

March 1965

## Academic Freedom: How Does Florida Stand?

Jere E. Lober

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Jere E. Lober, *Academic Freedom: How Does Florida Stand?*, 17 Fla. L. Rev. 564 (1965).

Available at: <https://scholarship.law.ufl.edu/flr/vol17/iss4/4>

This Note is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

## ACADEMIC FREEDOM: HOW DOES FLORIDA STAND?

Academic freedom is popularly viewed as a subject of an extra-legal nature, but aspects of it are finding their way into the courts with increasing frequency. This note is designed to convey a brief understanding of the development of the concept of academic freedom, its modern history, and the impact of the concept on the public institutions of higher education in the State of Florida. No attempt will be made to discuss the role of academic freedom in the private schools. Throughout the note reference is made to the materials contained in three appendices. The documents therein have been reproduced in their entirety, not because all aspects of them are inextricably woven into the fabric of this note, but because they are not readily available to the general public, and a complete reading of them is essential before one can appreciate the progress that has been made, at least on paper, in the development of academic freedom. A genuine effort has been made to keep this work free from emotionalism, but the subject matter is controversial and some of the conclusions drawn necessarily reflect the predispositions of the writer.

The concept of academic freedom is a vague one at best, of undefined limits and controlled by the uncontrollable and unpredictable currents of popular opinion. This was recognized by the Florida Supreme Court in *Jones v. Board of Control*:<sup>1</sup>

Nowhere in the briefs are we supplied with a definition of the term "academic freedom" or the outer limits thereof if any are recognized to exist. This . . . is quite understandable for the simple reason that in none of the authorities mentioned and in none of the authorities discovered by our own research is the term given any definitive meaning.

In *Kay v. Board of Higher Education*,<sup>2</sup> however, the court ventured a definition that found its way into *Words and Phrases*: "'Academic freedom' does not mean academic license. It is freedom to do good and not to teach evil."<sup>3</sup> This definition recognizes two points: (1) the concept of academic freedom can be defined only by words that themselves are defined by current social opinion; and (2) that academic freedom is not without correlative responsibility. This latter point will receive more attention later. Perhaps the most workable and understandable definition was proposed by Lovejoy:<sup>4</sup>

- 
1. 131 So. 2d 713, 716 (Fla. 1961).
  2. 173 Misc. 943, 18 N.Y.S. 2d 821 (Sup. Ct. 1940).
  3. 1 WORDS AND PHRASES 377 (1964).
  4. Lovejoy, *Academic Freedom*, in 1 ENCYC. SOC. SCI. 384 (1930).

Academic freedom is the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.

The following definition was offered more recently by Professor Fuchs:<sup>5</sup>

Academic freedom is that freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts, and research. . . . It is not sought as a personal privilege, although scholars enjoy the activities it permits, and the tenure rights of faculty members, which are conferred after a period of probation, bestow economic security as well as forestall restrictions on freedom that might stem from the power to dismiss.

#### HISTORICAL EVOLUTION OF ACADEMIC FREEDOM

But definitions, in and of themselves, are not sufficient. An understanding of the present day concept of academic freedom requires an analysis of its evolutionary process, which has unavoidably followed the pendulous ideals of political and social philosophy.<sup>6</sup>

The conception of academic freedom which is dominant in colleges and universities in the United States today rests mainly on three foundations:

(1) the philosophy of intellectual freedom, which originated in Greece, arose again in Europe, especially under the impact of the Renaissance, and came to maturity in the Age of Reason;

(2) the idea of autonomy for communities of scholars, which arose in the universities of Europe; and

(3) the freedoms guaranteed by the Bill of Rights of the federal constitution as elaborated by the courts.

Since the first point outlined above is self-explanatory, it will not be discussed. Rather, it is contended that the most powerful historical

---

5. Fuchs, *Academic Freedom—Its Basic Philosophy, Function, and History*, 28 LAW & CONTEMP. PROB. 431 (1963).

6. *Id.* at 431.

influence on the concept of academic freedom emanates from German academic ideals of the nineteenth century.<sup>7</sup> The German university was a state institution, but it enjoyed an autonomy over its intramural affairs that allowed the free pursuit of truth. Dominant philosophical thought regarded the existence of academic freedom as essential to the existence of the university. It was felt that without such freedom the university could subsist in name only. The autonomy granted to the university created an attitude of self-reliance and indeed the university became a virtual self-governing institution. The development of that atmosphere was encouraged by the political and religious climate of the times. The German state was unified as the result of a surge of nationalistic spirit, and the church and state had removed their arm of control from the academic community.

The German philosophy can best be described by its own terminology. *Lernfreiheit* (student freedom) and *Lehrfreiheit* (professor freedom) were the basic concepts involved.<sup>8</sup> The student had an unrestricted choice of the courses of study he wished to pursue. He was free to lead his own private life limited only by the requirement that he submit to comprehensive final examinations. *Lehrfreiheit* entitled the professor to follow his own thoughts, and allowed him to pursue channels of inquiry dictated only by his own desires. So long as the professor's activities remained within the bounds of the university he enjoyed almost absolute freedom. He was free to publish his conclusions in oral or written form, the only requirement being that his conclusions be supportable by reason. The German professor, however, was severely limited in his extramural activities in that loyalty to the church and nation was demanded, and agitation for political change outside of the classroom was not permitted. Thus the concept of academic freedom as it existed in Germany clearly had its limitations.

