



June 21, 2023

M. Elizabeth Magill
President
University of Pennsylvania
1 College Hall, Room 100
Philadelphia, PA 19104

Dear President Magill:

On June 23, 2022, the Chair of the Faculty Senate received a request from Penn Carey Law School Dean Ted Ruger (“Charging Party”) to convene a Hearing Board to review whether the conduct of Professor Amy Wax (“Respondent”) constitutes a major infraction of University Standards under Faculty Handbook Section II.E.16., “Procedure Governing Sanctions Taken Against Members of the Faculty.” A hearing was held from May 1-3, 2023, in which both the Charging Party and the Respondent participated. The following report represents the Hearing Board’s findings, conclusions, recommendations.

Background

The Hearing Board spent many hours over the past year considering the details of the case submitted by Dean and Professor Ted Ruger, in which Professor Amy Wax was charged with engaging in conduct that involved a “flagrant disregard of the standards, rules, or mission of the University or the customs of scholarly communities.”¹ In discussing this case we reviewed the charging statement, the responses submitted by Professor Wax, and the additional information provided at the hearing held in May 2023, including the numerous documents submitted by the Charging Party and the Respondent before, during, and after the hearing.²

We regard this to be a case not of free speech, which is broadly protected by University policy as articulated in the Faculty Handbook³, but rather of flagrant unprofessional conduct by a faculty member of the Penn Carey Law School, and of the University of Pennsylvania. This conduct has had a detrimental impact on equal access to educational opportunities at the Law School and on the community more broadly. For this reason, we focus in this report on widely acknowledged standards of our profession, which recognize a difference between professional conduct and

¹ Faculty Handbook, Section II.E.16.1.B.7.

² In his June 12 letter to the Board co-chairs Mr. Shapiro states that in the report from Dean Chemerinsky, that was submitted by the Charging Party and states that Respondent has crossed the line of speech protected by academic freedom, there was “no discussion of where this magical “line” exists, who gets to draw it, or how professors are supposed to know when they’ve crossed it.” We suggest that the process resulting in this report is one important way to draw such a line.

³ Faculty Handbook, Section II.A.

protected free speech. In coming to our conclusions, we are applying the standards of the Faculty Handbook.⁴

I. Conclusions

- (1) The Hearing Board finds Professor Wax in dereliction of her scholarly responsibilities, especially as a teacher.

Our faculty's primary teaching responsibilities are to teach our students according to the *highest professional standards*, and to do so *equitably*. Professor Wax has violated the first of these standards through her *uncritical* use of data⁵ and unfounded *declarative* claims⁶ in some of her courses, campus events, and elsewhere as a representative of the University of Pennsylvania. Her consistent reliance on misleading and partial information, which often leads her to make unsubstantiated statements⁷ and to draw sweeping and unreliable conclusions⁸, violates the University of Pennsylvania's Faculty Handbook as well as broader professional standards, expectations, and norms.⁹ Professor Wax's uncritical use of data, and her promulgation of unfounded claims are detrimental to her students¹⁰, and particularly where they concern groups with which many of our students and colleagues identify¹¹.

We do not dispute the protection Professor Wax has to hold her views or to express them in public. However, when controversial views, rejected by most peers and unsupported by peer-reviewed scholarship, are presented as uncontroverted¹² scholarly facts by a faculty member of the University of Pennsylvania, and when those views are, additionally, demeaning and demoralizing to minority groups¹³, they cannot help but *inequitably* impact the learning environment at our institution, as well as violate behavioral professional norms.

We stress that the impact of the positions Professor Wax has taken as a professor who holds a named Chair at Penn¹⁴, has been extraordinarily detrimental to her students and to the student body as a whole. By conveying these positions with reckless disregard for scholarly and professional norms, she has failed to effectively teach all our students, majority and minority

⁴ Faculty Handbook, Section II.E.1.

⁵ Appendix 2, Item 3.

⁶ Appendix 1, Item 17

⁷ Appendix 2, Item 5.

⁸ Appendix 1, Item 15.

⁹ Leading a conservative alum to describe them as 'reprehensible and unscholarly', Exhibit 32. We note that here and through the report we refrain from mentioning names and identifying information of students and alums to protect their privacy and safety, as was agreed by the sides prior to the hearing and reiterated at the hearing without objection. In some instances in this report we refrain from providing reference to specific statements for the same reason.

¹⁰ Appendix 2, Item 3.

