

**University of Minnesota
Academic Freedom and Responsibility
2011 White Paper
As presented to the University Senate December 2011**

Faculty Senate Committee on Academic Freedom and Tenure

Abstract

The protections and responsibilities in the University of Minnesota Board of Regents' Academic Freedom and Responsibility policy are intended to generate a setting in which free and vigorous inquiry is embraced in the pursuit of "the advancement of learning and the search for truth," in the words emblazoned on the front of Northrop Auditorium. The combination of protections and responsibilities implies that the privilege of academic freedom is available and supported when it is ensured that all voices are heard and ideas are the focus of the conversation and debate.

All University employees are obliged to meet the responsibilities listed in the policy in order to create the culture needed to sustain and affirm the University's commitment to academic freedom. The protections defined by the policy extend to all University employees who engage in scholarly work. The protections of academic freedom also apply to teaching and service settings.

In 2011 the Faculty Senate Committee on Academic Freedom and Tenure discussions addressed current thought about these aspects of University work. These discussions, which came about because of the U.S. Supreme Court decision in the case of *Garcetti v. Ceballos* and because of the controversy surrounding the release of the film *Troubled Waters*, led to the preparation of this White Paper. These discussions are contained in the minutes of the committee and the Senate for 2009-11.

Note: This White Paper will refer to the tenure regulations, shorthand for the Regents Policy: Faculty Tenure.

Introduction

Academic freedom and its associated responsibilities are core values of the University of Minnesota. Academic Freedom and Responsibility (AF&R) is also the title of the University's Regents' policy, which describes these guiding principles and how they are to be lived at the University. The policy elucidates how both academic freedom and responsibility frame the work of the University and guide decisions made regarding the performance of duties and pursuit of scholarship at the University of Minnesota. The AF&R policy provides:

ACADEMIC FREEDOM AND RESPONSIBILITY
[http://www1.umn.edu/regents/policies/academic/Academic_Freedom.pdf]

SECTION I. GUIDING PRINCIPLES.

The Board of Regents (Board) of the University of Minnesota (University) reaffirms 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.

SECTION II. ACADEMIC FREEDOM.

Academic freedom is the freedom, without institutional discipline or restraint, to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write on matters of public concern as well as on matters related to professional duties and the functioning of the University.

SECTION III. ACADEMIC RESPONSIBILITY.

Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution.

Over the past several years, academic freedom and responsibility have been the focus of extended discussions at the University. In 2004 the Faculty Senate's executive committee, the Faculty Consultative Committee, invited a task force to "consider current issues of academic freedom at the University...given the assaults on academic freedom experienced nationwide" at that time. Their report is available at:

<http://www1.umn.edu/usenate/fcc/acadfreedomreport.html>

During 2010-2011, additional experience compelled further careful discussion of academic freedom and responsibility at the University. These conversations resulted in an expanded understanding of these core values. The dimensions and nuances of the policy and its application are addressed in this White Paper, anticipating that they will provide a resource for further discussions and activities at the University.

Sources and Nature of Academic Freedom

Academic freedom is a public good. It extends from the implicit public contract that recognizes universities as places with special obligations with respect to the search for and production of knowledge. It allows the university to defend the pursuit of knowledge by individual faculty, staff, and students, wherever it may lead. Academic freedom protects university employees from discipline or restraint based on their activities in scholarship, teaching, and service as part of their University roles. The public benefits from this protection, with the advancement of learning and creative expression.

With academic freedom comes academic responsibility, and a recognition that academic freedom has its limits. The United States Supreme Court has established that academic freedom, like the First Amendment, is not a defense to acts such as academic fraud, slander or defamation, obscenity, or creating a clear and present danger of bodily harm (as a result of one's speech).

The American Association of University Professors (AAUP) first published documents defining and describing academic freedom in 1915, and re-visited and defended their observations in 1940 and 1970. Their comments were published because of challenges to academic freedom that arose when the U.S. was at war. During those conflicted times, the creative ideas and challenging discussions that are expected as part of academe seemed especially threatening to the country's social and political positions, and there were efforts to limit their expression.

