SAFS Newsletter

Society for Academic Freedom and Scholarship

Maintaining freedom in teaching, research and scholarship
Maintaining standards of excellence in academic decisions about students and faculty

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AUCC MEDIA RELEASE

Canada's universities adopt new Statement on Academic Freedom

October 25, 2011

Canada's universities have adopted a new Statement on Academic Freedom that clarifies the importance and definition of academic freedom on campuses across Canada. The new Statement on Academic Freedom was accepted unanimously by university presidents at the centennial meetings of the Association of Universities and Colleges of Canada today in Montreal. It replaces the statement members had agreed to in 1988.

Affirmation of this statement by institution's is expected to become part of AUCC's criteria for membership.

The new statement is as follows:

Statement on Academic Freedom

What is academic freedom?

Academic freedom is the freedom to teach and conduct research in an academic environment. Academic freedom is fundamental to the mandate of universities to pursue truth, educate students and disseminate knowledge and understanding.

In teaching, academic freedom is fundamental to the protection of the rights of the teacher to teach and of the student to learn. In research and scholarship, it is critical to advancing knowledge. Academic freedom includes the right to freely communicate knowledge and the results of research and scholarship.

IN THIS ISSUE

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Unlike the broader concept of freedom of speech, academic freedom must be based on institutional integrity, rigourous standards for enquiry and institutional autonomy, which allows universities to set their research and educational priorities.

Why is academic freedom important to Canada?

Academic freedom does not exist for its own sake, but rather for important social purposes. Academic freedom is essential to the role of universities in a democratic society. Universities are committed to the pursuit of truth and its communication to others, including students and the broader community. To do this, faculty must be free to take intellectual risks and tackle controversial subjects in their teaching, research and scholarship.

For Canadians, it is important to know that views expressed by faculty are based on solid research, data and evidence, and that universities are autonomous and responsible institutions committed to the principles of integrity.

The responsibilities of academic freedom

Evidence and truth are the guiding principles for universities and the community of scholars that make up their faculty and students. Thus, academic freedom must be based on reasoned discourse, rigorous extensive research and scholarship, and peer review.

Academic freedom is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission. The insistence on professional standards speaks to the rigor of the enquiry and not to its outcome.

The constraint of institutional requirements recognizes simply that the academic mission, like other work, has to be organized according to institutional needs. This includes the institution's responsibility to select and appoint faculty and staff, to admit and discipline students, to establish and control curriculum, to make organizational arrangements for the conduct of academic work, to certify completion of a program and to grant degrees.

Roles and responsibilities

University leadership: It is a major responsibility of university governing bodies and senior officers to protect and promote academic freedom. This includes ensuring that funding and other partnerships do not interfere with autonomy in deciding what is studied and how. Canada's university presidents must play a leadership role in communicating the values around academic freedom to internal and external stakeholders. The university must also defend academic freedom against interpretations that are excessive or too loose, and the claims that may spring from such definitions.

To ensure and protect academic freedom, universities must be autonomous, with their governing bodies committed to integrity and free to act in the institution's best interests.

Universities must also ensure that the rights and freedoms of others are respected, and that academic freedom is exercised in a reasonable and responsible manner.

Faculty: Faculty must be committed to the highest ethical standards in their teaching and research. They must be free to examine data, question assumptions and be guided by evidence.

Faculty have an equal responsibility to submit their knowledge and claims to rigourous and public review by peers who are experts in the subject matter under consideration and to ground their arguments in the best available evidence.

Faculty members and university leaders have an obligation to ensure that students' human rights are

respected and that they are encouraged to pursue their education according to the principles of academic freedom.

Faculty also share with university leadership the responsibility of ensuring that pressures from funding and other types of partnerships do not unduly influence the intellectual work of the university.

Media Contact: Helen Murphy, hmurphy@aucc.ca Association of Universities and College of Canada.

OPEN LETTER TO THE ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA

November 4, 2011

Professor Stephen Toope, Chair
Association of Universities and Colleges of Canada
600-350 Albert Street
Ottawa, Ontario
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Mr. Paul Davidson, President
Association of Universities and Colleges of Canada
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Dear Prof. Toope and Mr. Davidson:

We are writing on behalf of the Canadian Association of University Teachers to express our surprise and dismay with AUCC's recently released "Statement on Academic Freedom." There is a certain perverse irony that AUCC chose its 100th Anniversary to attempt to undo many of the advances that have been achieved in the understanding of academic freedom over the past 100 years.

In 1915, the American Association of University Professors adopted its influential "Declaration of Principles on Academic Freedom and Academic Tenure" – the first and arguably most important statement on academic freedom in North America. One of its key contributions was recognition that academic freedom includes "freedom of extramural utterance and action". This has been a key component of academic freedom since that time. But it finds no place in AUCC's new 2011 Statement on Academic Freedom.

Perhaps the majority of the famous academic freedom cases involve extramural speech, such as Bertrand Russell's firing at Trinity College Cambridge and at Columbia University or the foundation academic freedom case in Canada – the firing of Harry Crowe at United College (now the University of Winnipeg).

Apparently, according to AUCC in 2011, extramural speech rights have no place in statements on academic freedom.

Another significant omission is that your 2011 statement makes no mention of academic freedom including the right to criticize the institution where one works – perhaps a not surprising omission from the organization representing the executive heads of Canada's universities – but a troubling omission nonetheless. CAUT has long defined academic freedom as including the right "to express freely one's opinion about the institution, its administration, or the system in which one works." This is a central aspect of academic freedom as it has been understood in Canada, and internationally as expressed in the 1997 UNESCO Recommendation Concerning the Status of Higher Education Teaching personnel. It is also part of the great majority of academic freedom clauses in Canadian university collective agreements at the institutions whose presidents voted unanimously for a statement that does not mention this right.

AUCC's new statement also fails to recognize that all three of academic staff responsibilities – teaching, research and service – come under the protection of academic freedom. Your statement fails to make reference to service, even though, most collective agreements have long recognized that academic freedom includes freedom to engage in service to the institution and the community.

Equally of concern is your statement's conflation of academic freedom with institutional autonomy. It is absolutely true that academic institutions must not restrict the freedom of academic staff because of outside pressure – be it political, special interest group, religious – and institutions need to be autonomous in that sense. But to pretend that building a moat around the university protects academic freedom is

disingenuous and ignores the reality of internal threats to academic freedom. The 1915 AAUP statement arose partially in recognition of internal threats – from boards, administration, colleagues and students. As the CAUT policy statement on academic freedom says, "Academic freedom must not be confused with institutional autonomy. Post-secondary institutions are autonomous to the extent that they can set policies independent of outside influence. That very autonomy can protect academic freedom from a hostile external environment, but it can also facilitate an internal assault on academic freedom. To undermine or suppress academic freedom is a serious abuse of institutional autonomy."

We are troubled that your 2011 statement introduces qualifications for academic freedom that open the door to its abuse:

"Academic freedom is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission. The insistence on professional standards speaks to the rigor of the enquiry and not to its outcome.

The constraint of institutional requirements recognizes simply that the academic mission, like other work, has to be organized according to institutional needs. This includes the institution's responsibility to select and appoint faculty and staff, to admit and discipline students, to establish and control curriculum, to make organizational arrangements for the conduct of academic work, to certify completion of a program and to grant degrees."

