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## Lessons in academic freedom as lived experience

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### ABSTRACT

What is academic freedom, what guarantees it, and what would you do if your university violated yours? Few of us academics entertain these questions or ponder possible answers. This leaves us individually and collectively vulnerable to encroachments on our right to free and open inquiry. I use a case study from 1989–1994 to illustrate how violations of academic freedom develop, the typical pretexts used to justify them, and what is required to halt and reverse them. My aim is to help scholars recognize when academic freedom is at risk and how better to safeguard it in daily academic life. To this end, I describe the general social mechanisms that operate both inside and outside academe to selectively burden and suppress unpopular research. The case study provides concrete examples to illustrate six specific lessons. Like free speech in general, academic freedom (1) has maintenance costs, (2) is not self-enforcing, (3) is invoked today to stifle unwelcome speech, (4) is often violated by academic institutions, (5) is not often defended by academics themselves, and (6) yet, requires no heroic efforts for collective enjoyment if scholars consistently contribute small acts of support to prevent incursions.

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### 1. Introduction

Most of us in academe take academic freedom for granted—until our own is violated. Not so Thomas J. Bouchard, Jr., our festschrift honoree. He has acted affirmatively to protect freedom of speech and conscience since his graduate-school days, long before his own research came under ideological fire. For him, freedom of speech and inquiry are not just principles to espouse, but ones to live. I am among the scholars who have benefited directly from his concern that scientific work not be suppressed on ideological grounds. I draw on that experience to describe lessons I have learned while observing and contending with such suppression.

I learned these lessons only gradually, as immediate experience kept contradicting my tacit presumptions about what academic freedom is and how we possess it. As a novice scholar, I had thought of academic freedom as a talisman automatically bestowed with one's doctoral degree. Like most academics, I took for granted that the principle provided effective protection because I did not see academics being fired for their views. I began to learn differently as my research led me deeper into the literature on intelligence differences. Rigorous research in that field seemed to provoke public opprobrium and efforts to impede the research or its publication. I could also feel the chill worsen where I worked, an educational research center at the Johns Hopkins University, the closer I myself ventured to socially sensitive questions.

My most concentrated opportunity to observe interference in academic freedom was in 1989–1994, soon after I moved to the University of Delaware (UD), taking a position in the Department of Educational Studies. It was during those years that I and a department colleague, Jan H. Blits, became the target of a racially-charged public controversy.

I cull from those events to illustrate six lessons about academic freedom. I focus on the events of 1989–1994 because they are well documented in the public record (e.g., Holden, 1992; Hunt, 1999; Kors & Silverglate, 1998; O'Neil, 2008; Wainer & Robinson, 2009). For ease of exposition, I have organized the majority of these tangled, intertwined, and sometimes Byzantine events into five sets according to the formal complaints (“cases”) we filed within the University alleging specific violations of academic freedom by specific individuals. I use them to illustrate the mechanics of how academic freedom is commonly eroded. I concentrate on freedom in research because that is where my experience lies and, for many scholars, it is more important than the three other prongs of academic freedom—freedom in teaching, intramural speech, and extramural speech.

### 2. Preview of the six lessons and five sets of violations

Academic freedom is the right of scholars to inquire and speak freely, according to the standards of their profession, without interference or fear of retribution. Their ability to enjoy this right is, however, contingent on local norms and social practices that are vulnerable to political interference and competing interests.

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Americans have a constitutional right to speak their mind in the public sphere, and their ability to enjoy that right is similarly vulnerable to improper constraint. It is the scholar's job, however, to think and speak freely nonetheless.

The six lessons reflect different aspects of this tension between scholarly rights and duties, on the one hand, and, on the other, the costs and constraints in fulfilling them. Academic freedom, like free speech, (1) has maintenance costs, (2) is not self-enforcing, (3) is often invoked today to stifle unwelcome speech, (4) is often violated by academic institutions, (5) is not often defended by academics themselves, and (6) yet, requires no heroic efforts for collective enjoyment if scholars consistently contribute small acts of support to prevent incursions.

Our experiences during 1989–1994 are informative for present purposes because the violations were varied, prolonged, and novel, and also occurred despite our working under perhaps the most favorable legal and contractual standards in the world. Blits and I work in a public university in the United States and thus benefit from First Amendment constitutional protections not found in private institutions or other countries. UD faculty are additionally protected by a union contract negotiated by the Delaware Chapter of the American Association of University Professors (AAUP). Our contract guarantees “full freedom” in research and publication.

All violations during the six years had their proximal cause in the controversy that erupted in October 1989 when the University President received a highly publicized letter from campus constituencies hostile to my research. The letter detailed the supposed evils of the foundation from which I, and only I at UD, received research support: the Pioneer Fund. The letter asked the University President to ban receipt of Pioneer funding because, it asserted, the Fund's mission was contrary to the University's commitment to cultural diversity.

*Case 1 (Funding Ban):* In November 1989, the University President requested that the UD Faculty Senate's Research Committee investigate the Pioneer Fund, and in April 1990 he accepted its recommendation that the University ban further grants from it.

*Case 2 (Gottfredson Promotion):* Simultaneously, our department's promotion and tenure (P&T) committee recommended against my promotion to full professor because it disapproved two in-press articles (Blits & Gottfredson, 1990a,b) that were critical of a national report purporting to find scientific justification for race-norming (the practice of scoring employment tests on a racial curve), and my department chair did likewise in early 1990.

*Case 3 (Blits Promotion):* During 1989–1990, improper actions taken by the department P&T Committee, department chair, and college dean in relation to my promotion application promised to undermine the fairness of the promotion process for Blits, the senior author of the two race-norming articles.

*Case 4 (Gottfredson Course De-Listing):* In Spring 1990, also on ideological grounds, the Sociology Department removed my section of our department's Sociology of Education course, and no one else's, from its list of courses for which Sociology majors got credit toward that major.

*Case 5 (Chair's Harassment):* The chair retaliated against Blits and me for filing the foregoing complaints. Retaliation included changing Blits's long-standing teaching assignment, reclassifying our race-norming publications as non-research, and lowering my merit ratings.