The University of Minnesota Board of Regents acknowledged the role of academic freedom and responsibility in 1938. At that time the Board of Regents' resolution observed that in times of national crisis, it is especially important for the University as an institution of higher learning to adhere to the values and traditions of academic freedom (Board Resolution January 28, 1938).

In 1995, and again in 2009 and 2011, the Board of Regents reaffirmed its commitment to academic freedom and responsibility as basic to the University's work in service of the state. The Board of Regents policy specifically identifies the associated responsibilities as: a) performance

of professional duties and obligations; b) recognition of the demands of academe; and c) candor in attributing responsibility for ideas and statements when speaking on matters of public interest.

The University of Minnesota Academic Freedom and Responsibility policy is referenced in other Regents' policies, which specifically connect these guiding principles to the University's tenure regulations and code of conduct policies and expectations. Key language from the tenure regulations includes statements that indicate the links between tenure and academic freedom and responsibility:

- "Tenure is the keystone for academic freedom."
- "Both tenure and academic freedom are part of an implicit social compact."
- "[F]aculty have the responsibility of furthering the institution's programs of research, teaching, and service."

Report of the Task Force on Academic Freedom (2004)

The 2004 Task Force Report also acknowledges academic freedom as a public good that is crucial to our democracy. Academic freedom is defined as an implicit contract between society and universities pertaining to scholarly and creative activities (p 4). The Task Force Report described two dimensions of this core value as the "protective" and "affirmative" components of the principle of academic freedom (pp. 5-7). The protective component of academic freedom is defined in Section II of the Board of Regents AF&R policy: Academic freedom limits outside interference with academic work, assuring scholars the right to free inquiry "without fear of punitive sanction" (p. 5). The Task Force Report also notes that in the University, a scholar's freedom to pursue knowledge and express ideas is expected to be subject to rigorous debate and scholarly review by others within the academy. The affirmative component of this principle is the culture that is required to support this unrestricted exchange of ideas protected by academic freedom. The culture supports discourse within the University that is expected to be rigorous, respectful, civil, continuing, and both within and across disciplines (p 6). It is also noted that the affirmative component of academic freedom becomes ineffective when it becomes a "culture of offense." (p 6) The effective balance of both components is essential to attaining the benefits of academic freedom for society and for the academy.

2011 Insights

To varying extents, the AF&R policy extends protections to and establishes responsibilities for all who work at the University of Minnesota. Over time these protections and expectations have been most closely described and defined for the scholarly work that is produced at the University. However, as the policy provides, these protections and responsibilities also extend into the other dimensions of University work, including teaching and service. The sections below reflect insights regarding academic freedom and responsibility that were generated in 2011 AF&T discussions.

Who enjoys the AF protections at the University of Minnesota?

Scholarly Work

The protections of academic freedom are extended to all University employees who engage in scholarly work, which is also identified as original intellectual and artistic content, as part of their employment. Anyone—of any employment status or rank—who designs, creates, or discovers content as part of their University employment enjoys the protections of academic freedom; that includes professors, museum directors, artists, etc. regarding that work.

Some employees and faculty at the University have both administrative and creative / departmental positions. In cases where the person functions as an administrator, the person does

not have the protections of academic freedom for the administrative work; however, when teaching and doing creative work within the person's discipline, the protections do apply.

It is important to note that the protections of academic freedom do not extend to employees (of any employment status or rank) who have been hired to complete the intellectual / artistic work of their supervisor. Anyone hired by someone to accomplish that person's design/plan/etc. is not extended the protections of academic freedom; the creative effort and responsibility remain with the supervisor who is directing the employee's effort.

In general, when a University employer hires an employee or a student to complete work as part of the employer's creative work ("work for hire"), the protections of academic freedom extend to the creative leads on the project but not to the others hired to work on the project. The protections apply regardless of the source of funding. In other words, the protections of academic freedom apply to the creative lead for a project and they apply when an employee or student is creating his/her own work. The protections do not apply when a student or employee is working on another's creative work. (Academic freedom in a "work for hire" setting should be clearly defined in the contracts and other documents that are signed in the hiring process.)

