

Academic Freedom and Responsibility Symposium

***583 ACADEMIC FREEDOM OF PART-TIME FACULTY**

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Everyone assumes that part-time faculty should enjoy a full measure of academic freedom. The American Association of University Professors (AAUP) has consistently argued for it. [\[FN1\]](#) Martin Michaelson's draft "Academic Freedom Policy and Procedures," a touchstone for this symposium, accords academic freedom through contract to full-time and part-time faculty without distinction. [\[FN2\]](#) A recent article in the Chronicle of Higher Education raised the alarm that "To Many Adjunct Professors, Academic Freedom Is a Myth;" nowhere did it question the normative claim that an adjunct should enjoy complete academic freedom. [\[FN3\]](#)

The arguments for academic freedom protection for part-time faculty are strong. Academic freedom has generally been seen as an instrumental right, one that promotes a certain type of higher education. Any professor's professional liberty in the classroom serves the societal interest in providing students with a liberal education, rather than any interest in a "natural" or pre-social right of the teacher, either as a person or as a professional of a certain status. [\[FN4\]](#) Liberal education requires room to question dogma freely, so the *584 student may learn how to sift facts, texts, and prevalent opinions to arrive at informed and independent views. [\[FN5\]](#) When such education is the aim of a college or university, all teachers must be free to engage controversial matter according to their professional judgment. In other words, the teacher must have academic freedom for the education to be liberal.

Yet, when one enthusiastically embraces the basic commitment to academic freedom for all faculty, significant questions of both substance and process arise. The goal of this paper is to clarify the nuances of difference in the academic freedom properly available to part-time faculty and to suggest procedures for its protection commensurate with the scope of that freedom and the practical realities for adjuncts. The fundamental problem is that the protection of academic freedom within universities has typically been embedded in specific institutional arrangements, such as tenure and peer review, which are unlikely to be made available to part-time faculty. That does not mean that an appropriate arrangement is impossible, but it may require adjuncts to accept less protection than full-time faculty in order to gain more than they enjoy now. Positive enhancements are possible, I believe, without significant change in the contractual relation between adjunct and institution.

Fair assessment of these issues requires clarity both about academic freedom and about the nature of part-time academic appointments. Academic freedom lacks a canonical definition. It primarily is a creation of academics themselves in articulating the normative basis of modern scholarship and teaching. Only derivatively is academic freedom a legal concept, even though it is now protected at public institutions by the First Amendment to some extent. [\[FN6\]](#) In another publication, I attempted to state, based on AAUP statements, a workable legal definition of academic freedom:

Academic freedom includes the following rights and duties:

- 1) Faculty members have the right to pursue chosen research topics and to present their professional views without the imposition or threat *585 of institutional penalty for the political, religious, or ideological tendencies of their scholarship, but are subject to fair professional evaluation by peers and appropriate institutional officers.
- 2) Faculty members have the right to teach without the imposition or threat of institutional penalty for the political, religious, or ideological tendencies of their work, subject to their duties to satisfy reasonable education objectives and to respect the dignity of their students.
- 3) Faculty members may exercise the rights of citizens to speak on matters of public concern and to organize with others for political ends without the imposition or threat of institutional penalty, subject to their academic duty to clarify the distinction between advocacy and scholarship.
- 4) Faculty members have the right to express views on the educational policies and institutional priorities of their schools without the imposition or threat of institutional penalty, subject to duties to respect colleagues and to protect the school from external misunderstandings. [FN7]

This definition seeks to preserve the traditional understanding that a professor's liberties are largely professional in character and invite substantive evaluation of speech for professional promise and accomplishments by faculty peers. Academic speech occurs in distinct communal contexts within which it is appropriate, even necessary, to evaluate a professor on the content of his speech, as in the consideration of tenure. The assumption is that peer review will enhance the quality of teaching and scholarship over time. Moreover, it has been the exclusivity of peer review in the evaluation process and the rare and searching nature of that review in the tenure process that has been the principal institutional bulwark of academic freedom itself.

