

Academic Freedom and Responsibility Symposium

***609 ACADEMIC TRADITION AND THE PRINCIPLES OF PROFESSIONAL CONDUCT**

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I. INTRODUCTION

The autonomy and traditions of both the academic profession and its sister professions, law and medicine, are under assault. Essentially the challenge for all three professions boils down to the relentless reductive pressure of the market to define all professional relationships as nothing more than consumer/service provider or employer/employee relationships. Professor Eliot Krause, having studied the professions of law, medicine, the professorate and engineering in the United States, Britain, France, Germany and Italy concludes as follows:

Both the professions of medicine and law--especially their elites--have increasingly bought the capitalist model itself and have imposed capitalist rationalization upon those lower in the professional pecking order. Engineering has always accepted capitalist values and has therefore never been a profession acting in its own interest in competition with the values and aims of capitalism. The university itself, the source of the professional training, has increasingly been made over in the image of capitalist interests Perhaps this process is a final example of what Weber would have called "die Entzauberung der Welt," the loss of any noncapitalist values within the professions, both because of external pressures we have considered here and because of the surrender of positive guild values--of collegiality, of concern for the group, of a higher professional ethic beyond mere profit-- that has eroded the distinction between professions and any other occupation and thus left them together as the middle-level employees of capitalism. [\[FN1\]](#)

***610** With the academic profession, legislators, governing boards, and administrations emphasize a number of market realities: (1) costs of higher education have been rising much more rapidly than the costs of other goods and services for many years, and tuitions and revenue growth cannot continue to keep pace; (2) legislators and governors want public higher education to focus more on current economic development and workforce needs; (3) students increasingly view themselves as consumers and demand responsiveness to their needs at various stages in their lives; (4) corporate for-profit and online enterprises in the higher education market are effectively competing for students; and (5) enrollment patterns are changing more rapidly. [\[FN2\]](#) In response, many governing boards and administrations propose, and in some cases carry out, the elimination of tenure, a dramatic increase in the use of part-time and adjunct faculty, and post-tenure review. The 1998 Association of Governing Boards (AGB) Statement on Institutional Governance emphasizes managing higher education similarly to other nonprofit enterprises, with reduced power for the voting faculty. [\[FN3\]](#) University of California President Emeritus Clark Kerr predicts a trend toward more external investigation of academic conduct, more laws subjecting higher education to public enforcement procedures and more decision-making by the courts. [\[FN4\]](#)

Similarly emphasizing the ascendance of market values, corporations are providing

growing financial support for academic research, creating potential conflicts of interests and drawing research activity toward corporate agendas. Some scholars take a financial interest or even a management role in these corporate funders of research. Market-focused individual faculty members who achieve celebrity status or whose knowledge has high profit potential increasingly emphasize personal gain outside the walls in the allocation of their time and productive energy.

Is it inevitable that eventually the market will eliminate associations and traditions that do not worship solely at the altar of economic efficiency? In analyzing economic inevitability arguments in the context of the tradition of the learned professions, consider that we live in the period of greatest wealth creation in our society's history. During such a period, human nature exaggerates the importance of the market and economic efficiency in relation to other societal values. The traditions and ethics of the learned professions will appear "inefficient" when the market dominates our thinking. In the face of the reductive pressure of the market, the professions must publicly defend the economic and non-economic benefits that their social compact provides society. In order to preserve its autonomy, a learned profession must, in each generation, renew its social compact for both the public and those within the *611 profession, thus reassuring the public that the public's interests are being served and that the profession may be trusted with high public purposes.

What is the social compact and what does it require? The academic profession is one of the four great learned professions for which the medieval university provided education. Professor Stephen Barker points out that the two central features of the late-medieval conception of a profession remain with us today: (1) a profession requires mastery of an extensive body of knowledge and skills to be achieved by years of university study; and (2) entrants into a profession are required to commit themselves to a distinctive ideal of public service which imposes ethical demands, to which ordinary citizens are not subject, to restrain self-interest and to use the special knowledge and skills gained for the common good. [FN5]

Society and members of a profession form an unwritten social compact whereby the members of a profession agree to restrain self-interest, to promote ideals of public service, and to maintain high standards of performance, while society in return allows the profession substantial autonomy to regulate itself through peer review. The ethics of each profession are descriptive of the profession's duties under the social compact. [FN6] In order to maintain the social compact and its autonomy, a profession must both develop clear principles *612 of professional conduct and hold members of the profession accountable for meeting the principles.

The question addressed here is: to what degree has the academic profession developed clear principles of professional conduct? Over the course of the past eighty-five years, the American Association of University Professors (AAUP) has issued periodic statements that partially define such principles. More recently, principally in response to pressure from the federal government, some of the sciences have developed principles of conduct for scientific research. Over the course of the last decade, there has also been increasing interest among some of the disciplinary associations outside of the sciences in developing de novo, or revising existing, codes of ethics.

The education of new and veteran faculty members concerning such principles is at an earlier stage. Some of the federal agencies, for example, the National Institutes of Health, require that grant recipients provide formal training on research ethics; [FN7] graduate students in some of the professional schools, like law and the health professions, are required to take a disciplinary ethics course; and a few graduate programs in the other disciplines require graduate students to take a disciplinary ethics course. There are also elective ethics courses for graduate students in some departments. Even more rare would be a department or faculty that offers education in academic tradition and ethics to new faculty (or engages veteran faculty regularly on these issues). Some scientific societies offer programs on research ethics at annual/regional meetings.

The common assumption appears to be that novitiates will absorb the ethics of the

discipline from senior mentors through osmosis. In any event, these efforts at socialization focus almost entirely on the ethics of the discipline, not on the larger question of the principles of professional conduct that cut across the disciplines and apply to the academic profession as a whole. Professors are socialized, to the degree it is done at all, as members of a discipline, not as members of a larger academic profession.

The situation today regarding instruction in the tradition and ethics of the academic profession is described by former Harvard Dean Henry Rosovsky: "[T] here is a conspicuous lack of agreement concerning appropriate standards of professional conduct Of one thing we may be sure: that an individual who joins the academic profession will almost never have received any instruction concerning conduct or the dimensions of the social contract." [FN8] Professor Richard De George goes further, noting that the claim that individual *613 faculty members have duties correlative with the rights of academic freedom [FN9] would come as a surprise to many faculty. [FN10]

De George also emphasizes that the rights of academic freedom and tenure are defensible only if the faculty fulfills the ethical responsibilities of academic freedom and tenure. This is the social compact that was articulated in the AAUP's 1915 General Declaration of Principles. [FN11] To the extent that faculty fail to fulfill these duties, academic freedom and tenure are rightfully under attack. "Yet," De George notes, "there is surprisingly little discussion of the ethical responsibilities of those within the university The result is increasingly vocal critique from the outside." [FN12]

There are some reasons for optimism. In April 2000, the American Association for the Advancement of Science (AAAS) and the United States Office of Research Integrity hosted a conference on "The Role and Activities of Scientific Societies in Promoting Research Integrity." [FN13] The report on the conference summarizes a twenty-year history of surveys and reports variously by AAAS, the National Academy of Sciences, and the Commission on Research Integrity showing that historically scientific societies have paid little attention to professional ethics. [FN14] In preparation for the 2000 conference, AAAS surveyed 126 scientific societies that staff thought were likely to have developed ethics activities to determine what societies are doing to promote research integrity and to assess the effectiveness of their efforts. [FN15] Forty-six societies returned the survey, and of those, 74% reported having an ethics statement of some sort [FN16] and 57% "currently engage in or plan to engage in activities to promote research integrity." [FN17] Conference participants recommended that scientific societies can and should do more to promote research integrity by, for example: (1) developing codes of ethics and educating those to whom they apply; (2) including ethics components in graduate programs and accreditation standards; (3) developing educational materials on research ethics; and (4) conducting research on how the ethical climate in which scientists work is shaped. [FN18]

There is also a significant movement towards post-tenure review that is explored in Part II.C. on "The Negotiated Mechanics of Peer Review." *614 While the professorate could seize the initiative on post-tenure review and use it to reassure the public that the profession may be trusted in its commitment to the high public purposes of the social compact, this in general is not happening. Most frequently, legislatures and administrations are imposing post-tenure review on the profession.

While there are some hopeful signs of more attention to academic ethics in very recent years, fundamentally the academic profession is losing the battle of narratives to those who argue that the market will eliminate the separate professional moralities of the learned professions. A profession unable to articulate publicly a compelling narrative justifying its privileges, and unwilling to fulfill the correlative obligations of its social compact will ultimately be seen as no different from other business enterprises in a market economy.

In Part II, this essay analyzes academic tradition concerning the rights and corresponding duties of the academic profession. In Part III, the essay then articulates principles of professional conduct that flow from academic tradition.

Parts II and III together are intended to explore both the ethics of aspiration, meaning the highest ideals of the profession, as well as the ethics of duty, or the floor of conduct below which a member of the profession cannot go without peer sanctions. There is some risk that Part III will inadvertently convey a message that a faculty member should put a premium on the timid and conventional, thus keeping his or her "head down," in order to avoid tripping over one of the principles of conduct. Of course, the highest aspiration of the profession is to create and disseminate knowledge, which depends upon unconventional thought and speech. The peer review construct explored in Parts II and III provides the means both to foster a peer collegial culture of high aspiration and also to address violations of the principles of professional conduct in a way that contributes to, not undermines, both the mission of the university to create and disseminate knowledge and the professorate's social compact with society.

II. ACADEMIC TRADITION

A. The Academic Profession's Role in a Liberal Intellectual System

The story of the profession's role and the American traditions of academic freedom and shared governance are rooted in the intellectual system that grew out of Western tradition, particularly the Enlightenment's conviction that reason, if left free, could discover useful knowledge. This intellectual system is liberal in the sense that it favors individual freedom, open-mindedness, and the use of reason to foster human progress.

The liberal intellectual system is understood as a social community with indefinite possibilities created by human intellectual diversity. For philosopher Karl Popper, the key insight on which the community is based is the recognition of the inherent fallibility of human thought. [FN19] The bedrock idea is that any and all of us might, at any time, be wrong. Knowledge is always *615 seen to be tentative and subject to correction. If no person is immune from error, it follows implicitly in the liberal intellectual system that no belief, no matter how strongly held, is above critical scrutiny for possible correction. No person can claim to be above being checked by others. [FN20]

Philosopher John Searle describes the development of the liberal intellectual system along lines related to Popper's construct. For Searle, a decisive step in this tradition was the Greek creation of a "theory:" "[T]he introduction of the idea of a theory allowed the Western tradition to produce something quite unique, namely systematic intellectual constructions that were designed to describe and to explain large areas of reality in a way that was logically and mathematically accessible." [FN21] However, Searle posits, one essential concept the Greeks lacked, which Europe discovered in the Renaissance, was the idea of systematic experimentation. "The Greeks had logic, mathematics, rationality, systematicity, and the notion of a theoretical construct. But the idea of matching theoretical constructs against an independently existing reality through systematic experimentation really did not come until much later." [FN22]

A third feature of this tradition, in Searle's analysis, is its self-critical quality. Elements within it have always been under challenge; it was never a unified tradition. The idea of critique was always to subject any belief to the most rigorous standards of rationality, evidence, and logic. [FN23] The Enlightenment's emphasis on the use of reason and freedom of thought and speech fostered the idea of critique.

In this system, knowledge is the evolving critical consensus of a decentralized community of inquirers, who adhere to the principle that knowledge claims must be capable of being checked and have withstood checking, regardless of the source of the claim or the identity of the inquirer. [FN24] The system must protect freedom of speech in order for the decentralized *616 community of inquirers to produce knowledge, but it does not grant freedom to make knowledge claims. Only the consensus of critical inquirers has the status of a knowledge claim. [FN25] The liberal intellectual system, Jonathan Rauch points out in *Kindly Inquisitors*:

*617 absolutely protects freedom of belief and speech, but it absolutely denies freedom of knowledge: ... there is positively no right to have one's opinions, however heartfelt, taken seriously as knowledge ... A liberal intellectual regime says that if you want to believe the moon is made of green cheese, fine. But if you want your belief recognized [and acted upon] as knowledge, there are things you must do. You must run your belief through the [system] for checking [FN26]

The university in a liberal intellectual system plays a critical role as the one community whose mission is specifically seeking, discovering, and disseminating knowledge through public criticism. [FN27] Accordingly, the academic profession in the universities constitutes a significant proportion of the decentralized community of inquirers on which knowledge production depends.

The major threat to the decentralized community of inquirers in general, and the profession in particular, has been and will be from political, economic, ethnic, religious, or other groups who wish to prevent the anguish and pain that results when their beliefs are subjected to checking and criticism. This is the context in which the profession sought to gain autonomy to perform its role in the community of inquirers.

The profession saw a unique role for itself to contribute to the progress of knowledge as a community of inquirers with specialized training, information and skills. In virtue of a professor's special competence as an inquirer in some area of study, including knowledge of the existing scholarship and mastery of the techniques of investigation and validation in some academic discipline, the professorate claimed special rights of investigation and dissemination of knowledge. [FN28] These unique roles ultimately justified special employment protection for a professor's right to offend in the pursuit of knowledge. As Professor Peter Byrne observes:

Scholars work within a discipline, primarily addressing other scholars and students. Their audience understands and evaluates their speech within a tradition of knowledge, shared assumptions and arguments *618 about methodology and criteria, and common objectives of exploration or discovery ... The ordinary criterion of success is whether, through mastery of the discipline's discourse, the scholar improves the account of some worthy subject that the discipline has previously accepted. [FN29]

The persons who may engage in this speech in the university are rigorously screened. The scholar must have completed the necessary undergraduate and graduate degrees to be certified by his or her peers as competent to engage in the scholarly discourse of a discipline. [FN30] Within the constraints of the disciplinary discourse and the criteria for certification of professional competence, the scholar is free to reach conclusions that contradict previous belief, whether within the academy or the larger society. [FN31]

The essential requirement for this progressive conception of knowledge within a university setting is, thus, free discourse among academic professionals within the ethical and competency constraints of a discipline. [FN32] During the late 1800's and early 1900's, when the disciplines formed and overall professionalization occurred, the principal threat to the realization of free discourse among competent professionals was interference by lay administrators and boards of trustees and regents who governed higher education in the United States ("lay" is used here to refer to persons not belonging to the academic profession).

B. Exceptional Vocational Freedom of Speech and Peer Review

For several hundred years after the founding of institutions of higher education in the United States in the mid-1600's, professors labored under employment law doctrine holding that private and public employees had no right to object to conditions placed upon the terms of employment, including restrictions on free expression. [FN33] As the modern university and its research mission developed in the late 1800's, and professors increasingly questioned and challenged the cherished beliefs of the time, the lack of constitutional protection for academic speech became a critical problem. [FN34] No clear standard for First Amendment protection

for those professors employed in the public universities developed until 1968. [\[FN35\]](#)

Interference by university employers took one of two forms. First, because of financial, political, moral, or religious concerns, lay boards and administrators tended to distort intellectual inquiry by imposing constraints on offering of new hypotheses or criticizing of accepted ones. Second, the free exchange envisioned was to occur among competent academic professionals. *619 The exchange could tolerate error but not incompetence, and only academic professionals, not lay administrators and boards, could evaluate professional qualifications and performance to determine whether error was within the range of competent and ethical inquiry. [\[FN36\]](#) For example, the determination whether a professor's advocacy of a "flat earth" hypothesis is an error within the range of competent inquiry rests with the peer collegium.

At the turn of the century, as social scientists began a critical analysis of the economic order, some industrialists on the governing boards sought to control professorial speech. [\[FN37\]](#) This led academics in 1915 to organize a professional association, the American Association of University Professors (AAUP). [\[FN38\]](#) The AAUP pressed university employers to grant professors rights of free inquiry and speech in scholarship and teaching without interference by lay boards of trustees and administrators. [\[FN39\]](#)

With the founding of the AAUP, the professorate sought a mutual understanding and agreement on principles with employers. The term "professional academic freedom" describes this mutual understanding or tradition. University employers, serving the university's unique mission of creating and disseminating knowledge, have agreed to grant rights of exceptional vocational freedom of speech to professors in teaching, research, and extramural utterance without lay interference on the condition that individual professors meet correlative duties of professional competence and ethical conduct. The faculty as a collegial body also has correlative duties both to enforce the duties to be met by individual professors and to defend the academic freedom of colleagues. Because of the unique history of the academic profession in the United States, the governing boards act as surrogates for the public in this social compact with the profession that grants rights of academic freedom, *620 peer review, and shared governance in return for the performance of the corresponding duties.

It is this tradition of faculty self-governance in peer review of professional competence and ethics that makes professional academic freedom unique, not the tenure system that has many parallels in other employment settings. Peer review is the linchpin of professional academic freedom and tenure. [\[FN40\]](#) This tradition has been incorporated into employment contracts with individual professors. It is also protected by professional academic organizations like the AAUP, disciplinary associations, and by accrediting authorities.

The concept of "professional academic freedom" explored in this essay is part of a family of concepts that protect freedom of speech in the university. "Professional academic freedom"--a concept developed particularly by the AAUP since 1915--focuses on the employment relationship between an individual professor and his or her employing institution, whether public or private. Starting with the *Sweezy v. New Hampshire* decision in 1957, [\[FN41\]](#) the United States Supreme Court turned to the First Amendment to develop *621 "constitutional academic freedom." It grants both universities and professors freedom from direct governmental restrictions--by the executive or legislative branches--on either the content of speech or the right of the university to determine who may teach. This constitutional academic freedom, as it applies to the university itself, is sometimes referred to as "institutional academic freedom." In a 1968 decision, *Pickering v. Board of Education*, [\[FN42\]](#) the United States Supreme Court, again turning to the First Amendment, first articulated a clear test for protecting freedom of speech of persons as employees of public employers. [\[FN43\]](#) A subset of these public employee speech cases involves faculty speech in the public university context. Note that the *Pickering* line of cases does not apply to professors at private colleges and universities. Both the constitutional academic freedom cases and the First Amendment cases involving professors at public universities borrow from the earlier tradition of "professional

academic freedom." Much of the confusion in the literature over the meaning of academic freedom has arisen because of the failure to distinguish the First Amendment doctrines of both constitutional academic freedom and public employee free speech from the earlier and more inclusive tradition of professional academic freedom. [\[FN44\]](#)

C. The Negotiated Mechanics of Peer Review

The mechanics of this tradition of peer review have been a subject of continuing negotiation between university employers and the professorate. Since the essential requirement of progress in the discovery of knowledge in a university setting is free discourse among academic professionals, within the ethical and competency constraints of a discipline as defined by peers, the essential elements of a peer review system are a strong presumption in favor of a professor's free discourse and evaluation and hearing procedures to permit peers to exercise judgment. In practical terms, the negotiated mechanics of peer review have come to require some probationary period where a professor seeking continued employment carries the burden of demonstrating excellence in teaching, research, and service in an evaluation process relying principally on peer assessment. Successful candidates receive tenure, subsequent to which the burden shifts to the administration to demonstrate to a peer committee through academic due process that a professor has failed to meet correlative obligations of competence or ethics and thus merits employment sanctions. The administration generally must demonstrate a violation of duty by clear and convincing evidence. The principal purpose of academic due process is to maximize protection of the rights of academic freedom while providing the means for peers to enforce its correlative obligations. The peer review system tolerates "honest" error that peers consider within the range of competent and ethical inquiry.