Some creative work at the University is funded by external sources, awarded to the Board of Regents, and managed through grants and contracts. When concerns regarding the connection of a funded project with the University are raised, systems exist to review those concerns (Sponsored Projects, IRB, animal safety, etc.).

Teaching

The protections of academic freedom equally apply to the teaching mission of the University and to all who participate in the teaching-and-learning enterprise.

According to the AF&R policy, the protections of academic freedom include "the freedom to discuss all relevant matters in the classroom." Teachers and students pursue ideas openly and broadly. Teachers decide what to include in a class and students engage fully in challenging discussions of the material. However, there are boundaries to what a teacher includes in a course and to a student's participation, and these boundaries are identified in the following paragraphs of this White Paper and are also set forth in the syllabus statement adopted by the Faculty Senate in 2010:

Academic freedom is a cornerstone of the University. Within the scope and content of the course as defined by the instructor, it includes the freedom to discuss relevant matters in the classroom. Along with this freedom comes responsibility. Students are encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Students are free to take reasoned exception to the views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

Many of the instructional programs at the University are designed to meet particular accreditation, disciplinary, and professional expectations. Outside organizations (professional boards, accreditation groups, etc.) provide broad guidelines for what students need to accomplish in order to be prepared for their work. These expectations specify what needs to be taught at the University for these students. These externally-defined expectations, combined with faculty decisions, determine what information and materials are included in programs of study and in specific courses.

Administrators also have a voice in what is taught and who does the teaching, to ensure the institution meets its instructional obligations. Administrators (typically department heads and

chairs) make teaching assignments to particular faculty members, based on the skills and interests of the faculty and the coursework that needs to be taught to meet students' broader requirements. This administrative role in assigning what is taught and by whom is consistent with the explanation in Interpretation 4 of the tenure regulations (2011).

Within these boundaries and additional specifications determined by the faculty of a unit, teachers enjoy the protections of academic freedom in preparing course syllabi, based on what they think the courses should encompass, while also including the required material. Faculty members have the protections of academic freedom to present course material in their own way, as long as that material is competently taught and represents a current review of the required materials. (See The Academy of Distinguished Teachers' set of best practices for peer review of teaching — http://academic.umn.edu/provost/peer_review/)

The protections of academic freedom also extend to students, who have the freedom to engage course and class material in rigorous conversation. Faculty members can limit the students' classroom engagement to ensure that course goals are met.

Service

As described in the AF&R policy, the protections of academic freedom also apply to the outreach and service dimensions of University employment. As written in the AF&R policy, academic freedom protections extend to the "[F]reedom to speak or write on matters of public concern, as well as on matters related to professional duties and the functioning of the University."

Limitations on Academic Freedom

Administrators are limited in their ability to state their opinions about University positions publicly, as established in recent federal court opinions. (*Faghri v. University of Connecticut*, 621F.3d 92 (2010), bears most directly on the point.) The courts have recognized that administrators (deans and above) have the responsibility to engage in vigorous, robust discussion up to the point an administrative decision is made and University policy is defined. Once the decision is made, administrators who criticize the decision can be terminated from their administrative position (but not their tenured faculty position, if they hold one). This court decision reflects the opinion that as a public employee in a position of authority, an administrator relinquishes certain free speech and academic freedom protections as part of the employment bargain. This extends to statements that might be made before the legislature, to the media, and other public fora.

These academic freedom protections are limited in a parallel way for students and others in settings where they are employed to complete scholarly and creative projects as a "work for hire." While employed and working on the projects, these employees may participate as part of the team with rigorous debate and contributions to the process. However, once the supervisor / creative lead on the project has made a decision regarding how to proceed, the employee does not have the protections of academic freedom to criticize the work. This expectation is based on the belief that the employee relinquished that freedom when accepting the employment contract.

What are the Academic Responsibilities that accompany the protections of Academic Freedom?