AUCC is correct that academic freedom is a professional right but your statement fails to acknowledge any of the nuance that is now commonplace. "Profession" is both the basis for academic freedom but can be a source of its abuse. Hence the need to understand "professional standards" as heuristic devices that themselves are always contested. None of this subtlety appears in the AUCC statement, leaving a rigid notion of "professional standards of the relevant discipline" that could countenance repression of academic freedom for ideas at the margin or ideas that are critical of the mainstream.

As well this section gives incredible power to the "constraint of institutional requirements" without once affirming them as collegially determined rather than administratively handed down. This is especially disturbing as your 1988 statement is careful to note that any parameters that guide the exercise of academic freedom must be developed internally, and collectively. It also acknowledges that institutional decisions rely upon a collective engagement with the intellectual enterprise by the practitioners of that enterprise. This nuance is lost in the 2011 statement, which omits reference to the collective project.

In light of the above, we are concerned about the AUCC claim in the 2011 [not present in your 1988 statement] that "The university must also defend academic freedom against interpretations that are excessive or too loose." By whose definition of "excessive" or "too loose?"

Your 2011 statement's qualification of academic freedom continues: "Universities must also ensure that the rights and freedoms of others are respected, and that academic freedom is exercised in a reasonable and responsible manner." The administration's notion of "reasonable and responsible" exercise of academic freedom has been at the base of some very serious violations of academic freedom for decades upon decades. The examples are numerous.

We also see danger in what might be intended as innocuous language in your statement: "Faculty have an equal responsibility to submit their knowledge and claims to rigorous and public review by peers who are experts in the subject matter under consideration and to ground their arguments in the best available evidence." However innocuous the intention, the effect can be chilling. Do you mean that if peers view one's work negatively, one no longer has the academic freedom to pursue the idea? Some ideas are beyond the bound of any serious scientific basis – that the world is flat or that humans were created 6,000 years ago. But many other scientific ideas were broadly panned but proven right (e.g., the bacterial basis of ulcers). And what of Harvard's president, during the cold war years, saying that no communist could teach at Harvard because they could not, by definition, be independent thinkers? We could go on and on with examples. There is a grain of truth to the importance of peer review and the professional basis of academic freedom, but your statement's crude description opens the door widely to the kind of abuse we have seen for a hundred years.

On the positive side, we are pleased with the statement's affirmation: "Academic freedom does not exist for its own sake, but rather for important social purposes. Academic freedom is essential to the role of universities in a democratic society. Universities are committed to the pursuit of truth and its communication to others, including students and the broader community. To do this, faculty must be free to take intellectual risks and tackle controversial subjects in their teaching, research and scholarship." We also welcome the statement's reference to the importance of academic integrity.

Overall, though, the statement, as we said at the outset, would reverse 100 years of advancement in the understanding of academic freedom. With the growing pressures on universities to compromise their defense of academic freedom in the quest for financial support, we need a more expansive notion of academic freedom, not a more restrictive one. A major problem in Canadian universities is not that too many people are asserting their academic freedom, but that too few are. AUCC's rendition of academic freedom will only worsen this problem.

We would be pleased to discuss this matter further with you, should you wish.

Yours truly,

Wayne D. Peters, President
James L. Turk, Executive Director

SAFS BOARD OF DIRECTORS

2011 - 2013

At the May 2011 Annual Meeting a motion was passed to approve the Board of Directors for a two years term, 2011-2013. Accordingly there is no call for nominations for the 2012-2013 Board.

SAFS ANNUAL GENERAL MEETING

May 12, 2012

At

University of Western Ontario

Advance Notice

We are pleased to announce that **Gábor Lukács** will be our keynote speaker. The title of his presentation is: **Is Academic Integrity adequately promoted by Academic Governance, Collective Bargaining, and Judicial Review?**

We will also have another session concerning the new statement on academic freedom adopted by the AUCC. Mark Mercer, a professor of philosophy at St. Mary's University and a member of the SAFS Board of Directors, will interview Dr. Paul Gooch, President of Victoria College at the University of Toronto, who was a member of the committee that drafted the AUCC statement.

SAFS BOARD OF DIRECTORS

2011-2013

LESSONS FROM LUKÁCS

Todd Pettigrew

How the traditional university is under attack from all sides

The epic battle waged between Gábor Lukács and the University of Manitoba, which ended last week, has shone an unflattering light onto the state of academic integrity at our universities.

Listening to most recent observers, one would think that our universities need to be completely "reinvented" because professors spend too much time either not teaching at all or at least not teaching practical job skills.

But the Lukács case shows what's really wrong.

As universities become increasingly defined by their administrations—as opposed to their faculty—the traditional values of higher education come under assault from all sides: from management, from the public, and even from the associations that represent professors themselves.

Lukács, recall, is the wunderkind mathematician who sued his university when it granted a PhD to a student who had not completed all the normal requirements, a decision, he felt, was an intolerable violation of academic integrity. University officials defended the decision on the grounds that the student's documented "exam anxiety" constituted a disability and they had a duty to accommodate.

Lukács' lawsuit stalled when a court ruled he had no legal standing in the case. Meanwhile, the university had suspended him without pay because, they said, he had violated the privacy of the student in question. Lukács filed a grievance protesting his suspension, and the whole mess was finally resolved in a legal settlement that leaves Lukács looking for a new job and the university looking, well, you be the judge. Here are the difficulties I think have been highlighted by this saga.

One fundamental problem is the differing ways responsibility is understood at universities today. Professors, by and large, see the university as part of a noble tradition of higher education. They see themselves as guardians of high intellectual standards. By virtue of their long years of education, their records of scholarly publications, and their years of teaching and service, they understand that they have earned the right to teach and conduct research as they see fit.

And, for that matter, to decide who else has accomplished enough to meet the high standards they themselves were held to. That is generally demonstrated when students pass required exams.

Many administrators, on the other hand, see their responsibilities in terms of meeting the legal requirements under which their institutions operate. We might say that these differing views are complementary, except that, as this case has shown, ultimately, administrators have the power. In a battle between the idealist and the bureaucrat, the former is usually right, but the latter usually wins.

Every university is different, of course, and undoubtedly there must be universities where the priorities of administrators mesh beautifully with the ideals of faculty. But few examples leap to mind. Take a look at the ugly strike dragging on at Brandon University and you'll see what I mean.

That the court would not recognize the legal standing of a professor contesting the awarding of a degree in his own program shows the alarming extent to which universities are now viewed as private enterprises, rather than the public institutions they used to be. Indeed, this was a key element of the court's ruling: that Lukacs was not affected by the awarding of the degree.

But the fact is, if a university compromises its integrity, we are all affected because we rely on universities to produce graduates whose skills we can rely on. Put another way, the more we see universities as private entities, the less we expect them to produce public goods like broadly-educated citizens. More and more we see universities as merely advanced job-training facilities.

At the end of the day, our economy may be richer, but our civilization will be poorer.

