporting town halls, he resisted the notion that the Senate could order the administration to fund whatever it wants. But he cheerfully volunteered to provide some funding.

Executive Committee chair Sharyn O’Halloran (Ten., SIPA) thanked the president for his offer.

The president said he considered the present resolution—like the previous one—an expression of the following principle: this institution has a rule, a law, a principle, a value that it will stretch to deal with difficult ideas. In particular, it will protect speakers who are invited to the campus by faculty and students, not because they have a right to come on the Columbia campus and speak, but because students and faculty have the freedom to discuss their ideas freely, and part of that freedom is the ability to invite people in to discuss ideas. He said the Columbia community will then do everything it can to protect that speech, subject to certain limits. And there are always complications, the limits that keep First Amendment experts like himself in business.

The president said Columbia does not always have to exercise its commitment to free speech fully. When it does invite a controversial speaker, and people react strongly on one side or the other, it's very important to find ways to maintain an environment in which academic work and the life of the community can go forward. That was an important purpose of the resolution on academic freedom adopted at the previous plenary. He said he embraced that purpose, and thought all members of the academic community do.

The president said the first part of the new resolution makes a different point. He said one way to understand complex principles like academic freedom or free speech is to develop a benchmark or analogy. In this case the benchmark is the First Amendment itself. He said it is generally understood that the First Amendment does not apply to Columbia; it only governs state action, and Columbia is a private institution. Public universities are subject to the First Amendment. But as he has said many times, Columbia voluntarily embraces the First Amendment as a reference point. He said that is the point of the new resolution.

But the president said the First Amendment could change. There have been different interpretations over time, including some he would not accept. During some periods, the prevailing interpretation has allowed censorship of speakers who should have been protected. He offered the qualification that the First Amendment does not deserve unlimited esteem. For the same reason, he also urged caution about the resolution's statement that the First Amendment applies "presumptively" to speech on the Columbia campus. The president said a resolution can never be perfect. As long as certain limitations are clear, he could be in accord.

The president said the message of the second resolved clause of the new resolution—that the Senate should create a board to organize town hall meetings on controversial issues—was similar to that of the academic freedom resolution. He understood it to be saying that free speech can exact high costs on an academic community, which needs ways to repair and maintain its environment. One way, the new resolution says, is to hold town hall meetings where people can express themselves about controversial speakers and ideas. He said EVP for University Life Suzanne Goldberg would want to speak to this question, but discussions like these, as Sen. Noam had also pointed out, are built into the life of the University. He said town hall meetings, perhaps conducted by the Senate, could be very productive.

The president said again with the qualifications he had mentioned, he supported the resolution.

Sen. Noam said he was very pleased to hear the president's perspective, including the qualifications, which all made sense to him. He noted that Lee Bollinger is not only Columbia's

CEO but also an eminent scholar on free speech—a happy combination for the institution. But future presidents might focus more on their administrative responsibilities and the demands of outside constituencies and pressures, including funders or alumni or governments in power, and less on free speech principles. So a formal statement of the University’s commitment to the First Amendment might provide a little more continuity, beyond the current president’s leadership.

Sen. Noam also said the Supreme Court does shift on some issues, but not much on free speech. He said the bulk of free speech decisions by the Supreme Court have been 8-1 or unanimous, and not 5-4 votes where one presidential appointment could make a major difference.

A related point, Sen. Noam said, is that Columbia can always adopt stronger protections for free speech than those in some future Supreme Court decision. Nothing in the current version of the resolution prevents such strengthening of protections.

Discussion

Sen. Izzet Kebudi (Stu., SEAS) said that coming from Turkey, he did not take freedom of expression for granted. On the other hand, after the experience on campus the previous semester with controversial speakers, should there be a limit on hate speech? Where should the line be drawn?