The AF&R policy establishes that the core value of academic freedom confers these protections in a setting with commensurate responsibilities. All employees at the University are responsible for maintaining a culture that supports rigorous academic debate and scholarly review. The responsibilities named in the policy set three specific expectations: faithful performance of duties and obligations; recognition of the demands of the scholarly enterprise; and the candor to make it clear that one is personally responsible (not speaking for the University) for remarks when

participating in public discourse. These responsibilities are intended to create a respectful and civil setting that supports the University's pursuit of understanding, search for truth, and advancement of learning.

Specific Responsibility: Perform Professional Duties and Obligations

The University accomplishes its work through the scholarly activities, teaching, and service of its faculty, students, and staff. Each University employee works either to create these work products or in support of the setting where these products are generated. When employees perform their jobs with this orienting vision, the University can accomplish its work.

For those who do scholarly work and teach, actively participating in the exchange of ideas is an essential dimension of their professional duties and obligations. Peer review is an essential part of that process, ensuring that the best ideas are considered, challenged, and debated. Old paradigms may founder, new ideas flourish, unexpected ideas emerge. This process is rarely quiet or simple, and the expected controversy draws attention within the academy and beyond, into society.

Another dimension of employee responsibility in performing professional duties and obligations is to meet the expectations of the unit for the position into which they are hired. These expectations are defined in the tenure regulations and 7.12 statements for faculty, and in parallel documents for other positions. Accomplishing the design, discovery, and creation of scholarly work throughout a career is one aspect of faculty professional duties and obligations; maintaining the rigorous debate and scholarly review expected in the setting is another. The Academic Freedom and Responsibility policy establishes that creating and maintaining the setting for this unrestricted exchange of ideas applies to all employees.

In maintaining a culture that depends on this exchange of ideas with the goal of advancing learning, there are also University employees whose jobs are to promote the University or to protect the University's name. Actions taken in service of such promotion or protection may sometimes work to undermine the University's goals by hindering inquiry, debate, and presentation of ideas, so it is critical that the importance of free inquiry be balanced against the promotional aims. More important than protecting the University's name in connection with the public dissemination of material is promoting and protecting the core values of the University. The protections of academic freedom can only be maintained when all employees within the culture support the free exchange of ideas and recognize that controversy may follow.

Specific Responsibility: Recognize the Demands of the Scholarly Enterprise

The University's work is producing significant scholarship, effective teaching, and service to the community. Controversy must be expected, whether the controversy results from a challenging idea, performance, or presentation. While controversy is expected, it must not be a determining factor when deciding what can be taught, investigated, and/or discussed, nor should it influence decisions regarding dissemination of intellectual or artistic work products from the University. However, there are important nuances in how controversy is integrated into and managed within the University's work.

Recognizing the University's role in society's scholarly enterprise means embracing the responsibility to use academe's collective judgment in ensuring the University's work products are appropriate for an institution dedicated to the advancement of learning.

However vigorous conversation and debate becomes, these discussions need to remain respectful, civil, and focused on ideas, so the culture continues to affirm the purpose of the University. When a culture of offense is established and the setting taints the exchange of ideas, the University's work is undermined and those employed can become demoralized.

Specific Responsibility: Candor to make it clear when one is not speaking for the institution

It is important to note that University employees have a specific responsibility described in the AF&R policy, which requires that an employee "make it clear that when one is speaking on matters of public interest, one is not speaking for the institution." It is obvious that when an employee is doing scholarly or instructional work, they are doing their University job, and thus not speaking to the public for the University. This specification in the policy notes that when an employee moves beyond the academy and into public space, it is important that the individual acknowledge that the opinions and work being presented are personal ideas and opinions, and do not represent the University's position, if there might be uncertainty. This applies when one writes a letter to the editor, submits an op-ed piece, or is interviewed for a news story. [Suggested disclaimers include: "Professor Jane Doe is an associate professor the University of Minnesota's College of Education and Human Development. (The views represented are Professor Doe's and do not represent those of the University of Minnesota.)"]

Recourse

When issues of concern arise about the protections extended through the Academic Freedom and Responsibility policy, whether to faculty, staff, or students, the matter should be referred to the Provost as the University's chief academic officer (other administrators do not have the authority to make a decision). Individual faculty members may file a case with the Judicial Committee; P&A staff may file a charge with the Office of Conflict Resolution.

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