It is sad that Lukacs' only hope for justice was as a member of a union. That there is still some forum for aggrieved academics is heartening, but it's unfortunate

that this forum is the adversarial arena of labour board star chambers. For one thing, these proceedings can drag on for years. For another, they reinforce the destructive notion that professors are merely employees who work at the university, rather than the professional collective that fundamentally forms the university.

Taking university reform seriously means addressing these problems. We must find and reward Deans and Presidents who value intellectual integrity above all else and are willing to fight for it—to fight bad laws when necessary. We need to restore the notion of universities as powerful forces for the general welfare, not greenhouses for mindless cupidity. And we need to put more power in the hands of professors so that they don't have to rely on the rusty machinery of the trade union.

Addressing these problems would be fixing the university system in a way far more profound than asking profs to teach more or focus more heavily on job training. Had the University of Manitoba been clearer on its priorities, it would have put standards ahead of accommodation, and it would have avoided a public-relations nightmare. And Gábor Lukács would, most likely, still have a job.

Macleans, November 14, 2011. □

OVER THE LINE

Scott Jaschik

In an unusual move, Harvard University's Faculty of Arts and Sciences voted this week to eliminate two summer school courses in economics because of anti-Muslim statements the instructor made in an op-ed published in India.

When word about the op-ed spread in July, some Harvard students demanded that Subramanian Swamy be fired. At the time, Harvard pledged to look into the situation, but noted that it is "central to the mission of a university to protect free speech, including that of Dr. Swamy and of those who disagree with him."

But faculty members this week cited the nature of his statements as justifying the move to kill his courses rather than permit him to return to Cambridge.

The op-ed ran in *Daily News & Analysis.* The piece, a response to a bombing by Muslim terrorists in Mumbai, said that India could wipe out terrorism by taking certain steps, such as declaring India a Hindu state where "non-Hindus can vote only if they proudly acknowledge that their ancestors were Hindus," or demolishing mosques, or banning conversion from Hinduism to any other faith.

Swamy was once an economics professor at Harvard, but he returned to his home in India, where is an outspoken nationalistic politician. But he has come back to Harvard each year to teach in the summer school.

The faculty vote on Swamy's courses came during what is typically a routine review (and approval) of the slate of summer school offerings. In this case, the faculty approved the courses only after removing the two Swamy was to have taught.

Harvard faculty meetings are closed to the press except for representatives of *Harvard Magazine* (the alumni publication) and *The Harvard Crimson* (the student newspaper). An account of the meeting in *Harvard Magazine* said that the economics department chair, John Y. Campbell, told the faculty that his economics colleagues considered Swamy to be "competent" to teach the courses, and that none of the students who took his courses last summer had complained about him. The only student who mentioned the op-ed in a class evaluation rated the course favorably. The department had "expressed its view that it would not take a collective position on academic freedom or on matters of speech, hate speech, or Harvard's reputation – issues on which there were a wide range of views, in this case, within the department," Campbell was quoted as saying.

The proposal that eventually carried – to decline to authorize Swamy's courses – was made by Diana L. Eck, a scholar of India's religions. According to the *Harvard Magazine* account, she stressed that this was much more than an issue of a professor having some controversial views. She called Swamy's views "destructive" and said that his ideas involved limiting the human rights of others and denying freedom of religion. In light of the nature of his comments, she

also wondered why his courses hadn't been "quietly dropped," rather than included in the proposed offerings for the coming summer.

She also quoted from a letter she and other Harvard faculty members sent to President Drew Faust last summer. The letter said in part: "Freedom of expression is an essential principle in an academic community, one that we fully support. Notwithstanding our commitment to the robust exchange of ideas, Swamy's op-ed clearly crosses the line into incitement by demonizing an entire religious community, demanding their disenfranchisement, and calling for violence against their places of worship. Indeed, India's National Commission for Minorities has filed criminal charges against Swamy, whose incendiary speech carries the threat of communal violence. When Harvard extends appointments to public figures, it behooves us to consider whether the reputation of the university benefits from the association. In this case, Swamy's well-known reputation as an ideologue of the Hindu Right who publicly advocates violence against religious minorities undermines Harvard's own commitment to pluralism and civic equality."

Under Harvard's governance system, the faculty vote is final, and does not require administrative approval. A spokesman for the university released only a brief statement: "Members of Harvard's Faculty of Arts and Sciences each year vote to approve or amend the course list for the Harvard Summer School. Yesterday, the faculty voted to approve the curriculum for the Summer School for the coming summer session with the exception of two courses, about which there was considerable discussion."

On his Twitter feed, Swamy said that the vote at Harvard was "nothing serious," explaining that "non-economists at Harvard don't like my views on how to protect India."

Citing Eck and a colleague who also wanted his courses dropped, Swamy also tweeted: "I have been held accountable at Harvard for what I write in India. This means India studies' [Michael] Witzel and Eck are accountable in India. Healthy?"

The Foundation for Individual Rights in Education has spoken out against Harvard's taking any action against Swamy on the basis of his op-ed. The organization's blog noted that Swamy's op-ed calls for radical social change in India, but FIRE noted that American principles of free expression extend to calls for radical social change. As an example, it cited the legal right for people to call for the United States to become a communist country.

"We tolerate the widest possible range of political, social, cultural, and religious views because, for one thing, we trust in the marketplace of ideas to eventually sort it all out," the blog post said.

Inside Higher Ed, December 8, 2011.

UNIVERSITIES FAIL TO STAND UP FOR FREE SPEECH

John Carpay

One of the biggest threats to free speech in Canada comes from universities that condone illegal activities on the part of people who obstruct, interrupt and effectively shut down the events and speeches of people they disagree with.

University of B.C. president Stephen Toope has lamented that "in Canada, we have seen many examples of students trying to shut down speakers with whom they disagree."

Toope has asserted that, "the role of the university is to encourage tough questioning, and clear expressions of disagreement, but not the silencing of alternative views. Universities are sites for the contestation of values, not places where everyone has to agree. That means that speakers we don't like, or even respect, should be allowed to put forward their views . . . (which can) then be challenged and argued over."

Section 430 of the Criminal Code makes it an offence to "obstruct, interrupt or interfere with any person in the lawful use, enjoyment or operation of property."

But universities in Ottawa, Montreal, Waterloo, Calgary and elsewhere have turned a blind eye to people physically obstructing and disrupting speech they disagree with.

Ann Coulter, the controversial American pundit and author, was scheduled to speak at the University of Ottawa in March 2010 as part of her tour of Canadian universities, sponsored by the International Free Press Society. Before arriving, Coulter received a threatening letter from University of Ottawa academic vice-president Francois Houle, warning her: "Weigh your words" or risk criminal or civil legal consequences.

Coulter's speech ended up being cancelled due to the university failing to provide adequate security in the face of violence-threatening protesters.

In November 2010, Christie Blatchford was to speak at the University of Waterloo about her book Helpless: Caledonia's Nightmare of Fear and Anarchy, and How the Law Failed All of Us. Blatchford criticized Ontario's McGuinty government for failing to treat all citizens equally.

Three students sat on the stage, loudly chanting things like "no free speech for Nazi apologizers!" and refused to leave. One of these disrupting obstructionists explained, "We don't want people who are really, really racist teaching . . . (and) we don't want that person to have a public forum because it makes it dangerous for others in the public forum. Our goal was to not let her speak. We accomplished that."