The president said he was comfortable with this question, which he considered important and difficult. Under the First Amendment, speakers are protected in the United States even if their ideas are highly offensive. Advocacy of murder, genocide, racism, overthrow of the government—all of these ideas are protected up to the point where action is imminent, the speaker intends the action, and the action will seriously compromise values that society has a right to protect. Sometimes that idea is expressed as “clear and present danger,” sometimes as “imminent incitement.” In practice this norm protects speakers for the Klan, neo-Nazis, white supremacists, etc. There is no bright line for these boundaries, the president said. They have to be articulated over and over and applied in concrete instances, to build up a sense of their meaning. That process has taken place over the past 50 years. The president said that is the test that he has applied at Columbia and that the present resolution was proposing for the University community.

The president outlined related issues. The question in some cases is not only whether the speaker will incite violence, but also whether people listening are so angered by the speech that *they* threaten violence. At what point should a speaker be stopped under conditions like these? This problem is sometimes called the heckler’s veto.

The president said the general norm under the First Amendment is that the state—or, in the present resolution, the university—has to go out of its way to protect speakers. But there are always questions. How much of a budget should be committed to this purpose? This issue arose with a speaker at Berkeley last year. The administration there canceled the speech, arguing that the cost of protecting one speaker was prohibitive—an argument President Bollinger said he did not accept. But he said the issue is complex.

Another question the university has to weigh when it invites controversial speakers is, Should the New York City police be allowed on campus to protect the speaker?

The president's final point was that some people don't believe that the approach he had outlined is the right one under the First Amendment. He mentioned Robert Post, a former dean of the Yale Law School and a longtime friend who is writing an essay for a book the president is publishing called *100 Years of Freedom of Speech and Press in the United States*. The essay argues that universities should not be following the course on the First Amendment that President Bollinger has advocated. This is a legitimate debate under the First Amendment itself, as shown in a 1952 decision. The president said it is entirely reasonable to argue that free speech should not protect extreme kinds speech. He did not share this view, and it was not the view Columbia or the present resolution has adopted, but it's a reasonable view. What is not acceptable, in the president's view, is to decide on one's own not to allow controversial speakers, and to shut them down in contravention of the principle that the University broadly has adopted. But the president said there should always be open and respectful debate on the limits of free speech. He asked whether the present resolution accepted the legitimacy of such debate.

Sen. Noam said it did.

The president said the university is open to people who want to argue that the Statutes of the University should be changed to have a more restrictive sense of free speech and academic freedom. Nothing is ever written in stone.

Sen. Noam supposed that if Robert Post were president of Columbia, the university would probably have a more restrictive policy on campus speech. Historically, when restrictions on speech are instituted in order to protect minorities—say, from hateful speech—these restrictions almost inevitably are used against the same minorities. In the civil rights movement, First Amendment and free speech principles protected dissenting groups, civil rights leaders, or abolitionists from being shut down by the majority that wanted to keep things quiet, or to keep subversives from inflaming their institutions. So hate speech codes actually backfire against precisely those whom they are supposed to protect.

President Bollinger said Sen. Noam was making an argument that he himself had made many times. But he stressed the point that free speech has to be open for debate too, like any other issue. And it's incumbent upon those who share his own beliefs about the First Amendment to be respectful of people who hold a different view. People who favor restricting the scope of the First Amendment argue that the United States is an outlier in the world even among democracies.

Sen. James Applegate (Ten., A&S/Natural Sciences) said he was an interested amateur in these issues. He believes that any issue under discussion off campus should be debatable on campus as well, and at a higher standard than off campus. He said this point meant a lot to him and, he thought, to the proponents of the present resolution. What he had found in recent years was that everyone says they support freedom of expression but there is often some exception. And then the exceptions became almost a heckler's veto so broad that positions that were pretty mainstream off campus were starting to be excluded from campus. Sen. Applegate said the Faculty Affairs Committee saw this happening in classrooms and got involved. He himself saw it when he took some controversial positions on campus issues.

Sen. Applegate said that when he urged the Senate to endorse the Chicago statement on freedom of expression in September 2016, his examples were attempts to exclude positions that one might find on the editorial pages of *The New York Times*, *The Wall Street Journal*, or *The Economist*.

