

TO: PROVOST MARTY KRAUSS

FROM: Committee on Exhibitions and Expression (Jeffrey Abramson, Marc Brettler, Judith Eissenberg, David Fischer, Michael T. Gilmore, Paul Jankowski (chair), Marya Levenson, Robert Meyer)

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#### THE COMMITTEE'S CHARGE

Last June, at the request of President Reinharz, and after subsequent discussion with the Faculty Senate Council, you formed a Committee on Exhibitions and Public Expression on Campus. Its charge was threefold:

- “1. Examine the controversy surrounding the removal of the ‘Voices of Palestine’ exhibit.
2. Recommend guidelines and procedures for the public discussion on campus of controversial or inflammatory subjects, and in particular guidelines for the presentation, location, and reception of student exhibits on such matters.
3. Recommend fall activities, such as a Forum or panel discussion, that will review further the open discussion of controversial issues on campus.”

#### PREFACE

The following premises have guided the Committee's work:

We are heirs to three traditions of free expression. The first is our American tradition of liberty and freedom, founded in the Revolution, rooted in our many Bills of Rights, and refined in ten generations of constitutional debate.

The second is our tradition of academic freedom, which derives from European ideas of Lernfreiheit and Lehrfreiheit (freedom to learn and teach), and was developed in a “Statement of Principles” by the American Association of University Professors (1925, 1940, 1969, 1990, 2006, with endorsements by most universities, colleges, and learned societies in the United States.

The third is our own tradition at Brandeis University, which was conceived as an open nonsectarian university of Jewish sponsorship, founded in the spirit of free inquiry, and dedicated to the rigorous pursuit of “truth even unto its innermost parts.”

These three traditions are fundamental to our beliefs, and instrumental to our largest purposes. Without rights of free expression, our republic cannot survive, our universities cannot function, and our own institution cannot flourish.

Each of these traditions has grown through time, and ideas of free expression have tended to expand. But all three traditions also recognize that freedom must exist within certain limits, if it is to exist at all.

The Bill of Rights is fundamental to the American constitutional tradition and to the protection of free speech. But few, including the jurists who have enlarged or interpreted the Bill, have argued that free expression is an absolute right. Most agree that some forms of expression are not protected by the Bill of Rights, and yet these limits themselves have been carefully limited. “Fighting words” are not thought to be protected by the Bill of Rights (Chaplinsky v. New Hampshire, 1942), but only when inciting “imminent lawless action” (Brandenburg v. Ohio, 1969). Pornography is not protected, but an expression that has “serious literary, artistic, political or scientific value” is not pornographic (Ginsberg v. New York, 1968); Miller v. California, (1973).

While private universities are not legally bound by the first amendment, they are wise to heed in their own governance its guiding principle: That apart from a narrow class of exceptions (libel, obscenity, fighting words, incitements to violence), speech should not be regulated on the basis of its content, however provocative or controversial. Private universities are also wise to follow the courts in recognizing that students have free speech rights, as long as they can be exercised consistently with the educational purposes of the institution.

Within our own institutional tradition at Brandeis, faculty and students have fiercely defended rights of free expression. They have also recognized that a community of learning and teaching cannot exist without some measure of mutual restraint. To that end, our rules explicitly forbid defamatory, discriminatory, and harassing expressions. While we recognize the ideal of civility of discourse, it may not always be possible to attain it in practice, when people are involved in passionate discourse about topics where there are very strong disagreements.

We believe that the practice of free speech is a necessary condition for the expansion and communication of human knowledge, the most vital mission of the Academy, requiring it to encourage the widest possible expression of divergent views. At the same time, we recognize that our individual rights to free expression entail a responsibility to respect the rights of others. Brandeis University has a strong tradition of protecting and encouraging the public expression of divergent or controversial views, one that over the years the current administration has done much to uphold.

## FINDINGS ABOUT THE VOICES OF PALESTINE EXHIBIT

After reviewing the episode that generated such controversy on campus last spring, the Committee concluded that in removing the Voices of Palestine exhibit, the University committed a serious error.

