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April 23, 2003

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

I am writing to let you know that I have asked the Academic Council to review a draft policy on academic freedom. This discussion was initiated because the present policy, issued by President Sproul in 1934 and incorporated in the Academic Personnel Manual in 1944, is inadequate in light of changes that have occurred over the last half century. For your information, I enclose a copy of my letter to Academic Council Chair Binion, the current policy on academic freedom, and a letter from Professor Robert Post, who has done the principal drafting of the policy under consideration. Because of the fundamental importance of this issue, it will doubtless spark widespread discussion.

It is important that there be a discussion of all aspects and implications of the proposal. The Academic Council has procedures in place that will ensure a thorough discussion of all points of view. Academic Council Chair Binion informs me that the draft is now out for review on the campuses and within the appropriate systemwide Academic Senate committees. The matter will be on the agenda for the next meeting of the Assembly of the Academic Senate on May 28.

I will be sure to keep you up to date on the issue.

Fiat Lux,

/s/ Richard C. Atkinson

Richard C. Atkinson
President

Enclosures

cc: Chancellors
Academic Council Chair Binion



OFFICE OF THE PRESIDENT

RECEIVED

MAR 24 2003

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March 21, 2003

ACADEMIC COUNCIL

ACADEMIC COUNCIL CHAIR BINION

Dear Gayle:

As you may know, the current statement on academic freedom in the University's Academic Personnel Manual was first issued by President Sproul in 1934 and was incorporated into the Manual in 1944. There have been no modifications to it in 58 years. The statement is focused on the primacy of "dispassionate" scholarship. Although appropriate for the time, it has become outdated and does not provide an adequate basis for understanding and defending academic freedom at the University of California in the 21st century.

I believe the University's stance on academic freedom should reflect the modern university and its faculty. Accordingly, this past January I asked Professor Robert Post, who is a member of the Law School faculty at Berkeley and a respected scholar on First Amendment law, to draft a proposed revision of APM 010-- Academic Freedom. After reviewing the statements at comparable institutions, he developed the enclosed proposed revision of APM 010 that integrates both traditional and modern notions of academic freedom, and focuses on the relationship between professional competence and academic freedom. Professor Post summarized that relationship in his letter to me forwarding the draft statement:

"The quality of scholarship is assessed by its content, not by the motivations that lead to its production. Because academic freedom is concerned with the quality of scholarship, it does not distinguish between 'interested' and 'disinterested' scholarship. It distinguishes instead between competent and incompetent scholarship."

The revised statement establishes a conceptual foundation for academic freedom based on the notion of the faculty as a professional body with distinctive competence and responsibilities, essential for the University to carry out its fundamental mission. His proposed revision also reinforces the principle that academic freedom exists within the norms of professional responsibility and scholarly ethics, and that

Academic Council Chair Binion
March 21, 2003
Page 2

academic freedom depends upon fulfillment of associated duties of professional care that are outlined in APM 015-- Faculty Code of Conduct. His proposed revision confirms that these expectations are to be maintained by the Academic Senate, subject to appropriate review by the Administration.

I would appreciate it if the Academic Council would review Professor Post's draft and provide advice with regard to appropriate wording on a new statement on academic freedom which will serve as the revised APM 010. It would be in the University's best interest if this important project can be completed and issued this academic year, and I therefore seek the Council's response by June 15, 2003.

Sincerely,

A handwritten signature in black ink that reads "Dick" followed by a long horizontal line.

Richard C. Atkinson
President

Enclosure

cc: Provost King
General Counsel Holst
Associate President Hayashi

Academic Freedom

This section is intended to replace APM-010:¹

The University of California is committed to upholding and preserving principles of academic freedom. These principles guarantee freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These principles reflect the University's fundamental mission of discovering knowledge and of disseminating knowledge to its students and to society at large. Knowledge cannot be advanced unless there is freedom of exploration and investigation. It cannot be transmitted to our students and to the public unless there is freedom of expression and publication, both inside and beyond the classroom. The University also seeks to instill in its students a mature independence of mind, and this purpose cannot be achieved unless students and teachers are free within the classroom to express the widest range of viewpoints within the norms of scholarly inquiry and professional ethics.

Academic freedom depends upon respect for the academic competence of the faculty. It is only by reference to that competence that the University may discover and disseminate the knowledge that is central to its mission. It is of the essence of academic freedom that the assessment of teaching and scholarship reflect the application of academic standards.² The University expresses respect for faculty expertise in the application of such standards in the Standing Orders of the Regents, which establish a system of shared governance among the Regents, the Administration and the Academic Senate. Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to review by the Administration for abuse of discretion, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care.

¹ The original language of § 10 of the APM, which was drafted in 1934, associated academic freedom with scholarship that gave "play to intellect rather than to passion." It conceived scholarship as "dispassionate" and as concerned only with "the logic of the facts." The revised version of § 10 repudiates this standpoint. It holds that academic freedom depends upon the quality of scholarship, which is to be assessed by the content of scholarship, not by the motivations that led to its production. The revision of § 10 therefore does not distinguish between "interested" and "disinterested" scholarship; it differentiates instead between competent and incompetent scholarship. Although competent scholarship requires an open mind, this does not mean that faculty are unprofessional if they reach definite conclusions. It means rather that faculty must always stand ready to revise their conclusions in the light of new evidence or further discussion. Although competent scholarship requires the exercise of reason, this does not mean that faculty are unprofessional if they are urgently committed to a definite point of view. It means rather that faculty must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion. Competent scholarship can and frequently does communicate definite and politically salient viewpoints about important and controversial questions.

² Academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. The contours of these duties are more fully set forth in The Faculty Code of Conduct (APM 015).

Members of the faculty are entitled as University employees to the full protections of the Constitution of the United States and of the Constitution of the State of California. These protections are in addition to whatever rights, privileges and responsibilities attach to the academic freedom of university faculty.

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**APM-010 Academic Freedom
Current Statement**

GENERAL UNIVERSITY POLICY REGARDING
ACADEMIC APPOINTEES
Academic Freedom

APM - 010

University of California

University Regulations
(Revised No. 5)

Academic Freedom

The following announcement was originally made by the President of the University before the Northern Section of the Academic Senate on August 27, 1934, and is to be regarded as a setting forth of the principles which guide the President in these matters and accordingly stand as, in a certain sense, the policy of the University.

The function of the university is to seek and to transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or to make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social, or sectarian movements, they are dissected and examined—not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts.

The University is founded upon faith in intelligence and knowledge and it must defend their free operation. It must rely upon truth to combat error. Its obligation is to see that the conditions under which questions are examined are those which give play to intellect rather than to passion. Essentially the freedom of a university is the freedom of competent persons in the classroom. In order to protect this freedom, the University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for propaganda. It therefore takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name.

The University respects personal belief as the private concern of the individual. It equally respects the constitutional rights of the citizen. It insists only that its members, as individuals and as citizens, shall likewise always respect—and not exploit, their University connection.

The University of California is the creature of the State and its loyalty to the State will never waver. It will not aid nor will it condone actions contrary to the laws of the State. Its high function—and its high privilege, the University will steadily continue to fulfill, serving the people by providing facilities for investigation and teaching free from domination by parties, sects, or selfish interests. The University expects the State, in return, and to its own great gain, to protect this indispensable freedom, a freedom like the freedom of the press, that is the heritage and the right of a free people.