Michael Strickland, the University of Waterloo's assistant director of media relations, stated, "We made a determination that since she wasn't going to get a word in, in any sort of respectful fashion, there would be no point in bringing her out and having her subjected to that."

Apparently, arresting and removing the obstructionists was not on the university's radar screen.

At McGill University in 2009, the speaker giving a controversial talk called Echoes of the Holocaust, organized by the campus Choose Life club, was shouted down by protesters. Campus security did not remove the protesters, who effectively censored the event by shutting it down, much like the protesters who shut down the Blatchford and Coulter events. Some pro-choice attendees approached the speaker afterward to express their regret at not being able to hear his arguments.

At the University of Calgary, pro-life students have set up a controversial display on campus 12 times since 2006, for two consecutive days each time. In the fall of 2007, campus security stood by and watched while obstructionists blocked and disrupted the display, and prevented the pro-life students from carrying on dialogue with other students. Campus security did not ask the obstructionists to cease their conduct. Instead, after this incident, the university started demanding that the pro-life students turn their signs inward. When the students refused to comply with this demand, the university found them guilty of non-academic misconduct, a verdict the students are now seeking to overturn in court.

The universities' failure to uphold the rule of law sends a very clear message in support of mob rule: If you disagree with someone, then silence that person and prevent that person from expressing her or his views. Whether universities themselves restrict controversial or politically incorrect speech, or whether they fail to uphold the rule of law on campus, in both cases, the end result is censorship.

Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms. www.jccf.ca

Calgary Herald, November 14, 2011.

U OF C DEFENDS RIGHT TO DISCIPLINE STUDENTS WHO CRITICIZED PROF ON FACEBOOK

Daryl Slade

The University of Calgary must have autonomy in disciplining students for non-academic conduct and the Charter of Rights and Freedoms should not apply, its lawyer argued before the Alberta Court of Appeal on Wednesday.

"It is clear and self-evident that discipline is an internal function of the university," Peter Linder said in attempting to overturn a lower-court decision that found the school infringed upon the freedom of expression of twin brothers Keith and Steven Pridgen, 22, when it sanctioned them for criticizing their professor on Facebook.

"Private dealings between the university and its students are a fundamental core function of the university. Without it, they couldn't manage their affairs."

The university appealed Court of Queen's Bench Justice Jo'Anne Strekaf's ruling last year which quashed its decision to place the brothers on probation in 2008 for statements made on the website beginning in November 2007.

The Facebook page was entitled, "I no longer fear Hell, I took a course with Aruna Mitra."

Tim Boyle, lawyer for the Pridgens, conversely said his clients had a legitimate basis for complaints against the professor, first because she "misrepresented her qualifications" when she took over the class and when she gave harsh marking in the course.

"All 17 students who applied to appeal their grades had their grades increased," said Boyle, noting the university did not begin the disciplinary process until 10 months after the comments were made.

He said his clients, who were sanctioned for their comments and comments made by other students on the website attributed to them, should be protected by the charter.

Boyle said several students were told to sign a letter of apology to the professor or face sanctions. The Pridgens were among four students who refused to sign and all were reprimanded.

"Not only was their freedom of expression breached, it was breached a second time when they were essentially forced to say things they didn't believe," said Boyle. "The university didn't care; they just wanted them to sign the letter."

Neither Steven nor Keith Pridgen was present for the hearing as they are in the United States studying and working, respectively, but their father Blake Pridgen and grandfather Ralph MacLean were there.

Blake Pridgen said the family was "extremely proud" of what they did and they haven't backed down against the university.

Colin Feasby, lawyer for the intervening Canadian Civil Liberties Association, said the case "is being watched closely by students across the country and civil libertarians to protect freedoms of expression.

"We're not asking for freedoms that don't exist in society at large," said Feasby. "In university, the context may be different. There may be some limitations.

"Autonomy should not be used to oppress students. When given autonomy, they must be subject to the charter in the disciplinary process."

Strekaf said in her precedent-setting ruling released Oct. 13, 2010, that, contrary to the U of C's position, the Charter of Rights and Freedoms applies to universities in such situations and their rights were infringed.

The case arose from a judicial review of the university's General Faculties Council review committee findings.

Strekaf rejected the university's argument that defamatory statements made by a student about a professor must necessarily constitute non-academic misconduct.

Two other interveners — the Governors of the Universities of Alberta and the Association of Colleges of Canada — sided with the U of C in its appeal to the province's highest court.

"The issue here is whether charter-based rights and freedoms of expression are necessary to scrutinize what universities do," said Greg Harding, who represents the Governors of the Universities of Alberta. "We are dealing with private activities and private actions of universities."

Jim Lebo, lawyer for the Association of Colleges of Canada, said there is a conflict between two academic freedoms subject to discipline and subject matters and the autonomy of universities long predates the charter.

"As an astronomer you can't teach the Earth is flat, but you can stand on a street corner and speak for the Flat Earth Society," said Lebo. "No one is suggesting human rights don't apply to students. Students have to be treated fairly.

"But this went beyond that and invoked disciplinary process. (Freedom of expression) doesn't allow you to say whatever you want in the name of academic freedom. If defamatory to excess, you are subject to discipline."

Lebo said students have a right to complain about the quality of education and there are channels for that complaint.

Keith Pridgen previously said the court challenge was never about money. "We just wanted to make sure students in the future aren't afraid to say anything against the university or a professor."

Strekaf said in her decision she accepted that the objectives of maintaining a learning environment where there is respect and dignity for all and in protecting its reputation as an institution are meritorious and accord with the values of a free and democratic society.

Mitra, who is no longer at the U of C, has never commented about the case.

However, according to the university's brief presented at trial, she was of the view that it "was set up for the purpose of injuring her reputation and character in a public manner."

Nevertheless, the judge ruled there was no evidence of any injury to her as she did not testify during the university's hearings and the only evidence of injury was hearsay.

Appellate justices Marina Paperny, Bruce McDonald and Brian O'Ferrall reserved their decision.

The Calgary Herald, November 10, 2011.

SUBMISSIONS TO THE SAFS NEWSLETTER

The editor welcomes articles, case studies, news items, comments, readings, local chapter news, etc. Please send your submission by e-mail attachment.

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INVOKING 'ACADEMIC FREEDOM' TO SILENCE DEBATE

Kenneth L. Marcus

Academic freedom, like democracy, is one of those things everyone supports because it can mean anything to anyone. In this sense, it is the opposite of anti-Semitism, which everyone opposes because it can be defined so narrowly that it means virtually nothing at all. What's interesting is when the two concepts collide.

This is precisely what happened, for example, on Oct. 28 at Kent State University. Guest speaker Ishmael Khaldi, a former Israeli consul official, got a rough welcome when he visited to discuss his experience as an Israeli Bedouin. Professor Julio Pino, a Kent State historian, asked Khaldi hostile questions before leaving the hall shouting, "Death to Israel!"

Kent State's president, Lester A. Lefton, responded quite well. Lefton wrote that it "may have been Professor Pino's right to" shout at Khaldi, "but it is my obligation, as the president of this university, to say that I find his words deplorable, and his behavior deeply troubling." Lefton did not try to censor Pino.