***622** The peer review process during the probationary period has been largely successful in requiring candidates to excel in meeting the correlative obligations of academic freedom. The public challenge today is directed at the failure of peer review adequately to enforce the correlative duties of professional competence and ethical conduct following the grant of tenure.

Historically, once tenure has been achieved, the intensity of peer review has been dramatically lower. Administrators do annual evaluations of individual professor's work and assess sabbatical or additional resource requests, but these decisions generally do not involve peer review. There is some movement toward post-tenure review, which involves continuing peer review of tenured professors on a periodic basis.

In the last fifteen years, as a result of growing public pressure for increased accountability, there has been significant movement toward some form of post-tenure review at a number of colleges and universities. Professor Christine Licata finds that,

In most settings, post-tenure review is distinguished from the traditional annual merit review because it is usually a peer review-driven process and is designed specifically to systematically assess performance; nurture professional growth; promote improvement, if necessary, through a required plan (usually of one to three years); and, in some situations, impose sanctions when improvement is not forthcoming. [\[FN45\]](#)

Post-tenure review policies are of two basic types: (1) "comprehensive periodic review of all tenured faculty, usually at 5-7 year intervals" or (2) "selective review of some faculty" triggered by poor performance apparent in some other review (usually annual review). [\[FN46\]](#)

Professor Licata reports that "[t]hirty-seven states either have adopted systemwide post-tenure policies, implemented them in selected state institutions or are considering such policies and "several regional accrediting bodies now require institutions to implement post-tenure review policies." [\[FN47\]](#) In a recent study of 217 institutions by the Harvard Project on Faculty Appointments, Professor Cheryl

Sternman Rule finds that 46% of the 192 institutions in the study that grant tenure have post-tenure review. [FN48] Included in the overall proposition of 46% were both public institutions, where **55ad post-tenure review, and private institutions, where 45ad post-tenure review.** [FN49]

Professor Licata observes some confusion "whether these reviews are intended primarily to promote ongoing senior faculty vitality or to reprimand underperformers." [FN50] Academic tradition would support both purposes, since ***623** the faculty peer collegium has correlative duties both to create a culture of high aspiration in terms of professional ideals and to hold individual faculty members accountable for meeting minimum standards of competence and ethical conduct. She concludes that because post-tenure review programs are less than seven years old, "little is known about their long-term effectiveness and their resource requirements." [FN51]

Prior to the movement towards post-tenure review, the peer review system in higher education historically has involved a degree of misbehavior or incompetence among a subset of tenured professors because the degree of vigilance necessary to prevent it would generate costs greater than benefits. Competent review is itself time-consuming and takes tenured faculty away from research, teaching, and other public service. In addition, the university's mission of the creation and dissemination of knowledge is better served by a system that is somewhat more forgiving of error than one that is too restrictive.

It is one thing for the academic profession de facto to recognize that close peer review of tenured colleagues on minor matters may entail more costs than benefits, but it is another matter entirely not to acknowledge the duty of peer review for tenured professors at all, or to ignore the duty except for the most egregious matters of unprofessional conduct. The evidence points toward widespread misunderstanding of professional responsibility for peer review within the academic profession. Only 55% of faculty respondents in a 1993 Acadia Institute survey of 2000 professors in chemistry, civil engineering, microbiology, and sociology believed that they should, to a great extent, exercise responsibility for the conduct of their colleagues, and a mere 13% judge that faculty in their department actually exercise a great deal of shared responsibility for their colleagues' conduct. [FN52] Swazey, Lewis, and Anderson found differences among the disciplines; in chemistry for example, only forty-six of the chemist-respondents strongly affirm collective responsibility for colleagues' behavior. [FN53] Only approximately one-half of faculty respondents in the Swazey, Lewis, and Anderson survey were familiar with the content of their disciplinary code of ethics. [FN54]

Professor William Van Alstyne has emphasized that academic tenure, accurately defined, carries no claim whatever to a guarantee of lifetime employment, or insulation from a fair accounting for performance. Rather,

The price of an exceptional vocational freedom to speak the truth as one sees it, without penalty for its possible immediate impact upon the economic well-being of the employing institution, is the cost of exceptional care in the representation of that "truth," a professional standard of care. Indeed, a grave ethical failure in the integrity of a teacher's or a scholar's academic representations ... is precisely the kind of offense ***624** to the contingent privilege of academic freedom that states a clearly adequate cause for a faculty recommendation of termination. [FN55]

It is the correlative obligation of the faculty as a collegial body to enforce the duties when individual professors do not observe them. The late Professor Fritz Machlup also stressed that the faculty has a moral obligation to initiate action against professors who falsify evidence or distort the truth in the presentation of readily verifiable facts. [FN56]

In championing the concept of peer review, AAUP leaders early in this century took pains to argue that peer review would not shelter the incompetent or unethical professor. For example, before an audience of university presidents, the AAUP's first president, John Dewey, maintained that peer review would "facilitate the removal of incompetents by bringing into play the resources of highly critical

connoisseurs." [FN57] Many university presidents of the time were skeptical, fearing that professors were likely to protect professors and ignore the interests of students and the public. [FN58] The AAUP's 1915 Declaration of Principles cautioned that if the profession "should prove itself unwilling to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or for uncritical and intemperate partisanship, it is certain that the task will be performed by others." [FN59]

III. PRINCIPLES OF PROFESSIONAL CONDUCT

The construct of the correlative duties of academic freedom and peer review assumes the existence of generally accepted principles of professional conduct. While not the only source for principles of professional conduct, the major statements of the AAUP have played a substantial role in defining the tradition of academic freedom in the United States. [FN60] We start by closely *625 analyzing the AAUP's 1915 General Declaration of Principles and the 1940 Statement of Principles on Academic Freedom and Tenure. [FN61]

A. The AAUP's 1915 General Declaration of Principles

The AAUP's 1915 General Declaration of Principles remains the foundational statement defining the American concept of professional academic freedom. [FN62] This document starts with the reality that "American institutions of learning are usually controlled by boards of trustees as the ultimate repositories of power." [FN63] Making no distinction between private or public universities, the 1915 declaration takes the position that such boards are in a position of public trust to serve the public interest. [FN64] Universities serve the public interest by: (1) promoting inquiry and advancing the sum of human knowledge; (2) providing instruction for the students; and (3) developing experts to advise government and the community on the solution of problems. [FN65] The function of the professional scholar in realizing these purposes is

to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and their fellow-specialists' investigation and reflection, both to students and to the general public, without fear or favor. The proper discharge of this function requires ... that the university teacher shall be exempt from any pecuniary motive or inducement to hold, or to express, *626 any conclusion which is not the genuine and uncolored product of his own study or that of fellow-specialists. [FN66]

Based on these arguments, the 1915 declaration built a definition of professional academic freedom. Professional academic freedom must enable the individual scholar to perform the three functions of: (1) dealing with sources of knowledge and reflecting upon them toward some result; (2) imparting those results to students; and (3) extending those results to the public. [FN67] These three functions in turn relate closely to the university's three purposes set forth in the declaration of: (1) promoting inquiry and the advancement of human knowledge; (2) providing instruction to students; and (3) developing expert advisers for the community. [FN68]

The 1915 declaration defined the three elements of professional academic freedom necessary for scholars to perform their functions within the larger purposes of the university. These were: (1) freedom of inquiry and research; (2) freedom of teaching within the university; and (3) freedom of extramural utterance. [FN69] In these three areas, trustees served the public trust by granting university teachers rights of freedom from lay interference so that neither *627 intellectual inquiry and discourse nor decisions concerning professional competence to engage in the intellectual discourse would be distorted by lay bias. [FN70]

The 1915 declaration recognized that the granting of these rights of freedom from lay interference rested upon a professor's meeting unique obligations. Each professor must observe personally and enforce through collegial action the ethical

and competency constraints on scholarly inquiry and discourse. "Since there are no rights without corresponding duties, the considerations heretofore set down with respect to the freedom of the academic teacher entail certain correlative obligations." [\[FN71\]](#)

1. Correlative Obligations of the Individual Faculty Member in the 1915 Declaration

Inherent in the concept of professional academic freedom in the United States are correlative obligations for both individual university teachers and for the faculty as a collegial body. The principal correlative obligation of the individual university teacher is to comply with the ethical and competency constraints of professional scholarly inquiry and discourse.

The claim to freedom of teaching is made in the interest of the integrity and of the progress of scientific inquiry; it is, therefore, only those who carry on their work in the temper of the scientific inquirer who may justly assert this claim. The liberty of the scholar within the university to set forth his conclusions, be they what they may, is conditioned by their being conclusions gained by a scholar's method and held in a scholar's spirit; that is to say, they must be the fruits of competent and patient and sincere inquiry, and they should be set forth with dignity, courtesy, and temperateness of language. The university teacher, in giving instruction upon controversial matters, while he is under no obligation to hide his own opinion under a mountain of equivocal verbiage, should, if he is fit for his position, be a person of a fair and judicial mind; he should, in dealing with such subjects, set forth justly, without suppression or innuendo, the divergent opinions of other investigators [\[FN72\]](#)

Extramural utterance in the 1915 declaration includes speech that is both within disciplinary expertise and outside the walls (which the declaration sees as being covered by the same general principles as freedom of teaching) and the political activities of a citizen outside the walls. [\[FN73\]](#) The 1915 declaration imposes higher correlative obligations on extramural utterances. "In their ***628** extramural utterances, it is obvious that academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression." [\[FN74\]](#)

The 1915 declaration does not specifically address freedom for intramural speech other than teaching and research. However, freedom of teaching includes intramural speech relating to the education of students, and freedom of inquiry and research includes intramural speech that involves critical inquiry. For example, the protection of intramural speech clearly extends to decisions involving curriculum, procedures of student instruction and assessment, faculty appointments and status, and admissions. Any intramural speech involving critical inquiry is protected.

2. Correlative Obligations of the Faculty as a Collegial Body in the 1915 Declaration

Within the American tradition of professional academic freedom, the principal correlative obligation of the faculty as a collegial body is to enforce in the first instance the ethical and competency constraints of the academic profession when individual professors do not observe them. "[T]he power of determining when departures from the requirements of the scientific spirit and method have occurred, should be vested in bodies not composed of members of the academic profession." [\[FN75\]](#) Only members of the profession have the competence to judge these requirements, and they "must be prepared to assume this responsibility for themselves ... the responsibility cannot ... be rightfully evaded." [\[FN76\]](#) The 1915 declaration conditions the rights of academic speakers on the performance of the correlative obligation to comply with the strictures of inquiry and discourse established by their discipline. Collegial responsibility to sanction departure from professional modes of inquiry and discourse is implicit in the statement's admonition that university teachers must have the capacity "for judicial severity when the occasion requires it." [\[FN77\]](#)

B. The 1940 AAUP/AAC Statement of Principles on Academic Freedom and Tenure

The 1940 statement of principles adopted by the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities) incorporates in summary terms the rights and correlative obligations of professional academic freedom set forth in the 1915 declaration. It sets up a framework of norms concerning rights and duties. This 1940 statement has been endorsed by almost all major educational disciplinary organizations in the United States, [\[FN78\]](#) is commonly adopted by reference in academic ***629** employment contracts and faculty handbooks, [\[FN79\]](#) and is often cited in judicial opinions. [\[FN80\]](#)

1. Rights of Academic Freedom

a. For Research and Teaching

In its introductory paragraphs, the 1940 statement reasons that universities are established for the common good, and 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. [\[FN81\]](#)

Immediately following the introductory paragraphs, under the heading "Academic Freedom," the 1940 statement sets forth three paragraphs that further define the concept. In paragraph (a), the statement provides that "teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties." ***630** [\[FN82\]](#) In paragraph (b) the statement provides that "teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject." [\[FN83\]](#) Paragraph (c) of the 1940 statement concerns extramural utterance.

b. For Both Intramural Utterances Other Than Teaching and Research and Extramural Utterance

There is no specific reference in the 1940 statement to "freedom of extramural utterance and action" as there is in the 1915 declaration. Paragraph (c) under Academic Freedom provides that

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they 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 they are not speaking for the institution. [\[FN84\]](#)

An interpretation adopted by both the AAUP and the AAC (now the AACU) and issued contemporaneously with the 1940 statement, refers to the "admonitions of paragraph (c)" as applicable to the "extramural utterances of the teacher." [\[FN85\]](#)

The question whether paragraph (c) of the 1940 statement, creating rights of academic freedom for extramural utterance, was also intended to create rights of academic freedom for intramural utterance other than teaching and research, thus essentially creating rights of academic freedom for all professorial speech, either inside or outside the walls, has been difficult to resolve because of ambiguity in the text. The literal words of paragraph (c) of the 1940 statement focus on speech

outside the walls of the university. The second sentence of paragraph (c) refers to speaking or writing "as a citizen," recognizing that a teacher's special position "in the community" imposes special obligations. It is possible that "citizen" and "community" refer to citizenship in the university community inside the walls as well as citizenship in the community outside of the walls. However, the third sentence of paragraph (c) urges teachers to remember that "the public" may judge their profession and their institution by their utterances; and the fourth sentence urges teachers to make every effort to indicate that they are "not speaking for the institution." The contemporaneous interpretation comments that paragraph *631 (c) deals with "extramural utterance." This evidence heavily favors reading paragraph (c) as referring only to speech outside the walls. [\[FN86\]](#)

In addition, the 1940 statement is building on the tradition of the 1915 declaration where extramural utterance included: (1) speech that is within disciplinary competence outside the walls; and (2) political activities of a citizen outside the walls. [\[FN87\]](#) The emphasis on faculty speech outside the walls also appears in the statement issued by a 1925 conference of major higher education organizations. [\[FN88\]](#) The conference adopted language drafted by university presidents.

"(a) A university or college should recognize that the teacher in speaking and writing outside of the institution upon subjects beyond the scope of his own field of study is entitled to precisely the same freedom and is subject to the same responsibility as attach to all other citizens.

(b) If the extra-mural utterances of a teacher should raise grave doubts concerning his fitness for his position, the question should in all cases be submitted to an appropriate committee of the faculty of which he is a member." [\[FN89\]](#)

Consideration of the 1915 declaration and the 1925 conference statement together demonstrates that the governing boards and administrators were most concerned about faculty speech outside the walls that would endanger the institution. [\[FN90\]](#)

*632 The 1940 statement specifically grants rights of academic freedom to teaching and research, which are types of intramural utterance, but the statement does not specifically address whether other types of intramural utterance constitute teaching or research, leaving them with no academic freedom protection if they do not. However, the interpretation of "teaching" and "research" in the 1940 statement must be consistent with the policy rationale for academic freedom developed in the 1915 declaration and reflected in the 1940 statement. Thus, "academic freedom in its teaching aspect" includes intramural utterance relating to the education of students, and academic freedom "in research" includes intramural speech that involves critical inquiry. [\[FN91\]](#)

There are differences of opinion about how broadly to construe these rights of academic freedom for intramural speech other than teaching and research. Professor Matthew Finkin fears that any restrictions on intramural speech will place a professor in the position of having to guess where his or her utterance lies on a spectrum from purely professional to purely aprofessional. [\[FN92\]](#) This may harm the quest for knowledge within the university. He would protect practically all utterances of a professor within the walls. [\[FN93\]](#) University of Minnesota President Mark Yudof believes that there must be a reasonable connection between a professor's speech and the academic work of teaching or research, or the concept of professional academic freedom will become indistinguishable from the general demands for professional autonomy common in progressive labor relations today. [\[FN94\]](#) Thus, Yudof argues, inadequate salaries, uncomfortable offices, inadequate insurance, or lack of parking space typically affect all university employees, and, in the case of professors, may stifle creative impulses, but academic freedom must not be stretched too far to give special license to professors to comment on these matters. [\[FN95\]](#)

*633 Shedding further light on what intramural utterance should be protected by academic freedom, the 1966 Statement on Government of Colleges and Universities outlines the allocation of governance responsibilities. [\[FN96\]](#) The statement was originally jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards. [\[FN97\]](#) The AGB in its 1998 Institutional

Governance Statement took a substantially different position, essentially disconnecting shared governance from academic freedom, and importing the idea of stakeholder analysis from the business ethics literature where the faculty becomes one stakeholder among many the governing board should consider. [FN98] Since the practice of shared governance is a corollary of academic freedom and peer review, those areas of shared governance outlined in the 1966 statement would clearly be protected by rights of academic freedom. In the 1966 statement on government, the voting faculty has primary authority over: curriculum; procedures of student instruction; standards of faculty competence and ethical conduct including faculty appointments and tenure; policies for admitting students; standards of student competence and ethics; maintenance of a suitable environment for learning; judgments determining where within the overall academic program terminations for financial emergency should occur; and decisions to terminate a program or department when no financial exigency is declared. [FN99] The governing board is to consult with the voting faculty on: the determination of mission; strategic decisions and comprehensive planning; physical and fiscal resources; budgeting and distribution of funds; the decision to create a program, department, school, college or division; the decision to declare a financial exigency; and the selection and assessment of the presidents and deans. [FN100]

***634** If rights of academic freedom extend to all intramural utterance relating to the education of students or critical inquiry, and all intramural speech relating to shared governance, the remaining subset of intramural utterance, for example faculty complaints over parking or an uncomfortable office, is small. Professor Rabban notes that few of the AAUP reports or legal cases on violations of academic freedom involve such cases. [FN101] Moreover, such speech may be protected by the First Amendment or university grievance procedure. [FN102]

2. Correlative Duties of the Individual Faculty Member in the 1940 Statement

The 1940 statement also sets up a framework of norms concerning duties. [FN103] It provides that academic freedom "carries with it duties correlative with rights." [FN104] The phrase "duties correlative with rights" is left open-ended in the 1940 statement, listing several specific duties and mentioning two more general duties. [FN105] There is no indication the listing is exhaustive on the concept of "duty."