For the President of the University

F. C. Stevens
Executive Secretary

Approved:

Robert G. Sproul
Berkeley, June 15, 1944



ROBERT C. POST
ALEXANDER F. & MAY T. MORRISON PROFESSOR OF LAW
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12 March 2003

Richard C. Atkinson
President, University of California
1111 Franklin St.
Oakland, CA 94607-5200

Dear President Atkinson:

You have asked me to draft a proposed revision of the academic freedom regulations of the University of California. References to academic freedom are of course scattered throughout official University documents, and they appear in many locations in the APM. These references have accumulated over time, and they are inconsistent, one with the other. To locate and edit all these references would be a monumental, time-consuming task. I concluded, therefore, that I should focus my attention on APM § 10, which is the only section of the APM that directly and exclusively addresses the question of academic freedom. I am accordingly enclosing with this letter a proposed revision of APM § 10. I am also enclosing an Appendix ("A") that summarizes what I have been able to learn about the academic freedom regulations of 18 comparable institutions, and an Appendix ("B") that contains a brief annotated bibliography of books and articles about academic freedom. Appendices A and B should assist you in evaluating the proposed revision of § 10.

After reviewing § 10, I concluded that the present version should be altogether scrapped. Section 10 originated as a statement by President Robert G. Sproul that was issued on August 27, 1934; in 1944 it became University Regulation No. 5. The statement was issued in response to student political protests which had aroused public hostility.¹ The thrust of § 10 is to propose a political bargain with the State: the University will confine itself to the "dispassionate" task of dissecting "the logic of the facts," and the State, in return, will "protect" the "indispensable freedom" of the University to "transmit knowledge." President Kerr essentially sought to enforce the terms of this bargain in 1964 during the days of the Free Speech Movement, when it

¹ The background of the statement may be found in C. Michael Otten, *University Authority and the Student: The Berkeley Experience* 106-131 (1970); Robert Cohen, *When the Old Left Was Young* 118-33 (1993).

sparked bitter controversy and was ultimately abandoned as a defensible account of academic freedom.²

As Appendix A demonstrates, no modern university understands academic freedom in these terms. Most would now agree that scholarship can be both politically engaged and also professionally competent. In fact political passion is the engine that drives some of the best scholarship and teaching at the University of California, particularly in the humanities and social sciences. The quality of scholarship is assessed by its content, not by the motivations that lead to its production. Because academic freedom is concerned with the quality of scholarship, it does not distinguish between “interested” and “disinterested” scholarship. It distinguishes instead between competent and incompetent scholarship.

It is of course true that scholarship requires an open mind, but this does not mean that faculty are unprofessional if they reach definite conclusions. It means rather that faculty must always stand ready to revise their conclusions in the light of new evidence or further discussion. It is also true that scholarship requires the exercise of reason, but this does not mean that faculty are unprofessional if they are urgently committed to a definite point of view. It means rather that faculty must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion. There is no academic norm that prohibits scholarship from communicating definite and politically salient viewpoints about important and controversial questions, like democracy or human rights or the welfare state.

I have therefore sought to revise § 10 to reflect modern understandings of academic freedom. These understandings derive academic freedom from two main principles. The first principle concerns the mission of the university, which is roughly articulated in terms of the advancement and dissemination of knowledge. This principle is stated in the first paragraph of the proposed revision of § 10. The second principle concerns roughly the professional expertise of the professoriate. Because the “knowledge” which the University exists to advance is defined by reference to this expertise, academic freedom requires a large measure of faculty self-regulation. That is why I have drafted the second paragraph of the statement in terms of the prerogatives and obligations of the Academic Senate.

I have drafted § 10 as a general statement of principles. As the bibliography cited in Appendix B indicates, academic freedom is a vast and complicated subject, with applications to a myriad of distinct and unforeseeable circumstances. Section 10 is not the location to craft a code of conduct that seeks to anticipate and resolve specific disputes about academic freedom that may arise in these diverse contexts. Such rules as the University wishes to adopt belong in §15 of the APM. I have conceived § 10 as a declaration of the basic ideas that make up the concept academic freedom, in the hope

² The story is told in Robert Post, “Constitutionally Interpreting the FSM Controversy,” in Robert Cohen & Reginald E. Zelnik, *The Free Speech Movement: Reflection on Berkeley in the 1960s* (2002).

that it may assist readers to think through unanticipated controversies that may arise in the future.

The first paragraph of the proposed revision of § 10 defines the mission of the University in terms of discovering and disseminating knowledge to our students and to the public. This definition of the University's mission is relatively uncontroversial, and Appendix A suggests that it is in fact quite common. The paragraph then deduces three aspects of academic freedom from this mission: freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These freedoms attach to individual faculty members. The tripartite division of academic freedom originated in "General Report of the Committee on Academic Freedom and Tenure (1915),"³ which in my view remains the deepest and most satisfying account of academic freedom in American universities. The tripartite division is also referenced in the "1940 Statement of Principles on Academic Freedom and Tenure,"⁴ which has received almost universal endorsement. The right to freedom of expression and publication refers both to the right to speak in public as a scholar, and to the right to speak in public as a citizen. It also refers to the right to speak within the University as a participant in its affairs.

The first paragraph also advances a second and logically independent objective of the University. It states that we seek to educate our students so as to instill independence of mind. Academic freedom in teaching is sometimes justified solely in terms of the need to disseminate to students the fruits of scholarly research; the fifth sentence of the first paragraph adopts this rationale. But in my view academic freedom in teaching also depends on the need to attain the distinct educational objective, characteristic of universities, of fostering in our students the ability to think for themselves as mature adults. This objective can be realized only if teachers are free in the classroom to model intellectual independence.

The second paragraph of the proposed revision of § 10 addresses the relationship between academic freedom and the professional autonomy of the professoriate.⁵ The historical roots of academic freedom lie in this autonomy. The basic idea is that what counts as knowledge, scholarship, and teaching, turns on the application of professional standards of judgment. This idea has many implications. The most important is that the quality of faculty work is to be judged *only* by reference to professional standards of academic judgment. It is not to be determined by reference to the political decisions of the electorate, the priorities of financial donors, or the managerial priorities of the administration. Academic freedom historically developed in this country precisely because of the need to insulate faculty from these inappropriate bases of judgment. In the second paragraph of the proposed revision of § 10, I associate this respect for the professional autonomy of the faculty with the exemplary tradition of shared governance,

³ The Statement may be found at pages 291-301 of AAUP, *Policy Documents and Reports* (9th Edition 2001).

⁴ *Id.* at 3-10.

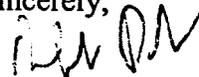
⁵ The history and logic of this relationship are well discussed in Thomas L. Haskell, "Justifying the Rights of Academic Freedom in the Era of Power/Knowledge," in Louis Menand, ed., *The Future of Academic Freedom* (1996).

which is expressed in Standing Orders of the Regents, including Standing Orders 105.2 and 103.9.⁶

A second important implication of the idea that the mission of the university depends upon the application of professional standards is that faculty have the responsibility both to assess the work of their peers and also to submit to the assessment of their peers. This responsibility is what underlies decisions concerning hiring, promotion, awarding tenure, approval of course descriptions, evaluations of teaching, and so forth. A third implication is that faculty must undertake to comply with professional standards in the performance of their duties. In the realm of teaching, for example, professional standards require that faculty accord students the right to think freely and to exercise independent judgment; that they evaluate students solely on the merits of their work; and that they not penalize students merely because of their political, ethical, or religious perspectives. If academic freedom implies professional autonomy, it also implies professional responsibility. Academic freedom does not shield faculty from judgment or evaluation if they act in ways that are professionally unethical or incompetent. We specify the nature of the professional responsibility of faculty in § 15 of the APM (*Faculty Code of Conduct*).