But he announced that Pino's behavior was out of bounds.

The influential Association of American University Professors, however, was incensed. Treating Pino as the victim, AAUP President Cary Nelson told Inside Higher Ed *that it was Lefton who had stepped* out of bounds. Nelson insisted that Pino's behavior "falls well within the speech rights of any member of a university community." This of course was not at issue, since Lefton had only voiced his own opinion. Nelson, however, went on.

"More surprising, to be sure," Nelson said, "is President Lefton's invention of an absurd form of hospitality: you must not question the moral legitimacy or the right to exist of a guest's home country."

In fact, Lefton had said no such thing. But it is telling that the AAUP's chief defends a supposed special right to delegitimize Israel. Natan Sharansky had included this supposed right in his famous "3D" test: criticism of Israel crosses the line into anti-Semitism when it

uses double standards, demonizes the Jewish state, or attempts to delegitimize it. This test is the basis for anti-Semitism standards adopted by the U.S. State Department and the U.S. Commission on Civil Rights.

Ironically, it is Khaldi's speech which some are trying to suppress. This is true not only in that his rude treatment may dissuade him from visiting other U.S. campuses. Four days before his Kent State speech, Khaldi appeared at the University of Michigan at Ann Arbor. There, approximately 60 students reportedly staged a walkout of Khaldi's presentation in order to disrupt and embarrass him. Bilal Baydoun, who chairs one of the student protest groups, bragged to *Arab American News* that their disruption "succeeded in rattling the speaker and making him nervous; we sent the message that this campus doesn't welcome him."

The goal of such protests is not merely to disrupt, embarrass, or discomfort Israeli speakers but to silence them. "But ultimately," as the *Arab American News* quotes Baydoun, "our goal is to prevent someone like this from even arriving on campus in the first place and we feel confident that we will be able to accomplish this as we continue to spread awareness."

In this respect, Khaldi's treatment resembles the so-called Irvine 11's orchestrated disruption of Ambassador Michael Oren's speech at UC Irvine last year. In that case too, the protesters admitted that their intent was to shut down the pro-Israel side of the debate. Indeed, it is now fair to say that there have been efforts nationwide to prevent university speakers from delivering presentations that deviate from the anti-Israel orthodoxy that reigns on too many campuses.

It is ironic that academia's self-appointed guardians of academic freedom and freedom of speech do not recognize this concerted effort to squelch one side of the debate. On the contrary, some are all too eager to recognize academic freedom only when it does not apply and to ignore anti-Semitism where it does. Those who support academic freedom should insist that it not be used as a weapon in support of the silencers and against their victims. If they cannot speak out on the right side of this debate, they should at least not join the wrong side.

This op-ed was distributed by *Joint Media News Service.*

Kenneth L. Marcus is executive vice president of the Institute for Jewish & Community Research and author of Jewish Identity and Civil Rights in America. He formerly served as staff director of the U.S. Commission on Civil Rights.

New Jersey Jewish News, November 9, 2011.

THE SORRY STATE OF FREE SPEECH IN OUR INSTITUTES OF HIGHER LEARNING

George Jonas

Are Canadian universities a threat to free speech? If you ask me, yes, and if you ask civil rights lawyer John Carpay, he'll go even further. Carpay has ranked universities so that you can see which one is a bigger threat than the other. He demonstrated it last week at a breakfast organized by the Frontier Centre for Public Policy for Calgary's Chamber of Commerce, where guests in the Fireside Parlor were treated to a preview of Carpay's "Campus Freedom Index."

The index isn't a parlor game. Carpay and his colleagues at the Justice Centre for Constitutional Freedoms have come up with a scale to register the comparative magnitude of the threat that institutions of higher learning pose to constitutional liberties. To be released in November, the index promises to "evaluate and rank the state of free speech at Canadian universities."

Many find this counterintuitive. People expect threats to liberty and other progressive virtues to come from the academically challenged. We picture book-burners as knuckle-dragging dropouts with brows so low they're obliged to view the world through their hairlines. The very organizers of Mr. Carpay's breakfast say in their brochure that "traditionally, the university was a bastion of free speech" and "universities abhorred censorship," adding that they did so "in the belief that the quest for truth was assisted by the clash of ideas." The suggestion is that the university as censor is a recent and aberrant development.

I'm afraid not. The origin of schools and scholars is ecclesiastical, not liberal, and bookish monks were

looking for heresy, rather than the truth. Theologians thought of truth as being in their possession already, very much like climate activists today. Their quest wasn't to find truth but to eradicate falsehood. What scholars saw as their task was to ferret out and destroy error. In their early days, universities resembled madrasahs far more than laboratories. Although this has changed, one doesn't have to spend much time in faculty rooms (or, for that matter, in student cafeterias) to discover that a scholastic temper fits an inquisitor as comfortably as an experimental scientist, if not more. Scholars may be smart, but they aren't necessarily tolerant, patient — or courageous.

Saying that universities reflect the Zeitgeist is an understatement. Universities are more fashion conscious than *Women's Wear Daily*. Academics go sashaying and flouncing like so many models on a catwalk in their ivory towers as they display the latest whim of the great designer, Intellectual Currency. Philosophers have better centuries and worse centuries, as the spirit of the times changes. The 18th century was good; the 19th century mixed, the 20th century baneful. Universities incubated both fascism and communism, along with their many sub-versions (pun intended). Although the great democracies defeated those two particular monstrosities in the end, it was a close-run thing and no thanks to their academic elites. As for the 21st century, with jihadists infesting campuses all over the world, we're off to a rocky start.

No doubt, today's universities "empower their administrators and student union politicians … to censor expression on campus," just as the Calgary brochure complains. But that's no departure; it's what universities do. They burn books or express solidarity with those who do. At Heidelberg, they did it for Hitler — but never mind Heidelberg. When Nazism was in vogue during the 1930s, trendy academics and administrators did it for Hitler even at Harvard or at New York's Columbia University.

As for Stalin, Mao and their successors, excusing suppression of speech was the least of it. There was hardly a Western university that didn't justify, minimize, or apologize for mass murder as long as it was Marxist-inspired. If the battle of Waterloo was won on the playing fields of Eton, America's campuses played a starring role in the loss of Saigon.

When some brave souls associated with universities speak out against censorship, as they do on occasion, they're the inspirational exception. The rule is an obedient dissemination of the dogma of the day, including terrorist chic, with Hamas apologists shouting: "No freedom of speech for racists." I heard them do it at the Alma Mater of a noxious doctrine called "Israeli Apartheid," a.k.a. University of Toronto. A Canadian institution of higher learning is the least likely place, I'd say, to encourage a clash of ideas to discover the truth. Greasing the squeakiest wheel of an intellectual bandwagon, then handing out honorary doctorates to those who hitch a ride on it, would be more of its speed.

Earlier this year a provincial government commission, ominously named Working Group on Journalism and the Future of the News, and headed by a Quebec university professor, former CBC journalist Dominique Payette, recommended that the government license or otherwise qualify journalists. This, presumably, would split journalists into "professionals" and amateurs, the latter with reduced access, privileges and subsidies. While Charter provisions guaranteeing a free press wouldn't permit the immediate exclusion of unlicensed journalists from practice the way unlicensed lawyers or doctors could be, it would undoubtedly be a step in that direction. Before long, writing an article or a column without proper "qualifications" could be a matter for the police.