Sen. Applegate also recognized there are certainly things he could say under the First Amendment that he would not say in a classroom—a distinction underlying the resolution on academic freedom that the Senate adopted at the previous plenary. But given his commitment to conduct higher-quality on-campus discussions of off-campus issues, he said the bar for deciding to exclude an invited speaker should be very high. That’s another reason why connecting First Amendment jurisprudence to the campus is important.

Sen. Applegate thought the real danger facing universities now is not that they have too much freedom of speech but that they have become so sensitive that they have basically cut off what amounts to right-wing or conservative but really mainstream ideas. The number of times that mainstream Republican opinions, compatible with, say, the editorial board of the *Wall Street Journal*, are heard on campus is very small. Sen. Applegate said universities are really picking up only half of a discussion, and may be marginalizing themselves from American civil life.

Sen. Applegate concluded that the university has to go the extra step to welcome all points of view, and nurture vigorous debate. He thought the resolution now before the Senate and the one adopted at the previous plenary complement and support each other nicely.

Sen. Irving Herman (Ten., SEAS) said he supported the resolution, but had a reservation about the second resolved clause. He objected to the characterization of a group of people who might want town hall meetings—“including those aggrieved by a public speaker or event”—because it highlighted the wishes of only one particular group, the one that might have been disturbed by last October’s speakers. He said there are surely people on campuses who will be aggrieved by a speaker who has come, but there are also others who would be aggrieved when a certain speaker is not allowed to come. Sen. Herman suggested either removing that phrase or broadening it.

Sen. Piacentini took Sen. Herman’s point. He said the intention in drafting the second resolved clause was certainly not to limit attention to one group, but to recognize that group in light of recent history. He agreed with Sen. Herman’s suggestion to broaden the phrase to include other possible points of view.

President Bollinger said there were a number of instances where he wanted to make changes in phrasing. He asked if the proponents would be willing to make these and other changes and to bring the measure back to the next plenary for a vote.

Sen. Robert Pollack (Ten., A&S/Natural Sciences), co-chair of Faculty Affairs, thanked the president for the lesson on the First Amendment and its application to the Columbia campus. In the light of what he had learned, he proposed an approach to a subsequent conversation about the freedom of expression resolution. He suggested a town hall meeting, on the model presented in that resolution, on the question of the limits of free speech that the president had discussed.

Sen. Pollack's second question was whether such a town hall meeting would be enough of an educational moment that the resolution from the previous plenary—on academic freedom—should apply to the behavior of the people there, even though it is taking place outside the classroom, because it would be an example of the delicacy needed to address what goes on inside the classroom. He envisioned this town hall as the discussion at the level of the private university of where its boundaries are, a discussion that should observe the decencies of academic freedom.

Sen. Nanda said she would support the idea of such a town hall meeting if the Senate agreed to it. But she disagreed with Sen. Pollack's idea of conducting the town hall according to the provisions of the academic freedom resolution because she said it went against the work the Student Affairs Committee had done to try to separate the two realms.

Sen. Pollack said Student Affairs had the burden of determining the boundaries. He said he was offering a scaffold to limit the burden.

Sen. Nanda said she thought the University already has a valuable scaffold in the open meetings organized by the Office of University Life. Organizers of the proposed Senate town hall meetings would certainly not be reinventing the wheel. She thought Columbia manages such meetings successfully, and the proposed town halls can apply those lessons and perhaps make improvements.

The president said one problem with making general statements about free speech on campuses is that the scope varies with the setting in which the speech happens. When a student group invites a speaker, the protections of speech apply most strongly. In a classroom they don't apply that broadly. A faculty member can make racist statements in a public setting and write an op-ed or a blog without fear of consequences from the university. But if he or she makes racist comments or is intimidating to students in a class discussion, that behavior will be taken into account in promotion and tenure decisions, and the department will restrict such behavior. The president said he had written articles on this subject, and related issues had arisen at Columbia. Similarly, students cannot make statements in a class that are completely irrelevant or wrong on the facts and, when given a low grade, claim that they are within their free speech rights to say whatever they want without consequences. So the norms in a classroom setting are quite different from those at a speech on campus by an outside speaker. The president understood that nothing in the present resolution was inconsistent with that distinction.