#### DEVELOPMENT IN THE UNITED STATES

Academic freedom in the United States has compromised the two extremes of the academic freedom of nineteenth century Germany by relaxing the control of the professor in his extramural activities,<sup>9</sup> and restricting the professor in his intramural activities. The

7. The following discussion is condensed from Metzger, *The German Contribution to the American Theory of Academic Freedom*, 41 AAUP BULL. 214 (1955).

8. Student freedom and teacher freedom are interwoven concepts. I have attempted, however, to limit the scope of this note to a discussion of the professorial academic community. This accounts for the somewhat hasty treatment of student affairs. I do not mean to imply that student academic freedom is of comparatively slight importance — it is not.

9. Query whether this is attributable to the expansion of academic freedom or the dignity given to all individuals by the United States Constitution.

basic German philosophy, however, that autonomy is necessary for academic freedom, and that academic freedom is necessary to the maintenance of more than a nominal university, is still the theme upon which the advocates of academic freedom build their arguments. But it is also recognized today, and agreed upon by most commentators, that absolute autonomy is undesirable: "Academic freedom, in addition, has its correlative in academic responsibility in the use of freedom, which there may or may not be recognized means of enforcing against faculty members."<sup>10</sup> It is thus seen that self-discipline by professors is regarded as insufficient to achieve the ends desired by the modern university. The question whether these ends are always meritorious is not within the scope of this note.

A degree of institutional autonomy is both desirable and necessary to an atmosphere of academic freedom, but the heart of the matter is the instructor. He must be regarded not as an organ of the university, but as an individual. As aptly stated by Professor Fuchs:<sup>11</sup>

Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured. A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. Student freedom will follow — unless, indeed, individual faculty members or departmental groups are permitted to tyrannize over particular students, as occasionally happens. Hence the main concern over developing and maintaining academic freedom in this country has been focused upon encouragement and protection of the freedom of the faculty member. Institutional autonomy, constitutional freedoms, and the basic ideology of intellectual freedom have been invoked mainly to this end.

In the United States pressure has been applied to the university professor from various sources. Usually originating outside the academic community, these pressures have made themselves felt through laws passed by the state legislatures and through direct efforts exerted against the university administrations. It has been considered illegal in parts of this country to teach Darwin's theory of evolution because

---

10. Fuchs, *supra* note 5, at 431-32.

11. Fuchs, *supra* note 5, at 433.

it supposedly conflicted with the ecclesiastical view.<sup>12</sup> University administrations have been pressured to prevent their faculty from teaching that the United States Supreme Court enunciated the law of the land in civil rights cases.<sup>13</sup> Textbooks have been attacked because they expounded doctrines not in accord with the beliefs of the politicians at the time.<sup>14</sup> "At first the pressures that resulted in these incidents were the product of demands for religious conformity; later they involved objections to the economic or political views of faculty members. Most recently, nonconforming utterances in matters of sex, or literary works which have been deemed offensive, have produced faculty dismissals raising issues of freedom."<sup>15</sup>

In 1915, the American Association of University Professors was organized. It is largely through the efforts of this organization that a more concrete basis for academic freedom has been established in this country.<sup>16</sup>

In this century, particularly since the advent of the American Association of University Professors in 1915, great importance has been attached to the concept of academic freedom as an essential attribute of a socially useful and intellectually healthy university community. The AAUP recognized from the beginning that professors must be protected from arbitrary and punitive discharges in order to assure freedom of research and teaching. Academic tenure has been rightly considered to be the handmaiden to academic freedom, and since its inception the AAUP has encouraged, with increasing success, the adoption of tenure plans in American universities. These plans, generally speaking, prohibit the discharge of tenured professors except for proper causes and after a hearing.

In 1940 the AAUP issued a statement of principles on academic freedom and tenure. This statement is considered to be the most authoritative expression of the concepts of academic freedom and tenure to be submitted to date. It is reproduced in full in Appendix I to this note; a reading of the statement at this point will enable the reader to follow the ensuing discussion with a more adequate background.

The Bill of Rights of the United States Constitution, as interpreted with increasing liberality by the United States Supreme Court, forms

---

12. MISS. CODE ANN. §6798 (1952); TENN. CODE ANN. §49-1922 (1955).

13. Woodward, *The Unreported Crisis in the Southern Colleges*, Harper's Magazine, Oct. 1962, p. 82.

14. *Academic Freedom and Tenure: The University of South Florida*, 50 AAUP BULL. 44, 53-55 (1964).