Next to separating the church from the state, the most important thing, it seems to me, is to separate the newsroom from the ivory tower. To protect whatever remains of a free society's traditions and institutions — such as free speech and free press — we must protect ourselves from our universities. Even journalism schools attract the kind of politically correct conformity that is detrimental to bold inquiry, but turning news gathering and commentary into a profession requiring academic "qualifications" would put the lid on it.

No real danger, some colleagues say. Canada isn't China. Even China isn't China anymore. By now, between these two statements, I have more confidence in the second.

National Post, November 1, 2011.

SAFS Editor's Note: The 2011 Campus Freedom Index and The State of Campus Free Speech in 2011, are available on the website of the Justice Centre for Constitutional Freedoms, www.jccf.ca/

MINDING OUR LANGUAGE BREEDS CYNICISM AND CULTURAL DISHONESTY

Frank Furedi

One of the most disturbing developments in the cultural life of the West is the casual acceptance of the policing of language.

These days people who should know better - even artists and academics - devote far more energy towards justifying measures that limit free speech than advocating its expansion. Sometimes one can even pick up a sneering sense of contempt towards those who seek to counter the policing of speech.

Just listen to the tone in which Greg Barnes, a barrister and president of the Australian Lawyers Alliance, dismisses the claim that the Federal Court's ruling against Andrew Bolt represented a serious threat to the exercise of the right to free speech. "Has it not occurred to Bolt and those who are busy mouthing similar platitudes that freedom of speech is not an absolute right?" he asks.

The tendency to treat free speech as a platitude and to mock those who take this right seriously as puerile is symptomatic of a fundamental shift in the conceptualisation of the relationship between freedom and the state.

In previous times the liberal and radical advocates of freedom regarded the state regulation of speech as a threat to democratic life. Today, far too many people look to the state for protection from too much free speech.

Therefore the original impetus behind the emergence of the cause of free speech - fear of the power of the state to censor and persecute people for their beliefs and words - is implicitly dismissed as a historical footnote.

From this perspective, mistrust of people with strong views stands in sharp contrast with a naïve trust in the regulation of speech by the state.

Aside from its implication for democracy, the policing of language is a hugely important issue for the way we lead our lives. The experience of history demonstrates that language does not simply mirror the everyday reality that it describes; to some extent it also constructs it.

So the words people use express and also shape their reality. That is why the words and claims that can be stated and the ones that cannot be voiced really matter. The silencing of words, beliefs and attitudes through policing language can directly and indirectly shape attitudes and have a profound impact on the conduct of public life. Communities under pressure to mind their language quickly adapt and learn to mask their views and opinions. Invariably it breeds cynicism and cultural dishonesty.

The weak cultural valuation of the freedom of speech has meant that during the past quarter-century the gradual institutionalization of censorship - formal and informal - rarely has been challenged. Sadly, the one institution where linguistic policing has become most entrenched is in universities. Historically, institutions of higher education were in the forefront of upholding academic freedom and freedom of speech. Today, communication on campuses is filtered through an elaborate system of speech codes and censorship. The Inclusive Language Guideline of the University of Newcastle reads like a medieval censor's manual. After correctly explaining that "language both reflects and shapes social reality", the manual lays down the law about just what kind of reality it wants to impose on its staff and students. It provides a list of terms to be avoided and offers permission for ones that can be used. Most of the suggestions are harmless or inane. For example "manning the office" is out; "staffing the office" is in. It helpfully reminds us that it is more polite to reverse old stereotypical terms "Sir and Madam" with new ones "Madam and Sir".

If you read the Some Useful Tips section of the University of Western Australia guidelines, you will discover there really are a lot of words to avoid. With a hint of self-caricature, the reader is informed that words such as crazy and mental are on the avoid list. So is loopy! Other universities demonstrate considerable ingenuity in inventing new terms to replace inappropriate ones. My favourite suggestion is that pioneering fathers be replaced with the more inclusive, and very snappy, pioneering forebears.

Upon inspecting these codes, my first reaction is to ask, "Where did these people get their BA in banality from?" But of course the policing of speech is not an

innocent pastime motivated by the impulse to improve the quality of discussion. Although these lists of words are presented in the form of advice, they are underwritten by a code of practice that is not just prescriptive but coercive.

What's even more disquieting than campus speech codes is the acquiescence of staff and students to them. Yet the university ought to be an environment hospitable to the pursuit of free and open debate, where it is assumed that people have the intellectual resources and maturity to deal with any idea or words thrown at them.

Instead the academy has become linguistically infantilized. Students and staff are treated like infants with the warning "Mind your language". Once self-censorship has become a habit, the addiction to it becomes difficult to break. Is it any surprise that some academics spend more time arguing for limiting free speech than extending it? It is worth noting this is the environment that shapes the linguistic universe and imagination of the legal professionals of the future, including judges and legal scholars.

Tragically, even law faculties have become influenced, if not dominated, by the illiberal trend towards the exercise of the right to the freedom of speech. It was refreshing to read a robust defence of this freedom a few weeks ago by Bill Rowlings, chief executive of Civil Liberties Australia. Despite his disagreement with Bolt, he stated that what was needed was more, and not less, free speech. Hopefully such an eloquent call for tolerance can inspire others to take the right to voice an opinion more seriously.

However, the challenge of upholding freedom of speech is principally a cultural and not a legal accomplishment. Open-minded, tolerant and genuinely liberal people should set an example by not minding their words and challenging the regulation of speech in all its forms.

The Australian, October 22, 2011.

COLLEGE DIVERSITY AT RISK

Lee C. Bollinger

There have been few moments in our history when the nation so badly needed institutions to unify the country, overcome divisiveness, and dispel the unfounded “jealousies and prejudices” that our first president warned against. As George Washington wrote to Alexander Hamilton, bringing together the youth “from different parts of the United States” at a university would allow young people to learn there was no basis for “jealousies and prejudices which one part of the union had imbibed against another part.”

Yet if the Supreme Court decides to hear a case called *Fisher v. University of Texas at Austin*, colleges could be severely restricted in continuing to serve this unifying function.

A white student named Abigail Fisher has argued that she would have been admitted to the University of Texas if the school had refrained from considering race in its admissions decisions and that her constitutional rights have been harmed as a result. Lower courts decided against Fisher, ruling that the university’s efforts to assemble a racially diverse student body complied with the constitutional standards established in the 2003 case *Grutter v. Bollinger*, the Supreme Court’s definitive holding on affirmative action in U.S. education.

A move away from the court’s recognition in *Grutter* of the “substantial” and “laudable” benefits of a diverse student body would be as damaging to higher education as it would be ill-timed for the nation at large. When students encounter others’ points of view and discover how contrary opinions have been forged by different life experiences, they learn more than how we differ: They learn what we have in common.

The places in U.S. society where people of different backgrounds have a meaningful opportunity to learn about each other are far too rare. Yet instead of cultivating these unifying social institutions, we have been undermining them. Sixteen years ago, California adopted a ballot measure banning the consideration of race in admissions decisions. Within five years, only 3 percent of the students in California’s public law schools were African American (compared with 10 percent at the state’s private law schools), and black

enrollment declined throughout the state system. Similar ballot measures have passed in Arizona, Washington state and Michigan, where a federal appellate court is reviewing the law's constitutionality. This year, New Hampshire banned admissions policies that value racial diversity.