The first case eventually went to binding arbitration through the local AAUP's Grievance procedure. We filed the other four complaints with the UD Faculty Senate's Faculty Welfare and Privileges (FW&P) Committee. The national arbitrator ruled in our favor in

August 1991, forcing the University to rescind its funding ban. The FW&P Committee's five-faculty hearing panel decided Cases 2–4 in our favor earlier that year, but the UD administration rejected its conclusions and recommendations for redress. The Committee suspended operations before hearing Case 5 because of administration interference. I will also make brief mention of a 1992 out-of-court settlement and additional agreements we negotiated in 1994 owing to escalating harassment by our college dean. Table 1 lists the major documents in the five cases, totaling 750 pages, and how to obtain them.

### 3. Lesson 1. Academic freedom, like constitutionally-protected free speech, has maintenance costs

Tom Bouchard's own efforts illustrate how safeguarding free speech can be costly. In 1964–1965 he was in graduate school at the University of California at Berkeley, a publicly-funded institution. During that academic year the Berkeley administration sought to limit its political liability with the California State Legislature for Berkeley students' activism off-campus. President Clark Kerr had recently incurred its displeasure for refusing to discipline students arrested in civil rights and anti-war demonstrations off-campus, and he now wished to avoid being held politically accountable for their on-campus planning of possibly illegal off-campus activities. Beginning in September 1964, Berkeley stopped allowing its students to recruit or advocate for civil rights or other political action on school grounds, even in the plaza built specifically for such activity (Turner, 1964b). Thus was born the Free Speech Movement.

After several months of unsuccessful negotiations with the Berkeley administration, a thousand students staged a peaceful sit-in on December 3, camping out for the night on all floors of Sproul Hall, the main administration building. Over 600 police officers spent 13 h dragging limp students, Tom Bouchard included, down stairs and into jail-bound paddy wagons (Turner, 1964a). The protest and ensuing publicity eventually led the university to rescind its restrictions, but not before considerable personal cost to the protesting students, including Bouchard, who incurred special costs for his principled refusal to plead the equivalent of no contest (Goines, 1993, p. 530).

It would have been equally unconstitutional had Berkeley attempted to impose onerous restrictions on only certain political views. Under the First Amendment, any restrictions on speech must be content-neutral. Free speech is not a privilege that government actors may bestow or withhold depending on personal predilection or political pressure. Rather, it is a constitutional protection they must observe.

Academic freedom is not coterminous with constitutionally-protected free speech. Indeed, their relation is “dauntingly complex” (O'Neil et al., 2009, p. 72). Academic freedom, as promulgated by the AAUP, has never relied upon constitutional or statutory law but it overlaps First Amendment law in crucial respects. The First Amendment protects all individuals from governmental constraint on speech and association in the public sphere. Legally, publicly-funded colleges and universities are government actors, so they too are barred from punishing their members for speech and associations outside the workplace. Under academic freedom policies, such activities fall under the heading of extramural speech.

In contrast to the First Amendment, academic freedom protects a smaller set of actors—academics—but protects them more fully by assuring their professional autonomy. Depending on era, place, and circumstance, the protected party has been conceived to be the profession at large, individual colleges as scholarly institutions, or individual scholars and students within those institutions (Finkin & Post, 2009). Unlike the First Amendment, academic freedom pro-

**Table 1**

Documents for five formal complaints filed at University of Delaware (all but Item 3.5 are available at Gottfredson's UD website, <http://www.udel.edu/educ/gottfredson/academicfreedom>).

1. Ban on research grants from Pioneer Fund
  - 1.1. UD president requests investigation of Gottfredson's funding source (11/22/89)
  - 1.2. Faculty Senate's Research Committee recommends ban (4/19/90)
  - 1.3. UD president enacts ban (4/24/90)
  - 1.4. Trustee's letter supporting ban (7/2/90)
  - 1.5. Gottfredson's complaint to Faculty Senate's FW&P Committee (9/17/90)
  - 1.6. Arbitration briefs
    - 1.6.1. Gottfredson-Blits's brief (6/20/91)
    - 1.6.2. UD's brief (6/20/91)
  - 1.7. Arbitrator's ruling (8/5/91)
2. Department's recommendation against Gottfredson's promotion
  - 2.1. Gottfredson's complaint to FW&P Committee (9/17/90)
  - 2.2. FW&P hearing panel's conclusions (5/31/91)
  - 2.3. UD administration's response (6/21/91)
3. Threats to Blits's promotion
  - 3.1. Blits's complaint to FW&P Committee (9/17/90)
  - 3.2. FW&P hearing panel's conclusions (5/31/91)
  - 3.3. UD administration's response (6/21/91)
  - 3.4. Blits withdraws promotion application (7/22/91)
  - 3.5. Blits-Gottfredson out-of-court settlement (confidential, 4/29/92)
    - 3.5.1. Provision to protect Blits's promotion process (4/29/92)
4. Gottfredson's Sociology of Education course stripped of credit for Sociology majors
  - 4.1. Gottfredson's complaint to FW&P Committee (9/17/90)
  - 4.2. FW&P hearing panel's conclusions (7/12/91)
  - 4.3. UD administration's response (8/7/91)
5. Continued harassment by department chair
  - 5.1. Blits-Gottfredson's complaint to FW&P Committee (5/22/91)

texts not just the extramural speech of scholars, but also their research, teaching, and speech within the institution. It therefore provides a larger protective umbrella for scholars than possessed by individuals in any other occupation.

A body of First Amendment case law has developed in the United States since 1950 that prohibits state action against academics for the views they express in public discourse (Metzger, 1988). These constitutional protections apply to faculty in all public colleges (but not private ones) because, as noted earlier, they are considered state actors. A yet larger, more coherent body of case decisions has accrued on academic freedom since 1915 by its chief institutional guardian, Committee A of the AAUP (Finkin & Post, 2009). Many colleges and universities have formally endorsed AAUP doctrine on academic freedom, and faculty who work in institutions with AAUP contracts can invoke it to hold their academic institutions legally accountable for violating their academic freedoms.