Sen. Indira Martinez (Stu., SW) noticed that in the course of an invigorating discussion of free speech and outside speakers she had not heard anything about protests. She asked the authors of the resolution for a clarification of the resolution's implications for the right to protest.

She also offered an amendment: replacing a "significant representation" of students in the composition of the proposed board that would organize town halls with "a majority representation" of students. She said students would be the most actively engaged and most often aggrieved group in such town halls, so it would be powerful for this group to be student-led.

Sen. Nanda said the present resolution, like the academic freedom resolution, offers principles and guidance for the Rules of University Conduct, but not recommendations to change the Rules.

The principles may guide future deliberations of the Rules Committee as it considers revisions to the Rules.

Sen. Noam addressed Sen. Martinez's proposed amendment. He appreciated the sentiment but disagreed with the idea. He said there are many other people at the university who have strong opinions and equally deserve representation. The proposal in the second resolved clause is for a *university* town hall representing all Senate constituencies, as opposed to a student meeting. He didn't know exactly what the breakdown should be, but didn't think a majority of students would provide the right balance. He added that nothing in the resolution prevents student groups from having their own meetings.

The president invited EVP for University Life Suzanne Goldberg to comment. She thanked the proponents of the resolution for prompting an important conversation, which she said is also renewable, to be repeated at regular intervals, so people keep rethinking these issues.

She added two points. She said it might be worthwhile to include the idea not just of expressing a sense of grievance, but also of having the opportunity to listen to each other. The second point concerned difficult speakers whose positions are at times directly contrary to the university's expressed values. Such a situation provides an opportunity to restate the university's values, and to make clear, as the University did last fall when a speaker with vehement anti-Muslim views addressed a meeting on campus, that those are not University's views, and that the University's commitment is in the opposite direction. She said the question of inviting some speakers can be a kind of puzzle: Why let them come to campus when they are expressing ideas that are contrary to the values of the University? For all of the reasons expressed in the present resolution and in the president's remarks, Columbia does allow these speakers to come, but while making clear that they don't reflect the university's values. Sen. Goldberg thought the Senate could play a valuable role in amplifying this point.

Sen. Bollinger asked the proponents if they were comfortable waiting till the next meeting for a vote, after taking suggestions in writing.

Sen. Noam agreed on behalf of External Relations.

Sen. O'Halloran said the resolution would be on the next meeting's agenda, in accordance with the Senate's custom of allowing one plenary for discussion of significant resolutions, and the next for a vote.

Sen. Worman urged senators with suggestions for wording to provide them to the Senate staff. He asked to have the changes sooner rather than later, from everyone including the president.

The president said there was time for one more comment.

Sen. Jay Rappaport (Stu., CC) expressed enthusiastic support for the resolution. He said free speech is one of the chief tools that people use to find truth and to learn what is right and to debate those principles on this campus and in the world. He said the present resolution and the previous one are not mainly about the content of what people say. An immense obligation

remains to judge what they say and to reach substantive conclusions. He congratulated Sens. Noam and Piacentini and the whole External Relations Committee for their demonstration of how faculty and students can work together on critical issues at the Senate level. He was also happy to be one of the collaborators in this effort from Student Affairs. He expressed excitement about the support he had heard for the resolution on the Senate floor.

Resolution to Establish a Program Leading to a Dual Master's Degree in Public Health and a Master of Science in Bioethics (Education). Sen. Mary Byrne (NT, Nursing), a member of the Education subcommittee that reviewed the proposal, read the [resolution](#) aloud.

Sen. Pollack supported the resolution. He said it provided a model for the place of the School of Professional Studies inside the University by putting the quality of its education on a par with that of the School of Public Health.

The Senate then voted unanimously to approve the resolution.

Reports

Student Affairs Committee on space initiatives in Lerner Hall. SAC co-chair Josh Schenk (CC) and Izzet Kebudi (SEAS) presented the report, referring to a set of [slides](#).

There were no questions after the report.

Sen. O'Halloran adjourned the meeting shortly after 2:30 pm.

Respectfully submitted,

Tom Mathewson, Senate staff