Especially in this era of economic insecurity, the argument is made that diversity in post-secondary schools should be focused on family income rather than racial diversity. Of course, we want both. When universities are granted the freedom to assemble student bodies featuring multiple types of diversity and possess the resources to support "need blind" admissions with full financial aid, the result is a highly sought-after learning environment that attracts the best students.

Consider Columbia, where our undergraduate student body has the highest percentage of low- and moderate-income students and the largest number of military veterans of our peer institutions, as well as the highest percentage of African American students among the nation's top 30 universities. But our country cannot rely on private universities such as Columbia to realize these benefits. Far more students attend our great public universities, where a combination of declining state support and unfavorable ballot measures pose a serious risk to our model of higher education.

Dismantling an educational system that for decades has valued contact among students with different sensibilities and replacing it with one that does not would be regrettable on many fronts. Justice Sandra Day O'Connor wrote for the majority in *Grutter v. Bollinger* that the benefits of a diverse student body are "not theoretical but real": Indeed, more than five dozen leading corporations, including Microsoft, General Electric, Shell Oil and 3M, told the court in 2003 that students learning in diverse educational settings can be expected to be better workers. These companies cited skills ranging from creative problem solving and the ability to develop products with cross-cultural appeal to the employees' ease with global business partners and their positive effect on the work environment. In an amicus brief submitted to the court, retired U.S. military leaders also advocated racially diverse student bodies, noting that with minorities constituting 40 percent of the active-duty armed forces as of 2002, "success with the challenges of diversity is critical to national security."

Last month, the departments of Education and Justice announced new guidance on the implementation of *Grutter* intended to encourage schools embracing the educational benefits of a diverse student body. The action is a strong antidote to what had been a prevailing vagueness in legal guidance and its attendant chilling effect on university presidents and admissions officers. But the impact could be short-lived, for it will remain relevant only so long as the rationale for considering race in admissions remains constitutionally valid.

This is the wrong time for the Supreme Court to abandon its decades-old commitment to the role colleges and universities play in unifying and elevating U.S. society. To ensure the nation's prosperity and fulfill our founding ideals of equal opportunity, the court should stand by its strong endorsement of diversity in higher education.

Lee C. Bollinger is currently president of Columbia University, and was president of the University of Michigan when the admission decisions against Gratz and Grutter took place.

SAFS Editor's note: It was gratifying to see that the comments to Bollinger's opinion were overwhelmingly negative – http:/washingtonpost.com/opinions/college-diversity-at-risk/2012/01/13gIQACxpn1P_story.html Washington Post, January 15, 2012.

THE AFFIRMATIVE ACTION MYTH

LOWERING ADMISSION STANDARDS HURTS THOSE IT IS SUPPOSED TO HELP

Jeff Jacoby

IF RACIAL preferences in higher education were good for racial minorities in higher education, we surely would have seen definitive evidence of it by now.
Instead, a widening shelf of empirical research suggests that the opposite is true - that affirmative action in academia is not advancing minority achievement but impeding it.

In the University of California v. Bakke case more

than 30 years ago, the Supreme Court gave colleges and universities a green light to admit applicants on the basis of race if their aim was to secure the blessings of a "diverse'' student body. Many educators and policymakers concluded that lowering academic standards for black and Hispanic candidates - though awkward and controversial - was a worthwhile tradeoff, since it would increase the number of minorities with advanced degrees and prestigious careers. Build racial diversity into each freshman class, it was widely believed, and more diversity among graduate students, academics, and professionals would ensue.

But it hasn't worked that way.

In a report published last year, the US Commission on Civil Rights explored why black and Hispanic students who enroll in college intending to major in science, technology, engineering, or math - the so-called STEM fields - are far less likely than other students to follow through on those intentions.

The problem isn't lack of interest; incoming minority freshmen start out *more* attracted than their white counterparts to a science or engineering degree. Nor is racism to blame; the commission found that discrimination "was not a substantial factor'' in the rate at which black and Hispanic students give up on science and math majors. Yet the bottom line is disheartening: Even after decades of affirmative action, blacks (relative to their share of the overall population) are only 36 percent as likely as whites to earn a bachelor's degree in a STEM discipline — and only 15 percent as likely to make it all the way to a science-related PhD.

And it's not only in science and math that the supposed beneficiaries of racial preferences fall behind. According to UCLA economist and law professor Richard Sander, more than 51 percent of black students at elite law schools finish their first year in the bottom 10 percent of their class. Black students fail or drop out of law school at more than twice the rate of white students (19.3 percent vs. 8.2 percent). And while 78 percent of white law school graduates pass the bar exam on their first attempt, only 45 percent of black graduates do.

The inability of racial preferences to vault more minority students into high scholastic achievement shouldn't come as a surprise. When an elite institution relaxes its usual standards to admit more blacks and Hispanics, it all but guarantees that those academically weaker students will have trouble keeping up with their better-prepared white and Asian classmates. Minorities who might have flourished in a science or engineering program at a middle-tier state college are apt to find themselves overwhelmed by the pace at which genetics or computer architecture is taught in the Ivy League. Many decide to switch to an easier major. Others drop out altogether.

This is the cruelty of affirmative-action "mismatch'' — the steering of minorities to schools where they are less likely to succeed. Absent such preferences, black and Hispanic students would attend universities for which their credentials better suited them. Many would earn higher grades or degrees in more prestigious and challenging fields; more would go on to graduate school and careers in academia or the professions. If it weren't for race-based admissions policies, in other words, underrepresented minorities wouldn't be so underrepresented.

Racial preferences, says University of San Diego law professor Gail Heriot, have backfired. She is one of three members of the civil rights commission urging the Supreme Court to recognize the damage it unleashed when it allowed racial "diversity'' to trump the Fourteenth Amendment's guarantee of equal protection of the laws. Skin color was always an ill-contrived proxy for diversity of experiences and beliefs. What more than 30 years of race-based admissions have made clear, Heriot argues, is that "even with the best motives in the world, race-based admissions do far more harm than good.'' Especially to the students they are supposed to help.

Globe Columnist, Dec. 23, 2011.

PRO-MALE AFFIRMATIVE ACTION?

Carrie Lukas

In a culture quick to claim victim status, the existence of a concerted effort to hush up systematic discrimination may seem surprising -- particularly when that discrimination is against women. Yet as the University of San Diego law professor Gail Heriot and Alison Somin write in the Federalist Society's Engage, there's been a notable lack of public debate about pro-male bias in the college admission process.

It's an open secret, they explain, that a growing number of colleges are holding male and female applicants to different standards to inflate the number of male students. Women already receive about six in ten bachelor degrees, so many colleges that don't want their student bodies skewed too heavily female are making it easier for men to enroll. Just how prevalent is the practice? It's tough to say, since, as Heriot and Somin describe, an effort by the U.S. Commission on Civil Rights to study the situation was recently terminated.