Thus, one can readily see the significant difference between the protection of academic speech by academic freedom and the protection of lay speech against official penalty by the First Amendment. The former has the goal of enhancing the quality of speech by protecting against ignorant or political interference, while the latter seeks to protect expression within a civil society against governmental control for more generically libertarian reasons. Freedom survives professional evaluation because it is strictly limited to peers and confined to the critical periods of hiring, promotion, tenure, and (possibly) post-tenure review. [FN8]

How well do these norms fit part-time faculty? Addressing this requires some factual knowledge about part-time employment in colleges and universities. In 1993, the AAUP reported that thirty-eight percent of faculty appointments were held by part-time faculty, excluding graduate teaching assistants. Plainly, this is a lot of people, but it is unclear how much teaching it represents. At Georgetown University Law Center, for instance, there are more adjunct professors than full-time professors, but the adjuncts teach *586 many fewer students in any semester because each generally teaches one small class, and often they team teach. But there are institutions, particularly community colleges, where the bulk of teaching is done by part-time faculty. Also, there are different forms of part-time employment that experience different incentives concerning speaking freely. There are part-timers, for instance, who have exclusively academic skills, which limit employment alternatives, and who would like to be full-time but have not been able to obtain such a position. Such faculty usually can ill-afford to lose their position and thus are most vulnerable to improper pressures. They might be termed "academic adjuncts." On the other hand, there are many adjuncts, particularly in professional institutions, who have substantial professional careers independent of universities, whose educational advantage is precisely their understanding of practice, and who would not be full-time professors even if they could. These "professional adjuncts" are much less dependent, both for income and status, on academic supervisors and thus are less susceptible to their influence.

The growth in the number of part-time professors has permitted colleges and universities to cope with the increases in size and diversity of higher education.

These institutions employ part-time faculty for a number of motives. A universal reason is economy. Not only are part-timers generally paid less per pupil (including reduced or no fringe benefits) but they do not require long-term budget commitment or approval. Hiring a professor with a certain expertise to teach one or two courses also enhances curricular flexibility; a literature department may not feel that it can afford to hire a medievalist, but might be delighted to employ someone to teach an introductory course on Chaucer. Moreover, the institution can offer a new course without being committed to a teacher should the course prove unpopular or unsound. [FN9] Finally, professional adjuncts can teach students valuable practical wisdom or skills that full-time academics may not be able to teach as effectively. Employing part-time faculty offers numerous benefits for higher education and will not soon end.

Nearly all these adjuncts lack, however, meaningful peer review, opportunities for scholarship, or participation in curricular development. Hiring of adjuncts often is done by a dean or department chair, with little formal input by faculty; performance review, when it occurs, may be perfunctory, at least until something goes wrong. Contracts are short-term, generally only for a semester or academic year. Adjuncts rarely enjoy institutional support for their scholarship, other than library access; they do not get research assistants *587 or sabbaticals. Finally, they often are fitted into vacant positions for courses that others have decided need to be taught and do not participate in faculty deliberations about what should be taught.

The tenuousness of the adjunct's contractual claim against the University and her frequent invisibility to peers create persistent risk of violations of academic freedom. The adjunct professor's supervisor can simply decide to not to renew the adjunct contract because in that supervisor's opinion the course is not needed or can be taught better by another. Thus, the faculty member can be separated with no or some anodyne reason informally given by a single person. Thus, it is easy for the supervisor to dump someone who criticized a colleague's work in class or argued for social policy against the interests of a school benefactor. Even when this discretion is exercised with appropriate regard for the values of academic freedom, as no doubt it generally is, the structure itself ex ante will encourage faculty to avoid controversy.

The anonymity of the adjunct to full-time colleagues complicates the situation. It deprives the adjunct of "champions," full-time and tenured colleagues who can advocate for the person or the course without fear for their own positions. The probability of such complaint or intervention often will deter the supervisor from making untoward decisions about an adjunct, as the supervisor will be diverted from other tasks and even, in egregious cases, jeopardize his own position. Champions have incentives to act either to protect an academic program or because they are concerned about academic freedom throughout the university, and can raise issues of propriety at fairly low personal cost merely by inquiring. Most full-time faculty understand that a threat to the academic freedom of any professor in a university is a threat to all, because it raises fundamental issues about authority over how the university makes educational choices.