15. Fuchs, *supra* note 5, at 437.

16. Murphy, *Educational Freedom in the Courts*, 49 AAUP BULL. 309, 310 (1963).

the legal basis for academic freedom in this country. Of primary concern are the protections afforded by the first and fourteenth amendments, more particularly the guarantees of freedom of speech and association, and the due process clause. The importance of the legal recognition of academic freedom can readily be understood:<sup>17</sup>

The performance of this function of seeking new truths will sometimes mean, as it has repeatedly meant since the beginnings of modern science, the undermining of widely or generally accepted beliefs. It is rendered impossible if the work of the investigator is shackled by the requirement that his conclusions shall never seriously deviate either from generally accepted beliefs or from those accepted by the persons, private or official, through whom society provides the means for the maintenance of universities. . . .

[Students] are entitled to learn the contemporary situation in each science, the range and diversity of opinion among specialists in it; it is not the pedagogic province of the university to acquaint students merely with facts of common knowledge and with opinions accepted by the general public or the donors of endowments.

The above comments were written over thirty years ago, and although the American Association of University Professors was established almost fifty years ago, there remains a noticeable lack of cases dealing with academic freedom. Indeed, until recently the reporters were virtually devoid of cases even approaching the many facets of the problem. Professor Murphy has given three factors that he feels account for this situation. First, he states, "the academic world has not sufficiently educated the rest of the populace as to the purpose, need, and importance of academic freedom. . . . It is not surprising that a freedom which is valued so little by so many of its beneficiaries is accorded little respect by others."<sup>18</sup> Professor Fuchs is in accord with this attitude:<sup>19</sup>

Also badly needed is greater consciousness within the expanded academic community of the importance of academic freedom and of its exercise. The numerous faculty members who are content to perform their specialized work in a manner conducive to pleasant personal relations and to public inconspicuousness contribute little to the ends for which freedom exists.

---

17. Lovejoy, *supra* note 4, at 384-85.

18. Murphy, *Academic Freedom — An Emerging Constitutional Right*, 28 LAW & CONTEMP. PROB. 447 (1963).

19. Fuchs, *supra* note 5, at 446.

Secondly, Professor Murphy concludes that academic freedom is "almost invariably invoked by or in behalf of some persona or causa non grata."<sup>20</sup> The third reason he gives is "the failure of the academic community to vigorously and collectively press these claims before the courts. Many educators have discounted the law as a source of protection for academic freedom. This may be the result, rather than the cause, of the numerous instances in which teachers have gone to court and lost."<sup>21</sup>

The 1950's, however, brought several cases to the United States Supreme Court that directly concern the concept of academic freedom. In the first of these cases, *Adler v. Board of Education*,<sup>22</sup> the Court upheld the constitutionality of New York's Feinberg Law, which required that persons who advocated the overthrow of the Government by force, or knowingly belonged to an organization teaching this doctrine, be prohibited from teaching in New York's public school system. In his dissenting opinion, Justice Douglas stated that academic freedom fell within a constitutionally protected area:<sup>23</sup>

The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher. . . .

Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect.

. . .

This system of spying and surveillance with its accompanying reports and trials cannot go hand in hand with academic freedom. It produces standardized thought, not the pursuit of truth. Yet it was the pursuit of truth which the First Amendment was designed to protect.

In 1957, the Court decided *Sweezy v. New Hampshire*.<sup>24</sup> The New Hampshire Attorney General had been conducting an investigation to determine the presence of subversives in the state. Sweezy was questioned in this investigation and answered most questions, including whether he was a Communist. He refused, however, to answer questions relating to the contents of a lecture he delivered at the University of New Hampshire and questions relating to his knowledge of the activities and membership of the Progressive Party of the state. Sweezy based his refusal to answer on his rights under the first amendment, rather than on his privilege against self-incrimination, asserting that the questions were not pertinent to the investi-

---

20. Murphy, *supra* note 18, at 448.

21. Murphy, *supra* note 18, at 449.

22. 342 U.S. 485 (1952).

23. *Id.* at 508-11.

24. 354 U.S. 234 (1957).



gation. He was adjudged guilty of contempt when he refused to answer the same questions at the direction of a state court. This judgment was affirmed by the New Hampshire Supreme Court. The United States Supreme Court reversed the judgment in a six-to-two decision, holding that Sweezy's rights under the due process clause of the fourteenth amendment had been violated. Although there was no majority opinion, Chief Justice Warren announced the opinion of four members of the Court including Justice Douglas. The opinion of the Chief Justice reads with a tone very similar to Justice Douglas' dissent in *Adler*:<sup>25</sup>

We believe that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression — areas in which government should be extremely reticent to tread.

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Thus the concept of academic freedom now appears to be sheltered under the protective umbrella of the first amendment as applied to the states by the fourteenth amendment.

Another line of cases leads directly into the Florida situation. These are the cases that deal with loyalty oaths. In *Wieman v. Updegraff*,<sup>26</sup> the United States Supreme Court struck down a requirement that all Oklahoma officers and employees take a loyalty oath that required them to swear they were not, and had not been for the preceding five years, members of any organization listed as subversive by the United States Attorney General. The decision rested on the fact that the statute applied with equal force to those who knowingly belonged to the proscribed organizations and to those who were ignorant of the subversive nature of the organization.

---

25. *Id.* at 250.