¹¹ Appendix 2, Item 5.

¹² The syllabi submitted to the Board, and multiple student witnesses. In a June 12th letter to the Hearing Board, the Respondent's counsel suggests that "the goal of Prof. Wax's class is to present students with ideas with which they – and she – might well disagree" (p.4). Later in the same document Mr. Shapiro suggests that no evidence was presented to refute the "observed differences between groups" or to discredit "factual statements by Murray, Powell, and Taylor, or by Prof. Wax herself" on these matters.

¹³ As was evident in students' and colleagues' testimonies at the hearing.

¹⁴ <https://almanac.upenn.edu/archive/volumes/v53/n08/lawchairs.html>

students alike, particularly in the area of Conservative Legal Thought.¹⁵ Indeed, not only has she modeled shoddy “science”¹⁶ in her teaching practice, but in so doing she has polarized the student body and alienated many students. This has produced a double loss to Penn students, limiting their exposure to scholarly discussions on conservative legal thought, and negatively impacting their learning environment.

(2) The Hearing Board finds Professor Wax in violation of privacy policies of the University of Pennsylvania.

Repeated statements that Professor Wax has made in public about her students’, and Penn Carey Law School students’ grade distributions by race^{17,18} constitute serious violations of professional norms. For professors to publicly discuss grades by race (irrespective of whether such statements are grounded in fact) violates norms around grading privacy at universities across the country,¹⁹ and Penn is no exception. Despite warnings,²⁰ Professor Wax continues to assert her right to make such statements. This practice has further discouraged racially diverse and minoritized students from taking her classes; several have expressed concern that potential employers may infer they earned a low grade from her.

(3) The Hearing Board concludes that Professor Wax has on numerous occasions, both inside the classroom and in public, flagrantly violated University norms to treat all students with equitable due respect.

Professor Wax’s history of disrespectful and dismissive treatment of various groups is long, persistent, and well-documented. Indeed, it demonstrates a pattern of flagrant, even escalating disregard for University expectations and professional norms regarding the treatment of members of the University community. Various groups of students - most significantly Black students, but also Asian students, Hispanic and immigrant students, LGBTQ students and women – are not only harmed but also wronged by this treatment. These students have a justified expectation of equitable, respectful treatment by faculty at the University of Pennsylvania.²¹ We

¹⁵ By Professor Wax’s account at the hearing, she sees her public appearances and her classes as a continuum and draws ideas and perspectives from her engagements in public venues. This leads to a reductive view of conservative and right-leaning thought in her class.

¹⁶ Appendix 2, Items 1, 2, 3; Appendix 1, Items 2 and 14 (as examples of public speech given in her capacity as professor at Penn Carey Law School).

¹⁷ “The downside to social uplift | Glenn Loury & Amy Wax [The Glenn Show]”, September 11, 2017, <https://www.youtube.com/watch?v=cb9Ey-SsNsg>. Referenced in Charging Party’s “Wax Cross Exhibits” “Tab 11 – 2021.04.27 – Student Complaint.”

¹⁸ “Tucker Carlson Today,” *Fox Nation*, April 8, 2022. Referenced in Charging Party’s “Wax Transcripts” “Tab 11 – 2022.04.08 – Tucker Carlson and Amy Wax.”

¹⁹ <https://catalog.upenn.edu/pennbook/confidentiality-student-records/>; <https://www.umsl.edu/services/academic/policy/gradeconfidentiality.html>; <https://clas.uiowa.edu/faculty/student-records-confidentiality-ferpa>; <https://www1.villanova.edu/villanova/provost/resources/student/policies/disclosure.html>; https://www.fordham.edu/download/downloads/id/1850/09_-_dos_and_donts_for_teachers.pdf; <https://infoforfaculty.fas.harvard.edu/book/student-privacy>; <https://www.registrar.columbia.edu/content/privacy-rights-ferpa>; <https://deanofstudents.stanford.edu/policies-processes-and-protocols/privacy-and-confidentiality>

²⁰ Professor Wax has been warned in writing by the Dean that such statements are in violation of both the Family Educational Rights and Policy Act (FERPA) and University of Pennsylvania policy.

²¹ <https://oaaeop.upenn.edu/resources/policies-handbooks-procedures>

conclude that disciplinary action is necessary when such disrespectful and dismissive treatment *negatively and inequitably* impacts the learning environment, whether in the classroom, elsewhere on campus, or in other professional settings in which students reasonably expect to learn and to be treated equitably.