There is another side to the adjuncts' anonymity. Other faculty in their department may learn about their teaching or scholarship and disapprove of it on professional grounds. Since adjuncts are usually hired without the scrutiny full-time faculty accord full-time hiring decisions, it seems predictable that more adjuncts will come to be evaluated unfavorably by peers in the early years of their teaching. Such opinions are more likely to be formed on the basis of casual or incomplete information than are formalized departmental reviews. The communication of such negative professional evaluation to an administrative decision maker might result in non-renewal of the adjunct's contract. A full-time professor is not immune from such peer judgments, but they are considered in far more elaborate and careful assessments of the full-timer's overall work at specific points in her career.

This situation presents complex questions about what academic freedom means for adjuncts. The subtleties are illustrated from a story in the Chronicle article about the academic freedom of adjuncts. [FN10] (Of course, I can have no opinion about the truth or merits of the situation being described and use the story as reported as an

illustration of what may happen.) A part-time psychology professor was hired to teach courses on addiction and the merits *588 of "Twelve Step" programs. The adjunct does not believe that addiction is a "disease" but represents behavior rationally chosen; indeed, he did not appear to believe that there is anything that properly should be called "mental illness." Senior colleagues in the psychology department were appalled that such views were being taught at their college or university, views which they viewed as "political." A public controversy ensued. Although the college defended the adjunct's freedom to hold and teach his views, he was not reappointed.

Assuming that pressure by full-time faculty lead to the adjunct not being reappointed (something not at all conceded in fact), was the adjunct's academic freedom violated? First, the college was right to publicly defend the professor's right to teach his views and to permit him to finish teaching the courses for which he had been hired. Abrogation of a one semester teaching contract on the basis of disciplinary views ought never be permitted (in the absence of some serious risk to students). The department's assumption of an adjunct's professional competence extends at least through the period for which he has been hired. Termination of a short-term contract implies hasty reactions and imposes too great a stigma on the professor. Moreover, the threat of such a swift and harsh sanction poses too great a chill on the profession of unorthodox ideas.

On the other hand, we can assume that a psychologist professing such views would never have been hired to a full-time position in that department, or if he had, would likely not be tenured. The key point here is that such exclusion not only does not offend academic freedom but may be an essential component of it. [FN11] Normally, we expect that progress in the disciplines requires competition among ideas for professional acceptance. Rejection of a certain perspective, even though it may eventually be thought mistaken, reflects academics' attempt to advance knowledge by creating a research or discussion agenda more worthy of further time and resources. In practice, of course, such winnowing engenders real conflict often played out over individual appointments. The processes of appointment, peer review, and tenure regularize these decisions and aim to minimize the risks that such decisions will inappropriately turn on primarily personal or rankly political factors. The problem for the adjunct in the story is not that senior colleagues rejected him for his professional views, but that the decision was too informal.

One way to address the exposure of adjuncts to disapproval by full-time faculty is to grant them procedural protections analogous to those given full-time faculty. In this spirit, the AAUP argues that part-timers should be eligible for tenure, or at least for long-term contracts. [FN12] And it seems right that continued reappointment should be taken to imply approval of the adjunct's prior teaching. However, rules requiring adjuncts to qualify for tenure or tenure review after some period of service have serious practical disadvantages, potentially requiring a commitment to a part-time teacher for courses *589 that the institution may not be sure it will continue or who brings skills to the classroom that the institution values but only secondarily, like personal knowledge of recent developments in a field. My sense is that while longer term commitments do enhance academic freedom, they will make programmatic sense only in particular circumstances, as when the skills or competence of an academic adjunct are indistinguishable from those of full-time faculty and the person is serving part-time only for long-term budgetary reasons. [FN13]

The AAUP's advocacy of tenure for part-timers rests on a view that the growth of part-time instruction is undesirable because it threatens academic freedom by creating large numbers of faculty with fragile employment rights. [FN14] While this threat may be real in some situations, it seems more plausible that generally the opposite is true. The ability to cope with changing instructional needs through hiring part-timers makes it easier for institutions to continue to support tenured faculty and their research needs. Hiring adjuncts permits senior faculty to pursue their specialized interests without needing to teach basic or remedial courses or staff courses in which they have little or no intellectual interest or for which they have no aptitude, but which properly fit within the curriculum. If such courses were not being taught because of resistance by senior faculty, the pressure on

tenure would increase. Adjuncts thus function as a safety valve for tenure, which in turn is the surest protection for academic freedom.