The statement does define several specific duties. With respect to the right of academic freedom in research, the 1940 statement provides that such freedom is granted "subject to the adequate performance of their other academic duties." [FN106] It also imposes a duty that "research for pecuniary return should be based upon an understanding with the authorities of the institution." [FN107] With respect to the right of academic freedom in teaching students, the 1940 statement imposes a specific duty that teachers "should be careful not to introduce into their teaching controversial matter which has no relation to their subject." [FN108] With respect to the right of academic freedom for extramural utterances, the 1940 statement includes a specific duty that professors "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 they are not speaking for the institution." [FN109] In the contemporaneous interpretation of the 1940 statement, administrators are given permission to file charges, if "the extramural utterances of the teacher have been ***635** such as to raise grave doubts concerning the teacher's fitness for his or her position." [FN110]

Describing more general correlative obligations, the 1940 statement provides that tenured professors may be dismissed for "adequate cause," which may include "charges of incompetence" or reasons "involving moral turpitude." [FN111] These two general duties of professional competence and ethical conduct, referred to in passing in the text of the 1940 statement, are not further defined in the text of the 1940 statement or the contemporaneous interpretation. They only partially define the elements of the open-ended term "duties" correlative with rights used in the 1940 statement.

A number of other AAUP statements and scholarly commentaries help clarify the

definition of "duties correlative with rights" in the 1940 statement. It is critical first to visualize the framework of norms for the individual professor in the 1940 statement.

1. Rights of Academic Freedom

- a) Research
- b) Teaching
- c) Intramural Utterance Relating to the Education of Students or Involving

Critical Inquiry

- c) Extramural Utterance

2. Correlative "Duties" of the Individual Faculty Member. The 1940 statement does not exhaustively define the open-ended term "duties." It lists several specific duties and mentions two general duties.

- a) Duties Relating to Research, Teaching, and Intramural Utterance

i) Specific Duties

1) Professors must provide "adequate performance of their other academic duties" (meaning professors cannot neglect assigned duties of teaching and service)

2) Research for pecuniary gain should be based upon an understanding with the authorities of the institution.

3) Teachers should be careful not to introduce into their teaching controversial material that has no relation to their subject.

ii) General Duties

- 1) Professional competence.

- 2) Ethical conduct.

***636** b) Duties Relating to Extramural Utterance. Speech as a citizen is to be free of institutional censorship or discipline but subject to "special obligations." Teachers speaking as citizens should:

i) at all times be accurate;

ii) exercise appropriate restraint;

iii) show respect for the opinions of others; and

iv) make every effort to indicate that they are not speaking for the institution.

The most important statement further clarifying the meaning of "duties correlative with rights" is the 1970 AAUP Interpretive Comments for the 1940 Statement.

The Association of American Colleges [now the AACU] and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in their exercise of their responsibilities to the institution and to students, and in their conduct when resigning from the institution or when undertaking government-sponsored research. Of particular relevance is the Statement on Professional Ethics, adopted in 1966 as Association policy. [\[FN112\]](#)

The AAUP's 1970 Interpretive Comments for the 1940 Statement recognize "special responsibilities" incumbent on members of the academic profession. [\[FN113\]](#) These "special responsibilities" themselves are further defined by reference to the AAUP's major policy statements, particularly the 1966 Statement of Professional Ethics, which also recognizes the "special responsibilities" placed on members of the profession. [\[FN114\]](#)

In this framework, other major AAUP policy statements and academic tradition give more precise definition to the 1940 statement's general duties of professional competence and ethical conduct in teaching, research, intramural utterance, and extramural utterance. What defines academic tradition? The AAUP is the one association whose mission for over eighty-five years has focused on the rights and corresponding duties of academic freedom for the entire academic profession, not just one discipline. However, a number of the disciplinary associations in more recent decades have also sought to formulate codes of ethics or standards of professional conduct. Some disciplines have comprehensive codes of ethics. [\[FN115\]](#) Some have statements that touch on only a few areas like sexual harassment and discrimination. ***637** [\[FN116\]](#) There is strong agreement on principles of conduct between the AAUP documents and the disciplinary codes of ethics and among the disciplinary codes themselves. This indicates the existence of a commonly understood

academic tradition. There is also scholarly commentary on the rights and responsibilities of academic freedom, and significant consensus within this scholarship supports the existence of a commonly understood academic tradition.

The discussion to follow is sometimes quite technical, but close analysis is necessary to define clearly the outer limits of professional academic freedom. Vagueness in this area will chill speech that actually serves the university's mission. If a principle of professional conduct appears in several sources defining academic tradition, the essay discusses each of them. This may seem redundant, but the source of a principle of conduct and the number of times the principle is articulated indicate its strength in academic tradition.

a. Further Definition of the General Duty of Professional Competence.

The academic profession has struggled in the effort to define the duties of professional competence. The 1940 statement refers to incompetence and moral turpitude in the discussion of termination for cause, but in a procedural context and without elaboration. [\[FN117\]](#) It also refers to the duty to provide ***638** "adequate performance of their other academic duties." [\[FN118\]](#) This is neglect of assigned duties of teaching and service. In 1958, the joint AAC-AAUP Statement on Procedural Standards in Faculty Dismissal Proceedings acknowledged that

one persistent source of difficulty is the definition of adequate cause for the dismissal of a faculty member[C]onsiderable ambiguity and misunderstanding persist throughout higher education ... concerning this matter. The present statement assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal, bearing in mind the 1940 statement and standards which have developed in the experience of academic institutions. [\[FN119\]](#)

Since the 1940 statement gives such modest guidance, it is the developed academic tradition of duties in higher education that provides the definition of professional competence.

The 1970 Interpretive Comments for the 1940 Statement specifically refer to the AAUP's 1966 Statement on Professional Ethics to define a professor's "special responsibilities." [\[FN120\]](#) The AAUP's 1966 Statement on Professional Ethics begins, "Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed on them." [\[FN121\]](#) The Statement defines professional competence for professors to include the following special responsibilities: "to seek and to state the truth as they see it;" to "devote their energies to developing and improving their scholarly competence;" "to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge;" to "practice intellectual honesty;" to "hold before students the best scholarly and ethical standards of their discipline;" to "ensure that their evaluations of students reflect each student's true merit;" to acknowledge academic debt; "to acknowledge significant academic or scholarly assistance from [students];" to "seek above all to be effective teachers and scholars;" to "accept their share of faculty responsibilities for the governance of their institutions;" and to "observe the stated regulations of the institution, provided that the regulations do not contravene academic freedom." [\[FN122\]](#) The 1966 statement does not further define "effectiveness" as a scholar and teacher, "scholarly competence," "best scholarly standard," the exercise of "critical self-discipline and judgment in using, extending, and transmitting knowledge," or "intellectual honesty."

***639** The 1915 declaration, from which the 1940 statement's concept of a correlative duty of professional competence is drawn, lends some help. It provides that academic freedom for teaching may only be asserted by "those who carry on their work in the temper of the scientific inquirer." [\[FN123\]](#) Academic freedom for a scholar's conclusions "is conditioned by their [sic] being conclusions gained by a scholar's method and held in a scholar's spirit." [\[FN124\]](#) The 1915 declaration further defines the phrases "temper of the scientific inquirer," "a scholar's method," and "a scholar's spirit" to mean that conclusions must: (1) be the fruit of "competent and patient and sincere inquiry;" and (2) especially on controversial matters, be the product of "fair" deliberation where the divergent opinions of other

investigators are "set forth justly, without suppression or innuendo." [FN125] Richard Hofstadter and Walter Metzger, examining the development of academic freedom in the United States, describe these traditions incorporated into the 1915 declaration as "norms of neutrality and competence." [FN126]

In 1971, the AACU and the AAUP established a Commission on Academic Tenure in Higher Education to evaluate the operation of the tenure system in higher education. [FN127] The Commission reported its views which were officially adopted by the AAC and the AAUP in 1973. [FN128] The Commission found that a professor must demonstrate teaching effectiveness, scholarly competence and promise, and academic citizenship at a professional standard determined by the faculty. [FN129] Academic tradition should guide the faculty in defining these standards. [FN130] The Commission defined "adequate cause" for dismissal as: (1) demonstrated incompetence or dishonesty in teaching or research; (2) substantial and manifest neglect of assigned duty; and (3) personal conduct that substantially impairs the individual's fulfillment of his or her institutional responsibilities. [FN131]

These principles of professional competence are easier to visualize when reorganized around duties in teaching, in internal governance, and in scholarship. In teaching, both the 1966 statement and the 1973 Commission Report require faculty members to be effective teachers. The 1966 statement further requires that faculty members, in teaching, hold before students the best scholarly and ethical standards of the discipline and ensure that their evaluations of students reflect each student's true merit, practice intellectual honesty, exercise critical self-discipline and judgment in transmitting knowledge, *640 and acknowledge academic debt. [FN132] The 1973 Commission Report provides that substantial and manifest neglect of assigned teaching duties would be adequate cause for dismissal. [FN133]

With respect to internal governance responsibilities of academic citizenship, the 1966 AAUP Statement in Professional Ethics requires that faculty members "accept their share of faculty responsibilities for the governance of their institution." [FN134] The 1973 AAUP/AAC Commission Report provides that a professor must demonstrate academic citizenship at a professional standard determined by the faculty. [FN135] A professor also cannot neglect assigned service duties.

Finally, both the 1966 AAUP Statement on Professional Ethics and the 1973 AAUP/AAC Commission Report require a professor to demonstrate competence in scholarship. The 1966 statement further provides that faculty members should: (1) devote their energies to improving their scholarly competence; (2) hold before students the best scholarly standards; (3) practice intellectual honesty; (4) exercise critical self-discipline and judgment in using, extending and transmitting knowledge; and (5) acknowledge academic *641 debt. [FN136] A Statement on Plagiarism, adopted during the AAUP's annual meeting in 1990, reaffirms that "professors must also be vigorously honest in acknowledging their academic debts." [FN137] In 1990, the AAUP's Committee B on Professional Ethics also urged that scholars involved in collaborative work explain forthrightly the respective contributions of each author. [FN138]

This is still not a complete definition of professional competence for a faculty member. The meanings of "best scholarly standards," "intellectual honesty," and "critical self-discipline and judgment" rest on common understandings of professional competence. A good example is the fabrication or falsification of evidence in teaching, research and intramural utterance.

Accuracy in the recording and use of evidence and nonfalsification are simply so fundamental as to be assumed in the common understanding of "intellectual honesty" and "best scholarly standards." [FN139] The major canon of academic work has been honest and accurate investigation, and the cardinal sin has been stating or presenting a falsehood. This includes omission of a fact so that what is stated or presented as a whole states or presents a false-hood. It also includes misrepresenting the strength of one's findings or credentials, plagiarism, or improper attribution of authorship. With respect to extramural utterance, where this duty was not so fundamental and clear, the 1940 statement does state that teachers speaking as citizens shall "at all times be accurate." [FN140] The standard of care

for the duty of accuracy is high. "'The price of exceptional freedom to speak the truth as one sees it,' Professor Van Alstyne astutely observes, 'is the cost of exceptional care in the representation of that "truth," a professional standard of care.'" [FN141]

There is, as former Harvard President Derek Bok has observed, a common definition of professional competence used to evaluate the academic work of faculty. [FN142] The common definition of professional competence can *642 be gleaned from the AAUP statements and the long tradition of the academic profession. A faculty member cannot neglect any of the responsibilities assigned by the university employer: teaching, research, and academic citizenship. In satisfying these duties, the faculty member must meet a professional standard defined by faculty, which in turn is guided by academic tradition. In all academic work, a faculty member must meet general duties of both practicing "intellectual honesty" and exercising "critical self-discipline and judgment in using, extending, and transmitting knowledge." [FN143] In teaching in particular, a professor is "to hold before students the best scholarly standards and ethical standards of the discipline." [FN144] This includes staying well informed about developments in the discipline. [FN145] The traditions of the profession further define intellectual honesty, critical self-discipline and judgment, and best scholarly standards:

1. to gather the evidence relevant to the issue at hand through thorough and painstaking inquiry and to preserve the evidence so that it is available to others;
2. to record the evidence accurately;
3. to show the evidence and methodology so that other investigators can replicate the research;
4. to set forth without misrepresentation or distortion the divergent evidence and propositions of other investigators;
5. to give careful and impartial consideration to the weight of the evidence;
6. to reason analytically from the evidence to the proposition;
7. to seek internal consistency;
8. to acknowledge when the evidence contradicts what the scholar and teacher had hoped to achieve;
9. to present evidence and analysis clearly and persuasively;
10. to be rigorously honest in acknowledging academic debt;
11. to correct in a timely way or withdraw work that is erroneous; and
12. to provide open access to the results of research conducted within the university. [FN146]

*644 In research, the faculty member must develop and improve scholarly competence. The tradition of the profession is that the faculty member is to use this competence to develop and improve some area of knowledge. In *Scholarship Reconsidered: Priorities of the Professoriate*, Ernest Boyer argues for a broader, more capacious understanding of scholarship. [FN147] The work of the professorate has four separate, yet overlapping functions: the scholarship of discovery; the scholarship of integration; the scholarship of application; and the scholarship of teaching. In *Scholarship Assessed: Evaluation of the Professoriate*, the Carnegie Foundation returns to the topic, proposing the following standards for scholarship.

1. Does the scholar identify important questions in the field?
2. Does the scholar adequately consider existing scholarship in the field?
3. Does the scholar use appropriate methodology recognized in the field? This includes the rules of evidence and the principles of logical reasoning.
4. Does the scholarship add consequentially to the field?; and
5. Does the scholar make an effective presentation of the work? [FN148]

In the 1940 statement, the AAUP articulated for professors exceptional vocational freedom to inquire, to teach, and to publish without lay interference. The principal price of this exceptional freedom is that professors must meet corresponding duties of professional competence in their academic work. [FN149]

b. Further Definition of the General Duty of Ethical Conduct.

In defining the open-ended term duties correlative with rights, the 1940 statement provides that tenured professors may be dismissed for "adequate cause," which may

include charges "involving moral turpitude." [FN150] The AAUP's "1970 Interpretive Comments" for the 1940 Statement provide that "moral turpitude" is "behavior that would evoke condemnation by the academic community generally." [FN151] The 1970 "Comments" also recognize special responsibilities incumbent on professors, particularly those in the AAUP's Statement on Professional Ethics. [FN152] The 1966 Statement on Professional *645 Ethics defines the general duty of ethical conduct for professors to include the following obligations: to "demonstrate respect for students as individuals" and to "adhere to their proper roles as intellectual guides and counselors;" to "make every reasonable effort to foster honest academic conduct;" to "respect the confidential nature of the relationship between professor and student;" to "avoid any exploitation, harassment, or discriminatory treatment of students;" not to discriminate against or to harass colleagues; "[i]n the exchange of criticism and ideas ... [to] show due respect for the opinions of others;" "to strive to be objective in their professional judgment of colleagues;" to defend the academic freedom of students and colleagues; to "avoid creating the impression of speaking or acting for their college or university;" not to permit outside interests to compromise their freedom of inquiry; to "give due regard to their paramount responsibilities within their institution in determining the amount and character of the work done outside it;" and to recognize the effect of their interruption or termination of service upon the academic program and to give due notice of their intentions. [FN153]

A 1970 statement by the AAUP's Council titled Freedom and Responsibility affirms several of these duties of ethical conduct. The 1970 statement provides that "membership in the academic community imposes on students, faculty members, administrators, and trustees an obligation" to do the following: "to respect the dignity of others;" "to acknowledge their right to express differing opinions;" "to foster and defend intellectual honesty;" not to express dissent or grievances in ways that "injure individuals or damage institutional facilities," disrupt classes or speeches, or "significantly impede the functions of the institution;" to provide "an atmosphere conducive to learning" with "even-handed treatment in all aspects of the teacher-student relationship;" not to force students "by the authority inherent in the instructional role to make particular personal choices as to political action or their own social behavior;" not "to intrude material that has no relation to the subject, or to fail to present the subject matter of the course as announced to the students and as approved by the faculty;" to base "[e] valuation of students and the award of credit" on "academic performance professionally judged and not on matters irrelevant to that performance, whether personality, race, religion, degree of political activism, or personal beliefs;" and to foster and defend the academic freedom of students and colleagues. [FN154]

The 1973 AAUP/AAC Commission Report on Academic Tenure in Higher Education also defined adequate cause for dismissal to include personal conduct that substantially impairs the faculty member's fulfillment of his or her *646 institutional responsibilities. This presumably includes conduct like the commission of felonies or conflicts of interest. [FN155]

The 1915 declaration urges professors to avoid conflicts of interest: "The proper discharge of [a professor's research, teaching, and public service] requires ... that the university teacher shall be exempt from any pecuniary nature or inducement to hold, or express, any conclusion which is not the genuine and uncolored product of his own study or that of fellow specialists." [FN156] The 1940 statement does not directly address the area of conflicts of interest except to state that "research for pecuniary return should be based upon an understanding with the authorities of the institution." [FN157] The 1966 AAUP Statement on Professional Ethics separates conflict of interest from conflict of commitment. On conflicts of interest, it provides that "[a]lthough professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry." [FN158] Regarding conflicts of commitment, the 1966 statement also asks that "[p]rofessors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it." [FN159]

In 1965, the AAUP and the American Council on Education developed a statement, On

Preventing Conflicts of Interest in Government-Sponsored Research at Universities. The statement cautions that,

[I]t is important to avoid actual or apparent conflicts of interest between government-sponsored university research obligations and outside interests and other obligations. Situations in or from which conflicts of interest may arise are:

a. the undertaking or orientation of the staff member's university research to serve the research needs of the private firm without disclosure of such undertaking or orientation to the university and to the sponsoring agency;

b. the purchase of major equipment, instruments, materials, or other items for university research from the private firm in which the staff member has the interest without disclosure of such interest;

*647 c. the transmission to the private firm or other use for personal gain of government-sponsored work products, results, materials, records, or information that are not made generally available ... [\[FN160\]](#)

In 1990, the AAUP's Committee B on Professional Ethics approved a more general Statement on Conflicts of Interest. [\[FN161\]](#) The statement urges university faculties to draw up conflict of interest guidelines with due regard for the proper disclosure of a faculty member's involvement in off-campus enterprises in terms of investment, ownership or consultative status, for the use of university personnel, including students, and for the disposition of potential profits. [\[FN162\]](#)

c. Further Definition of the General Duties of Individual Faculty Members Relating to Extramural Utterance.