The third and final paragraph of the proposed revision of § 10 makes clear that University faculty also enjoy constitutional rights under the Constitution of the United States and the Constitution of the State of California. Nothing in § 10 is meant to qualify or limit these rights.

Sincerely,



Robert Post

Enc.

⁶ For a discussion of shared governance at the University of California, see Daniel L. Simmons, "Shared Governance in the University of California: An Overview (1995) (Manuscript). On the history of shared governance at the University of California, see John A. Douglass, "Shared Governance at UC: An Historical Review (1995) (Manuscript). I am grateful to General Counsel James Holst for sharing these manuscripts with me.

Appendix A

Academic Freedom Policies At Comparable Institutions

Columbia University

Columbia's Faculty Handbook contains a section entitled "Obligations and Responsibilities of Officers of Instruction and Research." Columbia Faculty Handbook, Obligations and Responsibilities—Introduction and Academic Freedom, available at <http://www.columbia.edu/cu/vpaa/fhb/c7/intro.html>. This section states:

The University is committed to maintaining a climate of academic freedom, in which officers of instruction and research are given the widest possible latitude in their teaching and scholarship. However, the freedoms traditionally accorded those officers carry corresponding responsibilities. By accepting appointment at the University, officers of instruction and research assume varied obligations and duties.

The section goes on to briefly sketch the duties of officers of instruction and research and refers to the guidelines governing those duties. In a paragraph labeled "Academic Freedom," the section notes that:

The University's commitment to the principle of academic freedom... assures officers of the freedom to determine the content of what they teach and the manner in which it is taught and the freedom to choose the subjects of their research and publish the results. It also guarantees that they will not be penalized for expressions of opinion or associations in their private or civic capacity.

It also refers the reader to §70a of the University Statutes, the University's Code of Academic Freedom and Tenure. Columbia Faculty Handbook, Appendix B, Code of Academic Freedom and Tenure, available at http://www.columbia.edu/cu/vpaa/fhb/app/app_b.html. §70a states that:

Academic freedom implies that all officers of instruction are entitled to freedom in the classroom in discussing their subjects; that they are entitled to freedom in research and in the publication of its results; and that they may not be penalized by the University for expressions of opinion or associations in their private or civic capacity; but they should bear in mind the special obligations arising from their position in the academic community.

Dartmouth College

The Dartmouth College Faculty Handbook contains a statement on Freedom of Expression and Dissent. Dartmouth College Faculty Handbook, Part III: Policies and Procedures, Freedom of Expression and Dissent, available at http://www.dartmouth.edu/~dof/handbook/policies/freedom_expression.html. This statement provides that:

Dartmouth College prizes and defends the right of free speech, and the freedom of individuals to make independent decisions, while at the same time recognizing that such freedom exists in the context of law and of responsibility for one's actions. The exercise of these rights must not deny the same rights to any other individual. The College therefore both fosters and protects the rights of individuals to express their dissent. Protest or demonstration shall not be discouraged so long as neither force nor the threat of force is used, and so long as the orderly processes of the College are not deliberately obstructed.

In addition, the Dartmouth College Organization of the Faculty's Council on Academic Freedom and Responsibility promulgated an Agreement Concerning Academic Freedom, Tenure, and Responsibility of Faculty Members Voted by the Board of Trustees (January 15, 1971) after approval by the Faculty (October 19, 1970), available at <http://www.dartmouth.edu/~dof/ofdc/charter/councils/freedom.html>. This agreement sets out the College's tenure policies and in its first section states:

The Trustees and Faculty of Dartmouth College agree that the principle of academic freedom is fundamental to the life and work of the institution and of all who serve it in the responsible performance of teaching and scholarly pursuits.

The Trustees and Faculty accept the principle of academic tenure as a means conducive to that independence of mind and speech essential to higher learning in a free society. Academic tenure is a status which presupposes rigorous, sustained, professional preparation and performance, and the obligation on the individual's part to work according to the spirit and methods of responsible inquiry and teaching.

Duke University

The Duke University Faculty Handbook contains a policy on Academic Freedom and Academic Tenure. Duke University Faculty Handbook, Appendix C, Academic Freedom and Academic Tenure, page 81 of 231, available at <http://www.provost.duke.edu/fhb.pdf>. This statement defines academic freedom as a professor's freedom:

To teach and to discuss in his or her classes any aspect of a topic pertinent to the understanding of the subject matter of the course being taught.

To carry on research and publish the results subject to the adequate performance of his or her other academic duties.

To act and to speak in his or her capacity as a citizen without institutional censorship or discipline.

In a section entitled "Mutual Obligations" the policy also states:

As members of learned professions, faculty members of Duke University should remember that the public may judge their professions and their institution by their actions. They should also remember that in a deeper sense they cannot separate freedom as a member of the academic community from their responsibility as a privileged member of society. While the university will always protect freedom to espouse an unpopular cause, faculty members have a responsibility not to involve the university. Hence, when speaking, writing, or acting in the capacity of a private citizen, they should make every effort to indicate that they are not spokespersons or representatives of the university. *Id.* at 83 of 231, subsection G.

Georgetown University

The Georgetown University Faculty Handbook contains a statement on Academic Freedom. Georgetown University Faculty Handbook, VII. Faculty Rights and Responsibilities, Academic Freedom, pages 16-17, available at <http://www.georgetown.edu/facultysenate/FacHbk.pdf>. This policy states:

Academic freedom is essential to teaching and research. Such freedom requires free inquiry, free expression, intellectual honesty, respect for the academic rights of others, and openness to change. The rights and responsibilities exercised within the academic community must be

compatible with these requirements. All members of the faculty, in common with all other members of the community, share the responsibility for maintaining a professional atmosphere in which violations of academic freedom and responsibility are unlikely to occur. The University endorses the American Association of University Professor's *1940 Statement of Principles on Academic Freedom and Tenure*, with clarifications that place it in the Georgetown University context (see Section XXI) [on page 130].

A Faculty member has rights and responsibilities common to all citizens, free from institutional censorship. In furtherance of this principle, a Faculty member may be held accountable by the University for his or her private acts only as they substantially affect teaching, research or University service. However, in his or her private pursuits the services of the University shall not be used nor shall the University affiliation be used so as to indicate University approval. When speaking or writing in a controversial field, members of the Faculty should indicate that their viewpoints do not necessarily reflect the official position of the University authorities.

Harvard University

The Harvard University Faculty of Arts and Sciences website contains fairly extensive Free Speech Guidelines. Harvard University Faculty of Arts and Sciences Free Speech Guidelines, adopted February 13 and May 15, 1990, available at <http://www.fas.harvard.edu/~secfas/>. The Preamble to these guidelines states:

Free speech is uniquely important to the University because we are a community committed to reason and rational discourse. Free interchange of ideas is vital for our primary function of discovering and disseminating ideas through research, teaching, and learning. Curtailment of free speech undercuts the intellectual freedom that defines our purpose. It also deprives some individuals of the right to express unpopular views and others of the right to listen to unpopular views.

Because no other community defines itself so much in terms of knowledge, few others place such a high priority on freedom of speech. As a community, we take certain risks by assigning such a high priority to free speech. We assume that the long term benefits to our community will outweigh the short term unpleasant effects of sometimes noxious views. Because we are a community united by a commitment to rational processes, we do not permit censorship of noxious ideas. We are committed to maintaining a climate in which reason and speech provide the correct response to a disagreeable idea.