There are numerous reasons why so many would prefer to ignore, rather than analyze, this aspect of academic life. One might expect feminists to be outraged about universities systematically favoring less qualified men over higher-achieving women. But, as Heriot and Somin explain, peculiarities in Title IX enforcement encourage the practice, limiting ways that universities can otherwise seek to attract men (such as through athletics programs) and by creating a quota regime that kicks in only after the admission process.

Indeed, the entire concept of pro-male affirmative action undermines the feminist cause. Admitting that women so dominate academia that men need special rules to compete exposes as absurd the feminists' continued push for funding for girl-power programs (such as those related to math and science) and their continued fixation on the exact number of female college athletes. Feminists also have long championed affirmative action programs for other underrepresented groups, which would make outrage about using different standards for men a stretch.

Traditional opponents of affirmative action policies, on the other hand, tend to be concerned about the declining academic achievement of men. As a result, they may also be happy to ignore the inherent unfairness of this pro-male admissions process.

Yet surely this is a phenomenon that deserves a public airing, both to clarify what constitutes "fair" admission procedures and to consider the state of our education system more broadly.

Much has been written about how affirmative action programs tend to backfire on intended beneficiaries.

There is every reason to expect that this will affect male affirmative-action beneficiaries just as it does any other group. Yet Americans can also sympathize with a college's desire to have a more diverse population than achievement-only admission criteria would generate.

Ideally, colleges should be free to set policies as they see fit, and be rewarded or punished in a marketplace that takes into account a wide variety of factors, from prestige to quality of campus life to actual transmission of knowledge and skills. Concerns about taxpayer support being distributed through a process that considers attributes like race and sex (rather than affording true equal treatment) seems a good reason to get government out of the business of funding colleges, rather than limit how colleges make their selections.

Young men's inability to compete on a level playing field with women should also invite consideration of other policy reforms. To start, let's recognize that government programs predicated on the idea of women as "short-changed" by the education system have long since been overtaken by reality. Our government's obsessive interest in enforcing a de facto quota system in the name of Title IX -- but only in areas where men still outnumber women, like sports and math and science programs -- is entirely inappropriate.

Education reformers should consider why our K-12 education system fails to help so many boys reach their potential. Just as fixing the pipeline is ultimately the best path to boost minority education achievement, so it is with our nation's boys. Parents should consider whether traditional one-size-fits-all public schools are really best for their sons. Our education system should be restructured so that there are more options, including paradigms better-suited to serve boys' specific academic needs.

Many may prefer to ignore pro-male affirmative action policies, but they are a symptom of larger issues that will continue to hurt American society.

Carrie Lukas is the managing director of the Independent Women's Forum.

American Thinker, December 15, 2011.

ORWELLIAN JUSTICE IN NEW HAVEN--THIS TIME AGAINST A PROFESSOR

KC Johnson

Believe it or not, there is at least one person on the Yale campus who has received less due process than Patrick Witt, the former college quarterback and Rhodes scholarship applicant whose reputation has been effectively destroyed by Yale and the *New York Times*.

That information came last Tuesday in an e-mail from Yale president Richard Levin celebrating the "comprehensive, semi-annual report of complaints of sexual misconduct and related remedial actions" produced by Deputy Provost Stephanie Spangler. As already noted, the Spangler Report explained the Orwellian procedures under which Patrick Witt was investigated or, rather, not investigated. Most of the report described the undergraduate students who, like Witt, had been subjected to the "informal complaint" procedure, in which limited or no investigation occurs and in which the accuser retains all but total control of the process.

One of the Spangler cases, however, involved a complaint by a female professor against a male colleague. Here is the report's description of the procedure that Yale employed: "A faculty member sought resolution of an informal complaint alleging that a male faculty member had sexually harassed her.

The complainant requested confidentiality. The Chair of the UWC [University-Wide Committee on Sexual Misconduct] met with the complainant and her department chair and they identified measures to support and protect the complainant and monitor the respondent."

According to Spangler, then, after a complaint was lodged against a Yale professor, a meeting to discuss the matter occurred between university administrators, the accusing professor, and both professors' department chair. But the accused professor was never informed of the existence of the complaint, much less given a chance to defend himself. As a result, somewhere on the Yale campus today, a department chair and members of the administration have set up "measures" to "monitor" an unknowing member of the Yale faculty. Big Brother comes to New Haven.

In his *Wall Street Journal* article, Peter Berkowitz commented on a central irony of cases like Witt's–that academics, who by tradition have strongly defended due process, too often have remained silent to the erosion of civil liberties on today's campuses. As Berkowitz observed, "It is outrageous but not surprising that little protest has been heard from faculty around the country. Some have succumbed to the poorly documented contention that campuses are home to a plague of sexual assault. Some are spellbound by the extravagant claim championed more than two decades ago by University of Michigan law professor Catharine MacKinnon that America is a 'male supremacist society' in which women are rarely capable of giving meaningful consent to sex."

There's little indication that Yale faculty members are troubled at what happened to Witt–who, after all, lacks a profile that would be appealing to most in today's race/class/gender-dominated professoriate. But as the Spangler Report makes clear, the university's unusual conception of due process can just as easily be targeted against the professors themselves. Indeed, President Levin has all but promised as much: "The new procedures and services we have put in place are necessary, but they are not sufficient."

Perhaps a recognition that they could be the next Patrick Witt will cause some Yale professors to start worrying about the erosion of due process rights on the New Haven campus.

Forum, February 12, 2012.

PRESS RELEASE

Victory for Freedom of Conscience in Ward v. Polite

January 27, 2012

PRINCETON, NJ (January 27, 2012)—The National Association of Scholars applauded the ruling today by the Sixth Circuit Court of Appeals in favor of Julea Ward and in defense of freedom of conscience.

Julea Ward was a student in the counseling program at Eastern Michigan University who was expelled from the program after she asked permission to refer a gay client to another counselor. Ms. Ward, citing her Christian beliefs, was willing to counsel the client but not to "affirm" his homosexual behavior.

The National Association of Scholars filed a friend-of-the-court brief in the case just over a year ago, which states, "In a society where people—both counselors and clients—hold very different moral and religious views, it makes perfect sense that referrals would be a legitimate and valuable option for counselors who foresee a potential conflict with the client's goals."

Today's court decision corresponds with this concept. "Tolerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination," the opinion states. "A reasonable jury could find that the university dismissed Ward from its counseling program because of her faith-based speech, not because of any legitimate pedagogical objective. A university cannot compel a student to alter or violate her belief systems based on a phantom policy as the price for obtaining a degree."

Peter Wood, president of the *National Association of Scholars*, said "The Sixth Circuit's ruling is an important victory for freedom of speech and freedom of conscience in American higher education. Increasingly, students who dissent from the social views that prevail on liberal campuses are marginalized and in some cases stripped of their opportunity to pursue their education. The Court recognized that this is what happened to Julea Ward and it decided the case in a manner that should serve as a warning to other universities that discriminate against individuals under the pretext of upholding 'non-discrimination' principles."

NAS advocates for excellence in higher education by encouraging commitment to high intellectual standards, individual merit, institutional integrity, good governance, and sound public policy. To learn more about NAS, visit www.nas.org.

CONTACT: Peter Wood, President, NAS pwood@nas.

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