The 1940 statement grants broad academic freedom for extramural utterance as a citizen subject to the "special obligations" of paragraph (c). Teachers speaking as a citizen should at all times be accurate; [\[FN163\]](#) exercise appropriate restraint; [\[FN164\]](#) show respect for the opinions of others; and make every effort to indicate that they are not speaking for the institution. [\[FN165\]](#) These special obligations relating to extramural utterance are subject to a lower standard of care than the general and specific correlative duties relating to teaching, research, and intramural utterance. [\[FN166\]](#) The contemporaneous interpretation to the 1940 statement specifies that administrators may file charges if "the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position." [\[FN167\]](#)

The 1964 Committee A Statement on Extramural Utterance basically restates paragraph (c) of the 1940 statement and the contemporaneous interpretation of the 1940 statement. [\[FN168\]](#) It adds that the burden of proof on the administration to demonstrate that particular extramural utterance shows *648 grave doubts concerning the teacher's fitness for his or her position is a heavy one: "Extramural utterances rarely bear on the faculty member's fitness for continuing service." [\[FN169\]](#) The administration carries the burden to make a clear demonstration with weighty evidence.

The AAUP also formerly published responses from the AAUP's Washington staff to letters of inquiry. The 1940 statement's injunction for faculty members to exercise "appropriate restraint" is defined to refer "solely to choice of language and to other aspects of the manner in which a statement is made. It does not refer to the substance of a teacher's remarks. It does not refer to the times and place of his utterance." [\[FN170\]](#) The staff cites with approval Professor Ralph Fuchs's statement that "'a violation [of academic responsibility] may consist of serious intemperateness of expression, intentional falsehood, incitement of misconduct, or conceivably some other impropriety of circumstance.'" [\[FN171\]](#)

Professor Matthew Finkin notes that the "special responsibilities" outlined in paragraph (c) of the 1940 statement subject extramural utterance to "a professional standard of care." [\[FN172\]](#) While true at a general level, this fails to recognize that the 1940 statement creates a different set of professional duties for extramural utterance than for teaching, research, and intramural utterance. The four correlative obligations of academic freedom for extramural utterance are lower than the correlative obligations of academic freedom for teaching, research, and

intramural utterance described earlier. [\[FN173\]](#) The four correlative obligations applicable to extramural utterance were a compromise between the AAUP and the AAC (now the AACU). One of the most controversial issues addressed in the 1940 statement was the AAC's desire to subject the extramural utterances of academics to institutional discipline. [\[FN174\]](#) The AAC insisted that faculty members reach a line of professional propriety long before they reached a boundary between legally protected speech and libelous, seditious, or obscene utterances. [\[FN175\]](#) The four correlative obligations for extramural utterance in paragraph (c) of the 1940 statement were the result of prolonged negotiation over these issues. [\[FN176\]](#)

***649** The grant of rights of academic freedom to extramural utterance was a major achievement in 1940. [\[FN177\]](#) The Supreme Court did not articulate a clear test to protect freedom of speech of those academics who were government employees until 1968 in *Pickering v. Board of Education*, [\[FN178\]](#) and ultimately restricted such protection only to speech of public concern subject to a balancing test against the employer's interest. Academics in public higher education can claim protection for extramural speech under both the Constitution and professional academic freedom. Rights under the latter doctrine are subject to satisfaction of the four correlative obligations. Academics in private higher education can assert only professional academic freedom, unless the institution grants additional rights.

3. Correlative Duties of the Faculty as a Collegial Body in the 1940 Statement

Professional academic freedom also imposes two correlative duties on the faculty as a collegial body: (1) the duty to determine when individual professors inadequately meet their responsibilities of professional competence and ethical conduct; and (2) the duty to foster and defend the academic freedom of colleagues. The 1940 statement briefly outlines the faculty's role in determining whether an individual professor has inadequately performed the correlative obligations of academic freedom. The statement provides that "service [of tenured teachers] should be terminated only for adequate cause Termination for cause of a continuous appointment ... should, if possible, be considered by both a faculty committee and the governing board of the institution." [\[FN179\]](#) The AAUP's 1970 Interpretive Comments for the 1940 Statement adds that "[a] further specification of the academic due process to which the teacher is entitled ... is contained in the Statement on Procedural ***650** Standards in Faculty Dismissal Proceedings." [\[FN180\]](#) The 1958 AAC (now the AACU)/AAUP Statement of Procedural Standards in Faculty Dismissal Proceedings urges that "[t]he faculty must be willing to recommend the dismissal of a colleague when necessary." [\[FN181\]](#)

The 1915 declaration on which the 1940 statement builds sets forth a clearer understanding of the correlative duty of the faculty, as a collegial body, to determine when individual professors inadequately meet their responsibilities. The faculty must acquire "the capacity for impersonal judgment in such cases, and for judicial severity when the occasion requires it." [\[FN182\]](#) The 1915 declaration exhorts the profession to be willing "to purge its ranks of the incompetent and the unworthy," and "to prevent ... [academic] freedom ... from being used as a shelter for inefficiency, for superficiality, or for uncritical and intemperate partisanship." [\[FN183\]](#)

With respect to competency, specifically, the AAUP's Committee A in 1946 reported:

[T]he position of the Association [AAUP] is clear: far from protecting the incompetent, it welcomes and facilitates their elimination from the profession The Association ... accepts the principle that institutions of higher education are conducted for the common good, and the common good demands competence. But in order that incompetents may be eliminated, and incompetents only, the Association insists upon two things: The first is that department heads, deans, and personnel committees shall be honest and courageous in their duty of detecting and eliminating the incompetent during the period of probation The second thing is that when an established teacher is accused of incompetence, he shall frankly be charged with it, given a hearing with due process, and retained or dismissed on the findings. [\[FN184\]](#)

In 1963, Committee A of the AAUP attempted to develop the meaning of paragraph (c) of the 1940 Statement on extramural utterance in terms of "academic responsibility." The Committee stated that academic freedom can endure only if it is matched by academic responsibility, but that academic responsibility is very difficult to define. [FN185] While the primary source of a decent level of academic responsibility will always be the individual conscience, "[a] university faculty and administration have a legitimate interest in the maintenance of proper standards of faculty responsibility on the part of all *651 members of the academic community." [FN186] For a judgment as to the line between expression of views and improper acts, "recourse should be had in the first instance to a committee of the faculty. Both traditionally and practically, it is the duty and within the particular competence of the faculty to make the distinction and to recommend any appropriate action." [FN187] "The policy of permitting disciplinary action to be initiated by the administration is not likely to result in impairment of free utterance by faculty members if under established academic traditions and procedures the initial and primary judgment of an accused individual's action rests with his colleagues." [FN188]

Similarly, the AAUP's 1966 Statement on Professional Ethics provides that the individual institution of higher education assures the integrity of members of the profession. "[T]he individual institution ... should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group." [FN189]

The 1966 statement also states a duty of ethical conduct to foster and defend the academic freedom of students and colleagues. [FN190] The 1970 AAUP Council's Statement on Freedom and Responsibility also emphasizes in three places the faculty's duty as a collegial body to defend academic freedom and to uphold it by its own action. [FN191] The Council urged faculties, during a period of zealotry, to assume a more positive role as guardian of academic values against unjustified assaults from its own members. The traditional faculty function in disciplinary proceedings has been to ensure academic due process and meaningful faculty participation in the imposition of discipline by the administration. While this function should be maintained, faculties should recognize their stake in promoting adherence to norms essential to the academic enterprise. [FN192]

The 1973 report on faculty tenure by the joint AAC (now the AACU)/ AAUP Commission on Academic Tenure again emphasizes the theme of faculty responsibility to ensure that standards of competence and ethical conduct are met: "The faculty of the institution ... must be the source for the *652 definition and clarification of standards of professional conduct and must take the lead in ensuring that these standards are enforced." [FN193] The Commission noted that during the late 1960's assaults upon academic freedom from within the institution by or with the toleration of members of faculties themselves have gone unpunished. "In this situation there is a special urgency for faculties to accept their full corporate responsibility for the integrity of the profession. That responsibility cannot be avoided, it should not be assumed by others, and it must be fulfilled." [FN194]

Finally, in 1998, the AAUP's Committee B on Professional Ethics approved a statement, On the Duty of Faculty Members to Speak Out on Misconduct. [FN195] The AAUP Council remanded the proposal to be redrafted to require individual institutions to formulate rules for reporting misconduct. [FN196] The original statement urged that when a professor has reason to believe that a faculty colleague has violated standards of professional behavior, the professor should take the initiative to inquire about or to protest against apparently unethical conduct. [FN197] The statement emphasized that the obligation to speak out is rooted in two considerations: (1) the common good, which is higher education's purpose, is best served "when members of the academic profession effectively regulate their own affairs;" and (2) "faculty members are members of a profession, and as such should guard their own standards of professional behavior." [FN198] By calling attention to abuses of those standards, "faculty members promote adherence to norms essential to maintaining the integrity and autonomy of the academic profession." [FN199] Our tradition of peer review, the linchpin of academic freedom, requires a faculty member who has reasonable evidence of misconduct to act. [FN200]

IV. CONCLUSION

The unwritten social compact between the academic profession and the society is that the profession, and each member in it, have agreed to contribute to the creation and dissemination of knowledge, to maintain high standards of ethical conduct and performance, and to restrain self-interest. In return, the governing boards, acting as surrogates for the society, grant the profession substantial autonomy to govern itself through peer review. In our academic tradition, peer review is the linchpin for academic freedom, tenure and shared governance.

***653** Peer review rests on an assumption that there exists a collegium of peers in each department and faculty who are committed to academic tradition and the social compact and who in fact achieve both a peer culture of high aspiration and adequate self-supervision to prevent misconduct. Do peer collegia of high aspiration and effective peer supervision commonly exist in our colleges and universities?

Scholarship on the degree to which effective peer collegia currently exist in the academic profession and on how a strong peer culture is developed and maintained is thin. How is the collective conscience of a peer collegium developed and maintained? Professors Braxton and Bayer conclude that in higher education, "The social mechanisms of inviolable and admonitory norm internalization are not known." [FN201] They propose a wide ranging research agenda to investigate how norms in teaching are formed and maintained. [FN202]

The data that do exist point towards a significant weakness in many peer cultures. Faculty members, in a 1993 Acadia Institute survey of 2000 professors in chemistry, civil engineering, microbiology, and sociology, reported substantial differences between their espoused values and the actual practice in their departments. [FN203] In principle, 74% of the faculty respondents believed that they and their colleagues should exercise, to a great extent, collective responsibility for the conduct of their graduate students, "but only 27[%] judge that they and their departmental colleagues actually manifest to a great extent their shared responsibility for their students' professional ethical conduct." [FN204] Only 55% of the faculty respondents believed that they should, to a great extent, exercise responsibility for the conduct of their colleagues, but "just 13[%] judge that faculty in their department exercise a great deal of shared responsibility for their colleagues' conduct, whereas 30[%] hold that there is very little or no manifestation of collegial responsibility." [FN205] The authors conclude, "[o]ur survey data, and statements by faculty and graduate students whom we have interviewed, challenge the idea that faculty actually practice an ethic of collective governance." [FN206]

From their extensive study of faculty members in chemistry, civil engineering, microbiology and sociology, Swazey, Louis, and Anderson found that the culture of the academic profession everywhere emphasizes personal autonomy. [FN207] Professors John Braxton and Alan Bayer also hypothesize that ***654** faculty who place a high value on autonomy believe that collegial and administrative interventions for teaching misconduct should be avoided. [FN208] Swazey, Lewis, and Anderson conclude that personal autonomy takes strong precedence over a norm of collegial self-governance. [FN209]

Collegial self-governance occurs principally at the department and faculty (or research center) levels. What could departments and faculties do to improve the ethics of aspiration and the ethics of duty for individual faculty members and the peer collegium? Professors Braxton and Bayer, looking to control theory, hypothesize that:

[S]ources of social control that induce conformity to social norms are at the individual, the primary group, the community, and the institutional levels. Deviance from social norms occurs when such sources of control are not strong enough to induce conformity. The strength of such sources of control is indexed in the clarity and magnitude of normative expectations communicated by these sources.

For academic professionals, personal sources of control are indexed in the extent to which the normative expectations of teaching are internalized by the

individual academic professional. Primary group controls for academics emanate from their academic departments, community controls stem from the academic discipline, and institutional controls spring from the college or university of appointment. [FN210]

Looking at the available evidence, they conclude that:

[S]ocial rather than personal controls exert the greatest degree of influence. By extension, the academic department, the academic discipline, and the institution of employment wield more influence on individual faculty compliance with normative expectations of teaching than individual norm internalization. Consequently, teaching misconduct obtains when pressure for normative conformity is weak at the level of the academic department, the academic discipline, and the college or university of employment. [FN211]

***655** Based on the survey of 2000 faculty and 2000 graduate students mentioned earlier, Professor Melissa Anderson finds that the most critical correlates of misconduct are likely to be found at the departmental level. [FN212] Professors Pamela Luft and Robert Sprague, focusing on systems theory and human error theory, suggest that organizationally preexisting and predisposing conditions or characteristics play a substantial role in scientific misconduct. [FN213] They propose that research centers and departments focus on organizational culture as an important component of a preventive strategy to deal with misconduct. [FN214]

How to foster both the individual conscience of each faculty member and the collective conscience of the peer collegium regarding the correlative duties of academic freedom? Two common sense strategies would be: (1) for the peer collegium at the department or faculty (or research center) levels to agree on clear principles of professional conduct and (2) for the peer collegium to engage in ongoing education and peer discussion about academic tradition, academic freedom, the corresponding duties of academic freedom, peer review, and shared governance. Optimally, this would be through peer discussion of ethical dilemmas. University senates can play an important role in encouraging and supporting these efforts.

It is critical that individual faculty members and the peer collegium itself in each department or faculty understand the policies and codes governing ethical conduct. This is not presently the case. Based on the survey of 2000 faculty and graduate students noted earlier, Melissa Anderson reports that about one-half of the faculty respondents reported familiarity with the university's and the discipline's policies on research misconduct. [FN215] "About 55[%] of faculty respondents agreed strongly that faculty have a collective responsibility for their peers' conduct ..." [FN216] In the same study, 35% of the graduate students reported that they receive a lot of support from one or two people in their department to teach the details of good research practice. [FN217] Mentoring of graduate students on the ethics of the profession is inadequate.

Professor Melissa Anderson finds a correlation indicating that

[D]epartments whose faculty are, on the whole, knowledgeable about policies tend also to be departments whose faculty as a group feel a collective responsibility for peer and student behavior.

... [D]epartments that exhibit strong commitment to the traditional norms and a strong sense of community are significantly less likely to ***656** expose faculty and students to misconduct or to engender expectations of retaliation. [FN218]

She adds that, "Finally, there is a positive relationship between how familiar a department's faculty members are with relevant institutional and disciplinary policies and their sense of responsibility for colleagues' and peers' conduct." [FN219]

Almost thirty years ago, the Commission on Academic Tenure in Higher Education created by the AAUP and college administrators in the AAC urged faculties to consider and discuss the adoption of a faculty statement on professional conduct. [FN220] The Commission recommended that "The faculty of the institution ... must be the source for the definition and clarification of standards of professional conduct and must take the lead in ensuring that these standards are enforced." [FN221]

The Commission further specified:

The Commission believes that faculties should be authorized and encouraged to develop codes of professional conduct for the guidance of their members and as a basis for sanctions against those whose conduct falls below professional norms. Such codes should reflect the broad precepts embodied in such existing formulations as the 1940 Statement of Principles and the 1966 Statement of Professional Ethics and should attempt to articulate the traditional sentiments of academic persons as to the demands of their calling The very effort to provide a statement of professional standards will serve to dramatize the faculty's own responsibility for its integrity and that of the institution.

The Commission recommends that the faculty of each institution assume responsibility for developing a code of faculty conduct and procedures and sanctions for faculty self-discipline, for recommending adoption of the code by the institution's governing board, and for making effective use of the code when it has been approved. [\[FN222\]](#)

Both President Emeritus Kerr, and earlier Professor Eric Ashby, urge faculties to adopt a "declared professional code of practice" to address the problem of a disintegrating profession. [\[FN223\]](#) Professors Braxton and Bayer urge adoption of a formal code of teaching conduct. [\[FN224\]](#) A professional code of *657 practice should include what conduct mentioned in the code would be grounds for sanction, the specific sanctions to be applied, and the procedures to be followed for each type of sanction. The faculty should give clear notice of what is prohibited and how violations will be punished. In all sanctioning efforts, faculty judgment should play the critical role in the context of clearly defined procedural protections. [\[FN225\]](#)

The faculty's consideration of a code of professional conduct is itself educational. The debate that occurs during the drafting and adoption of standards will help individual professors and the collegial group understand the correlative duties of academic freedom. The faculty could revisit the statement at regular intervals to consider its effectiveness and possible amendment.

In drafting a code of professional conduct, the faculty can build on the work of others. The Appendix to this essay summarizes the principles of professional conduct gleaned from academic tradition. Some of the disciplinary associations have also drafted comprehensive codes of ethics. These codes match up closely with the principles presented in the Appendix. A few disciplinary associations have a mechanism for enforcement of their codes, [\[FN226\]](#) but the large majority of such codes leave enforcement to the individual institution. It would be highly beneficial both for the academic profession, and for the faculty as a whole at each college or university, if each department (or faculty and research center) gave special attention to the principles of professional conduct that cut across the disciplines.