Members of the University do not share similar political or philosophical views, nor would such agreement be desirable. They do share, however, a concern for the community defined in terms of free inquiry and dissemination of ideas. Thus they share a commitment to policies that allow diverse opinions to flourish and to be heard. In the words of the Resolution on Rights and Responsibilities, the University must protect "the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate and publicize opinion by print, sign, and voice."

* * *

It is expected that when there is a need to weigh the right of freedom of expression against other rights, the balance will be struck after a careful review of all relevant facts and will be consistent with established First Amendment standards.

The policy goes on to offer specific guidance for preventing disruption (defined as "any repeated or continuous action which effectively prevents members of the audience from adequately hearing or seeing the event") of campus events and providing for sanctions against disruptors. The Free Speech Guidelines conclude with a Resolution on Rights and Responsibilities, which begins:

The central functions of an academic community are learning, teaching, research and scholarship. By accepting membership in the University, an individual joins a community ideally characterized by free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change. The rights and responsibilities exercised within the community must be compatible with these qualities.

The rights of members of the University are not fundamentally different from those of other members of society. The University, however, has a special autonomy and reasoned dissent plays a particularly vital part in its existence. All members of the University have the right to press for action on matters of concern by any appropriate means. The University must affirm, assure and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate, and publicize opinion by print, sign, and voice.

The University places special emphasis, as well, upon certain values which are essential to its nature as an academic community. Among these are freedom of speech and academic freedom, freedom from personal force and violence, and freedom of movement. Interference with any of these freedoms must be regarded as a serious violation of the personal

rights upon which the community is based. Furthermore, although the administrative processes and activities of the University cannot be ends in themselves, such functions are vital to the orderly pursuit of the work of all members of the University. Therefore, interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University.

New York University

New York University's Faculty Handbook contains a Statement in Regard to Academic Freedom and Tenure. NYU Faculty Handbook and Resources, Title I: Statement in Regard to Academic Freedom and Tenure, available at <http://www.nyu.edu/academic.appointments/faculty.html>. In sections entitled "The Case for Academic Freedom," "The Case for Academic Tenure," and "Academic Freedom" the statement reads:

Academic freedom is essential to the free search for truth and its free expression. Freedom in research is fundamental to the advancement of truth. Freedom in teaching is fundamental for the protection of the rights of the teacher in teaching and of the student in learning. Academic freedom imposes distinct obligations on the teacher such as those mentioned hereinafter.

Academic tenure is a means to certain ends, specifically: (1) freedom of teaching and research; and (2) a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability.

Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties, but outside occupations and research for pecuniary gain, except in the case of sporadic and wholly unrelated engagements, should be based upon an understanding with the administration of the University.

Teachers are entitled to freedom in the classroom in discussing their subject, but they should not introduce into their teaching controversial matter that has no relation to their subject.

Teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but this special position in the community imposes special obligations. As men and women of learning and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence

they at all times should be accurate, should exercise appropriate restraint, should show respect for the opinions of others and for the established policy of their institution, and while properly identifying themselves to outside audiences as associated with the University should clearly indicate that they are not institutional spokespeople unless specifically commissioned to serve in such a capacity.

Northwestern University

Northwestern University's Faculty Handbook contains a statement on Academic Freedom. Northwestern Faculty Handbook, Academic Freedom, page 6, available at <http://www.northwestern.edu/provost/faculty/handbook.pdf>. This policy states:

Northwestern University subscribes to the principles of academic freedom stated by the American Association of University Professors (AAUP) as follows:

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of [his/her] other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing [his/her] subject, but [he/she] should be careful not to introduce into [his/her] teaching controversial matter which has no relation to [his/her] subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When [he/she] speaks or writes as a citizen, [he/she] should be free from institutional censorship or discipline, but [his/her] special position in the community imposes special obligations. As a [person] of learning and an educational officer, [he/she] should remember that the public may judge [his/her] profession and [his/her] institution by [his/her] utterances. Hence [he/she] should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that [he/she] is not an institutional [spokesperson].

Northwestern University's Faculty Handbook also includes a Trustee Statement on Disruption. Northwestern Faculty Handbook, Trustee Statement on Disruption, page 44, available at <http://www.northwestern.edu/provost/faculty/handbook.pdf>. This policy

indicates that disruption of campus activities is not considered part of freedom of expression, stating:

Northwestern University stands for freedom of speech, freedom of inquiry, freedom of dissent, and freedom to demonstrate in peaceful fashion. The University recognizes that freedom requires order, discipline, and responsibility and stands for the right of all faculty and students to pursue their legitimate goals without interference. The University, therefore, will not tolerate any attempt by any individual, group, or organization to disrupt the regularly scheduled activities of the University. Any such effort to impede the holding of classes, the carrying forward of the University's business, or the arrangements for properly authorized and scheduled events would constitute an invasion of the rights of faculty and students and cannot be permitted.

Princeton University

Princeton University publishes "Rights Rules and Responsibilities," a document "intended to provide a concise reference and guide for all members of the Princeton University community." Princeton University, Rights Rules and Responsibilities, 2002 Edition, available at <http://www.princeton.edu/pr/pub/rrr/02/index.htm>. This document does not contain a statement specifically addressing academic freedom, but it includes the following statements under the heading "University Wide Regulations":

Introduction

The central purposes of a University are the pursuit of truth, the discovery of new knowledge through scholarship and research, the teaching and general development of students, and the transmission of knowledge and learning to society at large. Free inquiry and free expression within the academic community are indispensable to the achievement of these goals. The freedom to teach and to learn depends upon the creation of appropriate conditions and opportunities on the campus as a whole as well as in classrooms and lecture halls. All members of the academic community share the responsibility for securing and sustaining the general conditions conducive to this freedom.

The primary purposes of regulations and discipline in a university are to protect the well-being of the community and to advance its educational mission by defining and establishing certain norms of behavior. At Princeton, disciplinary proceedings have a role that is subordinate to positive guidance, rational admonition, and reasonable appeal to members of the University to observe its stated norms. The disciplinary system establishes procedures for a fair hearing, including advising a person fully

of the charges against him or her, affording him or her ample opportunity to speak on his or her behalf, and requiring a clear explanation of his or her rights of appeal. Disciplinary proceedings are instituted only for violations of standards of conduct defined in advance and published, or for actions that can be reasonably deduced as violations in light of those specifically defined as such. Regulations governing the conduct of members of the University community will be revised only after deliberations in which representatives of the appropriate groups are invited to participate. Introduction to University Principles of General Conduct and Regulations, available at <http://www.princeton.edu/pr/pub/rrr/02/01.htm>.

Protests and Demonstrations

Free speech and peaceable assembly are basic requirements of the University as a center for free inquiry and the search for knowledge and insight. These rights involve a concurrent obligation on the part of all members of the University to maintain on the campus an atmosphere conducive to scholarly pursuits and to respect the rights of all individuals. Demonstrations and the distribution of leaflets, statements, or petitions, therefore, are permitted on the campus unless, or until, they disrupt regular and essential operations of the University or significantly infringe on the rights of others. On the same grounds, the campus is open to speakers whom students, faculty, or staff wish to hear, and to recruiters for agencies and organizations in whom students or faculty have an interest.

1. It is a *violation* of these policies for a member of the faculty, staff, or student body (a) to prevent, or willfully attempt to prevent, the orderly conduct of a University function or activity, such as lectures, meetings, interviews, ceremonies, and public events; (b) to block, or willfully attempt to block, the legitimate activities of any person on the campus or in any University building or facility. Violations of this provision, if persisted in after due warning, will be regarded as serious offenses.