The goal of supporting appropriate academic freedom for adjuncts should be to enlist full-time faculty in the protection of academic freedom for adjuncts. [FN15] The aim is to provide a semblance of peer review for adjuncts, while preserving the flexibility for institutions that part-time faculty provide. This requires two institutional structures. First, full-time faculty should participate in periodic evaluation of the part-time professor's teaching competence and the appropriateness of the courses she is offering. Such evaluation ought to involve review of student evaluations, classroom visitation by professors in the adjunct's field, and examination of classroom handouts, such as syllabi or photocopied readings. If such evaluations were conducted every three to five years, it would enhance the adjunct's job security by providing orderly peer evaluation and eliminating administrators' arbitrary decisions regarding competence. *590 Such a process also may dissipate the anonymity of adjuncts to faculty peers, creating champions or allies for their teaching. [FN16]

Second, adjuncts who are not reappointed ought to have an opportunity to ask full-time faculty to determine whether their release represents a violation of academic freedom. To this end, I recommend that an institution have a panel of full-time faculty who can review complaints by adjuncts who have suffered some job action, including non-reappointment, and investigate informally whether academic freedom has been violated. If the panel believes that academic freedom has been violated, they would issue a report explaining why. Although they would not have power themselves to reappoint the adjunct, they would have power to require the payment of money damages of up to one year's pay to the wronged adjunct.

The rationale for this peer panel needs explanation. I am not recommending a typical grievance panel of the type Mr. Michaelson recommends; indeed, the peer panel would not adjudicate claims. Rather, it would investigate and report academic problems in the manner of Committee A of the AAUP. Its purpose would be more to preserve and enhance academic freedom in the institution generally than to do justice to the individual adjunct. Its goal would be to ensure that part-time faculty in general enjoy academic freedom, so that academic freedom would not be undermined in the institution as a whole. In this way, the panel would further the commonality of interest between full and part-time faculty in the prevalence of academic freedom. This is the way Committee A of the AAUP functions when it investigates complaints about academic freedom; its goal is more to improve the conditions for academic freedom at the institution than it is to render justice in the complainant's case. The proposal assumes that full-time faculty will enjoy tenure (or some equivalent level of job security), so that faculty will feel sufficient self-confidence to criticize administrative decisions. The limited monetary award required to be paid when the panel considers it appropriate is intended not so much as compensation for the adjunct (although it may provide some solace) as it is to create an incentive for the part-time professor to bring a complaint. Payment is neither an entitlement nor releases the college or university from any civil legal claims the adjunct may have. [FN17]

*591 The peer panel may not order administrators to take any action in regard to the adjunct, thus preserving their contractual flexibility. The proposal is not intended to create any de facto tenure for adjuncts by subjecting negative hiring decisions to burdensome procedural requirements. At the same time, the normal desire of an academic administrator not to be censured by faculty for violating academic freedom ought to increase the care with which employment decisions about adjuncts are made. The goal is to foster an environment in which the academic community is conscious of and thoughtful about academic freedom. Intramural censure might also lead to censure by the AAUP.

The question of whether to involve courts in protecting the academic freedom of adjuncts is vexing. Mr. Michaelson would give adjuncts a contractual entitlement to academic freedom, which could be enforced in court as a term of the employment contract. [FN18] Although I favor this for full-time faculty, I think it inadvisable for adjuncts in the case of non-renewal of contract. My concern rests on the grave

difficulty courts have in understanding academic freedom and distinguishing it from general First Amendment rights of free speech. Academic freedom is more an academic norm than a legal concept and faculty understand it better than judges. [FN19] They can view any academic disapproval with administrative consequences as censorship. [FN20] These difficulties likely will be exacerbated in complaints brought by adjuncts, given the lack of peer review and necessary process in employment decisions concerning them.