The committee found that the student followed rules for mounting a display in a public site. It recognized, though, that the rules and procedures governing the what and the

where of student speech on campus lacked clarity, consistency, and completeness. But the student followed what rules there were. More importantly, in the eyes of the Committee, the content of the Voices of Palestine exhibit in its final form did not invite or justify its removal. (The guidelines pertaining to student speech and expression are found in Section 7.6 in the Rights and Responsibilities Handbook, as noted below.) Members of the Committee did not find that the most controversial images - showing a snake coiled as the Star of David, or the Palestinian flag in the shape of the state of Israel - constituted hate or any other prohibited form of speech. Such imagery would indeed be hurtful or troubling when standing on its own, or when included in a deliberate attack on the core identities of members of this community. But these images were not wielded as instruments of hate; they were embedded in a collection of other drawings assembled by a Brandeis student for the purpose of public viewing, with their provenance declared. The committee was not unanimous as to the wisdom of mounting the exhibit in its original form in the first place, in the designated place at the designated time. But in its final form, with suitable explanatory context added by the student (describing the origin of the images, her reasons for displaying them, and identifying herself as an “Israeli peace activist”), the exhibit depicted views about the Middle East that clearly did not purport to be those of the University, and it represented accordingly a legitimate student exercise of the right to free speech on campus. Some members of the committee felt that a statement dissociating the University from the drawings and providing fuller background would have been desirable, even though not mandated by prior customs or procedures. Only one felt such an addition necessary to the exhibit’s continued presence on the walls of the library. The removal of the Voices of Palestine exhibit thus represented a regrettable departure from the University’s own policies and practices, as many Brandeis faculty and alumni noted in the weeks following the removal of the exhibit.

Removal of the Voices of Palestine exhibit also appeared to depart from the practice at other non-sectarian liberal arts universities facing similar situations.<sup>1</sup> This may explain in part the extent of the media attention the removal attracted.<sup>2</sup>

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<sup>1</sup> These include MIT, Penn State, UC Irvine, and De Paul. Administrations at these and other colleges and universities have generally displayed great caution in regulating student speech and expression on campus; at the first two, the administrations intervened earlier this year to re-instate controversial exhibits after others had attempted to suppress them. At De Paul University in Chicago, a Palestinian art exhibit was introduced by a catalogue asserting that “in 1948 statehood was lost to Israeli occupation.” Objections were raised to this statement, but the sponsoring professors refused to remove the catalogue. While they would not have made the statement themselves, they said, they concluded that “what this statement does reflect is a view of at least some Palestinians, and as such, it helps people to understand the art that is being produced.”

<sup>2</sup> Coverage of the incident was widespread. Articles or discussions appeared in the Boston Globe, the Boston Herald, Haaretz, WBUR, Pacifica Radio, and numerous Internet sites and advocacy blogs, some from places as far away as Miami, Toronto, and Japan.

Even as it deplored the removal of the exhibit, the committee did not impugn the motives of those involved in the act. It chose to assess the incident and its lessons and to move beyond assignments of blame. It applauded the Administration's own record of upholding academic freedom and defending the expression of controversial views, sometimes in the face of strong pressure not to. It found the fostering of dialogue about the Middle East by the Administration particularly notable.<sup>3</sup> (It is thus unfortunate that the bad publicity that ensued dwarfed the good publicity that ought logically to have rewarded the larger story of this Administration's actions.)

The uncharacteristic act of removal at Brandeis occurred, in the committee's eyes, in the absence of clear and consistent guidelines and procedures for the authorization and regulation of exhibits on campus. The committee feels that the adoption of the following guidelines and procedures would help all members of the Brandeis Community; we now turn to these.