These two bodies of case law, although not entirely consistent (Metzger, 1988; O'Neil et al., 2009), enact the same core Western precepts that, first, the public sphere should be a marketplace for ideas and *not* a venue for enforcing orthodoxy, and, second, institutions of higher learning are especially important generators of the knowledge and inquiry required to lift the repressive hand of received wisdom. The temptations to abridge freedom of speech, conscience, and association in the name of community and efficiency are notoriously strong—which is precisely why the First Amendment provides a strong constitutional counterweight to them. The US Supreme Court has also recognized academic freedom as “a special concern of the First Amendment” (*Keyishian v. Board of Regents*, 385 US 589 (1967)).

Pervasive and persistent encroachment on freedom of expression and inquiry can be expected in the normal course of public affairs. Preserving those freedoms therefore requires constant vigilance and effort to push back encroachments. The threats that Jan Blits and I experienced at UD might best be described as a series of mutually reinforcing failures and refusals by the University to restrain vio-

lations against us, which tacitly condoned them and encouraged more. Halting and reversing them therefore required a large collective investment by a variety of individuals, not just Blits and me.

#### 4. Lesson 2. Academic freedom is not self-enforcing

A written body of professional and legal norms may be necessary for safeguarding freedom of inquiry and expression, but abstract paper-bound rules are never sufficient. They have force only when the individuals and institutions to which they apply actually live by them. If someone is violating our rights, there is seldom any automatic mechanism to make them stop. Rather, we must invoke the rules prohibiting such behavior to mobilize other people, including designated authorities, to get the perpetrator to cease, desist, and redress any harm caused. To mobilize protection or redress, we have to make a case to those with enforcement power that there has been a violation and they ought to act. Even when designated authorities agree to investigate, they may not have the authority to intervene. For example, the national AAUP can only “name and shame” institutions. Its Committee A cannot force a university to reinstate professors fired at the behest of angry trustees, legislators, donors, or internal constituencies.

Courts have that power, but few academic freedom cases involving First Amendment claims ever get to court, let alone the US Supreme Court. Moreover, the Court's unsettled doctrine on academic freedom in higher education is not auspicious for faculty seeking legal redress (Metzger, 1988; O'Neil, 2008; O'Neil et al., 2009), which would come only years later in any case. As a practical matter, the courts are the last line of defense, not the first. The odds of ever getting to court, let alone prevailing, are small. Aside from the formidable challenges of finding a willing and affordable lawyer with suitable expertise, courts generally will not hear academic freedom cases until after petitioners have exhausted all remedies within their institutions. The complainant may also have to prove clear and substantial harm. Moreover, courts give deference to academic institutions in governing themselves, because they conceive universities as also having academic freedom—freedom from undue government or community interference.

Litigation is expensive and time-consuming, so defendant institutions with deep pockets and top lawyers can wear down or impoverish faculty complainants. Had we not found an indefatigable pro-bono lawyer (Stephen Jenkins) willing to risk his own young career, we would never have had the benefit of legal advice or been able to contemplate a lawsuit. The expense and uncertainty of pursuing legal recourse is one reason for the profession to prevent violations ever rising to the level of seriousness that would create strong legal cases.

Internal rules and remedies are specific to institutions, so knowing them is crucial. As a thought experiment, readers might ask themselves to whom they would turn if they thought their institution had violated their academic freedom. Who inside or outside your institution has any authority or responsibility to investigate or take action? Does your university have any written policies that specify what academic freedom is, what constitutes a violation, what constitutes credible evidence that the violation occurred, who rules on the evidence, and whether the institution is required to act on that ruling? Do all parties interpret the written procedures in the same way and, if not, whose interpretation holds? What are your options if the designated authorities simply refuse to entertain formal complaints or they dismiss compelling evidence as irrelevant? What if the authorities are the perpetrators against whom you seek protection? As is typical of faculty, we began not even knowing the questions, let alone the answers.

The violations at UD during those six years were varied and unusual, so there were no ready-made answers. The violators

spanned the entire chain of command, from department colleagues to the University President, so we needed to know all UD's written policies and procedures. Importantly, we also needed know how to play them to our advantage, anticipate other players' moves, and, if possible, force them into documentable errors. We needed to know the policies that might be used against us and ones we might use to our advantage. For us, enforcement entailed a multi-player game with highly-contested and selectively applied rules. Of us, it required close attention, making absolutely no mistakes, and devoting endless time while still meeting all of our normal University obligations in teaching, research, and service.

It was risky even to abandon activities that the controversy effectively precluded. For instance, I had to answer to my dean why I had "unilaterally" suspended my Pioneer-supported research and cancelled my planned national conference at UD on "The Implications of Intelligence Differences for Educational Policy." The conference would have followed my widely-attended College speaker series in 1988–1989. The speakers were John Carroll, Hans Eysenck, Robert Gordon, Lloyd Humphreys, Arthur Jensen, Richard Lynn, and Robert Plomin. I had invited these luminaries because all were tough-minded empiricists, but at least five turned out to have been Pioneer grantees and the Faculty Senate's Research Committee singled out three of them (plus Tom Bouchard) to justify banning Pioneer monies.

It was difficult to get the University to abide by its contractual obligations despite the support of our union's uncommonly honorable AAUP Grievance Officer (George Cicala). For instance, UD administrators refused to entertain allegations of specific violations when UD policies and procedures (e.g., on "fairness" in promotion review) did not explicitly list them as prohibited acts (e.g., appointing a defendant in my promotion case to chair Blits's promotion committee). Few policies are unambiguous, and the administration interpreted all ambiguities in its favor.

The entire web of violations had proliferated from the same source, but when each was considered separately, as the administration insisted, all could be explained away with some apparently plausible pretext. It was essential for it to deny any wrongdoing because all the violations—the President's funding ban, dean's retaliation, chair's interference in teaching, departmental P&T committee's attempt to block my promotion, and assorted other misdeeds—were so intertwined in fact and perception that all defendants were vulnerable if the administration conceded anything.