Distribution of Written Materials by Members of the University Community

Free inquiry, free expression and civility within this academic community are indispensable to the University's objectives. Inclusion of the name, telephone number and/or e-mail address of the University sponsoring organization or individual member of the University community on material resembling petitions, posters, leaflets distributed on campus, including materials disseminated using campus information technology resources or University internet access is encouraged, since such attribution promotes and facilitates civility as well as vigorous debate in the academic community. Anonymous public postings without

sponsorship of a registered University organization shall be removed or deleted if a complaint by a member of the University is lodged with the Office of the Dean of Undergraduate Students or the Office of the Dean of the Graduate School. University-Wide Conduct Regulations, available at <http://www.princeton.edu/pr/pub/rrr/02/04.htm>.

Guidelines Relating to the Tax-Exempt Status of the University and Political Activities

* * *

3. While the University's name has traditionally been used in limited ways for purposes of identification by individuals and/or organizations connected with the University, individuals and groups must take special care to make it clear that when expressing political views they are speaking only for themselves and not for the University.

* * *

8. Faculty, staff, and students have an obligation to fulfill all of their normal responsibilities at the University, and while they are free to engage in political activities, such activities must not be at the expense of their responsibilities at the University. *Id.*, available at <http://www.princeton.edu/pr/pub/rrr/02/12.htm>.

Stanford University

Stanford's Faculty Handbook contains a Statement on Academic Freedom. Stanford Faculty Handbook, Chapter 4: Core Policy Statements, Section II. Statement on Academic Freedom, available at <http://www.stanford.edu/dept/provost/faculty/policies/handbook/ch4.html#statementonacademicfreedom>. In its Preamble, the policy notes that:

Stanford University's central functions of teaching, learning research, and scholarship depend upon an atmosphere in which freedom of inquiry, thought, expression, publication and peaceable assembly are given the fullest protection. Expression of the widest range of viewpoints should be encouraged, free from institutional orthodoxy and from internal or external coercion. Further, the holding of appointments at Stanford University should in no way affect the faculty members' rights assured by the Constitution of the United States.

Section I of the Statement goes on to state:

Decisions concerning (1) the search for, and appointment and promotion of, faculty; (2) the assignment of teaching and other primarily academic responsibilities; (3) the support and sponsorship of scholarly research; and (4) any other granting or withholding of benefits or imposition of burdens shall be made without regard to a person's political, social, or other views not directly related to academic values or to the assumption of academic responsibilities or is determined, in a proceeding pursuant to the Statement on Faculty Discipline, to come within the provisions of Section 1 of that Statement; and without regard to an individual's race, ethnic origin, sex or religion. Nothing in the forgoing shall be deemed to affect the University's application of affirmative action policies in its faculty search procedures.

Sections II and III describe the purpose and substance of appeal procedures designed to address violations of academic freedom.

University of Michigan

The University of Michigan Faculty Handbook contains a statement of the Fundamental Tenets of Membership in the University Community. University of Michigan Faculty Handbook: Fundamental Tenets of Membership in the University Community, available at <http://www.umich.edu/~provost/handbook/1/1.1.html>. This policy states:

The University of Michigan is a community devoted to learning. Members of our community advance, preserve, and transmit knowledge through study, teaching, artistic expression, research, and scholarship. As a public university, we have a special obligation to serve the public interest.

All who join the University community gain important rights and privileges and accept equally important responsibilities. We believe in free expression, free inquiry, intellectual honesty, and respect for the rights and dignity of others. We respect the autonomy of each person's conscience in matters of conviction, religious faith, and political belief. We affirm the importance of maintaining high standards of academic and professional integrity. In defining the rights we enjoy and the responsibilities we bear, we must keep those basic principles in mind.

All members of the University have civil rights guaranteed by the Bill of Rights. Because the search for knowledge is our most fundamental purpose, the University has an especially strong commitment to preserve and protect freedom of thought and expression. Reasoned dissent plays a vital role in the search for truth; and academic freedom, including the right to express unpopular views, is a cherished tradition of universities

everywhere. All members of the University have the right to express their own views and hear the views of others expressed, but they must also take responsibility for according the same rights to others. We seek a University whose members may express themselves vigorously while protecting and respecting the rights of others to learn, to do research, and to carry out the essential functions of the University free from interference or obstruction.

A statement on Freedom of Speech directly follows:

Free speech is at the heart of the academic mission. The University encourages open and vigorous discussion and strives to maintain an environment where the free exchange of ideas and opinions can flourish. The University also strives to encourage responsible dialogue in which the learning made possible by these exchanges can occur. University of Michigan Faculty Handbook: Freedom of Speech, available at <http://www.umich.edu/~provost/handbook/1/1.2.html>.

The Freedom of Speech statement goes on to refer to a Statement on Freedom of Speech and Artistic Expression issued by the Civil Liberties Board addressing the rights of speakers and protesters at campus activities. This statement “safeguards the rights of members of the University community and individuals invited to the University to express their views and opinions, and of those in attendance to hear [and] recognizes and protects the rights of free expression of those who would protest a speech or performance.” The text of this statement is available at <http://spg.umich.edu/pdf/601.01.pdf>.

University of Minnesota

The University of Minnesota Board of Regents has adopted a policy on Academic Freedom and Responsibility. University of Minnesota Board of Regents Policy, Academic Freedom and Responsibility, available at <http://www1.umn.edu/regents/policies/academic/AcademicFreedom.pdf>. This policy states in its entirety:

The Regents of the University of Minnesota reaffirm the Principles of Academic Freedom and Responsibility. These are rooted in the Belief that the Mind is ennobled by the Pursuit of Understanding and the Search for Truth, and the State well served when Instruction is available to All at an Institution dedicated to the Advancement of Learning. These Principles are also refreshed by the Recollection that there is COMMUNE VINCULUM OMNIBUS ARTIBUS—a Common Bond through all the Arts.

Academic Freedom is the Freedom to discuss all relevant matters in the Classroom, to explore all Avenues of Scholarship, Research, and Creative Expression and to speak or write as a public citizen without institutional Discipline or Restraint. Academic Responsibility implies the faithful Performance of Academic Duties and Obligations, the Recognition of the Demands of the Scholarly Enterprise and the Candor to make it clear that the Individual is not speaking for the Institution in Matters of public Interest.

In the Preamble to the University of Minnesota's Official Policy on Faculty Tenure, the Board of Regents makes several observations regarding academic freedom. University of Minnesota Official Policy on Faculty Tenure, available at <http://www1.umn.edu/usenate/policies/tenurecp.html>. The Preamble states:

The Board of Regents adopts these regulations with the conviction that a well-defined statement of rules is essential to the protection of academic freedom and to the promotion of excellence at the University of Minnesota.

* * *

Tenure is the keystone for academic freedom; it is essential for safeguarding the right of free expression and for encouraging risk-taking inquiry at the frontiers of knowledge. Both tenure and academic freedom are part of an implicit social compact which recognizes that tenure serves important public purposes and benefits society. The people of Minnesota are best served when faculty are free to teach, conduct research, and provide service without fear of reprisal and to pursue those activities with regard for long term benefits to society rather than short term rewards. In return, faculty have the responsibility of furthering the institution's programs of research, teaching, and service and are accountable for their performance of these responsibilities.