## GUIDELINES FOR EXHIBITIONS AND EVENTS

At present student expression and the content of exhibitions and events at Brandeis is restricted only by the following provisions of Rights and Responsibilities, Section 7.6:

### 7.6 Examples of Other Forms of Harassment/Discrimination

There are other forms of harassment/discrimination as well that create a hostile educational or work environment on the basis of race, color, ancestry, religious creed, national or ethnic origin, sex, sexual orientation, age, genetic information, disability, Vietnam Era veteran, qualified disabled veteran or other eligible veteran status or status in any group protected by federal or state law (together, "protected class status"). Depending on the circumstances, the following are examples of behaviors that may constitute harassment/discrimination under this policy. This is not an exhaustive list:

- Jokes, comments or innuendoes that make fun of, denigrate or are based on an individual's or group's protected class status;
- Epithets or slurs based on an individual's or group's protected class status;
- Objects, posters, cartoons or pictures which make fun of, denigrate or are based on an individual's or group's protected class status whether directed to an individual, placed on University premises or displayed or circulated on campus;

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<sup>3</sup> Within the past year the university President has defended Dr. Khalil Shikaki, former director of the Ramallah-based Palestinian Center for Policy and Survey Research, and now Senior Research Fellow of the Crown Center for Middle East Studies; it has awarded an honorary degree to Tony Kushner, whose public criticisms of Israel the Administration rightly deemed irrelevant to the literary work for which it was honoring him; it has defended its award of an honorary degree to Prince Hassan bin Talal, the former Crown Prince of Jordan and an active supporter of Arab causes; and it has promoted ties between Brandeis and Al-Quds University.

- Displaying, sending, forwarding, downloading or otherwise distributing materials via the internet, computer, or email that make fun of, denigrate or are based on protected class status;
- Other verbal or physical conduct that denigrates or shows hostility or aversion toward an individual or group based on protected class status. Determination of whether particular conduct violates this policy is made on a case-by case basis, in light of all the known facts and circumstances. The University may take action on conduct that it deems to be inappropriate, regardless of whether it rises to the level of a violation of law.

A document entitled “Student Development and Conduct” issued by the Division of Student Life in the Department of Student Development and Conduct (<http://www.brandeis.edu/studentlife/sdc/>) also lists certain “Core Values” that it expects students to honor, including “**Civility**: Regardless of difference in opinion or background, our conduct must demonstrate courtesy and compassion, and reflect our recognition of the dignity of every human being.” The legal status of this document, which had not been approved by the faculty, is unclear to the Committee.

The Committee does not propose to modify or expand the limitations upon student expression as described in the Rights and Responsibilities Handbook. Nor does the Committee propose to spell out in greater detail the practical meaning of “hate speech” or that of the provisions of Rights and Responsibilities; such undertakings are beyond its competence, even though the Administration may wish to re-examine Section 7.6 in the light of challenges to comparable regulations elsewhere. But the Committee does propose a procedure for resolving disputes arising from the interpretation of these provisions [see below].

The provisions above in Rights and Responsibilities already govern all forms of public student expression on campus, including posters, debates, or newspapers. Exhibitions, however, involve the authorized use of University space over an extended period of time for the public viewing of student work, often of a non-verbal nature. They invite a more careful elaboration of the conditions under which they appear. With exhibitions in mind, the Committee proposes to supplement the provisions of Rights and Responsibilities above with the following recommendations. They are not meant to impose additional restrictions on student speech but to protect its rightful exercise. Unless the manner of expression spills over into hate speech, discriminatory harassment, fighting words, obscenity, incitements to imminent violence and perhaps other narrowly defined exceptions to free speech recognized in Section 7.6 of Rights and Responsibilities, the presumption must be strongly in favor of the free speech rights of students.

- Exhibits must provide a clear statement of authorship and sponsorship.
- Each exhibit must carry a notice stating that by authorizing it the university does not necessarily endorse its content.