Prevailing against pretextually-justified misdeeds required methodically collecting indiscretions that revealed the violators' true intent. While laborious, it was not difficult to document bias when the actors were confident in the righteousness of their acts and acted incautiously. The Sociology Department's own minutes declared its ideological motive, something to which one disapproving member alerted me before the department expunged the incriminating language. The Faculty Senate Research Committee's long report to the President unwittingly detailed how it had done, as the arbitrator later wrote, precisely what it said it would not and should not do, namely, investigate the content of my work.

The administration also rebuffed our complaints by asserting its own interpretations of UD's academic freedom policy. On the Pioneer ban alone, it offered at least six. First, the President and Faculty Senate Research Committee agreed that I had a right to academic freedom, but it did not include seeking grants through University auspices. Submitting grant applications through the University was a "privilege," not a right, and the University could deny faculty privileges as it saw fit. Second, I had a right to academic freedom in research, but the funding ban did not violate it because it had nothing to do with me. Although it affected only me, it had not been targeted at me. Third, my right to academic freedom had to be balanced against the University's own goals,

especially its commitment to racial diversity. Fourth, my freedom in research had to be limited because otherwise it would infringe minority students' academic freedom by making them feel unwelcome. Fifth, UD lawyers argued at the arbitration hearing that the union contract's prefatory section on academic freedom had no legal force. Finally, my dean and others maintained that our academic freedom had not been abridged because Blits and I could still think, study, and say anything we wished.

In fact, the University assured us, the ban did not even prevent us from receiving grants from the Pioneer Fund. Receipt just had to be off-campus, which would require the Pioneer Fund to change its tax status to allow grants directly to individuals. UD's Associate Vice Provost for Research confirmed other restrictions. Since Pioneer-funded research could no longer be associated with UD, I could no longer hire UD student workers. Nor could I use my university office, telephone, or affiliation when conducting and reporting it. Additionally, I would now have to establish an entirely separate program of on-campus research to satisfy my contractual workload obligations. Finally, any Pioneer-funded research conducted off-campus would be classified as "research for pecuniary return," and UD's academic freedom policy allows UD to strictly control such activity. By forcing Pioneer-funded research off-campus, UD could use the policy to strip the research of all protections it was meant to guarantee.

Under UD's interpretation of academic freedom, it could selectively burden me, in any way, to any degree, on any pretext, without violating my academic freedom. To violate it, the University would have to explicitly forbid me from thinking, saying, or writing certain things or openly punish me for doing so. But this is precisely what the First Amendment forbids government actors from doing in the public sphere: selectively burdening some viewpoints but not others. Although it was too late to help us, the national AAUP affirmed the principle in academic freedom. In 1992 its Committee A issued a statement (*Academe*, September–October, 1992, p. 49), reaffirmed in 2003 (*Academe*, September–October, 2003, p. 83), that universities may not restrict funding on ideological grounds because "that curtails the researcher's academic freedom no less than if the university took direct steps to halt" it. The affirmation of content-neutrality is crucial because selectively hobbling unpopular research is probably the most common means of suppressing it while claiming not to do so.

Due process works slowly. It took almost three years before the AAUP grievance process ran its course and the arbitrator ruled on the funding ban. AAUP Grievance procedures were clearly specified and at its most critical stage the process was immune to administration manipulation. Conditions were not as favorable in UD's second route for seeking due process, through the Faculty Senate's mechanism for hearing non-contractual complaints.

First, the FW&P committee's written procedures did not anticipate such complex cases involving many defendants, nor ones involving the violation of ethical principles so taken for granted that they are never enumerated in written form. Written procedures were also silent on whether our lawyer could attend the hearings and whether the defendants must do so. When the committee ruled that our lawyer could attend, all defendants boycotted the hearings. This narrowed the number of claims the committee could decide. Second, Faculty Senate activities are more vulnerable to interference. The defendants pressed UD's Faculty Senate and central administration to change the Committee's membership or shut it down. The dean announced that if the Committee ruled against us, we would have to apologize for our "baseless charges." If it ruled in our favor, we would have to "face the consequences" of that too. This was the same dean who was attempting to withhold damning evidence from the FW&P Committee—the nine external peer reviews of my research, which the defendants had distorted—while assuring the Committee that they contained nothing

relevant to its deliberations. Third, FW&P Committee decisions are merely advisory, and the administration chose to reject them.

The fact that both the FW&P Committee and arbitrator consistently ruled in our favor was extremely important, however. It began to shift media coverage and public perceptions, and positive rulings were essential if we wished to file a lawsuit. But what helped us inflamed the losing side, and the dean's harassment escalated. He now accused us of "misrepresenting" the arbitration decision in our press release, and he warned all faculty that he would punish irresponsible public statements. This earned him a public rebuke from the local AAUP. So did his request to examine my students' papers for evidence of racist instruction. His continued harassment eventually put the university in clear legal jeopardy and forced it to reach an out-of-court settlement with us in April 1992.

But legal resolution, whether by binding arbitration or voluntary settlement, does not correct the errant social mechanisms that generated the improper actions. Indeed, the settlement enraged our department colleagues, partly because it excluded them from any participation in Blits's promotion process. They bitterly complained in a meeting with the Provost, UD's chief academic officer, that the central administration had wronged and betrayed them, especially because the special promotion procedures for Blits called their integrity into question. The dean's harassment continued another two years before the University reined him in. He suddenly announced his retirement as dean in April 1994, and later that year we negotiated additional agreements to help insulate us from further retaliation in our college.

Events at UD illustrate how quickly one can lose academic freedom and how difficult it is to restore once lost. Legal redress is available only after a violation has taken place and the scholar been harmed. Pursuing redress is arduous and costly, and the outcome is never certain. When after-the-fact enforcement is required, it is generally the victim who has to activate the enforcement machinery. Moreover, regaining academic freedom never guarantees that the victim will be "made whole" again, say, in fully regaining their reputation.

No UD faculty or sitting administrator ever apologized or conceded wrongdoing. Overt hostilities fade over time but perpetrators will never voluntarily subordinate or obligate themselves to their victims by conceding anything to them. Holding violators to account in any manner is difficult, so attempts at after-the-fact enforcement of academic freedom generally have little deterrent power. Prevention is more effective and probably less costly to all involved. Self-confident, decisive intervention by any number of administrators and faculty could have de-escalated the original controversy and prevented the destructive and unseemly stampede at UD to quash unpopular and uncomfortable ideas.