26. 344 U.S. 183 (1952).

A Florida statute enacted in 1949<sup>27</sup> required all state employees, including university professors, to take a loyalty oath. The defect in the application of the Oklahoma loyalty oath was not a bar to the implementation of the Florida oath. In *State v. Diez*,<sup>28</sup> the Florida Supreme Court ruled that the element of *scienter* was necessary to support prosecution for violation of the oath: "[W]e think the informations in this case were fatally defective for want of averments that the affiant had formerly *wilfully* given aid, support, advice, counsel, or influence to the Communist Party."<sup>29</sup> A new avenue of attack was utilized, however, and in 1961 the United States Supreme Court invalidated as unconstitutionally vague that part of the Florida loyalty oath reading, "that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party."<sup>30</sup> The reasoning and holding of this case have been reaffirmed as recently as June 1, 1964.<sup>31</sup> In both cases it was stated that the vice of unconstitutional vagueness is further aggravated where the statute in question operates to inhibit the exercise of individual freedoms protected by the Constitution. It was further declared that "those with a conscientious regard for what they solemnly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited."<sup>32</sup> It thus appears that academic freedom has been firmly established as a right guaranteed by the federal constitution. The earlier discussion concerning the difficulty of defining "academic freedom" should be recalled and in light of this it would be a bold conjecture to state how far into the field constitutional protection extends. But it does appear to be the feeling of the United States Supreme Court that loyalty oaths, so far as they inhibit the exercise of academic freedom through restrictions on free speech and thought, are invalid.

It is unfortunate that the legislative and administrative machinery of the State of Florida do not share this feeling. In July 1964, University of Florida employees received a form from the state. Completion of this form required signing the original loyalty oath, which remains on the books. This, in itself, would constitute little cause for concern, but Florida has another statute<sup>33</sup> requiring the immediate discharge of any employee who has taken the (invalid) oath and

---

27. FLA. STAT. §876.05 (1963).

28. 97 So. 2d 105 (Fla. 1957).

29. *Id.* at 111. (Italics by the court.)

30. *Cramp v. Board of Pub. Instruction*, 368 U.S. 278 (1961).

31. *Baggett v. Bullitt*, 84 Sup. Ct. 1316 (1964).

32. *Id.* at 1323.

33. FLA. STAT. §876.07 (1963).

who later violates it by lending "aid, support, advice, counsel or influence to the communist party." So in Florida, we are presented with a ridiculous anomaly as far as loyalty oaths are concerned: a professor-employee promises to obey certain standards that are unconstitutionally vague, and later he can be discharged for violation of these standards that reasonable men supposedly could not understand well enough to obey in the first place.

#### THE FLORIDA POSITION

Hopefully, the preceding discussion has acquainted the reader with the development and present status of the concept of academic freedom on a general level. For comparative purposes the present situation in Florida will be examined. At this point, it would be helpful to refer to Appendix II, which is a reproduction of the statement of the Board of Control of the State of Florida concerning academic freedom and responsibility. Notice should be taken of section D of the statement that requires each university to draft procedures for implementing the policy of the statement. The University of Florida procedure is reproduced in Appendix III. Appendix II and Appendix III, when read together and compared with the Statement of Principles of Academic Freedom and Tenure promulgated by the American Association of University Professors, and reproduced in Appendix I, discloses that they are substantially in accord with each other. Also, Article V of the Constitution of the University of Florida, adopted February 6, 1964, provides a complete exposition of the university's position regarding academic freedom and tenure. These policy statements are an adequate and commendable declaration of the feelings and attitudes of the governing bodies of the university.

As stated earlier, however, very few infringements on academic freedom originate from within the university. Most are outside pressures that make themselves felt in the university community. This major aspect of the problem has been expressed as follows:<sup>34</sup>

The operation of colleges and universities is enmeshed in community affairs at many points. When to this factor is added the direct and immediate dependence of public institutions and many private ones on current appropriations, contributions, or tuition payments for support, the difficulties besetting the maintenance of full academic freedom become apparent.

The AAUP has recently censured the administration of the University of South Florida.<sup>35</sup> In their report the AAUP seemed to indicate

---

34. Fuchs, *supra* note 5, at 445.

35. *Academic Freedom and Tenure: The University of South Florida*, 50 AAUP BULL. 44 (1964).

that part of the threat to academic freedom is coming from the spheres of the university administration and the Florida Board of Control. Usually, as seen from the perspective of the student observer and of the general public, faculties and university administrators are grouped together perhaps because many administrators have an academic background and even sometimes a dual status. As a matter of reality, however, university administrators frequently identify to a greater extent with local power groups than with the academic personnel. They are the ones directly involved in administration, regulation, and sanction against professors. They also tend to emphasize the responsibility element of academic freedom. They are engaged in full-time administration, matters of budget, staffing, and so on. Even though these activities are highly meritorious and necessary, they are in spirit relatively removed from the pursuit of truth as traditionally perceived to be the main goal of scientific inquiry. If these elements dominate the education process, universities will likely become more closely akin to the research department in a large corporation. In other words, inquiry will increasingly be limited to specific purposes, mass production, or mass education.