- Exhibits should have an official opening whenever possible, at which the author or artists introduces the work to the public.
- The Brandeis Office of the Arts, working with the Rose Art Museum, should develop a set of recommended curatorial guidelines about exhibits. Such recommended guidelines would be helpful to students and student groups who want to display exhibits, as well as to the faculty who are supporting or signing off on these exhibits.
- The university should not censor or remove an exhibit because some people object to its content. Members of this community should expect that they will come across exhibits expressing offensive points of view. Those who object to the content of an exhibit should be encouraged to mount their own exhibit or record their concerns where space is available. A student feeling frustrated in trying to air a competing view may bring the matter before the grievance committee [see below].

## B. PROCEDURES

The procedure for authorizing an event or an exhibit currently rests on the exhibit sites themselves and on Conference and Events Services. The jurisdictional lines are not clear, and some spaces, such as the library, appear to require authorizations from Conference and Events for one room but not for another. Other spaces, such as the hallway outside the science library, appear to float between jurisdictions or to be subject to none at all. It is not entirely clear how many sites on campus are presently available for student exhibits and events. Finally, and perhaps most importantly, we do not know what criteria sites currently use in accepting or refusing a proposed exhibition. We propose to remedy the situation with the following procedural guidelines, most of which could apply to events as well as to exhibits:

- An individual student, student club duly chartered under Section VIII of the Student Union by-laws, or another student group wishing to exhibit work would normally find a faculty sponsor, willing to support the proposed exhibit in a formal, written manner and to serve as an advisor.
- A student unable to find a faculty sponsor may bring the matter before the Faculty Grievance Committee [see below].
- Any student proposing in this way to display work should be entitled to do so somewhere on campus, at an appropriate time, as long the work does not violate existing restrictions under Rights and Responsibilities and as long as space is available.
- Students proposing an exhibit to a site should provide advance notice and try to avoid unsuitable times for display, such as final exams or a religious holiday. Inadequate notice, or choice of an awkward week, can constitute legitimate

procedural grounds for refusing an exhibit at that time.

- A list of authorized sites for the purpose is essential, and the administration needs to develop one.
- Each site should designate a “site coordinator” responsible for authorizing how the space will be used. A student wishing to display work in a particular site should approach it through Conferences and Events, which would become a central “clearing house” serving to find a site for a proposed exhibit. A site coordinator might refuse to accept the exhibit as unsuitable to a particular place, or because it does not fit into the already established schedule for displaying exhibits, in which case the student may approach a different space and/or the Faculty Grievance Committee.
- While the viewpoint of an exhibit should not in itself determine the site to which it is assigned, an individual site may on rare occasions deem an exhibit too shocking or graphic, or provocative for display in a highly visible, public site, where even those not wishing to see it would be forced to do so. In that case, the student or organization would approach Conference and Events and/or the Faculty Grievance Committee for assistance in finding another place to display the exhibit.
- The site coordinator should attempt to accommodate a student wishing to display critical or competing work, by making space available if it exists or by helping find space at some proximate site if it does not. A student feeling frustrated in trying to air a competing view may bring the matter before Conference and Events and the Faculty Grievances Committee. [See below]
- Reasons for refusing an exhibit or moving it to another site, as mentioned above, may include its violation of existing rules (Section 7.6), shocking or unduly graphic content, inappropriate timing or insufficient advance notice.

### C. DISPUTES AND GRIEVANCES

The designation of an exhibit as hateful, with the consequences that follow, is ultimately a matter of judgment, subject to challenge and protest. Such disputes, in the eyes of the committee, are better resolved by several heads than one. We accordingly recommend the creation of a Faculty Grievance Committee as follows:

- The committee should consist of members from the faculty, Administration, and undergraduate student body, possibly two from each, in ways to be worked out at the appropriate time. (This configuration might require a change of name to “Grievance Committee”). The committee would provide counsel to students, faculty and the administration when disputes arise, but would not have coercive powers of its own.