### **5. Lesson 3. Opposite to its intent, academic freedom is often invoked to restrict inquiry to "safe" ideas**

Both academic freedom and the First Amendment are intended to protect the free flow of ideas. There is no exemption for upsetting ideas. Under the First Amendment, freedom is the rule, the default presumption. All views are protected, no matter how hurtful, offensive, extreme, false, or evil they might seem. Prior restraint of speech or publication is permissible only in the rare circumstance where the release of information would directly endanger national security.

Certain types of speech are unlawful—"fighting words" (direct incitement to violence), as well as slander and libel—but even these may be punished only after the fact. They may not be banned or suppressed beforehand. There is no legal redress against lawful speech, no matter how noxious or disturbing it is. Indeed, that is

the rationale for both academic freedom and the First Amendment—to protect the expression of ideas we might fervently wish to forbid, regulate, or punish. That urge to ban is strong and incessant so its prohibition must be equally certain and encompassing. Universities may not carve out exceptions for ideas that frighten or offend.

All during 1989–1990, there was strong internal and external pressure for UD to do anything possible to distance itself from the Pioneer Fund and its resident grantee. As had been their purpose, the accusations in October 1989 about the supposed evils of the Pioneer Fund and its grantees created a firestorm, prompting calls for prompt corrective action from the local media, the student newspaper, the Black Student Union, and a coalition of African-American faculty and staff. News coverage was often lurid. The UD African-American Coalition argued that my work was not just offensive, but dangerous. My "so-called research" and the social policies I "was likely to propose" were "liable to threaten the very survival of African-Americans" (Tarver, 1990, p. 6A).

Social harm is the classic rationale for censorship. Ideas can literally be revolutionary. They can undermine cherished beliefs and break the grip of tyrants. That is why provocative ideas need protection and why freedom of speech and conscience was such a revolutionary concept centuries back. It is perhaps the central precept of the Western Enlightenment, which launched political modernity. It is no coincidence that the right to free speech was first codified in the First Amendment to the Constitution of the United States, the first republic formed during the Enlightenment.

The most unsettling ideas make the most tempting targets for suppression. Labeling an idea dangerous makes it a target, and the label simultaneously provides moral justification for suppressing it. Thus does suppression claim the moral high ground: danger and evil *require* such suppression in the name of the greater good. The more horrific the allusions to evil, the greater the alarm and revulsion evoked, and the greater the urge in bystanders to endorse all possible means of destroying the evil.

This invitation to set personal and professional scruples aside comes in three predictable forms: the targeted individual is said to be incompetent, immoral, or have a character defect. Academic freedom does not shelter incompetence or dishonesty, so accusations of either work to strip the targeted scholar of its protections. The department P&T committee's recommendation against my promotion simultaneously accused me of both when it alleged I had a "tendency to misrepresent the positions of others." An allegedly dishonest or malevolent scholar who appeals to the protections of free speech or academic freedom is said to be "hiding behind" them, which provokes further scorn. Every attempt at self-defense becomes another offense. Intimations of immorality, mean-spiritedness, perverse tendencies ("preoccupation" with race), and the like all mobilize distaste for targeted scholars, relax scruples in dealing with them fairly, and cause associates to shun them.

Aspersions on the Pioneer Fund and my character were mutually reinforcing. Each claim validated the others, no matter how bizarre and false. All I knew about the Pioneer Fund prior to the controversy was that it was a totally hands-off foundation that funded scholars of impeccable scientific stature, including Tom Bouchard. After the controversy broke, Robert Gordon, Jan Blits, and I spent several months investigating all claims about the Pioneer Fund. Every ugly accusation evaporated upon close examination. All relied on innuendo, mischaracterization, guilt by association, and outright lies. We made all evidence publicly available to faculty and journalists. Some journalists were as dishonest as the false accusations they so readily reprinted, their bias sometimes apparent in the doctored photos of Blits, me, and other grantees printed with their stories. I looked so much like a witch in one, that staff from ABC's *World News Tonight* with Peter Jennings were visibly startled to see otherwise when they met me in person for an interview.

Some critics avoid making ad hominem claims by asserting that, although the researcher may not be evil, their work can be used for evil purposes. The supposed dangers of the research are seldom explained, however, but just connoted. For instance, assertions that certain conclusions about intelligence or genetic influences are “obviously” harmful or dangerous are virtually never supported by any argument or evidence. Owing to constant repetition of such claims, however, it has become intellectual reflex in most quarters to associate the word intelligence with “hereditarianism” and, next, “hereditarianism” with evil (the Nazis), and “environmentalism” with benevolence (despite its disciple Stalin’s even larger genocide). So, although my intelligence research dealt exclusively with phenotypic differences between races, I was accused of espousing unsavory genetic policies.

This constantly reinforced negative association helps explain why straightforward statements of fact and logic are sometimes quoted as self-evident proof that the targeted scholar intends harm. To illustrate, the UD African-American Coalition (UDAAC) offered the following as evidence of transparent dangerousness in a December 5, 1989, paid advertisement in the student newspaper.

“Gottfredson’s current research is in the area of racial differences in intelligence and their role in employment. She states, ‘the large average IQ difference between blacks and whites plays a major role in explaining the disproportionately low representation of blacks for certain good outcomes—namely employment in professional jobs—and disproportionately higher representation of blacks for certain negative outcomes—namely various prevalence rates for crime and delinquency.’ She also states, ‘education and training strategies do not short circuit the impact of racial disproportions in *g* [intelligence] on job performance. . .’ She further states, ‘The presumption of equal intelligence is clearly a key prop in the moral claim now levied on whites for additional social resources for blacks. Without it calls for total socioeconomic equality by race probably would lose some of their moral force.’ This is the climate in which African American students, faculty and staff must function on a daily basis.”