Perhaps the most effective method of evaluating the concept of academic freedom in Florida is to discuss the attitude of the faculty themselves. I have chosen the University of Florida as representative of attitudes throughout the state-supported institutions of higher learning in Florida because of my proximity to the situation. It is my opinion that the problems are basically the same throughout the state. In 1962, the University of Florida compiled a Self-Evaluation Study for the Southern Association of Colleges and Secondary Schools. The findings of the study are reported, in part, as follows:<sup>36</sup>

There are no serious limitations on academic freedom which emanate from within the University. There are, however, limitations on the academic freedom of the University, and sometimes pressures from without the University have the effect of preventing faculty members from exercising full academic freedom. For instance, within the past five years a newly-appointed professor resigned because of pressure from outside the University. He had been recommended by the University administration and appointed by the Board of Control, but outside opposition to his appointment induced him to resign before entering upon the duties of his professorship. In the words of the College of Law faculty, "Improvement in the atmosphere of academic freedom could be made in the state uni-

---

36. University of Florida, INSTITUTIONAL REPORT: A SELF-EVALUATION STUDY FOR THE SOUTHERN ASSOCIATION OF COLLEGES AND SECONDARY SCHOOLS 175 (1962).

versity system as a whole"; such improvement should be made in order to improve the intellectual atmosphere of the University.

Faculty members in the College of Arts and Sciences, and others teaching in such sensitive areas as the social sciences and humanities, are also very familiar with the concepts of academic freedom as they are stated in the 1940 Statement of Principles adopted by the American Association of University Professors and the Association of American Colleges. The . . . unit reports of the professional schools and colleges, make it extremely doubtful, however, that the faculty as a whole is very familiar with academic freedom.

In view of the conclusions of the above study, it may well be apropos to restate a previously quoted argument, and to emphasize that not all responsibility for the retention of shackles on the practice of academic freedom can be placed upon the state legislature:<sup>37</sup>

Also badly needed is greater consciousness within the expanded academic community of the importance of academic freedom and of its exercise. The numerous faculty members who are content to perform their specialized work in a manner conducive to pleasant personal relations and to public inconspicuousness contribute little to the ends for which freedom exists.

One example of professorial harassment in Florida has been cited previously. Woodward, in *The Unreported Crisis in the Southern Colleges*,<sup>38</sup> concludes that the real trouble is a reactionary movement, directed against the Negro civil rights movement, "led by the White Citizens Councils, the John Birch Society, and the Ku Kluxers." Woodward provides two examples of "vigilante tactics" that have recently struck a blow to academic freedom in Florida:<sup>39</sup>

A recent victim in Florida is Thomas P. Hardeman, assistant professor of philosophy at the *University of Tampa*. Although technically a member of the faculty until August 1962, Hardeman received notice of his dismissal in June 1961, and was not only forbidden to teach but banned from the campus for the ensuing year. The dismissal followed an attack on

---

37. Fuchs, *supra* note 5, at 446.

38. Harper's Magazine, Oct. 1962, p. 82. C. Vann Woodward, Sterling Professor of History at Yale University, is the author of several books, his best known being *The Burden of Southern History*. He has taught at Johns Hopkins University and has won the award of the National Institute of Arts and Letters and the Bancroft Prize.

39. *Id.* at 83.

Hardeman by the "Florida Coalition of Patriotic Societies," headed by Sumter Lowry, a Tampa businessman and retired National Guard general. Lowry is a member of the John Birch Society's "Committee of Endorsers," and his son-in-law is head of one of the Tampa chapters of the society. Dr. David Delo, president of the university, denied that the Birchite attack was the reason for Hardeman's firing but announced that "I will certainly tell him to keep his mouth shut." But the professor refused to stop speaking in favor of the United Nations and the World Court or to give up his opposition to the House Un-American Activities Committee and the Birch Society. He was fired without a formal hearing or written charges against him.

The weaker institutions are more vulnerable to pressure, but the big state universities of the lower South have also suffered indignities. The *University of Florida* at Gainesville, for example, submitted to an outrageous inquisition three years ago. It was conducted by a committee of the state legislature, headed by a gubernatorial candidate, which held hearings for seven months on or near the campus. With the aid of lawyers, police, detectives, and paid informers, the committee dragged in hundreds of witnesses, mainly students, to testify against professors. Disclosures of political heresies were disappointing, but sexual deviations supplied headlines.

It would seem that instances such as those described above would provoke a rude awakening for those who have devoted their lives to the public service of the State of Florida; but, unfortunately, this apparently has not occurred. This year, the president of Florida State University has apparently submitted to outside pressures and resigned his post.<sup>40</sup> Also, Dean Harrell, highly esteemed dean of the College of Medicine at the University of Florida, allegedly resigned because of increasing academic frustration resulting from pressure at the medical school from both the state level and the internal administration at the University of Florida.<sup>41</sup> Evidently, the burden of choosing between yielding to outside pressures or facing the unknown consequences of resistance is very much a present-day reality in the university system of Florida. Though these instances seemingly affect only one person at a time, and although the latter two occurrences concerned administrators rather than teaching personnel, they indirectly affect the entire academic community.<sup>42</sup>

---

40. *Time*, Feb. 5, 1965, p. 63.