University of North Carolina

The University of North Carolina's Code of the Board of Governors contains a section entitled "Academic Freedom and Tenure." The Code of the Board of Governors of the University of North Carolina, Chapter VI-Academic Freedom and Tenure, page 21, available at <http://www.northcarolina.edu/legal/policymanual/100.1TheCode.pdf>. Section 600 of Chapter VI addresses Freedom and Responsibility in the University Community. It states:

(1) The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. The University therefore supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

(2) The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

(3) Faculty and students of the University of North Carolina shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

Section 601, Academic Freedom and Responsibility of Faculty, goes on to state:

(1) It is the policy of the University of North Carolina to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institutions. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with the University and their position as men and women of learning. They should not represent themselves, without authorization, as spokespersons for the University of North Carolina or any of its constituent institutions.

(2) The University and its constituent institutions shall not penalize or discipline members of its faculties because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility.

University of Pennsylvania

In its Faculty Policies and Procedures, the University of Pennsylvania “recognizes the importance of a system of tenure for faculty members as the preeminent means of fostering and protecting academic freedom in teaching, and in scholarly inquiry.” Faculty Policies and Procedures, Section II.A. Academic Freedom and Responsibility, available at http://www.upenn.edu/assoc-provost/handbook/ii_a.html. The policy goes on to describe the Senate and Faculty Committees on Academic Freedom and Responsibility and to state:

It is the policy of the University of Pennsylvania to maintain and encourage freedom of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, that would restrict him or her in the exercise of these freedoms in his or her area of scholarly interest.

The teacher is entitled to freedom in research and in the publication of results, subject to the adequate performance of his or her other academic duties, and to the institutional policies and procedures as set forth in the research policies of the University. Research for pecuniary return should be based upon an understanding with the authorities of the institution.

The teacher is entitled to freedom in the classroom in discussing his or her subject.

The teacher is a member of a learned profession and of an educational institution. When speaking or writing as an individual, the teacher should be free from institutional censorship or discipline, but should note that a special position in the community imposes special obligations. As a person of learning and a member of an educational institution, the teacher should remember that the public may judge the profession and the institution by his or her utterances. Hence the teacher should at all times show respect for the opinions of others, and should indicate when he or she is not speaking for the institution.

University of Texas

The Board of Regents of the University of Texas System has included a statement on academic freedom in its Rules and Regulations. Rules and Regulations of the Board of Regents of the University of Texas System, Part 1, Chapter III, Section 7, Rights and Responsibilities of Faculty Members as Citizens and as Teachers, available at http://www.utsystem.edu/bor/rules/MasterRRR.htm#_Toc29353322. This section states:

7.1 Freedom in Research and Publication

The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of other academic duties.

7.2 Freedom in the Classroom

The teacher is entitled to freedom in the classroom in discussing his or her subject, but is expected not to introduce into his or her teaching controversial matter that has no relation to his or her subject.

7.3 Special Obligations

The university teacher is a citizen, a member of a learned profession, and an officer of an educational institution supported by the State of Texas. When the teacher speaks or writes as a citizen, he or she should be free from institutional censorship or discipline, but the teacher's special position in the community imposes special obligations. As a person of learning and an educational officer, the teacher should remember that the public may judge the profession and the institution by his or her utterances. Hence, the teacher should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make it plain that the teacher is not an institutional spokesman.

University of Virginia

The University of Virginia's Faculty Handbook does not contain a statement on academic freedom. It does, however, contain a statement on Political Activity. University of Virginia Vice President and Provost: Policies, available at <http://www.virginia.edu/provost/political.html>. This policy states:

A faculty member is entitled to engage freely in political activity consistent with obligations as a teacher and scholar. The political positions assumed by members of the faculty are personal ones, and faculty members must ensure that they do not necessarily, nor even inferentially, imply that such positions are endorsed by the University. For this reason, a faculty member should avoid expressing such political positions on University letterhead.

University of Wisconsin-Madison

The Faculty Policies and Procedures of the University of Wisconsin at Madison include a section on Faculty Rights. Faculty Policies and Procedures University of Wisconsin-Madison, Chapter 8 Faculty Rights and Responsibilities, Section 8.01 Faculty Rights, available at http://wiscinfo.doit.wisc.edu/secfac/governance/FPP/Chapter_8.htm#804. This section states:

- A. Members of the faculty enjoy and exercise all rights secured to them by the Constitutions of the United States and the State of Wisconsin, and by the principles of academic freedom as they are generally understood in

higher education, as well as rights specifically granted to them by Regent action, University of Wisconsin System rules, these policies and procedures and relevant practices or established custom of their colleges or schools and departments.

- B. In any consideration of matters of tenure and academic freedom, the following statement of policy is relevant. It was enunciated at the time of the previous codification of the Laws and Regulations of the University of Wisconsin by the Regents of the University of Wisconsin on January 10, 1964. "In adopting this codification of the rules and regulations of the University of Wisconsin relating to tenure, the Regents reaffirm their historic commitment to security of professorial tenure and to the academic freedom it is designed to protect. These rules and regulations are promulgated in the conviction that in serving a free society the scholar must himself be free. Only thus can he seek the truth, develop wisdom and contribute to society those expressions of the intellect that ennoble mankind. The security of the scholar protects him not only against those who would enslave the mind but also against anxieties which divert him from his role as scholar and teacher. The concept of intellectual freedom is based upon confidence in man's capacity for growth in comprehending the universe and on faith in unshackled intelligence. The university is not partisan to any party or ideology, but it is devoted to the discovery of truth and to understanding the world in which we live. The Regents take this opportunity to rededicate themselves to maintaining in this university those conditions which are indispensable for the flowering of the human mind."

Vanderbilt University

The Vanderbilt University Faculty Manual contains a statement on Academic Freedom and Responsibility. Vanderbilt University Faculty Manual, Part III. University Principles and Policies, A Statement of Principles, Section A. Academic Freedom and Responsibility, available at <http://www.vanderbilt.edu/facman/statemnt.htm>. This policy states:

"Academic freedom" in the traditional sense refers to the University's continuing policy of maintaining conditions of free inquiry, thought, and discussion for every member of the faculty in professional activities of research, teaching, public speaking, and publication. These conditions are regarded as necessary rights accruing to appointment on the faculty. Faculty members have the correlative obligation to speak and write with accuracy, with due respect for the opinions of others, and with proper care to specify that they speak on the authority of their own work and reputation, not as special pleaders for any social group or as purporting to

represent the University. Such rights and obligations presuppose that faculty members adequately perform other academic duties and that they do not accept pecuniary return for activities outside of the University without a proper understanding with University authorities.

Some persons broaden the meaning of academic freedom beyond individual rights and duties to include faculty participation in determination of University policy. At Vanderbilt, the faculties of the College of Arts and Science, the Graduate School, and the professional schools (the Executive Faculty in the School of Medicine) determine the requirements and recommend all candidates for degrees. Through their collegial bodies and their elected representatives in the Faculty Senate, the faculties are free at any time to examine, debate, and make recommendations concerning any educational policy, program, or practice of the University.

"Academic responsibility" means adherence to the following values and standards of conduct (adapted from the *Beach Report on Issues of Conscience and Academic Freedom*, 1960):

Vanderbilt University is a community of men and women devoted to the search for truth. A self-governing institution, it professes freedom from both internal and external interference which hinders accomplishment of that purpose. It is an institution that transcends, as much as it challenges and accepts, the customs and values of society. It has its own standards of excellence and responsibility that do not always conform to those of the persons and groups who support it.