Another common retort to scholars who assert a right to investigate socially sensitive issues is that “with rights come responsibilities.” That is, one retains or deserves the right to speak freely only if one speaks “responsibly.” This hedge is usually asserted by university faculty and administrators because they are professionally obliged to pledge allegiance to the general principle of academic freedom. But being responsible is as much in the eye of the beholder as being dangerous. The former is only a muted form of the latter, as its antonym (“irresponsible”) illustrates. Demanding “responsible” scholarship on selected topics simultaneously invites and legitimates burdening that research, and it thereby selectively skews the menu of ideas available for public consideration. The appeal to responsibility is a common pretext for taxing supposedly sensitive research. “‘Responsibility’ and ‘restraint’ figure prominently and dubiously as standards of conduct in the annals of American academic freedom” (Finkin & Post, 2009, p. 153). They are synonyms for whatever is currently politically ascendant.

University administrators who demand “responsible” behavior in arenas that they themselves police become self-appointed censors. Their threat of arbitrary enforcement has a chilling effect on faculty utterances of all sorts. Like my dean, they sometimes rationalize their threats by appealing to a subsidiary sentence in the AAUP’s 1940 *Statement of Principles on Academic Freedom and Tenure* which reminds academics that, as scholars and educational officers, they should at all times be accurate, appropriately restrained, and respectful of others’ opinions. This refers simply to the profession’s norms of conduct, but our dean used it to warn

that he would not tolerate public utterances and writings that he considered “inaccurate, intemperate, and disrespectful.” But consider what the national AAUP’s June 1987 *Statement of Professional Ethics* (p. 171) actually says about the scholar’s responsibilities:

“Professors. . . recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and state the truth as they see it. . . They respect and defend the free inquiry of associates. . . [P]rofessors have a particular obligation to promote the conditions of free inquiry and to further public understanding of academic freedom.”

Their chief responsibility is thus to exercise and protect academic freedom. The rationale that guarantees scholars’ academic freedom is simultaneously their binding duty: to seek and speak the truth as best they can discern it via reasoned inquiry.

A skeptic might protest that some ideas are dangerous, perhaps by somehow endangering the well-being of socially disadvantaged groups. That was a common rationale for burdening my research at UD. For instance, my chair justified opposing my promotion because my race-norming articles with Blits, which had criticized the practice and its supposedly scientific justification, would “set Civil Rights back twenty years.” Our critiques did have political consequences, but in a manner that ideas are supposed to shape life in a free society. They prompted a debate in the US Congress, which then—acting in bipartisan consensus—outlawed the practice in 1991 as a naked form of quota hiring. The US Supreme Court, in turn, cited the ban in its landmark 2009 *Ricci v. DeStefano* decision.

AAUP doctrine explicitly protects “unpalatable” conclusions on race and intelligence. Over three decades ago, on February 7, 1974, Committee A of the national AAUP issued a statement, “On Issues of Academic Freedom in Studies Linking Intelligence and Race,” in which it “categorically rejects any proposal to curtail the freedom to report [these] research studies or the interpretative conclusions based on them, however unpalatable either may be.”

Race is, of course, only one topic on which many people have been tempted to carve out exceptions to free inquiry and reporting. Consider the field of behavior genetics, which Tom Bouchard has so profoundly influenced. It was much maligned when he started his twin research in the 1970s. Only the Pioneer Fund would support his now-famous research on twins reared apart. And it was not so long ago—just 1991—when the American Psychological Association’s own monthly magazine, *The APA Monitor*, carried a front-page article (Adler, 1991) reporting virtually nothing but doubts about the scientific credibility and social merits of his “controversial” research, which had just been published in *Science* and has since been repeatedly validated.

- “Bouchard’s study is ‘very important’ but ‘he’s arguing for more genetic influence than is the case.’”
- “Some psychologists question the whole field of behavioral genetics and its use of IQ and personality tests. . . and believe the pursuit of whether intelligence is inherited is misguided. ‘It is an impediment to healing people.’”
- “‘There’s surely nothing new here. . . I certainly don’t think that’s true [that studies of twins reared apart are a particularly simple but powerful methodology].’”
- “Findings showing strong heritability of intelligence have social implications because they ‘can be used for mischief and it makes some people edgy.’”

We see here the same moral innuendo about Bouchard’s research as had been used at UD to disparage mine: the work is scientifically suspect (exaggerated), morally obtuse (impedes healing), and socially dangerous (encourages mischief).

## 6. Lesson 4. Academic freedom is often violated by academic institutions

Protections for public speech are now well-delineated in AAUP doctrine, so institutions seldom fire faculty outright today for voicing ideas that outrage some constituency. The rarity of such glaring violations—or at least lack of publicity about them—is sometimes mistaken as evidence that universities no longer violate academic freedom. But once a bright line has been drawn, institutions can gauge how far they can go in stifling unpopular research before crossing the line.

Current lines are bright only for the sort of interference commonly experienced in the early and mid-twentieth century: external political interference in the internal affairs of academic institutions. One example was the loyalty oaths that some state legislatures demanded of university faculty during the McCarthy era; others were demands made by wealthy donors to fire professors who voiced views contrary to their own on then-current affairs, such as the gold standard, progressive taxation, and research on attitudes about sex. In that earlier era, the interests of faculty and their institutions coincided because they were united against external intrusion.

Case law is not well developed for newer forms of suppression, which operate within academic institutions (O’Neil, 2008). Hence there are yet few bright lines to discourage it. Academic administrations who would not dare to transmit political pressures from outside the institution now regularly act on political pressures emanating from within. This pits the institution against particular faculty, as happened at UD.

Anyone who assumes that internally-generated violations of academic freedom are rare should consult the Foundation for Individual Rights in Education (FIRE). A non-partisan civil liberties organization founded in 1999, FIRE categorizes individual colleges and universities as red-light, yellow-light, and green-light according to the degree to which their written policies threaten vs. protect the civil liberties of students and faculty. Its 2009 report on campus speech codes at 364 colleges and universities found that 74% still maintained frankly unconstitutional (red-light) speech codes. FIRE’s website also documents some of the 3000 plus instances where it has acted on behalf of students or faculty whose views were being suppressed, punished, or coerced. It chronicles the wholesale, Orwellian intrusions on student freedom of conscience at some universities (see especially its online video about UD’s now-suspended Residence Life Program). These intrusions are always justified in the name of some greater good, such as racial-ethnic diversity, social equality, citizenship, social responsibility, and sustainability.