41. *Ibid.* See also *The Florida Alligator*, Nov. 6, 1964, p. 5, col. 1.

42. Woodward, *supra* note 13, at 89.

Apologies and restitutions may help injured individuals and reputations but they cannot compensate for timidity and shame in the classroom, nor dispel the cloud of distrust and suspicion between trustees and state officials, between faculty and administration, between students and teachers. What happens to the pursuit of truth and the advancement of learning in such an atmosphere as the heresy hunters and thought controllers have created in parts of the South can only be conjectured.

A great handicap to the thwarting of outside pressure groups has been removed by an informed electorate in the election of November 3, 1964. Florida has previously had an educational hierarchy that encouraged, rather than discouraged, political interference with academic freedom. The board of control, the governing body of the state university system, has in the past been appointed by the governor to serve during that governor's term of office. It is a matter of common knowledge that patronage exists in the political field. I do not mean to intimate that political patronage has in fact created inroads on academic freedom in Florida, but merely point out that such a climate is favorable to the accomplishment of a whittled-down concept of academic freedom in this state. Florida voters, however, have approved a constitutional amendment that will permit the creation of a board of regents with staggered nine-year terms of office. This system is designed to help free the university system from being subject to changing political philosophies, and to shield the university system from power groups to a greater extent than can be done under the present system. The passage of this amendment by a substantial majority vote is especially encouraging because it demonstrates a greater public awareness that there are problems in the area of academic freedom, and further shows the public sentiment toward abrogation of these problems.

The politicians, however, have already made the board of regents another battleground of patronage. The bickering between two successive state administrations has resulted in a lame duck board of regents with no effective power to accomplish anything. This is but another manifestation of the fact that the leaders of our state have not as yet realized that education must not be merely another political play toy. Whether or not an effective board of regents can be established in such an atmosphere remains to be seen.

The creation of an effective board of regents will help, but it is by no means a panacea for problems that beset the development of academic freedom in Florida. Reference has previously been made to investigations conducted by a state legislative committee. The activities of this committee disrupted the academic community, not because of its purposes, but because of its methods. The game it

played with university personnel was one that shamed the responsible citizens of Florida. Whether such was really the case, it appeared that the committee described what, in its opinion, was a politically undesirable character and then searched the university for someone to fit the description. "At the University of South Florida, the committee broadened its inquiry to include nonconformist political opinions of individuals, alleged obscenity in literature used in courses, and the religious and philosophical views of professors and content of courses."<sup>43</sup> The committee started its investigation in a motel several miles from the campus; this was apparently done in secrecy because neither the press<sup>44</sup> nor the president of the university<sup>45</sup> learned of the presence of the committee until approximately one month after it had begun its activities. At the conclusion of the investigation the committee made sweeping criticisms of the university administration and faculty involving such areas as the speakers invited to the campus, textbooks used, and philosophies expressed by professors in the classroom.<sup>46</sup> The committee was particularly upset when the university demanded "irrefutable evidence" of homosexuality before a person could be discharged for that reason.<sup>47</sup> The committee, however, never released its full report to the public<sup>48</sup> and refrained from publicly making recommendations for action to the board of control.<sup>49</sup> Although these considerations cast doubt upon the credibility of the committee's accusations, only time will heal the wounds caused by this inquisition. Adverse publicity is unavoidable when activities such as those conducted by this committee are sanctioned. One cannot help wondering how many high quality academic personnel are not in Florida because of this legislative Frankenstein. The committee has been dissolved and, as evidenced by Appendix II, affirmative action has been taken in an attempt to prevent further repercussions from the committee's past activities.

I mention this committee not only to point out a discouraging setback to the exercise of academic freedom in Florida, but also because we, the people of this state, have been told that these techniques, methods that all responsible citizens had hoped would never recur, may be resumed in the near future. People in very high governmental positions in this state have openly made charges that our university system is thoroughly infiltrated with Communists and

---

43. *Academic Freedom and Tenure: The University of South Florida*, 50 AAUP BULL. 44, 52 (1964).

44. *Ibid.*

45. *Id.* at 46.

46. *Id.* at 52.

47. *Ibid.*

48. *Ibid.*

49. *Ibid.*



Communist sympathizers.<sup>50</sup> A sweeping purge has been threatened.<sup>51</sup> Also, opposition to the creation of a board of regents to replace the Board of Control has been expressed and, although an amendment providing for this has been passed, this attitude could severely limit the effective implementation of the amendment. Also, when this attitude is publicly displayed by the occupants of some of the highest and most powerful governmental offices in the state, ominous clouds of doubt threaten to cast their shadows upon the progress academic freedom has made in Florida. As expressed by the Florida Conference of the American Association of University Professors:<sup>52</sup>

The national image of Florida resulting from previous examples of such irresponsibility continues to hamper the recruitment of outstanding educators at both public and private institutions in our state. University faculties are pledged to the guardianship of professional standards and academic freedom. We therefore, request [these people] . . . to lead Florida in meeting its pressing educational needs, in terms of both money and morale, rather than to seek dubious political advantage by gratuitous attacks upon her educational leaders.