- It would meet only as needed, in response to a request for counsel.
- It could help a student find a faculty sponsor; help resolve disputes between a student and a site coordinator, or Conference and Events, over situating an exhibit; between a site and a student unable to find space for work critical of an exhibit; between a student and an Administration official who believes that an exhibit should be removed or closed.
- The Committee urges the Administration to consult with the new Committee if ever considering action against a student exhibit or event. It urges the Administration, furthermore, to consider in such cases reinforcing the disclaimer that would already be in place (according to the new guidelines) by dissociating the University from the exhibit, rather than by taking the extreme step of removing it, with all the attendant implications for the practice of free speech on campus. Exhibits ought to stand in appropriate places at appropriate times, unless they violate existing restrictions on hateful or defamatory speech, as set forth in Rights and Responsibilities section 7.6.

## FALL AND FUTURE EVENTS

The committee does not think it advisable to hold a symposium or conference about the Voices of Palestine episode, or about the dimensions of free speech on campus. Conceivably, the present report could be the basis for a discussion at a Faculty Meeting, or with the Faculty Senate.

The committee welcomes, though, the Provost's suggestion that the events being planned for the spring to commemorate the 150th anniversary of the birth of Justice Brandeis should include discussions of these matters.

The committee wishes to recommend for the fall and beyond a series of University-wide events under the general heading of "The Many Faces of the Middle East" or "Brandeis and the Middle East." These events should not, indeed must not, be confined to any one topic, such as the politics of the Middle East, nor to any single department or program. They should reflect the full range of the University's scholarly activities, and should include participation from the Creative Arts, the Sciences, and the Humanities as well as the Social Sciences.

An event already planned for October 19-21, the visit of a Persian-Turkish duo of musicians with related events including a film series, workshops, talks, and concerts ("Kayhan Kalhor and Erdal Erzincan: Musical Metaphors from the East – Improvisations on Persian and Turkish Themes" part of the Intercultural residency Series) provides a good example of the professional encounters of members of the University with counterparts from the Middle East, and could usefully take place under the umbrella of the new series the Committee envisages. Another example would be the September 14-17 theatrical offering at Springold (a co-sponsored program of Brandeis Theater and the Ethics Center) of "Via Dolorosa" by one of Britain's most respected political

playwrights, Sir David Hare, in which he explores the landscapes, ideologies, and emotions of a region he has visited at length. A third example would be the discussion on September 6, hosted by the Crown Center for Middle East Studies, among leading Middle East experts of the impact of the Hezbollah-Israel war.

The timely convergence of these three events alone suggests the presence of rich resources on campus. It is not unusual. Last October the Yuval Ron Ensemble, an internationally acclaimed ensemble representing three spiritual traditions of the Middle East, with Israeli, Palestinian, Armenian, and American musicians, came for a three-day residency at Brandeis, coinciding with another event organized by the Crown Center about the political situation in the Middle East. Examples to come could include a discussion about science dialogue that crosses national boundaries, about the consequences of the proposed British faculty boycott of Israel for purposes of academic exchange, a debate over the controversial article by John Mearsheimer and Steven Walt in The London Review of Books (vol. 28, 23 March 2006) about the “Israel lobby,” or a debate over the future of Lebanon in the wake of the recent hostilities.

The Series would provide one example of how to confront a major problem in the university. A disturbing finding that emerged from our inquiries had to do not with controversy engulfing one exhibition, but with the level of interest among members of the community in exhibits in general. Much of our exhibition space, furthermore, is empty much of the time. Perhaps we need another group, composed mainly of faculty and students, who would be asked to think boldly and creatively about programs and exhibitions that might support our primary mission of teaching and learning in exciting ways.

As a case in point, the series on the Middle East would seek to explore the region’s cultural as well as political life, in events and exhibitions that might coincide and intersect with one another. A committee of faculty, students, and administrators might sponsor and organize the series. The events themselves would provide a practical demonstration of the kind of discussion we wish to encourage, extend the Administration’s already impressive record of fostering dialogue, and move the University more lastingly beyond the removal of the Voices of Palestine exhibit than any renewed discussion of the exhibit itself.

“To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion.” Justice Louis Brandeis, in *Whitney v. California* (1927).