A code of ethics cannot provide a detailed description of every possible type of misconduct. As Professor P.A. Wagner observes, "The point of a code of ethics is not to tell the professional what to do in each and every instance; but to draw his or her attention generally to the most important moral considerations." [\[FN227\]](#)

Some scholars interpret the need for a code of ethics as a sign that implicit understandings no longer work, and thus that the profession is declining in coherence and vitality. [\[FN228\]](#) Our sister professions of law and medicine have long had accessible national codes of ethics for members of the profession. The benefits of a code of ethics for all professors that cuts across the disciplines are several: (1) It will remind graduate students and faculty members that they are members of an academic profession with a long and rich tradition, not just of a discipline; and (2) It will educate and reassure the public that their interests are served and that the institutions and the faculty can be trusted. [\[FN229\]](#)

*658 Having a code of ethics and achieving a peer culture of both high aspiration and effective compliance are two different things. Professor Anderson's research found that only about half of the faculty in disciplines that had a code of ethics were familiar with the code. [\[FN230\]](#)

The legal profession discovered over thirty years ago that having a code of ethics and relying on mentors are not sufficient to maintain professional tradition and ethics. There must be an effective means of both socializing novitiates into the profession and engaging veteran professionals on ethical issues in professional life. For the past thirty years, the consensus in the legal profession has been that all law students should take a professional ethics course. Many law schools offer additional ethics engagements in seminars, clinics or a pervasive approach where ethics is part of every course. Some states require continuing legal education that has an ethics component. This is still insufficient to maintain and develop the tradition and special moral responsibilities of the legal profession, especially in the face of the culture's current excessive celebration of the market and the reduction of all relationships to service provider and customer. At least the legal profession is making a significant effort at socializing new and veteran professionals.

The most effective corrective for the academic profession is to design educational programs on professional conduct and shared governance for all professors within each department or faculty (research center). Many faculty members have not had any significant grounding in the tradition of academic freedom and its corresponding obligations. They are socialized into a discipline, not into the academic profession. As a result, they poorly understand the traditions of the profession. [FN231] Professor Keetji Ramo concludes: "The professoriate has yet to find an effective, universal means through which to systematically imbue in its future and neophyte members a sense of academic culture that cuts across disciplinary lines, and part of the problem is our own failure to identify with the professoriate as a professional culture." [FN232] The objective of educational programs on professional conduct and shared governance is to help develop both an inner-directed ethic within each faculty member, and a peer culture of high aspiration regarding professional ideals and informal but direct collegial pressure concerning compliance with minimum standards.

Formal charges, adjudication, judicial severity and litigation should be rarely necessary. Fostering such educational programs is a strong preventive law approach to governing board and administrative frustration with faculty members who present competence or ethical conduct problems. A widely *659 shared understanding of a proper role in shared governance should also contribute greatly to timely and effective decision-making.

The most successful strategy to teaching research ethics in the sciences and professional ethics in the law schools has been a problem-oriented approach. Teaching methodology and subject matter are closely related in professional ethics. The method of instruction should build the skills that academic ethics, a peer review system, and shared governance require. The participants discussing a problem should see themselves as the peer collegium trying to solve the problem. The discussion should develop the following skills of academic ethics and shared governance: 1) Recognizing ethical and shared governance issues in professional contexts; 2) Analyzing a problem based on the traditions and ethics of the profession; and 3) As a peer group, discussing, questioning, disagreeing with civility, and formulating group standards, strategy and consensus.

Discussion of academic ethics and shared governance problems should focus both on the ethics of duty and the ethics of aspiration. The ethics of duty define the floor below which conduct merits discipline. On these issues, there is a trend in the profession to look just to the law to define the floor rather than to include also the traditions and ethics of the profession, the role of peer review, and peer culture.

The ethics of aspiration focus on the question, "In this situation, to what do we aspire as individual academics and as an academic community?" Discussion helps to form a supportive peer culture of high aspiration. After discussion of each problem, the participants should take votes on courses of action in order to experience how a peer review system works.

It is clear in the AAUP tradition that the professorate must educate itself and the public about the unwritten social compact, the benefits of academic freedom, and its corresponding obligations. The 1966 Statement on Professional Ethics ends by emphasizing that, "As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom." [FN233] This education must renew the social compact in each generation.

Professor John Bennett reminds us that effective peer review is the linchpin of the social compact and academic freedom.

Those who argue against external regulation of the academy must rest their case squarely upon the appropriateness and efficacy of faculty and institutional self-regulation by peers. This self-regulation is not easy and the fragility of the peer review mechanism is the Achilles heel of personal and institutional independence. When peer review fails, other agencies will take its place. [FN234]

***660** The 1915 declaration also ends by calling the profession to remember its pledge to society,

It is, in short, not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession, that is asserted by this declaration of principles. It is conceivable that our profession may prove unworthy of its high calling, and unfit to exercise the responsibilities that belong to it. But it will scarcely be said as yet to have given evidence of such unfitness. And the existence of this Association, as it seems to your committee, must be construed as a pledge, not only that the profession will earnestly guard those liberties without which it cannot rightly render its distinctive and indispensable service to society, but also that it will with equal earnestness seek to maintain such standards of professional character, and of scientific integrity and competency, as shall make it a fit instrument for that service. [FN235]

The university serving its mission of seeking, discovering, and disseminating knowledge is one of humankind's most remarkable achievements. One of the greatest contributions each member of the profession can make is to remember the principles upon which the university and the profession rest, and publicly to defend those principles.

***661** APPENDIX

SUMMARY OF PRINCIPLES OF PROFESSIONAL CONDUCT

The following summary uses dark type to identify the framework of principles in the 1940 AAUP Statement of Principles on Academic Freedom and Tenure, and italics to identify the clarification added by the 1966 AAUP Statement on Professional Ethics. Sources for other principles are indicated in parentheses.

- I. Rights of Academic Freedom Relating to:
 - A. Research
 - B. Teaching
 - C. Intramural Utterance Relating to the Education of Students or
Involving Critical Inquiry
 - D. Extramural Utterance
- II. Correlative "Duties" of the Individual Faculty Member. The 1940 Statement does not exhaustively define the open-ended term "duties." It lists

several specific duties and mentions two general duties.

A. Duties Relating to Research, Teaching, and Intramural Utterance

1. Specific Duties

- a. Teachers are entitled to full freedom in research ..., subject to the adequate performance of their other academic duties.
- b. Research for pecuniary gain should be based upon an understanding with the authorities of the institution.
- c. Teachers should be careful not to introduce into their teaching controversial material that has no relation to their subject. [Also in 1970 AAUP Statement on Freedom and Responsibility.]

2. General Duty of Professional Competence

a. In Teaching

- i. "As members of an academic institution, professors seek above all to be effective teachers and scholars." [FN236]
- ii. In teaching, a faculty member:
 - holds before students the best scholarly and ethical standards of the discipline;
 - ensures that the evaluation of students reflects each student's true merit;
 - exercises critical self-discipline and judgment in using, extending, and transmitting

knowledge; and
- practices intellectual
honesty.

iii. In teaching, a faculty member must base evaluation of students and award of credit on "academic performance professionally judged, and not on matters irrelevant to that performance, whether personality, race, religion, degree of personal activism or personal beliefs." [Freedom and Responsibility]

iv. Substantial and manifest neglect of assigned teaching duties would be adequate cause for dismissal (or by implication, lesser sanctions). (1973 A.C./AAUP Report of the Commission on Academic Tenure in Higher Education). [FN237]

b. In Internal Governance or Academic Citizenship

i. "As colleagues, professors have obligations that derive from common membership in the community of scholars."

ii. Faculty members must "accept their share of faculty responsibilities for the governance of their institution."

iii. A professor must demonstrate academic citizenship at a professional standard determined by the faculty. A professor cannot neglect assigned service duties [1973 A.C./AAUP Report of the Commission on Academic Tenure]

c. In Scholarship

i. "Professors' primary responsibility to their subject is to seek and to state the truth ..."

ii. Professors devote their energies to developing and improving their scholarly competence.

iii. "As members of an academic institution, professors seek above all to be effective teachers and scholars."

iv. Professors should "devote their energies to developing and improving their scholarly

competence."

v. A faculty member should:

- hold before students the best scholarly standards;
- practice intellectual honesty;
- exercise critical self-discipline and judgment in using, extending and transmitting knowledge;
- acknowledge significant academic or scholarly assistance from students; and
- acknowledge academic debt.

[A 1990 AAUP Statement on Plagiarism urges that professors must be rigorously honest in acknowledging academic debt, and a 1990 AAUP committee B statement urges that scholars involved in collaborative work explain forthrightly the respective contributions of each.]

vi. In research, a faculty member must develop and improve his or her scholarly competence. Academic tradition is that the

faculty member is to use this competence to develop and improve the account of some area of knowledge. In *Scholarship Reconsidered: Priorities of the Professoriate* (1990), Ernest Boyer argues for a broader, more capacious understanding of scholarship. The work of the professoriate has four separate, yet overlapping functions: the scholarship of discovery; the scholarship of integration; the scholarship of application; and the scholarship of teaching. In *Scholarship Assessed: Evaluation of the Professoriate* (1997), the Carnegie Foundation returns to the topic, proposing the following standards for a scholarship.

- Does the scholar identify important questions in the field?
- Does the scholar adequately consider existing scholarship in the field?

- Does the scholar use appropriate methodology recognized in the field? This includes the rules of evidence and the principles of logical reasoning.
- Does the scholarship add consequentially to the field?; and
- Does the scholar make an effective presentation of the work?

vii. The 1966 statement urges devotion of energy to "developing and improving scholarly competence," "critical self-discipline and judgment in using, extending, and transmitting knowledge," "intellectual honesty," "the best scholarly standards," and contribution as an "effective scholar." The 1915 declaration emphasizes both the importance of painstaking and thorough inquiry and the prohibition against misrepresentation or distortion of others' work. The meanings of these phrases rest on common

understandings of professional competence. Accuracy in the recording and use of evidence and nonfalsification are simply so fundamental as to be assumed in the common understanding of "intellectual honesty" and "best scholarly standards." The major canon of academic work has been honest and accurate investigation, and the cardinal sin has been stating or presenting a falsehood. This includes omission of a fact so that what is stated or presented as a whole states or presents a falsehood. It also includes misrepresentation of the strength of one's findings or credentials, plagiarism, and improper attribution of authorship. With respect to extramural utterance, where this duty was not so fundamental and clear, the 1940 statement does state that teachers speaking as citizens shall "at all

times be accurate."

- vii- In all academic work, a
 - i. faculty member must meet general duties of both practicing "intellectual

honesty" and exercising

"critical self-discipline and judgment in using, extending, and transmitting knowledge." In teaching in particular, a professor is "to hold before students the best scholarly standards and ethical standards of the discipline." The traditions of the profession further define intellectual honesty, critical self-discipline and judgment, and best scholarly standards to include the following duties of inquiry and argument:

- to gather the evidence relevant to the issue at hand through thorough and painstaking inquiry [1915 declaration] and to preserve the evidence so that it is available to

others;

- to record the evidence accurately;
- to show the evidence and methodology so that other investigators can replicate the research;
- to set forth without misrepresentation or distortion the divergent evidence and propositions of other investigators [1915 declaration];
- to give careful and impartial consideration to the weight of the evidence;
- to reason analytically from the evidence to the proposition;
- to seek internal consistency;
- to acknowledge when the evidence contradicts what the scholar and teacher had hoped to achieve;
- to present evidence and analysis clearly and persuasively;
- to be rigorously honest in acknowledging academic debt; and
- to correct in a timely

manner or withdraw work
that is erroneous.

- d. In Teaching, Internal Governance or Academic
Citizenship and Scholarship
"....[P]rofessors observe the stated regulations
of the institution, provided the regulations
do not contravene academic freedom ...'"

3. General Duty of Ethical Conduct.

The 1970

Interpretive
Comments for
the 1940
statement
define moral
turpitude as
"behavior
that would
evoke
condemnation
by the
academic
community
generally."

a. Duties to Students:

- i. to demonstrate respect for
students as individuals and
to adhere to their proper
roles as intellectual
guides and counselors;
- ii. to make every reasonable
effort to foster honest
academic conduct;

- ii. to respect the confidential nature of the relationship between professor and student;
- iv. to avoid any exploitation, harassment, or discriminatory treatment of students;
- v. to protect the academic freedom of students;
- vi. to provide an atmosphere "conducive to learning with evenhanded treatment in all aspects of the teacher-student relationship" [1970 AAUP Statement, Freedom and Responsibility];
- vii. not to force students "by the authority inherent in the instructional role to make particular personal choices as to political action or their own part in society." [Freedom and Responsibility];

b. Duties to professional colleagues

- i. not to discriminate against or to harass colleagues;
- ii. to strive to be objective in professional judgment of colleagues;

- iii. to defend the free inquiry of
colleagues; [FN238]
- c. General duties to the academic community:
 - i. In the exchange of criticism
and ideas, to show due
respect for the opinions of
others;
 - ii. to respect the dignity of
others [Freedom and
Responsibility];
 - iii. to acknowledge their right to
express differing opinions
[Freedom and
Responsibility];
 - iv. not to express dissent or
grievances in ways:
 - that disrupt classes or
speeches
 - that significantly impede
the functions of the
institution [Freedom and
Responsibility]
 - v. not to engage in personal
conduct that substantially
impairs the faculty
member's fulfillment of his
or her institutional
responsibilities [1973
AAUP/A.C. Commission Report
on Academic Tenure];

d.

Duties relating to conflicts of commitment:

- i. to reach an understanding

with the authorities of the institution regarding research for pecuniary return;

ii. to give due regard to the faculty member's paramount responsibilities within the institution in determining the amount and character of the work done outside it;

iii. to recognize the effect of their interruption or termination of service upon the academic program and give due notice of their intentions.

e.

Duties

i. to practice intellectual honesty, particularly not relating to conflicts of interest: permitting outside or subsidiary interests to compromise or hamper freedom of inquiry;

ii. to avoid actual or apparent conflicts of interest between government-sponsored university research obligations and outside interests or other obligations [AAUP Statement on Preventing Conflicts of Interest on

Government-Sponsored
Research at Universities].

B.

Duties Relating to Extramural Utterance. Speech as a citizen is to be free of institutional censorship or discipline but subject to "special obligations." Teachers speaking as citizens should:

1.

at all times be accurate;

2.

exercise appropriate restraint;

The AAUP also occasionally publishes responses from the AAUP's Washington staff to letters of inquiry. The 1940 Statement's injunction for faculty members to exercise "appropriate restraint" is defined to refer "solely to choice of language and to other aspects of the manner in which a statement is made. It does not refer to the substance of a teacher's remarks. It does not refer to the time and place of his utterance." The staff cites with approval Professor Ralph Fuchs's statement that "a violation [of academic responsibility] may consist of serious intemperateness of expression, intentional falsehood offered as a statement of fact, incitement of misconduct, or conceivably some other impropriety of circumstance."

3.

show respect for the opinions of others; and

4.

make every effort to indicate that they are not speaking for the institution [to avoid creating the impression of speaking or acting for the university.]

III. Correlative Duties of the Faculty as a Collegial Body

"Termination for cause of a continuous appointment ... should if possible, be considered by both a faculty committee and the governing

board of the institution."

The faculty has the following duties:

1. to determine in the first instance when individual professors inadequately equately meet their responsibilities of professional competence and ethical conduct [1940 statement, 1970 Interpretive Comments, and 1958 AAUP/AAC Statement on Procedural Standards in Faculty Dismissal Proceedings];
2. to be the source for the definition and clarification of standards of professional conduct and to take the lead in ensuring that these standards are enforced [1973 AAUP/A.C. Commission on Tenure];
3. to distinguish "honest error" that peers consider within the range of competent and ethical inquiry;
4. to respect and defend the free inquiry of colleagues;
5. to assume a more positive role as guardian of academic values against unjustified assaults on academic freedom from within the faculty itself [1970 AAUP Statement on Freedom and Responsibility];
6. to be honest and courageous in their duty to detect and eliminate the incompetent during the period of probation [AAUP Committee A];
7. to strive to be objective in professional judgment of colleagues;
8. if faculty members have reason to believe a colleague has violated standards of professional conduct, to take some initiative to inquire about and to protest against apparently unethical conduct [1998 AAUP Committee B].
9. to draw up conflict of interest guidelines, with due regard for the proper disclosure of a faculty member's involvement in off-campus enterprises, including the use of university personnel, property, and the disposition of potential profits [1990 AAUP Committee B].

10. recognizing the particular obligation of professors as citizens engaged in a profession that depends upon freedom for its health and integrity, to promote conditions of free inquiry and to further public understanding of academic freedom.
11. to create a peer culture of high aspiration with respect to the ideals of the profession.

[FNal]. Trustees Professor of Law, William Mitchell College of Law. The themes in this essay will be developed further in PROBLEMS AND MATERIALS ON PROFESSIONAL CONDUCT AND SHARED GOVERNANCE IN HIGHER EDUCATION (ACE/Oryx, forthcoming in 2001). I owe a debt of gratitude to the scholars who commented on earlier drafts of the essay: Prof. John Bailar III, Prof. Robert Bellah, Prof. Clark Byse, Prof. Richard Chait, President George Dennison, Dr. Mark Frankel, Prof. Paul Gross, Prof. Oscar Handlin, Prof. Thomas Haskell, President Nils Hasselmo, Professor and former President Donald Kennedy, Prof. Nelson Yuan-skeng Kiang, Prof. Mary Lefkowitz, Prof. Michael Olivas, Prof. Robert O'Neil, Prof. Russell Pannier, Dean David Rabban, Dr. Judith Swazey, Dr. Cathy Trower, and Prof. William Van Alstyne. I made a number of revisions based on these comments; all remaining errors are my own. I also wish to thank William Mitchell College of Law for its sabbatical support in the spring of 2000, and the Earhart Foundation for its research support in the spring and summer of 2000. Cal Bode and Linda Thorstad also provided valuable assistance. I am not speaking for either organization in this essay. Some of the ideas in this essay are taken from my earlier book, ZEALOTRY AND ACADEMIC FREEDOM (1995).