So how does Florida stand in relation to the concept of academic freedom? Theoretically, as evidenced by published statements, Florida is maturely receptive to the concept. This is a condition essential to development of a climate favorable for practical utilization of academic freedom. In practice, however, several shortcomings are evident, and these must be remedied before the ideals established by the statements of the American Association of University Professors and the Florida Board of Control can even be approached. We must not require the academician to become a cog in the state machinery merely because he has chosen to teach at a public institution, as opposed to a private one. Although the courts are sometimes available for the redress of private infractions of academic freedom, and although the American Association of University Professors has made, and will continue to make, strides forward in implementing academic freedom in practice, the road to fulfillment of the ideals of academic freedom is an aroused public opinion.

#### CONCLUSION

This, then, crystallizes the purposes of this note. No attempt has been made to cover all aspects of academic freedom. Notably missing

---

50. Gainesville [Fla.] Sun, Sept. 4, 1964, p. 1, col. 4; Editorial, *Universities and Politics*, St. Petersburg [Fla.] Times, Sept. 27, 1964, p. 2-D, col. 1.

51. *Ibid.*

52. Florida Conference of the American Association of University Professors,

is the concept of the academic freedom of the student. It is hoped, however, that the legal profession of the State of Florida has at least been made aware of some of the basic problems faced by the state system of higher education, and that the individual members will take it upon themselves to do their part and will make a conscientious effort to inform the public of the situation so that the foundations for corrective action through the legislature may be built. To recall the words of Mr. Justice Douglas and Mr. Chief Justice Warren: "Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect. . . ." <sup>53</sup> "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." <sup>54</sup>

JERE E. LOBER

---

News Letter, vol. 4, No. 2, p. 3, Dec., 1964.

53. *Adler v. Board of Educ.*, 342 U.S. 485, 510 (1952).

54. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

## APPENDIX I

Academic Freedom and Tenure  
1940 Statement of Principles

As Adopted by the American Association of University Professors<sup>1</sup>

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher<sup>2</sup> or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

## Academic Freedom

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

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

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

## Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only

---

(Note: This statement of procedure was issued July 9, 1963).

1. 49 AAUP BULL. 192 (1963).

2. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties. (Footnote by the AAUP).

for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have.

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

## APPENDIX II

### Statement on Academic Freedom and Responsibility Adopted by the Board of Control December 7, 1962

#### A. Preamble

The State of Florida can achieve its full potential for greatness only with an outstanding university system. Achieving this greatness necessitates a strong and respected Board of Control, administration, and faculty. The Board of Control reaffirms its determination to develop the State University System of Florida as a group of universities of national distinction in their respective roles. The Board is dedicated to making these institutions preeminent centers of learning and leadership and dynamic forces in American progress. The Board emphasizes that the dissemination of knowledge, the search for truth, and the development of educated, free minds constitute the professional responsibilities of the faculties. These re-

sponsibilities must be maintained while each university executes its function of providing a democratic climate for the study and exchange of ideas.

#### B. Academic Freedom and Responsibility

The Board of Control as the legally constituted agency for policy making and supervision of the state universities believes that academic freedom and responsibility are essential to the full development of a true university and apply to teaching, research and creativity. In the development of knowledge, research endeavors and creative activities, a university faculty and student body must be free to cultivate a spirit of inquiry and scholarly criticism and to examine ideas in an atmosphere of freedom and confidence. A similar atmosphere is required for university teaching. Consistent with the exercise of academic responsibility a teacher must have freedom in the classroom in discussing his subject. The university student must likewise have the opportunity to study a full spectrum of ideas, opinions, and beliefs so that he may acquire maturity for analysis and judgment. Objective and skillful exposition of such matters is the duty of every teacher.

The established policy of the Board of Control continues to be that the faculty member must fulfill his responsibility to society and to his profession by manifesting academic competence, scholarly discretion, and good citizenship. The University teacher is a citizen, a member of a learned profession, and an academic officer of an educational institution. He should be constantly mindful that these roles may be inseparable in the public view, and he should therefore at all times exercise appropriate restraint and good judgment.

#### C. Morals and Influences

It has long been the established policy of the Board of Control that institutions under its direction shall select faculty members of good moral character and of the highest educational background. The Board has also been concerned with the careful selection of students in the various institutions under its management and with their continuing social, economic, moral and spiritual welfare.

In order to assure a wholesome educational environment within the State universities of Florida, the Board of Control has adopted the following policies for the guidance of the universities:

Citizenship and Conduct: Each institution shall continue to examine carefully the qualifications and records of those individuals who are to be employed by it, not only with regard to their professional and academic competency but also with regard to their general character and their moral conduct. Furthermore, the Board directs the institutions under its control to continue to exercise due care in the selection of students, taking into account not only their academic ability to perform satisfactorily but also their character and moral behavior. The Board of Control also enjoins the administration in each of the institutions to continue to guard against activities subversive to the American democratic process and against immoral behavior, such as sex deviation.

