

From: Dean Ruger
Date: Tue, Mar 13, 2018
Subject: A Message from Dean Ruger

Dear members of the Penn Law community,

I write to share with you information about a development of great concern to our intellectual and professional community. In the past two weeks, students and alumni have brought to my attention a number of public claims made last fall by one of our tenured faculty, Amy Wax, during a video interview. Specifically, Professor Wax stated that, "I don't think I've ever seen a black student graduate in the top quarter of the class, and rarely, rarely in the top half." Moreover, she claimed that the University of Pennsylvania Law Review, a prestigious law journal whose editorial board is composed of Penn Law students, has a racial diversity mandate, suggesting that black students on Law Review had not earned their place. Speaking about black law students at Penn and peer schools, she went on to say that "some of them shouldn't" even go to college.

It is imperative for me as dean to state that these claims are false: black students have graduated in the top of the class at Penn Law, and the Law Review does not have a diversity mandate. Rather, its editors are selected based on a competitive process. And contrary to any suggestion otherwise, black students at Penn Law are extremely successful, both inside and outside the classroom, in the job market, and in their careers.

I want to make absolutely clear that Professor Wax, like every member of the faculty and the student body, is protected by Penn's policies of free and open expression as well as academic freedom, and I will steadfastly defend the rights of Law School community members to openly express their views. This has been the position of the Law School throughout my tenure as dean, and before, and it is the consistent message I have articulated in handling protests involving provocative figures speaking on campus, student-led panels on controversial topics, and other free speech debates including those involving Professor Wax. I will maintain this position moving forward. Professor Wax enjoys the same status as every other tenured colleague here: her job, salary, seniority, and opportunity to teach a full load of courses remains secure. She is scheduled to teach a full course load in the next academic year.

Debate at Penn Law is open and robust. But law schools are not free-standing debating societies or think tanks; we are also demanding professional schools dedicated to training hundreds of students each year to enter an increasingly sophisticated and rapidly changing legal profession. Our unwavering position at Penn Law is that the best interests of our students and of the profession are served by attracting and supporting a student body that is more talented and more diverse than ever.

In the statements described above, Professor Wax has chosen to speak publicly, disparagingly, and inaccurately about the performance of these students, some of whom she has taught and graded confidentially at Penn Law. As a scholar she is free to advocate her views, no matter how dramatically those views diverge from our institutional ethos and our considered practices. As a teacher, however, she is not free to transgress the policy that student grades are confidential, or to use her access to those Penn Law students who are required to be in her class to further her scholarly ends without students' permission. Penn Law does not permit the public disclosure of grades or class rankings, and we do not collect, sort, or publicize grade performance by racial group.

The existence of these policies and practices, while constraining this response, is not an invitation to statements made with conscious indifference to their truth content. Our first-year students are just that – students – not faceless data points or research subjects to be conscripted in the service of their professor’s musings about race in society.

In light of Professor Wax’s statements, black students assigned to her class in their first week at Penn Law may reasonably wonder whether their professor has already come to a conclusion about their presence, performance, and potential for success in law school and thereafter. They may legitimately question whether the inaccurate and belittling statements she has made may adversely affect their learning environment and career prospects. These students may also reasonably feel an additional and unwarranted burden to perform well, so that their performance not be used or misused by their professor in public discourse about racial inequality in academic success. More broadly, this dynamic may negatively affect the classroom experience for all students regardless of race or background.

As dean it is my responsibility to allocate faculty teaching resources in the best interest of students and of the Law School. After consulting faculty, alumni/ae, Overseers, and University officials, I have decided that Professor Wax will continue to teach elective courses in her areas of expertise, but that are outside of the mandatory first-year curriculum. In this respect, she will be similarly situated to a substantial majority of our tenured and chaired faculty, most of whom do not teach required first-year courses. This curricular decision entails no sanction or diminution of Professor Wax’s status on the faculty, which remains secure. Normally, this decision would be private, but because Professor Wax made these inaccurate public statements, and students and alumni raised their concerns publicly, sharing it with our community is important.

I know that this decision will spur debate and difficult conversations in the days, weeks, and months ahead, and I welcome them. At Penn Law we embrace free expression and robust dialogue as core values of a community that is diverse and inclusive in the broadest sense. We encourage and train our students to address problems and tackle the issues that matter most to them through open inquiry and reasoned debate. All faculty and students here will remain free to express their views. And all students and faculty are entitled to a law school that welcomes them equally as individuals.

To that end, I will soon announce a set of initiatives to encourage these conversations about both freedom of expression and diversity and inclusivity, so that all in our community feel that they are fully supported by the Law School, that their voices are heard, and their views matter. I pledge to take concrete steps to advance these core values in the months ahead. In the interim, please feel free to contact me directly to share any thoughts or concerns you have.

Sincerely,

Ted Ruger

Dean and Bernard G. Segal Professor of Law