[FN1]. ELIOT KRAUSE, DEATH OF THE GUILDS 281 (1996).

[FN2]. See Neil Hamilton, Are We Speaking the Same Language? Comparing AAUP & AGB, LIBERAL EDUC., Fall 1999, at 24.

[FN3]. See ASSOCIATION OF GOVERNING BOARD OF UNIVERSITIES AND COLLEGES, AGB STATEMENT ON INSTITUTIONAL GOVERNANCE (Nov. 8, 1998), <http://www.agb.org/governance.cfm>.

[FN4]. See CLARK KERR, HIGHER EDUCATION CANNOT ESCAPE HISTORY: ISSUES FOR THE TWENTY-FIRST CENTURY 135, 149 (1999).

[FN5]. See Stephen F. Barker, What is a Profession?, 1 PROF. ETHICS 73 (1992). There are other definitions of a profession. Professor Herbert Kritzer notes that there are at least three definitions. See Herbert Kritzer, The Professions Are Dead, Long Live the Professions, 33 L. & SOC'Y REV. 713, 716- 18 (1999). The "lay definition" is essentially synonymous with "occupation" and is distinguished primarily by means of its antonym, "amateur." See id. at 716. Thus in lay parlance a profession includes firefighting, plumbing, management, and medicine insofar as the professional performs a particular line of work to make a living and is committed to a set of standards. Id. The "historical definition" of a profession involves the creation and recognition of trained expertise and recognition of merit made not by the open market but by the judgment of similarly educated experts. See id. at 716-17. The sociological definition of a profession goes beyond the historical definition by limiting recognition to those occupations that combine both exclusivity (for example through licensing) and the application of abstract

knowledge. See *id.* at 717-18. Kritzer adds that "[p]rofessions in the sociological sense have further distinguished themselves by adding notions of altruism, regulatory autonomy through peer review processes, and autonomy vis-a-vis the service recipient." *Id.* at 717.

Professor Barker lists six possible definitions of "profession," but focuses on a seventh approach that emphasizes the etymology of the term as it came to be used to describe the original learned professions coming out of the late medieval universities. This essay examines the continuing development in the United States of the tradition that Professor Barker references, focusing upon the academic profession. See Barker, *supra*, at 84-87.

[FN6]. See *id.* There exists an unwritten social compact among the public, the university, and the professorate. In exchange for new knowledge, the education of students to become informed leaders and citizens, and the contribution of expert and professional skills and training to community issues, the public supports the university and the professorate, contributes to their finance, accepts their professional judgment and scholarly certification, and grants a unique degree of institutional autonomy and scholarly freedom. In fulfilling the compact, the university and the professorate have reciprocal obligations for the cultivation of advanced knowledge, impartial scholarship, the highest professional competence and integrity, love of learning among their students, and a sensitivity towards the need for their services in the society at large. See THE GLION COLLOQUIUM, THE GLION DECLARATION: THE UNIVERSITY AT THE MILLENIUM 4-5 (1998).

[FN7]. See R. Aarne Vesilind, The Responsible Conduct of Academic Research, in THE ACADEMIC'S HANDBOOK 104, 109-10 (A. Leigh DeNeef & Craufurd Goodwin eds., 2d ed. 1995).

[FN8]. Henry Rosovsky & Inge-Lise Ameer, A Neglected Topic: Professional Conduct of College and University Teachers, in UNIVERSITIES AND THEIR LEADERSHIP 121 (William Bowen & Harold Shapiro eds., 1998).

[FN9]. This essay uses as synonyms the following terms: "duties correlative with rights" (from the 1940 Statement), "correlative duties," "corresponding duties" (from the 1915 Declaration), "correlative obligations" (from the 1915 Declaration), and "special responsibilities" (from the 1970 Interpretation of the 1940 Statement and the 1966 Statement on Professional Ethics).

[FN10]. See RICHARD DE GEORGE, ACADEMIC FREEDOM AND TENURE: ETHICAL ISSUES ix (1997).

[FN11]. See *infra* note 59 and accompanying text.

[FN12]. DE GEORGE, *supra* note 10, at 113.

[FN13]. AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, THE ROLE AND ACTIVITIES OF SCIENTIFIC SOCIETIES IN PROMOTING RESEARCH INTEGRITY 1 (2000).

[FN14]. See *id.* at 1-2.

[FN15]. See *id.* at 3.

[FN16]. See *id.*

[FN17]. *Id.* at 6.

[FN18]. See *id.* at 12-13.

[FN19]. See JONATHAN RAUCH, *KINDLY INQUISITORS* 45 (1993); Mario V. Llosa, *The Importance of Karl Popper*, *ACAD. QUESTIONS*, Winter 1991-92, at 16.

[FN20]. See RAUCH, *supra* note 19, at 46.

[FN21]. John R. Searle, *Rationality and Realism, What is at Stake*, in RICHARD DE GEORGE, *ACADEMIC FREEDOM AND TENURE? ETHICAL ISSUES* 200 (1993).

[FN22]. *Id.*

[FN23]. See *id.*

[FN24]. See RAUCH, *supra* note 19, at 116-17; Thomas L. Haskell, *Justifying the Rights of Academic Freedom in the Era of Power/Knowledge*, in *THE FUTURE OF ACADEMIC FREEDOM* 47, 63 (Louis Menand ed., 1996). The professorate's demand for professional academic freedom developed during the nineteenth century as higher education shifted its focus from essentially religious and moral training for the elite professions to a much broader intellectual inquiry based on the premise that trained reason, principally through the scientific method, could grasp the essentials of human activity and advance human welfare. As Georgetown law professor Byrne notes, this endeavor presupposes:

a progressive conception of knowledge. Understanding at any one moment is imperfect, and defects can be exposed by testing hypotheses against reality, through either adducing new data or experimentation. The process of hypothesis-experimentation-new hypothesis improves knowledge and brings us closer to a complete, more nearly objective truth about the world. Error is not dangerous so long as the process is continued, because acknowledged means will expose it; in fact, it [error] is actually beneficial (and inevitable) as part of progressive discovery The process of theory, dispute, and experiment, rather than producing anxiety about the continuity of the community, is celebrated as intrinsic to the pursuit of truth.

J. Peter Byrne, *Academic Freedom: A Special Concern of the First Amendment*, 99 *YALE L.J.* 251, 273-75 (1989) (quoting ROBERT M. MACIVER, *ACADEMIC FREEDOM IN OUR TIME* 4-5 (1955)). This awareness of the possibility of error and fallibility does not mean that knowledge is unattainable, but that, to reach it, one must always be ready to reexamine and correct one's view and to tolerate those who contest established knowledge.

[FN25]. A research ethics textbook published by the National Academy of Sciences concludes:

The object of research is to extend human knowledge of the physical, biological, or social world beyond what is already known. But an individual's knowledge properly enters the domain of science only after it is presented to others in such a fashion that they can independently judge its validity Throughout this continuum of discussion and deliberation the ideas of individuals are collectively judged, sorted, and selectively incorporated into the consensual but ever evolving scientific worldview. In the process, individual knowledge is gradually converted into generally accepted knowledge.

COMMITTEE ON SCIENCE, ENGINEERING AND PUBLIC POLICY, NATIONAL ACADEMY OF SCIENCES, ON BEING A SCIENTIST: RESPONSIBLE CONDUCT IN RESEARCH 3 (2d ed. 1994).

In the liberal intellectual system, all knowledge claims are revisable. "Scientific results are inherently provisional. Scientists can never prove conclusively that they have described some aspect of the natural or physical world with complete accuracy." *Id.* at 15. Our confidence in a knowledge claim grows as it is subjected to criticism and testing.

Frederick Grinnell explains:

[A]t every step of the process, researchers continually reshape their work to anticipate and respond to the criticisms that they expect to receive from their peers. Only when others validate the observations--often modifying them at the same time--will the new work become widely accepted. Objectivity is embedded in the group, not the individual

Returning to the analogy of the baseball umpire, it should now be clear that in the everyday practice of science, individual researchers call things as they see them. Calling things as they are is reserved for scientists acting collectively, and even those calls are tentative. That is, scientists are satisfied with credibility in the present, deferring truth for the future.

Frederick Grinnell, *The Practice of Science at the Edge of Knowledge*, CHRON. OF HIGHER ED., Mar. 24, 2000, at B11-12.

Analyzing John Dewey's work, Professor Thomas Bender observes that, Dewey did not expect to arrive at universal reason, at absolute truth. His truths would be contextual, specific to time and place, always experimental, rooted in history but continually refined, reduced of their subjectivities through the process of public discussion.

If Dewey developed a philosophical anthropology that accepted historical contingency and uncertainty, he did not thereby embrace subjectivity. He acknowledged the difference that social position produced in politics and philosophical outlook. He granted a role to interest and difference. But if he never denied the inevitability of subjectivity, his aim was always the reduction of subjectivity in the forming of public truths Dewey did not offer the prospect of permanent truth, nor even rational certitude. What his participatory community of truth makers may achieve is a reasoned truth. Such truth will not be objective in any absolute sense, although the content it implies will at once accommodate interest and reduce subjectivity. What he proposes for us is the possibility of ever more secure but never completely secure truths.

THOMAS BENDER, *INTELLECT AND PUBLIC LIFE: ESSAYS ON THE SOCIAL HISTORY OF ACADEMIC INTELLECTUALS IN THE UNITED STATES* 139 (1993).

[FN26]. RAUCH, *supra* note 19, at 116.

[FN27]. See *id.* at 68-70; see also Byrne, *supra* note 24, at 268-69. "The modern university ... is the true child of the Enlightenment. At its core stands the rational scientific pursuit of knowledge The value of cognitive rationality, as Talcott Parsons pointed out sometime ago, provides the modern university with its autonomy." Brigget Berger, *The Idea of the University*, 58 *PARTISAN REV.* 315, 328 (1991).

[FN28]. See John R. Searle, *Two Concepts of Academic Freedom*, in *THE CONCEPT OF ACADEMIC FREEDOM* 86, 88 (Edmund Pincoffs ed., 1972). Thomas L. Haskell observes that "communities of the competent" formed in the late 1800's in history, chemistry, engineering, and other fields, and that these communities were the seed crystals around which the modern university formed. See Haskell, *supra* note 24, at 42-43. Defending their authority to make knowledge claims is what academic freedom is about. *Id.*

[FN29]. Byrne, *supra* note 24, at 258.

[FN30]. See *id.* at 258-59.

[FN31]. See *id.* at 259. Edward Shils notes that "[t]he range of 'reasonable disagreement' is the range over which academic freedom entitles individual academics to be free to investigate." EDWARD SHILS, *THE ORDER OF LEARNING* 218 (1997).

[FN32]. See Byrne, *supra* note 24, at 275.

[FN33]. See *id.* at 268-69.

[FN34]. See NEIL W. HAMILTON, *ZEALOTRY AND ACADEMIC FREEDOM* 9-14 (1995).

[FN35]. See *id.* at 196.

[FN36]. Error is inevitable in an intellectual system where even generally accepted knowledge claims may be proven wrong by future research. Errors arising from the responsible and reasonable best practice of the discipline are accepted.

Even the most responsible scientist can make an honest mistake

Mistakes made through negligent work are treated more harshly. Haste, carelessness, inattention, or any number of faults--can lead to work that does not meet the standards demanded in science

....

Beyond honest errors and errors caused through negligence are a third category of errors: those that involve deception. Making up data (fabrication), changing or misreporting data or results (falsification); and using the ideas or words of another without giving appropriate credit (plagiarism)--all strike at the heart of the values on which science is based.

COMMITTEE ON SCIENCE, ENGINEERING, AND PUBLIC POLICY, NATIONAL ACADEMY OF SCIENCES, *ON BEING A SCIENTIST: RESPONSIBLE CONDUCT IN RESEARCH* 15-16 (2d ed. 1994). See Byrne, *supra* note 24, at 275-76; J. Peter Byrne, Racial Insults and Free Speech Within the University, 79 *GEORGETOWN L.J.* 399, 417 (1991); RICHARD HOFSTADTER & WALTER METZGER, *THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES* 364-66 (1955).

[FN37]. See HAMILTON, *supra* note 34, at 13-14.

[FN38]. See *id.*

[FN39]. See generally *id.* at 14, 163.

[FN40]. Thomas L. Haskell emphasizes that "[t]he cardinal principle of professional autonomy is collegial self-governance; its inescapable corollary is that only one's peers are competent to judge one's performance." Haskell, *supra* note 24, at 46.

Historically speaking, the heart and soul of academic freedom lie not in free speech but in professional autonomy and collegial self-governance. Academic freedom came into being as a defense of the disciplinary community (or, more exactly, the university conceived as an ensemble of such communities), and if it is to do the work we expect of it, it must continue to be at bottom a denial that anyone outside the community is fully competent to pass judgment on matters falling within the community's domain.

Id. at 54.

Professor Thomas Bender adds that,

Neither the AEA [American Economic Association] in the 1890s nor, for that matter, the American Association of University Professors (AAUP) in 1915 stood

forthrightly for the freedom to express radical or controversial views. The real issue for them both was professorial, not civic or intellectual. They defended expertise in its proper arena, and they strenuously asserted that academic peers, not trustees of universities, were the only legitimate judges of academic performance.

THOMAS BENDER, INTELLECT AND PUBLIC LIFE 61 (1993).

Professor Rebecca Eisenberg emphasizes that the authors of the 1915 declaration did not argue for unqualified professional autonomy, to the contrary, the authors warned that the only way to preserve freedom from lay interference is through a system of accountability to professional peers. See Rebecca Eisenberg, Academic Freedom and Academic Values in Sponsored Research, 66 TEX. L. REV. 1363, 1366-67 (1988).

Professor David Rabban stresses the same point,

Standards of scholarly inquiry and professional ethics define the extent to which academic freedom protects individual autonomy. The traditional conception makes faculty peers primarily responsible for applying these limiting standards. But it also advises administrators and governing boards to monitor the faculty peers and overrule their substantive decisions when there are compelling grounds for concluding that the peers themselves have departed from professional standards of judgment.

David Rabban, Does Academic Freedom Limit Faculty Autonomy?, 66 TEX. L. REV. 1405, 1407-08 (1988).

[FN41]. 354 U.S. 234 (1957).

[FN42]. 391 U.S. 563 (1968).

[FN43]. See HAMILTON, *supra* note 34, at 195-96.

[FN44]. For a full discussion of these differences, see HAMILTON, *supra* note 34, at 187-227.

[FN45]. Christine Licata, Post-Tenure Review: National Trends, Questions and Concerns, 24 INNOVATIVE HIGHER EDUC. 5, 7 (1999).

[FN46]. *Id.* at 7; see *id.* at 7-9.

[FN47]. Christine Licata, Precepts For Post-Tenure Reviews, TRUSTEESHIP, Dec. 1999, at 8.

[FN48]. See Cheryl Sternman Rule, After the Big Decision: Post-Tenure Review Analyzed, in POLICIES ON FACULTY APPOINTMENT 180, 180 (Cathy Trower ed., 2000).

[FN49]. See *id.*

[FN50]. Licata, Post-Tenure Review, *supra* note 45, at 10.

[FN51]. Licata, Precepts for Post-Tenure Review, *supra* note 47, at 13.

[FN52]. See Judith Swazey et al., Ethical Problems in Academic Research, AMERICAN SCIENTIST, Nov.-Dec. 1993, at 542, 549.

[FN53]. See id.

[FN54]. See id.

[FN55]. William Van Alstyne, *The Specific Theory of Academic Freedom and the General Issue of Liberty*, in *THE CONCEPT OF ACADEMIC FREEDOM* 59, 76 (Edmund Pincoffs ed., 1972) (emphasis added).

[FN56]. See Fritz Machlup, *On Some Misconceptions Concerning Academic Freedom*, in *ACADEMIC FREEDOM AND TENURE* app. B 177, 189 (Louis Joughin ed., 1969).

[FN57]. Walter Metzger, *Academic Freedom in America*, reprinted in *COMMISSION ON ACADEMIC TENURE IN HIGHER EDUCATION, FACULTY TENURE* 93, 143-44 (1973).

[FN58]. See id.

[FN59]. American Association of University Professors, *The 1915 General Declaration of Principles*, reprinted in *ACADEMIC FREEDOM AND TENURE* app. A 155, 170 (Lewis Joughin ed., 1969) [hereinafter AAUP, 1915 Declaration].

[FN60]. The rights of professional academic freedom established in the AAUP statements are also adjudicated in individual cases. See HAMILTON, *supra* note 34, at 262 n.38. The AAUP receives approximately 800-1000 complaints each year alleging violations of the rights of academic freedom. See id. The AAUP undertakes formal investigation only on those complaints that the AAUP's general secretary believes involve a prima facie denial of academic freedom. See id. In the event an investigation is made, ultimately an ad hoc investigating committee prepares a report that is submitted to the Association's Committee A. See id. These reports do not constitute a coordinated and systematic body of common law similar to that of a judicial tribunal. See id. Each report is an elaborate factual presentation by a different ad hoc committee, and there is no practice of citing prior cases as precedent. See id. The university or college administration may or may not participate in the investigation. See id. There is no trial-type hearing. See id.

The AAUP's docket has been overwhelmingly dominated by extramural or intramural utterance cases. Cases involving "conflicts over personal pride and prejudices, and charges of hierarchic insubordination and co-worker friction have outnumbered disputes involving the content of teaching or research." See id. The principal grievance in nearly all of these extramural or intramural utterance cases is the failure of the administration or lay governing board to follow procedural due process in putting the decision to recommend appropriate action in the first instance to a committee of the faculty. See American Association of University Professors, *Report of Committee A, ACADEME*, Sept.- Oct. 1993, at 36, 41; Thomas I. Emerson & David Haber, *Academic Freedom of the Faculty Member as Citizen*, 28 *LAW & CONTEMP. PROBS.* 525, 535 (1963); American Association of University Professors, *1943 Report of Committee A*, 28 *AAUP BULL.* 15-17 (1943); Walter Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 *TEX. L. REV.* 1265, 1276 (1988).