Why do so many academic institutions violate their members’ right to freedom of speech and conscience? There are many personal and professional incentives to violate the right but few to protect it. Academic institutions are complex social organisms composed of competing interest groups vying for favor, resources, and influence. During 1989–1994, large sectors of the UD community gained internally by attacking us and others feared losses if they seemed sympathetic to us. At that time, the UD administration was being pressed to repair tense relations with minority faculty, staff, and students, who sought more resources and a stronger commitment to affirmative action hiring and admissions. This constituency used my presence on campus to argue the urgency of its needs, and the administration punished me to help appease them. One member of the Faculty Senate’s Research Committee (our local AAUP chapter’s president, no less) told me early in its investigation of the Pioneer Fund that I had “come on the scene after tremendous resentment and it was difficult to turn people to academic freedom.”

Each lower level of the administration no doubt felt compelled to support the higher levels, because each lower level serves at the pleasure of the higher, and some administrators aspired to move up the administrative ladder at UD or elsewhere. That may explain why my formerly staunchly supportive dean, who had for several years rebuffed the Affirmative Action Officer’s concerns about my supposed “academic racism,” became so unsupportive of me after the University President undercut him by authorizing an investigation into my funding. The President’s act had tilted internal incentives away from protecting academic freedom toward threatening it.

## 7. Lesson 5. Academic freedom is often not defended by academic professionals themselves

Like First Amendment case law, AAUP doctrine on academic freedom speaks primarily to the rights of faculty against improper intrusion by actors outside the profession. As noted earlier, neither set of doctrinal statements speaks clearly to violations perpetrated within the profession, including faculty on faculty. Yet faculty can operate as conduits of ideological interference and self-interest just as effectively as administrators and government officials. The key difference, however, is that academic freedom principles assign faculty special responsibility for discouraging such interference.

Academic freedom represents a special covenant between academe and its host society (Finkin & Post, 2009, chap. 2). Society gives the academic profession an autonomy not available to other professions so that it can fulfill its unique cultural role, which is to provide society new knowledge regardless of whether it accords with current belief. As employees, academics therefore have a right not possessed by members of other professions: to practice their profession—to inquire, teach, speak, and publish—according to standards set by their profession. In return, they have an affirmative duty to commit themselves “to the virtues of reason, fairness, and accuracy” in seeking the truth (Finkin & Post, 2009, pp. 42–43).

No academic stands against academic freedom in the abstract, but academic advancement depends critically on the good opinion of others within one’s institution and the profession at large. This puts a premium on not offending either. Prudence seems to counsel self-censorship on occasion and withholding regard from those who give offense. Only a handful of on-campus colleagues spoke up for us. Virtually no one in our department was willing to be seen on the wrong side of the controversy or even associating with Blits and me, regardless of how highly they had lauded my work the year before or what they currently believed. Social shunning is painful not just professionally, but psychologically and physically too (MacDonald & Leary, 2005), so it is an effective way to coerce conformity in any human group.

O’Neil (2008, pp. 280–281) describes the personal incentives for collective surrender of academic freedom:

“Even when one or several members of a particular faculty are threatened with reprisal because they advocate unpopular views or broadcast unwelcome research results, most other members of that faculty tend to look the other way, confident that they will not be seen as troublemakers or malcontents—and usually they are quite correct. Indeed, life may even be easier for the rest of the faculty members if one or two or three of their colleagues have been weeded out and tranquility returns to campus. Few others are likely to adopt a ‘there but for the grace of God’ view of the fate of the expendable or sacrificial mavericks. If lessons are learned, and if others within that same academic community are inclined to be a bit less venturesome after such an episode, little or no loss to the individual campus or to the academic community as a whole will be perceived.”

Such proclivities are intensified in conditions of uncertainty, as illustrated by my promotion case. The department had evaluated my work very highly the year before, in 1988, when I was granted tenure. The P&T committee's dramatic flip-flop in 1989 therefore caught most department members by surprise. All were well aware of the just-exploded controversy over my funding, however, and their good estimation of me had become unsettled. Exploiting the confusion, the P&T committee withheld its draft recommendation until the hour faculty were to vote on it. As a voting member of the faculty, Blits had seen the outside peer reviews of my research and knew that the draft recommendation represented the sole negative review as if it were four and ignored all praise in the eight laudatory reviews. But highly respected members of the P&T committee reassuringly disputed Blits's perception, as did other influential members of the department. As if excusing what had happened, one of them later defended the wholesale abandonment of professional norms by saying they "were just people, too."

There were islands of faculty integrity elsewhere, especially where individual faculty members bore direct, formal responsibility for rendering judgments on the evidence. The chair of the college's P&T committee (the third of six levels of review) helped turn the tide toward my being promoted that year by conducting an honest review of my application, despite his self-avowed intent not to get involved in the controversy. The eight or so UD faculty who had responsibility for handling our formal complaints remained steadfastly diligent and honorable over the coming months and years. For instance, the AAUP Grievance Officer spent untold hours advising and assisting us. The Senate's FW&P Committee withstood smears on its own integrity for taking our cases and then ruling in our favor thrice in 1991. All three reports laid out in stark terms the defendants' dishonest and unfair behavior.

What about support from outside the University? This is a delicate matter, because academic freedom is meant to protect faculty and their institutions against outside interference in their internal affairs. But outsiders have a legitimate role in correcting falsehoods and shaming institutions and individuals for not abiding by their own principles. Colleagues at other academic institutions wrote on our behalf to the University President and Board of Trustees, and their testimonials to our scientific and personal integrity may have weakened administration confidence in the accuracy of the evidence on which it had relied.

We contacted several professional associations, including the American Psychological Association and American Sociological Association. None acted on our calls for assistance, perhaps because none had a committee structure with the authority, procedures, or impetus to inject the organization into the dispute, at least in a timely fashion. Professional societies are ill-equipped and probably disinclined to weigh in on individual faculty complaints against their institutions. And while one might wish scholarly associations and allied journals to be special guardians of free and open inquiry, they are generally as sensitive to public sentiment as are colleges and universities.

