The full Committee met four times each semester. We were consumed with the issue of freedom of expression which arose as a consequence of *The Primary Source* case heard by the Committee on Student Life (CSL) in the Spring of 2007 and its aftermath. We were joined at our October 9 meeting by Cecilia Chen and Khin Mai Aung from the Asian American Legal Defense and Education Fund. Many of us met with Christopher Edley on October 15 prior to his talk entitled "Reasoned But Passionate, or Hateful But Privileged? Exploring the Boundaries of Freedom of Speech." Many of us also met with the Task Force on Freedom of Expression on March 12.

1. **President Bacow's Statement**

President Bacow issued a statement in late summer to inform the university community of Dean Glaser's decision during the summer to reverse part of the CSL ruling at the end of their hearing of the *The Primary Source* case: the imposition of a byline provision on *The Primary Source*. Included in the President’s statement was the following paragraph:

> While Tufts is a private institution and not technically bound by the First Amendment guarantees, it is my intention to govern as President as if it were. To put it another way, I believe that students, faculty, and staff should enjoy the same rights to freedom of expression at Tufts as they would if they attended or worked at a public university. With the exception of the recent CSL decision, we have operated in the past as if such rights applied. I will work with the Board of Trustees to formalize this policy.

Members of the Committee were concerned that President Bacow would take this issue to the Trustees before the larger community was allowed a chance to weigh in on the matter. This was communicated to the President. The President decided to convene a task force to explore the issue by consulting with constituencies throughout the University and make recommendations to him.

2. **Freedom of Expression**

The Committee had many lively discussions about the issues of freedom of expression/freedom from harassment. We had numerous questions including some of the following. Can Tufts as a private institution define an enforceable code of conduct with respect to harassment as described in *The Pachyderm*? What legal action against the university is available to an individual or group for failure to provide an environment that is free from harassment? Is that the same as a hostile environment? Are there official definitions for these by law? Can Tufts require "ownership" of speech (i.e. bylines)? What speech constitutes harassment? Can a specific group, as opposed to an individual, be harassed? What constitutes the creation of a racially hostile environment? What speech lies outside the protection of the First Amendment? In order to gain some insight into these issues we invited Cecilia Chen ’04 and Khin Mai Aung from the Asian American legal Defense and Education Fund to meet with us. The session we had
with them was quite informative. One particularly helpful consequence was their offering of the following definition of harassment:

Harassment is unwelcome conduct that is based on race, sex, color, ethnic or national origin, religion, age, sexual orientation and disability (hereinafter “protected classes”). Harassment that creates a hostile environment will be punished by disciplinary action if it is sufficiently severe, pervasive or objectively offensive so as to interfere with or limit the ability of an individual (or individuals) to participate in or benefit from the services, activities, or privileges provided by the University. Whether conduct is “objectively offensive” is determined by looking at whether the harassment would be offensive to a reasonable person, of the same age and protected class as the individual, under similar circumstances.

One of the important notions acknowledged by Christopher Edley during his consultation at Tufts is the inherent tension between freedom of expression and freedom from harassment and the role of the community in deciding how to handle these competing values. He also pointed out that fighting harassing speech with more speech only works when the aggrieved party is popular enough to have widespread, vocal support.

3. The Task Force on Freedom of Expression

Membership of the Task Force

Professor Jeswald W. Salacuse, Fletcher School (Chair); Professor Sawkat Anwer, Cummings School; Dr. Lisa M. Coleman, Office of Institutional Diversity; Professor Steven W. Hirsch, Classics; Professor Daniel G. Jay, Medicine; Mr. Dickens Mathieu, Esquire, Office of University Counsel; Professor Colin Orians, Biology

Charge to the Task Force (From President Bacow)

January 3, 2008

Thank you for agreeing to serve on the Task Force on Freedom of Expression. I greatly appreciate your willingness to help establish a university-wide policy regarding freedom of expression that will strengthen both academic freedom and community life at Tufts. The attention this issue has received over the course of the fall semester reflects its critical importance in the life of the university.

The Task Force is charged with recommending proposed policy language regarding freedom of expression at Tufts University that can be presented for adoption by the Board of Trustees. In developing a policy recommendation, I urge you to review best practices elsewhere to determine
how other institutions of higher education, public as well as private, have worked to ensure freedom of expression while preserving an environment that promotes civil discourse on campus.