[FN61]. In the AAUP tradition, different weight is accorded different statements depending upon the method by which the statement was adopted. Weight is accorded in the following order: (1) statements jointly adopted by the AAUP and the American Association of Colleges (the AAC is now the American Association of College and Universities); (2) statements adopted by the annual meeting of the AAUP; (3)

statements of the AAUP council; and (4) statements adopted by an AAUP Committee.

[FN62]. See Byrne, *supra* note 24, at 277; see also David M. Rabban, A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment, 53 LAW & CONTEMP. PROBS. 227, 232 (1990) [hereinafter Rabban, A Functional Analysis].

[FN63]. AAUP, 1915 Declaration, *supra* note 59, at 158.

[FN64]. See *id.* at 160.

[FN65]. See *id.* at 163-64.

[FN66]. *Id.* at 162.

[FN67]. See *id.* at 162.

[FN68]. See *id.* at 163-65.

[FN69]. The 1915 Declaration does not define clearly the meaning of "extramural utterance." For example, does the term mean professional speech outside the walls of the university, in contrast to teaching inside the walls, or does it mean professional speech that is outside of a professor's disciplinary expertise? The 1915 Declaration sees teaching and extramural utterance as "closely related," and "often not distinguished." *Id.* at 158. This recognizes disciplinary expertise as a key element in both, thus extramural utterance would refer to the use of disciplinary expertise other than in teaching. However, extramural utterance has an importance of its own, since of late it has perhaps more frequently been the occasion of difficulties and controversies than has the question of freedom of intra-academic teaching. All five of the cases which have recently been investigated by committees of this Association have involved, at least as one factor, the right of university teachers to express their opinions freely outside the university or to engage in political activities in their capacity as citizens. *Id.* at 158 (emphasis added). This excerpt points toward the location of the speech outside the university as a key distinction. It also distinguishes expression of opinions outside the university from engaging in political activity as citizens. Presumably the expression of opinions refers to expert opinion. Later references in the 1915 declaration distinguish between purposes of the university "[t]o provide general instruction to the students" and "[t]o develop experts for the various branches of the public service," or "experts for the use of the community." *Id.* at 164-65. Consideration of all these together suggests that extramural utterance is intended to include: (1) speech that is both within disciplinary expertise and outside the walls, and (2) political activity as a citizen outside the walls.

This interpretation finds support in a final reference in the 1915 Declaration:

In their extramural utterances, it is obvious that academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression. But subject to these restraints, it is not, in the committee's opinion, desirable that scholars should be debarred from giving expression to their judgments upon controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialties. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest.

Id. at 172.

[FN70]. See *id.* at 162-63.

[FN71]. *Id.* at 168.

[FN72]. *Id.* at 168-69 (emphasis added).

[FN73]. See *id.* at 158.

[FN74]. *Id.* at 172 (emphasis added).

[FN75]. *Id.* at 169.

[FN76]. *Id.* at 169-70.

[FN77]. *Id.* at 170.

[FN78]. See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments, *ACADEME*, May-June 1990, at 37, reprinted in *POLICY DOCUMENTS & REPORTS 3* (8th ed. 1995) [hereinafter *AAUP*, 1940 Statement].

[FN79]. See Walter P. Metzger, The 1940 Statement of Principles on Academic Freedom and Tenure, 53 *LAW & CONTEMP. PROBS.* 3, 4 (1990).

[FN80]. See Selected Judicial Decisions and Scholarly Writings Referring to AAUP Standards, in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at app. I 257.

[FN81]. *AAUP*, 1940 Statement, *supra* note 78, at 3 (emphasis added). Note that the mission of higher education is to create and disseminate knowledge. Rights of academic freedom are granted to serve this mission. Dissemination of knowledge in higher education involves a unique kind of teaching that is closely related to knowledge creation but different from teaching in secondary education. The *AAUP*'s Statement on the Relationship of Faculty Governance to Academic Freedom provides that "good teaching requires developing a critical ability in one's students and an understanding of the methods for resolving disputes within the discipline." American Association of University Professors, *On the Relationship of Faculty Governance to Academic Freedom*, *ACADEME*, July- Aug. 1994, at 47, in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 186, 188.

Professor Eric Ashby calls this teaching the discipline of dissent. Eric Ashby, *A Hippocratic Oath for the Academic Profession*, *MINERVA*, Autumn/Winter 1968-69, at 65. The teaching of the discipline of dissent requires the student to become familiar with both what is already known about a subject, and how to question that orthodoxy. See *id.* Teaching develops in the student: (1) an understanding of first principles in a discipline(s); (2) a critical analytical ability; and (3) an understanding of the methods for resolving disputes within and among the disciplines. See *id.* It may be, Ashby concedes, that many university students never get further than becoming familiar with orthodoxy, but "what is important is that a university graduate should have watched his teacher exercising this attitude of scepticism [the discipline of dissent] toward the traditional and orthodox view." *Id.*

The 1915 Declaration also emphasizes that university instruction should seek "to habituate [students] to looking not only patiently but methodically on both sides

before adopting any conclusion upon controversial issues." AAUP, 1915 Declaration, supra note 59, at 170.

[FN82]. AAUP, 1940 Statement, supra note 78, at 3.

[FN83]. Id.

[FN84]. Id. at 4.

[FN85]. Id. at 5 (emphasis added).

[FN86]. Some scholars argue that paragraph (c) does grant rights of academic freedom to intramural speech other than teaching and research. See Matthew W. Finkin, "A Higher Order of Liberty in the Workplace": Academic Freedom and Tenure in the Vortex of Employment Practices and Law, 53 LAW & CONTEMP. PROBS. 357, 366-67 (1990) (stating that the 1940 statement gives freedom of speech on any matter of intramural concern due an officer of the institution as a member of a learned profession) [hereinafter Finkin, Higher Order].

[FN87]. See supra note 69 and accompanying text.

[FN88]. See Walter Metzger, The 1940 Statement of Principles on Academic Freedom and Tenure, in FREEDOM AND TENURE IN THE ACADEMY 3, 53 (William Van Alstyne ed., 1993).

[FN89]. Id. (quoting 1925 Statement of Principles on Academic Freedom, 18 AAUP BULL. 329, 330 (1932)).

[FN90]. Professor Matthew Finkin reads this history differently, arguing that the 1940 statement extends academic freedom to four activities: (1) teaching; (2) research and publication; (3) utterance as a citizen (which the Association later glossed as "extramural" but that was not intended to mean outside the walls of the institution, but rather outside the walls of purely professional utterance as teacher and researcher); and (4) speech as an "officer of an education institution." Matthew Finkin, Intramural Speech, Academic Freedom and the First Amendment, 66 TEX. L. REV. 1323 (1988); see also Letter from Professor Matthew Finkin to Neil Hamilton (July 17, 2000) (on file with the author). The actual words of the 1915 declaration define extramural utterance to include: (1) speech that is both within disciplinary expertise and outside the walls; and (2) political activities of a citizen outside the walls. The phrase "officer of an educational institution" does appear in paragraph (c) of the 1940 statement, but its inclusion seems intended to be a limitation on the rights of professors to speak as citizens, not a grant of rights of academic freedom to speech as an officer of the institution. The full text is:

(c) College and university teachers are citizens, members of a learned profession and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and the institution by their utterances. AAUP, 1940 Statement, supra note 78, at 4.

[FN91]. See David Rabban, Academic Freedom, Professionalism and Intramural Speech, NEW DIRECTIONS FOR HIGHER EDUC., Winter 1994, at 77, 81, 86 (arguing that intramural speech related to "critical inquiry" is protected by academic freedom).

[FN92]. See Finkin, *Higher Order*, supra note 86, at 377-78

[FN93]. See id.; see also Matthew Finkin, *Intramural Speech, Academic Freedom, and the First Amendment*, 66 TEX. L. REV. 1323, 1337 (1988). Finkin also argues that a narrow definition of academic freedom would encourage administrators to use unprotected, non-professional speech as a pretext for discipline when the real reason is the ideas expressed in teaching or research. See Finkin, *Intramural Speech, Academic Freedom, and the First Amendment*, supra, at 1344-45.

[FN94]. See Mark Yudof, *Intramural Musings on Academic Freedom: A Reply to Professor Finkin*, 66 TEX. L. REV. 1351, 1355-56 (1988).

[FN95]. See id. Professor Rabban agrees with Yudof, noting that the initial concerns of the committee drafting the 1915 declaration were that "academic freedom would lose its rationale if it were stretched to protect activities not performed in the course of professorial duty." See Rabban, supra note 91, at 80, 81, 84. Rabban also argues that "the more academic freedom is confined to its convincing justification, the greater the probability that academic decision makers and judges will take seriously the implications for academic freedom in close cases." Id. at 86.

[FN96]. See American Association of University Professors, *Statement on Government of College and Universities*, ACADEME, July-Aug. 1994, at 47, reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 179 [hereinafter AAUP, *Statement on Government*].

[FN97]. See id.

[FN98]. See Neil Hamilton, *Are We Speaking the Same Language? Comparing AAUP & AGB*, LIBERAL EDUC., Fall 1999, at 24, 29.

[FN99]. See id. at 27.

[FN100]. See id. One sentence of the 1966 Statement on Government refers to faculty members' rights in their role as citizens. Focusing on the sentence in paragraph (c) of the 1940 statement reading, "[C]ollege or university teachers are citizens, members of a learned profession, and officers of an educational institution," the 1966 Statement on Government asserts that "[t]he right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of the individual's own institution is part of that person's right as a citizen and should not be abridged by the institution. AAUP, *Statement on Government*, supra note 96, at 182 & n.2. Earlier discussion in this essay pointed out that paragraph (c) of the 1940 statement refers to extramural utterance (holding it to professional standards) not intramural utterance. See Rabban, supra note 91, at 83-84.

[FN101]. See Rabban, supra note 91, at 86.

[FN102]. See id. at 81.

[FN103]. Professor Metzger is uncertain whether the 1940 statement grants academic

freedom on the condition that the duties included in the statement are to be obeyed. The negotiations between the AAUP and the AAC over the duties were prolonged, volatile and acrimonious. The parties saw the duties as obligatory. See Walter Metzger, The Statement of Principles on Academic Freedom and Tenure, 53 LAW & CONTEMP. PROBS. 3, 9, 47, 59 (1990).

[FN104]. AAUP, 1940 Statement, supra note 80, at 3.

[FN105]. See id.

[FN106]. Id.

[FN107]. Id.

[FN108]. Id.

[FN109]. Id. at 4.

[FN110]. Id. at 5.

[FN111]. Id. at 4. "Moral turpitude" is used in the 1940 statement in the context that "[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." See id. at 4. It is clear that moral turpitude in this context is limited only to extreme violations of duties of ethical conduct. This is supported by the AAUP's 1970 Interpretive Comments for the 1940 statement, stating that the concept of "moral turpitude" applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay." Id. at 7. Thus, by implication, the duties of ethical conduct cover a spectrum from those duties whose violation is utterly blameworthy to those whose violation simply warrants discharge.

[FN112]. Id. at 5-6.

[FN113]. Id.

[FN114]. See id.

[FN115]. For example, among the most comprehensive codes are the following:
American Historical Association, Statement on Standards of Professional Conduct;
American Association of Law Schools, Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities;
American Political Science Association, A Guide to Professional Ethics in Political Service;
American Psychological Association, Ethical Principles of Psychologists and Code of Conduct; and
American Sociological Association, Code of Ethics.
Less comprehensive are the following:

American Chemical Society, Academic Professional Guidelines;
American Mathematical Society, Ethical Guidelines Drafted by the AMS Council;
and
American Physical Society, Statement on Integrity in Physics.

[FN116]. For example, the following disciplinary associations have standards of professional conduct only on some issues like harassment and discrimination, conflicts of interest, or graduate student rights:

American Philosophical Association;
Association of American Medical Colleges; and
Modern Language Association.

Some disciplinary associations, like the American Economics Association, have no statements on disciplinary ethics. Professors Braxton and Bayer note that in an earlier 1995 study of 62 professional academic associations, 36 had written ethics policies. Of these "Remarkably few ... contain any policy statements whatsoever (as regards to impropriety in) teaching. In contrast, more than one-half of the ethics policies address matters of authorship, conflict of interest, and responsibilities to society." JOHN BRAXTON & ALAN BAYER, FACULTY MISCONDUCT IN COLLEGIATE TEACHING 142 (1999). They note that several of the behavioral and social science professional associations have adopted more detailed codes of ethics. See *id.* at 140-46.

[FN117]. See AAUP, 1940 Statement, *supra* note 78, at 4.

[FN118]. *Id.* at 3.

[FN119]. American Association of University Professors, Statement on Procedural Standards in Faculty Dismissal Proceedings, *ACADEME*, May-June 1990, at 42, reprinted in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 11, 12 (1995).

[FN120]. See AAUP, 1940 Statement, *supra* note 78, at 5-6.

[FN121]. American Association of University Professors, Statement on Professional Ethics, *ACADEME*, July-Aug. 1987, at 49, reprinted in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 105, 105 [hereinafter AAUP, Professional Ethics].

[FN122]. AAUP, Professional Ethics, *supra* note 121, at 105-06.

[FN123]. AAUP, 1915 Declaration, *supra* note 59, at 168.

[FN124]. *Id.* at 169.

[FN125]. See *id.*

[FN126]. RICHARD HOFSTADTER & WALTER METZGER, *THE DEVELOPMENT OF ACADEMIC FREEDOM IN THE UNITED STATES* 410 (1955).

[FN127]. See COMMISSION ON ACADEMIC TENURE IN HIGHER EDUCATION, *FACULTY TENURE* ix, xi (1973) [hereinafter *FACULTY TENURE*].

[FN128]. See *id.*

[FN129]. See *id.* at 34-41.

[FN130]. See *id.* at 41, 44.

[FN131]. See *id.* at 75.

[FN132]. See AAUP, *Professional Ethics*, *supra* note 121, at 105. How to define "effective teaching" or the "best scholarly standards of the discipline" in teaching? The Canadian Society for Teaching and Learning has provided a more developed definition of effective teaching that includes:

1. Content Competence. A university teacher maintains a high level of subject matter knowledge and ensures that course content is current, accurate, representative, and appropriate to the position of the course within the student's program of studies.

2. Pedagogical Competence. A pedagogically competent teacher communicates the objectives of the course to students, is aware of alternative instructional methods or strategies, and selects methods of instruction that, according to research evidence (including personal and self-reflective research), are effective in helping students to achieve the course objectives

8. Valid Assessment of Students. Given the importance of assessment of students performance in university teaching and in students' lives and careers, instructors are responsible for taking adequate steps to ensure that assessment of students is valid, open, fair and congruent with course objectives.

Harry Murray et al., *Ethical Principles for College and University Teaching*, *NEW DIRECTIONS FOR TEACHING AND LEARNING*, Summer 1996, at 57, 57-58, 62.

Braxton and Bayer point out that few professional association codes of conduct contain policy statements regarding teaching. They analyze three that do, from the National Association of Biology Teachers, the American Psychological Association and the American Sociological Association. These codes agree with the principles in the AAUP documents and include also the principles reflected in the Canadian Society for Teaching and Learning statement of effective teaching. The National Association of Biology Teachers code adds that evaluations of students should be timely. See *BRAXTON & BAYER*, *supra* note 116, at 140-46.

[FN133]. What does the concept of assigned teaching duties include? It would include, for example, the following: teaching the course as described in the curriculum adopted by the faculty; meeting assigned courses at the designated times; being reasonably accessible to students outside of class; and meeting grading and other instructional deadlines set by the college or university.

[FN134]. AAUP, *Professional Ethics*, *supra* note 121, at 106.

[FN135]. See *FACULTY TENURE*, *supra* note 127, at 34-41.

[FN136]. See AAUP, *Professional Ethics*, *supra* note 121, at 105-66.

[FN137]. American Association of University Professors, *Statement on Plagiarism*, *ACADEME*, Sept.-Oct. 1989, at 47, reprinted in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 109.

[FN138]. See American Association of University Professors, *Statement on Multiple*

Authorship, ACADEME, Sept.-Oct. 1990, at 41, reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 121. In addition, the 1966 AAUP Statement on Professional Ethics provides that professors must acknowledge significant academic or scholarly assistance from students. See AAUP, Professional Ethics, supra note 121, at 107 (1995).

[FN139]. Fundamental to the academic profession is a belief in intellectual integrity. "As Clark noted, 'In the academic lexicon, knowledge must be handled honestly, for otherwise it misinforms and deceives, is no longer valuable in itself, and certainly of no use to society.'" WILLIAM TIERNEY & ROBERT RHOADS, FACULTY SOCIALIZATION AS CULTURAL PROCESS: A MIRROR OF INSTITUTIONAL COMMITMENT 12 (ASHE-ERIC Higher Education Report No. 6, 1993).

[FN140]. AAUP, 1940 Statement, supra note 78, at 5.

[FN141]. Rabban, A Functional Analysis, supra note 62, at 242 (quoting William Van Alstyne, The Specific Theory of Academic Freedom and the General Issue of Civil Liberty, in THE CONCEPT OF ACADEMIC FREEDOM 76 (Edmund Pincoffs ed., 1972)).

[FN142]. See Derek Bok, Universities: Their Temptations and Tensions, 18 J.C. & U.L. 1, 2 (1991). A recent report by a panel of the National Academy of Sciences stresses that scientists rely on an honor system based on tradition to safeguard the integrity of the research process. PANEL ON SCIENTIFIC RESPONSIBILITY AND THE CONDUCT OF RESEARCH, NATIONAL ACADEMY OF SCIENCES, RESPONSIBLE SCIENCE: ENSURING THE INTEGRITY OF THE RESEARCH PROCESS ix, 1 (1992) [hereinafter RESPONSIBLE SCIENCE].

[FN143]. AAUP, Professional Ethics, supra note 121, at 105.

[FN144]. Id.

[FN145]. See ERNEST BOYER, SCHOLARSHIP RECONSIDERED: PRIORITIES OF THE PROFESSORiate 27-28 (1990).