This brings me to a more fundamental issue in academic freedom. It concerns the foundations on which the principle rests in Western societies: the integrity of the profession as a knowledge-generating enterprise. I begin by noting that the social and professional incentives that skew the enforcement of academic freedom—including personal or institutional reputation, funding, self-advancement, and ideological commitment—also skew the application of scientific standards when research is labeled controversial, insensitive, or dangerous. These pressures can converge, as Gordon (1988) has described, to impose a socially acceptable scientific orthodoxy on a discipline—"one-party science."

Ceci (2007) describes—and laments—the process by which all professional advantages and accolades flow toward scientists

who explicitly disavow, as he has, the politically incorrect side of scientific debates.

"I am fortunate that these are my views [on racial differences in intelligence] because they are politically correct and garner me praise, speaking and writing invitations, and book adoptions at the same time those who disagree with me are demeaned, ostracized, and in some cases threatened with tenure revocation even though their science is as reasonable as mine... I can tell my side far more easily than they are permitted to tell theirs."

Ceci is not speaking here of suppression from outside the profession, but within it.

This competition for reputational and ideological dominance also operates at the core of the profession as a knowledge-generating enterprise, specifically, in its manuscript review process. When peer review is ideologically skewed, the skewing almost always comes in the guise of applying scientific standards to (supposedly) substandard research. Sometimes reviewers and editors apply their non-scientific standards openly when rejecting manuscripts whose conclusions they disapprove. Usually they do this by invoking the dangerousness criterion to justify applying an uncommonly high standard of scientific review.

Occasionally they suggest that potentially "harmful" hypotheses not even be entertained in print until the author has disproved all competing ones—a conveniently impossible "beyond all possible doubt standard" (Gottfredson, 2007). Consider the rationale that the editor of the *American Psychologist* gave Arthur Jensen for rejecting his manuscript on Spearman's Hypothesis: he could not accept anything "less than absolutely impeccable" when "this area is so controversial and important to society." He did explicitly what many reviewers and editors do covertly.

When journal editors refuse to enforce one-party science, researchers on the politically-ascendant side of a scientific debate may boycott the journal if it continues to publish dissenting views. By no longer submitting manuscripts to the journal or citing articles that appear in it, they can marginalize the journal and deny its authors scientific respect (e.g., [Rigging a climate consensus](#), 2009).

I appreciate the willingness of some scholars to candidly articulate a case for greater "responsibility" in or control over controversial research (Hunt & Carlson, 2007a,b), because they unwittingly help crystallize what is at stake for the academic profession. It is no less than the foundation on which its autonomy rests—the legitimacy of its self-government (Finkin & Post, 2009, chap. 3).

Although ideologically biased enforcement of scientific norms in academic journals and associations is probably not a violation of academic freedom per se, it threatens the very basis for it. When the profession selectively impedes ideas that fail some non-scientific standard, such as alleged social harm, it breaks the covenant between society and academe that accords scholars freedom of inquiry. It is not the academic profession's prerogative to create extra fine scientific filters to screen (screen out) ideas that its self-appointed monitors think too dangerous for the common man to hear or ponder (Gottfredson, 2009). This is self-censorship writ large, and all the worse for its collective nature (Gottfredson, 1994).

## **8. Lesson 6. It does not take heroic efforts, just consistent ones, to sustain academic freedom**

O'Neil (2008) describes new threats to academic freedom, especially those created by electronic forms of communication and publication. He also suggests strategies for safeguarding it. So does

a recent AAUP Committee A report (O'Neil et al., 2009). Most of their suggestions are for steps that academic institutions and scholarly associations can take. I concentrate here on what individual academics can do.

Experience has taught me that academic freedom can thrive only when embodied in the daily culture of academic life. Academics must therefore pay closer attention to low-stakes decisions. Even the most noxious violations of academic freedom can originate from inconspicuous acorns of inattention, complacency, or expediency. For example, a suppressive act may seem too small or inconsequential to protest, as when senior faculty or administrators express ideological distaste for a colleague's research in front of junior faculty. But its very triviality provides a low-stakes opportunity for peers to reiterate the principle that the profession evaluates scholarship with reasoned critique, not ideological tests.

Ambiguity increases slippage in defending academic freedom against gradual encroachment. If it is not clear why an act makes us uneasy or is improper, then we cannot object effectively, if at all. It was rhetorically persuasive, for example, when UD administrators argued that no one had violated Blits's and my academic freedom because we could still think and write whatever we wished. Their argument's hidden fallacy was to equate UD's failure to ban my research outright with allowing me "full freedom" in research. This is akin to arguing that a person is not guilty of assault if their victim can still walk and talk.

Logical fallacies are widely deployed to confuse public perceptions of intelligence research (Gottfredson, 2009). Fallacious reasoning impedes enforcement of academic freedom, too, so academics must be alert for seemingly sensible rationales for burdening or censoring some sorts of inquiry but not others. As described earlier, content-based burdens often come in the guise of moralistic appeals guaranteed to evoke an emotional response, such as the work's supposed social sensitivity, social relevance, dangerousness, offensiveness, irresponsibility, or immorality. Simply asking proponents to explain such rationales and the reasoning behind them can unmask their impropriety and lack of supporting evidence: "What exactly makes this work dangerous? If its conclusion is true, do you think it is more dangerous for people to know this truth than not know it? Why? How would you classify ideas by dangerousness?"

Individual academics differ in expertise, interests, and personality, but all can contribute to safe-guarding academic freedom. Some, like Tom Bouchard, will exercise their "booming voice," literally and figuratively, to encourage free speech and protest ideologically-slanted research. Others will take pains to publish, teach, or otherwise give voice to ideas with which they disagree. Some will follow evidence wherever it leads, regardless of their initial presuppositions, or refuse to question the motives of others who do so. At the very least, all must refuse to feign disapproval of "controversial" research they privately respect.

It is essential that academics have supportive doctrinal principles they can invoke to entice, shame, or legally compel institutions to protect research from ideological interference. But it is equally essential for academics to invoke them with each other. Tom Bouchard exemplifies how, in living by such principles, each of us can help strengthen the climate for free and vigorous scholarship.

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