The University is also part of the civic community in which it exists. Its members, both faculty and students, are entitled to exercise the rights of citizens and are subject to the responsibilities of citizens. A member of the Vanderbilt community gives thoughtful consideration to the image of the University reflected in his or her public behavior.

Members of the Vanderbilt community share a due regard and respect for law. In the event that one of its members is in jeopardy before the law, either for the sake of conscience or for the purpose of testing the validity of particular provisions of law through deliberate violation, the University will not seek to protect him or her from due process of law. Regardless of the action of the courts, however, the University reserves the right to determine whether a faculty member is fit to retain membership in the academic community, and maintains its own procedures for taking action upon, hearing, and deciding complaints against one of its members.

Yale University

Yale's Faculty Handbook contains the University Policy on Freedom of Expression. Yale University Faculty Handbook, Section II. University Policy on Freedom of Expression, available at http://www.yale.edu/provost/handbook/handbook_ii_university_policy_on_freedom.html. This policy states:

The primary function of a university is to discover and disseminate knowledge by means of research and teaching. To fulfill this function a free interchange of ideas is necessary not only within its walls but with the world beyond as well. It follows that a university must do everything possible to ensure within it the fullest degree of intellectual freedom. The history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable. To curtail freedom of expression strikes twice at intellectual freedom, for whoever deprives another of the right to state unpopular views necessarily also deprives others of the right to listen to those views.

In a second paragraph, the policy makes clear Yale's position that disruption of campus activities is not considered free expression that the policy protects:

Members of this University have freely associated themselves with Yale and in doing so have affirmed their commitment to a philosophy of mutual tolerance and respect. Physical restriction, coercion, or intimidation of any member of the community is contrary to the basic principles of the University. It is also a violation of these principles and of the University's rules of conduct for any member of the faculty, staff, or student body to prevent the orderly conduct of a University function or activity, such as a lecture, meeting, interview, ceremony, or other public event. It is similarly a violation of these principles to block the legitimate activity of any person on the Yale campus or in any Yale building or facility.

Appendix B

**A Brief Annotated
Bibliography on the Subject of
Academic Freedom**

Primary Documents

American Association of University Professors, *1915 Declaration of Principles on Academic Freedom and Academic Tenure*, in *Policy Documents and Reports* 291 (9th ed. 2001).

The *1915 Declaration* is the first definitive American articulation of principles of academic freedom. Drafted by an AAUP committee chaired by Columbia economist Edwin R. A. Seligman, the statement identifies the elements of a professor's academic freedom as (1) freedom of inquiry and research, (2) freedom of teaching within the college or university, and (3) freedom of extramural utterance and action. The report considers the basis and scope of the power conferred upon the governing boards of universities, the nature of the university teaching profession, and the purpose of academic institutions, concluding a university cannot perform its function without fully protecting academic freedom.

American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments*, in *Policy Documents and Reports* 3 (9th ed. 2001).

The AAUP and the Association of American Colleges (now the Association of American Colleges and Universities) adopted the *1940 Statement* after a series of conferences begun in 1934. Over 170 educational organizations have endorsed the Statement and many colleges and universities have incorporated it into their faculty handbooks. It is generally regarded as the definitive account of academic freedom at American Universities. The Statement identifies three components to a teacher's academic freedom: (1) freedom in research and publication of results (2) freedom in classroom discussion and (3) freedom from institutional censorship or discipline resulting from extramural utterances.

American Association of University Professors, *Joint Statement on Rights and Freedoms of Students*, in *Policy Documents and Reports* 261 (9th ed. 2001).

The AAUP, the United States National Student Association (now the United States Student Association), the Association of American Colleges (now the Association of American Colleges and Universities), the

National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors (now the National Association for Women in Education) authored the *Joint Statement* in 1967. The statement outlines minimal standards of academic freedom for university students. The policy includes sections covering freedom of access to higher education, student freedom in the classroom (including freedom of expression, protection against improper academic evaluation, and protection against improper disclosure), student records, student affairs (setting forth standards to protect freedom of association, freedom of inquiry and expression, student participation in institutional government, and student publications), off-campus freedom of students, and procedural standards in disciplinary proceedings.

Books and Compilations

Aby, Stephen H. & Kuhn, James C. IV, *Academic Freedom: A Guide to the Literature* (2001).

This extensive guide to academic freedom literature contains 481 descriptive annotations of sources relating to academic freedom. It is organized into eleven chapters covering different aspects of academic freedom including its philosophy, history, and relationship to different issues such as religion and tenure.

American Association of University Professors, *Policy Documents and Reports* (9th ed. 2001).

This volume contains a wide range of policies and reports formulated by the American Association of University Professors (AAUP). Of particular interest is the *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments; 1915 Declaration of Principles on Academic Freedom and Academic Tenure*, and other policy statements, including the *Committee A Statement on Extramural Utterances*, the *Statement on Professors and Political Activity*, a policy on *Academic Freedom and Artistic Expression*, and a number of documents addressing procedural and tenure-related issues. An appendix offers examples of cases in which state and federal courts have referred to AAUP policies in adjudicating academic disputes and lists articles that discuss AAUP policies as a basis for a 'common law' of higher education. Many documents in this book are also available on the AAUP's website at <http://www.aaup.org/statements/index.htm>.

DeGeorge, Richard T., *Academic Freedom and Tenure: Ethical Issues* (1997).

In part one of this volume, DeGeorge discusses the justifications for and ethical issues surrounding academic freedom and tenure. Following a general treatment of the subject, DeGeorge considers two specific academic freedom cases arising at the City College of the City University of New York, *Levin v. Harleston* and *Jeffries v. Harleston*. He then discusses the importance of academic freedom in a technological age and answers some modern criticisms of academic freedom. Part two contains a number of historically important academic freedom documents including the AAUP's 1940 *Statement* and articles by Ralph F. Fuchs (*Academic Freedom—Its Basic Philosophy, Function, and History*), Robert McGee and Walter Block (*Academic Tenure: An Economic Critique*), Richard Rorty (*Does Academic Freedom Have Philosophical Presuppositions?*), and John Searle (*Rationality and Realism: What is at Stake?*).

Hofstadter, Richard & Metzger, Walter P., *The Development of Academic Freedom in the United States* (1955).

This book provides a detailed analytical history of academic freedom in the United States. In Part One, *The Age of the College*, Hofstadter briefly sketches the history of academic freedom in the universities of Western Europe up until the time of the Reformation. He then describes developments preceding the appearance of academic freedom in the United States. In Part Two, *The Age of the University*, Metzger describes the emergence of the modern university and its commitment to a model of truth seeking that justifies intellectual freedom.

Hollingsworth, Peggie J., ed., *Unfettered Expression: Freedom in American Intellectual Life* (2000).

This book is a compilation of nine lectures on academic freedom delivered during the 1990's. The lecture series was established as an apology to three University of Michigan faculty members who were dismissed in 1954 because they refused to explain their political beliefs to the House Un-American Activities Committee. It includes chapters by Lee Bollinger (*The Open-Minded Soldier and the University*); Avern Cohn (*A Federal Trial Judge Looks at Academic Freedom*); David A. Hollinger (*Money and American Freedom a Half-Century after McCarthyism: Universities amid the Force Fields of Capital*); Walter P. Metzger (*A Stroll along the New Frontiers of Academic Freedom*); Robert M. O'Neil (*Academic Freedom in Retrospect and in Prospect*); Linda Ray Pratt (*Academic Freedom and the Merits of Uncertainty*); Eugene Roberts Jr. (*Free Speech, Free Press, Free Society*); Catharine R. Stimpson (*Dirty Minds, Dirty Bodies, Clean Speech*); and Roger Wilkins (*Opportunity and Academic Integrity*).