In discussions this past semester, the debate has sometimes been framed as freedom of expression versus freedom from harassment. I do not see it this way. I think we can have both. The operative issues in my mind are how best to preserve freedom of expression in a way that protects unpopular speech and ideas consistent with the First Amendment, and how to protect members of the community from harassment without defining it so broadly as to require the university to respond to offensive speech with administrative action.

In carrying out your work, I ask that you consult broadly with the members of the Tufts community, including not only faculty but also students and staff. I leave it to you to decide how best to achieve such consultation.

While benchmarking and community input should be critical components of your process, I do not expect you to prepare an exhaustive academic report on these issues or to draft a code of conduct. The highest service the Task Force can render the university is to develop a proposed policy that is thoughtful, internally consistent, clearly worded, and concise. I would appreciate receiving your recommendations by the end of the spring semester—ideally, in time for the May trustees’ meeting. That said, it is far more important that you do your job well than it is to meet any deadline. I have asked Michael Baenen, Chief of Staff in the Office of the President, to serve as staff to the group.

I am truly grateful to all of you for taking on this responsibility, and to Professor Salacuse for agreeing to chair the Task Force. Your work will be tremendously important to the university and your colleagues.

4. EEOC Concerns

After learning about the Task Force's plans to gather input from various University constituencies, EEOC offered suggestions of groups/individuals that would be useful for the Task Force to consult. There was an A&S faculty/staff meeting March 5 with the Task Force and those present were given an early draft proposal entitled "A Declaration on Freedom of Expression and Inquiry at Tufts University.” Some of those who spoke at that meeting expressed dismay at the fact that the Task Force's tentative draft statement did not address the issue of freedom from harassment or even mention the word “harassment.” Other comments were that the document was far too vague, had no practical relevance and gave no specifics and no guidelines.

The Task Force's draft statement was discussed in depth at subsequent EEOC meetings. We wanted the Task Force to recognize that harassment can be so damaging as to prevent one from being able to study and grow. It was pointed out that one group's freedom of speech could have the effect of silencing another group. We felt strongly that the Task Force's statement be concrete enough as to be useful to those forming policy. Other comments were that the statement seemed to address the harassment of students only.
Moreover, there is no mechanism to stop a harasser and the role of the administration and faculty seems merely to educate in the hopes that harassment does not occur.

5. Larger Issues

Some student groups informed EEOC that they are very dissatisfied that so much focus has been put on the Task Force and its forthcoming recommendation to the President. They feel that this focus has eclipsed structural problems that contribute to inequity on campus. Students conveyed that they are neither advocating for the silencing of speech nor are they bent on punishment of those who cross the line into harassing speech. In the latter case, students communicated that students of color may be targeted by a backlash if the source of “punishment” is attributed to them. Students perceive the University as asking the “wrong” questions throughout this year and that issues of equity that concern them are related to much broader questions of campus climate. What students lack most are institutional support, concerned mentors, and especially mentors of color. Other student concerns relate to the lack of progress in filling the positions of Director of the Africana Center and Director of the Women's Center. Students believe that Tufts creates and projects a false image of being a supportive environment for a diverse student population. It was noted that many of the 52 first year students attacked by *The Primary Source* “carol parody” in 2007 have chosen to spend their junior years abroad *just to get away from Tufts*. When harmful harassing incidents occur, students feel that the burden of response has been and is with them because of this lack of institutional support. They feel *abandoned* by the University.

The Committee agreed that it has been quite difficult to get past tending to the damage inflicted on the campus community by *The Primary Source* carol parody and the administrative vacating of the CSL ruling, and more recently, the focus on the need for a statement on freedom of expression. We consider it extremely important to return to the crucial issues of hiring and retention of faculty of color, faculty training in how to engage differences, and diversification of the curriculum. In at least the last two decades, numerous studies have been conducted at Tufts on matters of faculty, student, and curricular diversity and equally numerous recommendations have been delivered. Further studies amount to “reinventing the wheel,” so EEOC plans to review this wealth of data next year, and present a set of updated recommendations in the hope of moving forward. The Executive Committee has made some of these old reports available on their webpage:

http://ase.tufts.edu/faculty%2Dcommittees/ase/executive/default.htm

6. Multicultural Service Award

The Committee once again had a strong set of candidates for the 2007-08 AS&E Faculty/Staff Multicultural Service Award. This year's awardees are Dean Jean Herbert from the Office of the Dean of Undergraduate Education, and Keith Maddox and Samuel Sommers from the Department of Psychology. Their service to Tufts is greatly appreciated.

Submitted by,
Mary Glaser (Mathematics) and Steven Hirsch (Classics)
Co-Chairs of EEOC for 2007-2008