[FN146]. Clark Kerr, President Emeritus of the University of California, outlined the components of "the ethics of knowledge." The following actions are obligatory:

- the careful collection and use of evidence, including the search for "inconvenient facts," as in the process of attempted "falsification";
- the careful use of the ideas and work of others;
- the obligation to be skeptical of what is not fully proven;
- an openness to alternative explanations ...;
- civility in discourse, and reliance on persuasion rather than coercion;
- open access to the results of research conducted within the university ...;
- avoidance of drawing and advancing policy application unless the full range of considerations entering into the policy making has been the subject of the study Scholars should not go beyond their knowledge;
- separating personal evaluation, based on moral and political values, from the presentation of evidence and analysis; and as a corollary, making any personal evaluations explicit

Clark Kerr, Knowledge Ethics and the New Academic Culture, CHANGE, Jan./Feb. 1994, at 13.

Professor Martin Trow emphasizes the critical importance of the duty actively to search out and confront convenient facts and contrary opinion. "For example, a major function of quantification in the social sciences is that it embodies impersonal procedures that ensure the collection of negative as well as supporting evidence for whatever 'party opinion' we hold at the moment." Martin Trow, Higher Education and

Moral Development, AAUP BULL., Spring 1976, at 20, 23.

In *The Academic Ethic*, Professor Edward Shils emphasizes that a university teacher who proceeds without respect for evidence and argument "is committing the ultimate treason against the university. Systematic disciplined investigation is its life-blood." EDWARD SHILS, *THE ACADEMIC ETHIC* 102 (1983).

In *The Order of Learning*, Shils argues that a professor should undertake careful study, be open to sound evidence, adhere to disciplinary rules in using and assessing evidence, record observations honestly, distinguish among varying degrees of certainty with respect to the evidence, and be fair in representing the arguments of others. EDWARD SHILS, *THE ORDER OF LEARNING* 93, 248 (1997).

A panel of the National Academy of Sciences stresses that fabrication, falsification, or plagiarism are the cardinal sins of scientific misconduct. The integrity of the research process requires adherence "to honest and verifiable methods in proposing, performing, evaluating, and reporting research activities. The research process includes the construction of hypotheses; the development of experimental and theoretical paradigms; the collection, analysis and handling of data; the generation of new ideas, findings, and theories through experimentation and analysis; timely communication and publication; refinement of results through replication and extension of the original work; peer reviews; and the training and supervision of associates and students." RESPONSIBLE SCIENCE, *supra* note 142, at 17-18. The panel stresses also care in reporting data and adverse evidence. *Id.* at 37, 47-48.

John Braxton and Alan Bayer argue that there is a normative structure for the performance of research.

Merton (1942, 1973) described this normative structure as composed of four core patterns: commonality, disinterestedness, organized skepticism, and universalism. Commonality means that the research findings are the intellectual property of the research community. Scholars should, however, receive appropriate recognition for their contributions. Disinterestedness bars individuals from conducting research for personal or financial gain, merely to receive recognition, or simply to gain prestige. The desire to advance knowledge should be the primary motive for conducting research. Organized skepticism stipulates that research findings not be accepted without peer assessment based on empirical and logical criteria. Universalism prescribes that research be judged on the basis of merit and not particularistic criteria such as race, nationality, or social origin. BRAXTON & BAYER, *supra* note 116, at 5.

See generally (on the characteristics of scholarship) SEYMOUR MARTIN LIPSET, *REBELLION IN THE UNIVERSITY* 203-04, 208 (1976); J. Peter Byrne, Academic Freedom and Political Neutrality in Law Schools: An Essay on the Structure and Ideology in Professional Education, 43 J. LEGAL EDUC. 315, 322 (1993). Professor Stephen Carter urges that:

A principal focus of modern scholarship ... has been to assault the idea that one can evaluate anything without significant reference to one's own values. Okay, point taken, although this does not answer the question of what one should try to do. The knowledge that perfectly unbiased observation is impossible should instill in all of us a healthy degree of caution on the certainty of our rightness, but ... scholars should strive for dispassion.

Stephen Carter, Academic Tenure and "White Male" Standards: Some Lessons from the Patent Law, 100 YALE L.J. 2065, 2071 (1991) (emphasis added).

[FN147]. See ERNEST BOYER, *SCHOLARSHIP RECONSIDERED* 16-25 (1980).

[FN148]. CHARLES GLESSICK, ET AL., *SCHOLARSHIP ASSESSED: EVALUATION OF THE PROFESSORiate* 25-36 (1987).

[FN149]. See Rabban, *A Functional Analysis*, *supra* note 62, at 242; see also Matthew W. Finkin, Intramural Speech, Academic Freedom and the First Amendment, 66 TEX. L. REV. 1323, 1332 (1988); David M. Rabban, Does Academic Freedom Limit Faculty Autonomy?, 66 TEX. L. REV. 1405, 1409 (1988).

[FN150]. AAUP, 1940 Statement, supra note 78, at 4.

[FN151]. Id. at 7.

[FN152]. See id. at 5-6.

[FN153]. AAUP, Professional Ethics, supra note 121, at 105-06. The general duty to avoid any exploitation or harassment of students is emphasized in the American Association of University Professors, Statement on Sexual Harassment, ACADEME, July-Aug. 1995, at 62, reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 171 (prohibiting faculty member's use of institutional position to seek unwanted sexual relations with students or others vulnerable to the faculty member's authority).

[FN154]. American Association of University Professors, A Statement of the Association's Council: Freedom and Responsibility, 56 AAUP BULL. 375-76 (1970), reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 107, 107-08.

[FN155]. See FACULTY TENURE, supra note 127, at 75. There may be other duties of ethical conduct not listed in the 1966 or 1970 statements. For example, the Federal Commission on Research Integrity defined professional misconduct to include breaches of duties of confidentiality associated with review of manuscripts or grant applications, an intentional taking of or damage to the research-related property of another, obstruction of investigations of research misconduct, non-compliance with research regulations, and obstruction of the research of others (including making allegations of misconduct in reckless disregard of facts). See U.S. COMMISSION ON RESEARCH INTEGRITY, INTEGRITY AND MISCONDUCT IN RESEARCH 28-31 (1995).

[FN156]. AAUP, 1915 Declaration, supra note 59, at 162.

[FN157]. AAUP, 1940 Statement, supra note 78, at 3.

[FN158]. AAUP, Professional Ethics, supra note 121, at 105.

[FN159]. Id. at 106.

[FN160]. American Association of University Professors, On Preventing Conflicts of Interest in Government Sponsored Research of Universities, 51 AAUP BULL. 42 (1965), reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 116-18.

[FN161]. See American Association of University Professors, Statement on Conflicts of Interest, ACADEME, Sept.-Oct. 1990, at 40, reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 119-20.

[FN162]. See id.

[FN163]. The 1915 Statement provided that in extramural utterances, the university teacher was under a "peculiar obligation" to avoid hasty or exaggerated statements. See AAUP, 1915 Declaration, supra note 59, at 172.

[FN164]. The 1915 Statement also directed teachers "to refrain from intemperate or sensational modes of expression." Id.

[FN165]. See AAUP, 1940 Statement, supra note 78, at 4.

[FN166]. If intramural speech is related to the education of students, critical inquiry, or shared governance under the 1966 Statement on Government, then it is subject to the same higher professional standard as teaching and research.

[FN167]. AAUP, 1940 Statement, supra note 78, at 5.

[FN168]. See American Association of University Professors, Committee A Statement on Extramural Utterances, 51 AAUP BULL. 29 (1965), reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 32.

[FN169]. Id.

[FN170]. American Association of University Professors, Advisory Letters from the Washington Office, 49 AAUP BULL. 393 (1963).

[FN171]. Id.

[FN172]. See Finkin, Higher Order, supra note 86, at 366-67.

[FN173]. See earlier discussion of correlative duties for teaching, research, and intramural utterance. See supra notes 117-62 and accompanying text. By implication, if the correlative duties of academic freedom for extramural speech include the duties: (1) to be accurate at all times; (2) to exercise appropriate restraint; and (3) to show respect for the opinions of others, the correlative duties of professional competence and ethical conduct in teaching, research, and intramural utterance include these.

[FN174]. Walter Metzger, The 1940 Statement of Principles on Academic Freedom and Tenure, 53 LAW & CONTEMP. PROBS. 3, 51 (1990).

[FN175]. See id.

[FN176]. See id.

[FN177]. Professor William Van Alstyne has argued that the AAUP's extension of the protection of professional academic freedom to extramural utterance was a mistake. One of his reasons is that attaching a claim for protection of academic freedom to extramural utterance implies a duty of accountability by "academic" standards for such speech. "The result ... is that the individual so situated is rendered less free in respect to his nonprofessional pursuits than others." William Van Alstyne, Reply to Comments, in THE CONCEPT OF ACADEMIC FREEDOM 127 (Edmund Pincoffs ed., 1972). This argument misses the point. While it is true that all citizens can exercise their First Amendment rights without coercion by government, private

employers can fire them for doing so unless the speech relates to whistleblowing, harassment or discrimination claims, or some other subset of speech protected by statute. Professional academic freedom protection for professors' extramural utterance protects faculty members at private universities from adverse employment consequences for speech that an employer does not like. As Van Alstyne has argued elsewhere, such exceptional vocational freedom to speak the truth as one sees it and without penalty for its immediate impact upon the economic well-being of the employing institution, is the cost of exceptional care in the representation of that "truth," a professional standard of care. See William Van Alstyne, *The Specific Theory of Academic Freedom and the General Issue of Civil Liberty*, in *THE CONCEPT OF ACADEMIC FREEDOM* 76 (Edmund Pincoffs ed., 1972). The tradeoff of rights and correlative duty for extramural speech seems reasonable.

[FN178]. 391 U.S. 563 (1968).

[FN179]. AAUP, 1940 Statement, *supra* note 78, at 4.

[FN180]. *Id.* at 7.

[FN181]. American Association of University Professors, Statement on Procedural Standards in Faculty Dismissal Proceedings, *ACADEME*, May-June 1990, at 42, reprinted in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 11, 12.

[FN182]. AAUP, 1915 Declaration, *supra* note 59, at 169-70.

[FN183]. *Id.* at 170.

[FN184]. American Association of University Professors, 1946 Report of Committee A, 31 AAUP BULL. 60-61 (1946).

[FN185]. See American Association of University Professors, "Academic Responsibility"; Comments by Members of Committee A Incident to Consideration of the Koch Case, 49 AAUP BULL. 40, 40 (1963).

[FN186]. *Id.*

[FN187]. *Id.* (emphasis added).

[FN188]. *Id.* at 41.

[FN189]. AAUP, Professional Ethics, *supra* note 121, at 75.

[FN190]. See *id.* at 105-06.

[FN191]. See American Association of University Professors, A Statement of the Association's Council: Freedom and Responsibility, 56 AAUP BULL. 375 (1970), reprinted in *POLICY DOCUMENTS AND REPORTS*, *supra* note 78, at 107, 108.

[FN192]. Id. The AAUP returned to the theme of attacks on academic freedom from within the faculty itself in 1994. "Even with a sound governance system in place and with a faculty active in self-government . . . , dysfunctions that undermine academic freedom may still occur: subtle (or not so subtle) bullying on the part of the faculty itself, a covertly enforced isolation, a disinclination to respect the views of the off-beat and cranky among its members." American Association of University Professors, *On the Relationships of Faculty Governance to Academic Freedom*, ACADEME, July-Aug. 1994, at 47, reprinted in POLICY DOCUMENTS AND REPORTS, supra note 78, at 186, 188.

[FN193]. FACULTY TENURE, supra note 127, at 43.

[FN194]. Id. at 43.

[FN195]. AAUP Committee B, *On The Duty of Faculty Members to Speak Out on Misconduct*, ACADEME, Nov.-Dec. 1998, at 58.

[FN196]. See American Association of University Professors, *Record of the Council*, Nov. 13-14, 1999, ACADEME, Jan.-Feb. 2000, at 52.

[FN197]. See AAUP Committee B, supra note 195, at 58.

[FN198]. Id.

[FN199]. Id.

[FN200]. See COMMITTEE ON SCIENCE, ENGINEERING AND PUBLIC POLICY, NATIONAL ACADEMY OF SCIENCES, *ON BEING A SCIENTIST: RESPONSIBLE CONDUCT IN RESEARCH* 31 (2d ed. 1984).

[FN201]. BRAXTON & BAYER, supra note 116, at 174.

[FN202]. See id. at 7-9, 170-80.

[FN203]. See Swazey et al., supra note 52, at 549.

[FN204]. Id.

[FN205]. Swazey et al., supra note 52, at 549. (2600 of the 4000 faculty and students surveyed returned the questionnaire with a response rate at 72% and 59% for the students and faculty, respectively. The proportions of faculty respondents agreeing strongly that faculty have a collective responsibility for their peers' conduct varied by discipline: 61% of the civil engineers and only 46% of the chemists strongly affirm collective responsibility for colleagues' behavior. See Melissa Anderson, *Misconduct and Departmental Context*, 5 J. INFO. ETHICS 15, 24-25 (1996).

[FN206]. Swazey et al., supra note 52, at 550.

[FN207]. See id.

[FN208]. See BRAXTON & BAYER, supra note 116, at 167-68.

Professor William Brown hypothesizes that the faculty collegium will not exercise sanctions because academics work independently with a focus on creativity. He or she requires stability for the exercise of creativity. It is better to ignore misconduct by a colleague than to impose sanctions that will threaten stability. WILLIAM BROWN, ACADEMIC POLITICS 17-19, 62-64 (1982).

Professors Braxton and Bayer also find supporting empirical evidence that professional solidarity shapes attitudes toward research misconduct in general and toward taking action against wrongdoing in a particular case. Professional solidarity protects the academic profession from lay interference as well as allows each individual professor a maximum degree of autonomy. John Braxton & Alan Bayer, Perceptions of Research Misconduct and an Analysis of Their Correlates, 65 J. HIGHER EDUC. 351, 355, 364-66.

[FN209]. See Judith R. Swazey et al., The Ethical Training of Graduate Students Requires Serious and Continuing Attention, CHRON. HIGHER EDUC., Mar. 9, 1994, at B1.

[FN210]. BRAXTON & BAYER, supra note 116, at 115 (citations omitted).

[FN211]. Id.

[FN212]. See Anderson, supra note 205, at 20.

[FN213]. See Pamela Luft & Robert Sprague, Scientific Misconduct: Individual Deviancy or System Complacency?, 5 J. INFORM ETHICS 72, 75-80 (1996).

[FN214]. See id.

[FN215]. See Anderson, supra note 205, at 22. There were disciplinary differences. Sixty-five percent of sociologists and civil engineers reported familiarity with the disciplinary code of conduct, but only 40% or fewer of chemists and microbiologists were similarly informed. See id.

[FN216]. Id. at 24-25.

[FN217]. See id. at 23.

[FN218]. Id. at 27.

[FN219]. Id. at 29.

[FN220]. See FACULTY TENURE, supra note 127, at 42.

[FN221]. Id.

[FN222]. Id. at 44-45.

[FN223]. See Eric Ashby, A Hippocratic Oath for the Academic Profession, MINERVA, Autumn-Winter 1968, at 64-66; Clark Kerr, Knowledge of Ethics and the New Academic Culture, CHANGE, Jan.-Feb. 1994, at 12. A panel of the National Academy of Sciences recommends that research institutions urge faculty to develop formal guidelines for the conduct of research. See RESPONSIBLE SCIENCE, supra note 142, at 13. The process of formulating guidelines itself may be extremely valuable for those who participate. Id. at 137

[FN224]. See BRAXTON & BAYER, supra note 116, at 177.

[FN225]. See RESPONSIBLE SCIENCE, supra note 142, at 102, 105-07.

[FN226]. For example, the American Sociological Association, the American Historical Association and the American Psychological Association have a provision in the code of ethics for enforcement by the association.

[FN227]. P.A. WAGNER, UNDERSTANDING PROFESSIONAL ETHICS 10 (1996).

[FN228]. See JOHN B. BENNETT, COLLEGIAL PROFESSIONALISM: THE ACADEMY, INDIVIDUALISM AND THE COMMON GOOD 90 (1998).

[FN229]. See id. at 91.

[FN230]. See Anderson, supra note 205, at 22.

[FN231]. Reflecting on 50 years of teaching at Harvard, Professor Oscar Handlin observes a major change in the university: "In the vast playing field that the multiversity has become, numerous people scurry about, all doing their own job, with only a few unifying links inherited from the past. Inertia, vague sentimental traditions, and catchphrases whose origins few recall trickle through among the players." Oscar Handlin, A Career at Harvard, AM. SCHOLAR, Winter 1996, at 47, 58.

[FN232]. KEETJIE RAMO, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ASSESSING THE FACULTY'S ROLE IN SHARED GOVERNANCE 8-9 (1998).

[FN233]. AAUP, Professional Ethics, supra note 121, at 106.

[FN234]. JOHN BENNETT, COLLEGIAL PROFESSIONALISM: THE ACADEMY, INDIVIDUALISM AND THE COMMON GOOD 16 (1998).

[FN235]. 1915 Declaration, supra note 59, at 173-74.

[FN236]. The Canadian Society for Teaching and Learning in Higher Education describes teaching competence to include:

- Content Competence. A university teacher maintains a high level of subject matter knowledge and ensures that course content is current, accurate, representative and appropriate to the position of the course within the student's program of studies.

- Pedagogical Competence. A pedagogically competent teacher communicates the objectives of the course to students, is aware of alternative instructional methods or strategies, and selects methods of instruction that, according to research evidence (including personal and self-reflective research), are effective in helping students to achieve the course objective.

- Valid Assessment of Students. Given the importance of assessment of students' performance in university teaching and in students' lives and careers, instructors are responsible for taking adequate steps to ensure that assessment of students is valid, open, fair and congruent with course objectives.

Braxton and Bayer's review of the few professional association codes of ethics that cover teaching shows widespread agreement among those codes on these same principles. BRAXTON & BAYER, *supra* note 116, at 140-46.

[FN237]. Assigned teaching duties include for example:

- presenting the subject matter of the course as announced to the students and as approved by the faculty [1970 AAUP Statement Freedom and Responsibility];
- meeting assigned courses at the designated times;
- being reasonably accessible to students outside of class; and
- meeting grading and other instructional deadlines set by the college or university.

[FN238]. 1. to observe confidentiality associated with review of manuscripts or grant applications [Commission on Research Integrity]; 2. not to take or damage the research-related property of another, to obstruct investigations of misconduct, or to obstruct the research of others [Commission on Research Integrity]; 3. to comply with all research regulations [Commission on Research Integrity].

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