Menand, Louis, ed., *The Future of Academic Freedom* (1996).

This collection of essays is organized into three sections entitled *What Does Academic Freedom Protect?*, *The Problem of Hate Speech*, and *The Ethics of Inquiry*. It includes articles by Ronald Dworkin (*We Need a New Interpretation of Academic Freedom*); Henry Louis Gates Jr. (*Critical Race Theory and Freedom of Speech*); Thomas L. Haskell (*Justifying the Rights of Academic Freedom in the Era of "Power/Knowledge"*); Evelyn Fox Keller (*Science and Its Critics*); Louis Menand (*The Limits of Academic Freedom*); Richard Rorty (*Does Academic Freedom Have Philosophical Presuppositions?*); Edward W. Said (*Identity, Authority, and Freedom: The Potentate and the Traveler*); Joan W. Scott (*Academic Freedom as an Ethical Practice*); and Cass R. Sunstein (*Academic Freedom and Law: Liberalism, Speech Codes, and Related Problems*). The Haskell essay is a particularly illuminating account of the origins and theory of American academic freedom.

Pincoffs, Edmund L., ed., *The Concept of Academic Freedom* (1975).

This volume contains articles drafted for a conference about academic freedom at The University of Texas at Austin in 1972. It contains essays by Hugo Adam Bedau (*Free Speech, the Right to Listen, and Disruptive Interference; Reply to Alan Pasch*); Bertram H. Davis (*Academic Freedom, Academic Neutrality, and the Social System*); Milton Fisk (*Academic Freedom in a Class Society; Comments on Hardy Jones and Bertram Davis*); Graham Hughes (*Tenure and Academic Freedom*); Hardy E. Jones (*Academic Freedom as a Moral Right*); Alan Pasch (*Comments on Bedau's "Free Speech, the Right to Listen, and Disruptive Interference"; Comments on Bedau's Reply*); Alexander Ritchie (*Tenure and Academic Freedom*); Amelie Oksenberg Rorty (*Dilemmas of Academic and Intellectual Freedom; Some Comments on Sartorius's Paper on Tenure*); Rolf Sartorius (*Tenure and Academic Freedom; Tenure, Academic Freedom, and the Nature of the University*); T. M. Scanlon (*Academic Freedom and the Control of Research*); Richard Schmitt (*Academic Freedom: The Future of a Confusion*); John R. Searle (*Two Concepts of Academic Freedom*); Judith Jarvis Thomson (*Academic Freedom and Research; A Proposed Statement on Academic Freedom*); and William Van Alstyne (*The Specific Theory of Academic Freedom and the General Issue of Civil Liberty; Reply to Comments*). The chapters by Searle, Scanlon, Thomson and Van Alstyne are particularly helpful.

Symposium on Academic Freedom, 66 *Texas Law Review* 1247-1659 (1988).

This Symposium on Academic Freedom contains articles by Paul Brest (*Protecting Academic Freedom Through the First Amendment: Raising the Unanswered Questions*); Rebecca S. Eisenberg (*Academic Freedom and Academic Values in Sponsored Research; Defining the Terms of*

Academic Freedom: A Reply to Professor Rabban); Matthew W. Finkin (*Intramural Speech, Academic Freedom, and the First Amendment*); Julius G. Getman & Jacqueline W. Mintz (*Foreword: Academic Freedom in a Changing Society*); Walter P. Metzger (*Profession and Constitution: Two Definitions of Academic Freedom in America*); David M. Rabban (*Does Academic Freedom Limit Faculty Autonomy?*); and Mark G. Yudof (*Intramural Musings on Academic Freedom: A Reply to Professor Finkin*).

Van Alstyne, William W., ed., *Freedom and Tenure in the Academy* (1993).

This book reprints articles originally published in a symposium entitled *Freedom and Tenure in the Academy: The Fiftieth Anniversary of the 1940 Statement of Principles* in vol. 53, no. 3 of the journal *Law and Contemporary Problems* (Summer 1990). It contains essays by Ralph S. Brown & Jordan E. Kurland (*Academic Tenure and Academic Freedom*); Matthew W. Finkin (“*A Higher Order of Liberty in the Workplace*”: *Academic Freedom and Tenure in the Vortex of Employment Practices and the Law*); Michael W. McConnell (*Academic Freedom in Religious Colleges and Universities*); Walter P. Metzger (*The 1940 Statement of Principles on Academic Freedom and Tenure*); Robert M. O’Neil (*Artistic Freedom and Academic Freedom*); David M. Rabban (*A Functional Analysis of “Individual” and “Institutional” Academic Freedom Under the First Amendment*); Rodney A. Smolla (*Academic Freedom, Hate Speech, and the Idea of a University*); Judith Jarvis Thomson (*Ideology and Faculty Selection*); and William W. Van Alstyne (*Academic Freedom and the First Amendment in the Supreme Court of the United States: An Unhurried Historical Review*). The volume also includes an unannotated bibliography of academic freedom literature and the AAUP’s *1915 Report*, *1940 Statement*, and *Joint Statement on Rights and Freedoms of Students*.

Articles

Byrne, J. Peter, *Academic Freedom: A “Special Concern of the First Amendment,”* 99 *Yale L. J.* 251 (1989).

Byrne describes and criticizes the Supreme Court’s academic freedom jurisprudence, finding it to offer little guidance. After tracing the concept of academic freedom from its professional roots to its role as a constitutional principle, he concludes that the professional and constitutional notions differ in ways that cause confusion. He then argues that whereas professional academic freedom encompasses the rights of individual faculty members, constitutional academic freedom should principally protect a university’s administration of academic affairs from state intrusion.

Euben, Donna R., Staff Counsel American Association of University Professors, *Academic Freedom of Individual Professors and Higher Education Institutions: The Current Legal Landscape*, May 2002, available at <http://www.aaup.org/Com-a/aeuben.HTM>.

This article provides an overview of the legal doctrine surrounding different types of academic freedom claims, those involving the individual rights of professors as well as the rights of universities to institutional autonomy. It compares professional and constitutional protections for academic freedom and details the development of First Amendment jurisprudence relating to academic freedom, providing many sources for further inquiry.

Lovejoy, Arthur O., *Academic Freedom*, in 1 Encyclopaedia of the Social Sciences 384-88 (Edwin R. A. Seligman ed., 1937).

A member of the AAUP committee that drafted the first American articulation of academic freedom principles, *The 1915 Declaration of Principles*, Lovejoy defines academic freedom and explains why it is indispensable to the scholarly enterprise. He then describes the means for maintaining academic freedom, including academic tenure and peer review of professional competence. Finally, he sketches the history and development of American notions of academic freedom.

Olivas, Michael A., *Reflections on Professorial Academic Freedom: Second Thoughts on the Third "Essential Freedom"*, 45 Stan. L. Rev. 1835 (1993).

Olivas briefly summarizes current professional and constitutional definitions of academic freedom and discusses academic freedom in the context of the freedom to decide how material will be taught in the classroom.

Rabban, David M., *Academic Freedom*, in 1 Encyclopedia of the American Constitution 12-14 (Leonard W. Levy ed., 1986).

This encyclopedia entry briefly describes the Supreme Court's First Amendment protection of academic freedom, concluding that the constitutional definition of academic freedom remains uncertain. Rabban sketches the history of the American notion of academic freedom, describing the concept's journey from a contractual principle first codified by the AAUP to a constitutional principle based on general freedom of expression.