II. Summary

The Hearing Board unanimously finds that the issues and facts presented by the Charging Party, and those further illuminated during the Hearing process, constitute serious violations of University norms and policies, and therefore should be treated as major infractions of University behavioral standards. We find that Professor Wax repeatedly violated professional norms by 1) presenting topics in reckless disregard of scholarly standards and presenting misleading and partial information, which is often not scholarly or peer-reviewed, in order to draw sweeping conclusions with the predictable impact of negatively and inequitably harming the learning environment at the University of Pennsylvania; 2) violating widely held standards of privacy and confidentiality by discussing her perception of Penn Carey Law student grades by racial groups; and 3) repeatedly and persistently making discriminatory and disrespectful statements to specific targeted racial, national, ethnic, sexual orientation, and gender groups with which our students and colleagues identify. Her behavior has created a hostile campus environment and a hostile learning atmosphere.

III. Major sanctions

Based on these findings, we recommend the following major sanctions:

- Public reprimand, expressed by University leadership.
- Loss of named chair, to reflect Professor Wax's unsuitability for University and/or School honors.
- A requirement to note in her public appearances that she is not speaking for or as member of the Penn Carey Law School or the University of Pennsylvania.
- One year suspension at half pay (with benefits remaining intact).
- Loss of summer pay in perpetuity.

IV. Recommendations

The hearing board spent many hours considering the impact of the violations noted above. As members of the Penn community, we care about repairing this impact. The following recommendations are not a part of the sanctions and are suggested by the Board as actions to be considered by the University and Penn Carey Law's leadership as steps forward.

a. Professional Development

In addition, and in response to Professor Wax's request during the hearing for suggestions on how to alleviate her students' concerns about possible unequal treatment in her classes²², we recommend that Professor Wax be required to engage in professional development in the area of

²² Hearing Transcript, Day 3, pages 128-129

pedagogical practice, which will help align her teaching practice with the University's professional expectations. She clearly demonstrated teaching excellence in the past, and we think both she and her future students would benefit from this professional development.

b. Future Participation at Penn Carey Law School

Given significant factual disputes over statements and interactions in Professor Wax's classes, we recommend that Penn Carey Law records her classes and ensure that the recordings are preserved by the Dean of Students to better facilitate resolution of any future disputes.

When feasible, we recommend that her classes are co-taught with another member of the faculty.

We recommend that Professor Wax's office be moved outside Penn Carey Law School buildings and that her classes are taught outside Penn Carey Law School buildings.

We recommend that Professor Wax not receive any committee assignments or advising roles.

Respectfully submitted,

Members of the Hearing Board in the Just Cause Matter regarding Professor Amy Wax

CC:

John Jackson, Jr., Provost

Crystal Nix-Hines, Charging Party Counsel

Theodore Ruger, Charging Party

David Shapiro, Respondent Party Counsel

Amy Wax, Respondent

Wendy White, Senior Vice President and General Counsel

Enclosure:

Hearing Transcripts, redacted to protect the identities of students and alumni

Appendices²³

Appendix 1. Examples of inequitably targeted disrespect:

1. “I’ll just come right out and say it right, that on average blacks have lower cognitive ability than whites. You know, that’s just a fact. It’s a fact which you can be persecuted for stating. But it is a fact.”
2. “Groups have different levels of ability, demonstrated ability. Different competencies, that they, and you know, you don’t just say that. Given the realities of different rates of crime, different average IQ’s, people have to accept, without apology, that blacks are not going to be evenly distributed through all occupations. They’re just not. And that’s not a problem. That’s not due to racism. That’s due to these differences.”
3. “I think the crime problem in this country, I’m sorry it is true, is overwhelmingly, certainly within cities, it is a black problem. It is a minority problem, okay? Overwhelmingly. I mean your chance of being, you know, a victim of gun violence by a white person in New York City, is essentially non-existent.”
4. “The basic idea is that, at this juncture in African-American history shall we say, in the United States, the main problems that are holding blacks back are really problems of behavior and not of overt racism, discrimination, really what society is doing to us, but the choices people are making. And I identify the main areas of difficulty as educational under-achievement, high crime rates and family breakdown.”
5. Low-income students may cause “reverse contagion”—infecting more “capable and sophisticated” students with their “delinquency and rule-breaking.”
6. “I often chuckle at the ads on TV which show a black man married to a white woman in an upper-class picket-fence house....They never show blacks the way they really are: a bunch of single moms with a bunch of guys who float in and out. Kids by different men.”
7. “We indulge the assumption, which I will say, we now see was overly, overly optimistic that blacks would be in the same position as whites if we had not, uh been a racist society.”
8. “... I mean, there are a lot of things that blacks themselves could reform to make their lives better, not have such a high out-of-wedlock birth rate, for example. Use drugs less, you know, be more obedient to law, stop committing crimes. These are all behaviors that are within the power of the people to change. So there is a lot of room for improvement.”
9. Asking whether “the spirit of liberty beat[s] in the[] breasts” of Asian people.
10. “As long as most Asians support Democrats and help to advance their positions, I think the United States is better off with fewer Asians and less Asian immigration.”
11. “And this hideous monstrosity, the diversity, inclusion and equity bureaucracy, which that is filled with mediocrities. You know people who don’t care about truth seeking, don’t care about academic values, couldn’t be scholars if their life depended on it, you know, are just kind of time-serving true believer bureaucrats ... It’s welfare for the, you know, for the barely-educated upper middle class, really.”
12. Speaking of University students: “And they have become these cowed, benighted sheeples. I mean, it’s just unbelievable. So not only are they, you know, thoroughly intimidated, as they should be, but they are ignorant. They know nothing.”

²³ Quotations are referenced in the Charging Party’s request to form this Hearing Board.

13. “We could have admitted women, which you know, fairness requires that we open channels of opportunity to women, although I will say that, you know, the crusty old patriarchs of old, in being reluctant to do that, they were kind of on to something.”
14. “So, women, on average, are more agreeable than men. Women, on average, are less knowledgeable than men. They’re less intellectual than men. Now, I can actually back up all those statements with social-science research.... They know less about every single subject, except fashion.”
15. “I mean, a lot of local governments, big city governments, they are not in the hands of what we would call legacy Americans. They’re not in traditional hands. They are being run like third world countries, frankly, in many respects... it’s a mixed bag...But I just worry that, you know, these corrupt grifters are going to take over our cities, have taken them over in part and, you know, bring us back to third world conditions...So we really have to be afraid of that and be vigilant. And of course, it’s all mixed up with race. So nobody feels like they can criticize these big city governments when, for example, they’re in black hands, that if they’re not well run, they can’t say anything negative...”
16. “I have been called a racist. I lost count of how many times I’ve been called a racist, and my view at this point is, you know, being a racist is an honorific. To be called a racist means you notice reality and to me that’s a positive thing not a negative thing that’s an occasion for praise and admiration.”
17. Some cultures are “not equal in preparing people to be productive in an advanced economy,” including “the anti-‘acting white’ rap culture of inner-city blacks,” and “the anti-assimilation ideas gaining ground among some Hispanic immigrants.”

Appendix 2. Incidents recalled by alumni and which, for the purposes of this report, were supplied under oath:

1. Telling a black law student who wondered whether Professor Wax agreed that black people are inherently inferior to white people that “you can have two plants that grow under the same conditions, and one will just grow higher than the other.”
2. Emailing a black student that “[i]f blacks really and sincerely wanted to be equal, they would make a lot of changes in their own conduct and communities.”
3. Telling a student that black students do not perform as well as white students because they are less well prepared, and that they are less well prepared because of affirmative action.
4. Telling a student who was part of a larger group of students invited to her home, that “Not everyone wants to live in a quiet neighborhood. Many Hispanic people, for instance, don’t seem to like that sort of thing.”
5. Emailing students after a lunch gathering with them that “there is very little savings in the black community (I say this based on data)” and “Look around and see who is running the businesses in Philadelphia—west, south, north, center city. Sadly, its mostly Asians, Indians, Jewish merchants—not blacks.”
6. Emphasizing loudly in class that a case witness was a black man, and then calling a black male student in class by the name of the black witness in the case.

Appendix 3. Incidents recalled by Professor Wax's former students, supplied under oath:

1. Stating in class that Mexican men are more likely to assault women and remarking such a stereotype was accurate in the same way as "Germans are punctual."
2. Commenting after a series of students with foreign-sounding names introduced themselves that one student was "finally, an American" adding, "it's a good thing, trust me."
3. Stating in class that people of color needed to stop acting entitled to remedies, to stop getting pregnant, to get better jobs, and to be more focused on reciprocity.