Religion: Religion plays a vital role in our American way of life and inevitably this subject will arise in classroom discussions. Religion may be properly discussed and analyzed there. The teacher bears the responsibility of pursuing such discussions objectively and impartially without advocacy or indoctrination and with due respect for the religious beliefs of all concerned.

Books and Teaching Materials: The Board of Control continues its concern that students be exposed to the best in books and teaching materials. While recognizing the right and responsibility of the individual scholar to choose his teach-

ing materials, the Board enjoins each member of the faculty to select materials that are among the best available, germane and in good taste within the context of the educational or scientific purpose.

#### D. Implementation of Policy

The Board of Control hereby charges the Presidents, the deans, and the faculties of the universities to adhere to these standards within an atmosphere of academic excellence, freedom, and responsibility.

In order to demonstrate its proper share of responsibility for the policy outlined above, each university is required to report to the Board for approval its procedures for implementing this policy. Such procedures as to mechanics may vary with each institution.

In reemphasizing its policy and the above requirements for its execution, the Board of Control wishes to make completely clear its confidence in the high quality of the administration, faculties, and students in the universities under its control. The intent of this policy and the spirit in which it is to be implemented is that of preserving this high quality on a continuing basis.

#### E. Conclusion

The Board of Control desires that members of all the faculties exercise the utmost of their ingenuity and creativity in order to bring to students the maximum benefits of enlightened education. The Board requires that such exercise be tempered with responsibility and due regard for sound educational principles.

The Board of Control is responsible for the operation of the University System and it is dedicated to the advancement of higher education in Florida.

### APPENDIX III

#### University of Florida Procedure for Implementation of Board of Control Statement of December, 1962, on Academic Freedom and Responsibilities

The Board of Control in December, 1962, issued a Statement on Academic Freedom and Responsibilities. This statement of general policies was prepared by a Board of Control committee which had on it a faculty representative from each operating University in the State System. It was approved by the full Board and by each University Senate. The policy statement specifies that each university shall formulate a procedure for implementation of the policy, so that any complaints arising under the policy may be handled appropriately.

The following is the implementation procedure at the University of Florida, as approved by the University Senate.

#### I. Complaints Against Faculty Members:

1. A complaint to be handled under these procedures must be in written form and must be signed by the complainant.\*
2. Complaints from outside the University shall be addressed or referred either to the President or the Dean of Academic Affairs. The President will refer complaints to the Dean of Academic Affairs or handle them directly.

---

\*Where subsequent examination of such complaint indicates that charges will be preferred, the complainant must agree in writing to face the accused if his testimony is required to prove the validity of the charges.

3. The Dean of Academic Affairs shall refer any complaint for which he is given responsibility to the dean (or director) of the college (or school) of the faculty member concerned. Where the Faculty member is in more than one college, both deans shall be informed.
4. Complaints from inside the University shall be made directly to the dean (or director) of the college (or school) of the faculty member concerned who shall inform the Dean of Academic Affairs of the existence of the complaint.
5. The college dean (or director) shall further refer the complaint to the department chairman (or chairman) [sic] concerned who will investigate the complaint himself, or appoint a committee for that purpose, and give a written opinion to the dean (with copy to the Dean of Academic Affairs) either that:
  - (a) The complaint lacks substance and no further action is necessary, or
  - (b) The complaint has substance but remedial action at the department level has been effectuated, or
  - (c) The complaint has substance and must be handled further at higher levels.
6. The dean shall review the matter and give a written opinion to the Dean of Academic Affairs either that:
  - (a) The complaint lacks substance and no further action is necessary, or
  - (b) The complaint has substance but remedial action at the department or college level has been effectuated, or
  - (c) The complaint has substance and must become a matter for charges.
7. The Dean of Academic Affairs shall review the matter and take such action as is necessary to ensure completion of handling the complaint.
8. Where charges are preferred they will be heard by the Senate Committee on Academic Freedom in accordance with the procedures specified in detail in the Constitution of the University and the Senate Bylaws.

## II. Complaints by Faculty Members:

1. Any faculty member may complain in writing of any alleged violation of his rights and responsibilities under the Board of Control Policy on Academic Rights and Responsibilities.
2. He shall forward such complaint to either the Senate Committee on Professional Relations and Standards or to the Senate Committee on Academic Freedom (whichever is concerned) who shall handle the complaint in accordance with the procedures specified in the Constitution of the University and the Senate Bylaws.
3. The committee's report shall be made to the President. The committee shall so specify if it is of the opinion that the matter should also be referred to the Board of Control.

## III. Procedure on Selection of Faculty:

In the recruiting of faculty members, it will be the responsibility of the department chairman, the director, or the dean to assemble (for review by appointing authorities) all available and pertinent data concerning the academic and professional preparation and experience of the applicant; to obtain letters of recommendation from appropriate persons concerning the character and moral conduct of the applicant as well as his professional qualifications; and whenever possible, to interview the applicant personally, prior to making a recommendation for appointment.