Consider the case of the psychologist discussed above who believes that there is no such thing as mental illness. The facts, at least as reported in the Chronicle, [FN21] permit the inference that he was not reappointed, in substantial part, because of his views. Many or most courts naively would condemn such a decision as a content-based restriction on speech that violates a professor's right to give his considered views in class. But such judgments on academic grounds by colleagues about the professional merits of a candidate's or junior colleague's views are a desirable part of academic work, preserving coherence in disciplines. When done in good faith and according to appropriate procedures, these decisions themselves (even recognizing that they may be *592 wrong) should be protected as essential to academic freedom. Thus, it would be far better for a panel of faculty to assess whether non-reappointment of the psychologist violated academic freedom than it would be for a judge to do it in a formal adversary proceeding.

I would permit part-time faculty who are terminated before the end of their contract to sue for violations of academic freedom as a matter of contract. Faculty on short-term contracts should not be dismissed except for serious misconduct or incompetence, given that they can be let go in an orderly manner for lackluster performance or just because the institution wants to offer a different course. Thus, such cases fall outside the type of academic evaluation that requires shielding from judicial gaze. For any cases where academic freedom is an enforceable contract term, the institution should provide a definition that can give guidance to a court; Mr. Michaelson uses the venerable language from the 1940 AAUP Statement, [FN22] which I doubt is explicit enough for judges without experience of peer review. [FN23]

It might be argued that I have extended very meager protection to the academic freedom of adjuncts. My approach permits faculty consideration of non-reappointment decisions, but only to the extent that the faculty considers the circumstances to be troubling and in such a posture as not to confine the normal discretion of the administrator to make such decisions on academic grounds. Complainants may have only such review as a faculty panel thinks appropriate and even in egregious cases may have no right to reappointment.

My proposals are not intended to create legal rights but to nudge the norms and practices of a college or university: to make the full-time faculty view themselves as responsible for the academic freedom of adjuncts to an extent that will safeguard academic freedom as an operative norm throughout the college or university. In this respect, the recommended periodic review of adjunct performance may have as great a benefit as any review procedure by enhancing peer respect for the professional judgment of adjuncts. Universities are organized around discussion, role, and shared values as much as they are around legal rights and bureaucracy. Thus, fostering natural affinities through increasing information and setting topics of discussion can influence behavior more than mandatory rules can. Moreover, as emphasized throughout, increasing academic freedom for adjuncts should be done without destroying the very real benefits part-time faculty offer higher education.

CONCLUSION

Part-time faculty cannot enjoy as full a protection for academic freedom as do full-time faculty, let alone faculty with tenure, because they are too removed from the system of peer review. The individual discretion under *593 which they are hired and retained provides substantial benefits to colleges and universities in terms of curricular and personnel flexibility but exposes adjuncts to decisions not based on appropriate academic grounds. My proposals seek to involve over time protected full-time faculty in setting the terms under which adjuncts are evaluated and released

without directly limiting that often beneficial discretion. It also respects the subtlety of the judgment about what academic freedom requires in evaluating classroom performance.

[FN1]. Professor of Law, Georgetown University Law Center. My thinking in this paper is strongly influenced by the three years I served as Associate Dean for the JD Program at Georgetown, when I had responsibility for hiring and retaining adjunct faculty for the JD program. My colleagues and predecessors had established a strong tradition of insisting on the academic freedom of adjuncts, without regard to any legal remedies the adjuncts might have had.

The paper is respectfully dedicated to Assistant Dean Carol Q. O'Neil, with gratitude for her thoughtful and energetic commitment to successful teaching by adjunct faculty.

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[FN1]. See AAUP, *The Status of Part-Time Faculty*, *ACADEME*, Feb.-Mar. 1981, at 29 [hereinafter *Part-Time Faculty*].

[FN2]. Martin Michaelson, *Academic Freedom Policy and Procedures*, in RICHARD CHAIT, *AMERICAN ASSOCIATION FOR HIGHER EDUCATION, IDEAS IN INCUBATION: THREE POSSIBLE MODIFICATIONS TO TRADITIONAL TENURE POLICIES* 28 (1998), reprinted in 27 J.C. & U.L. 565, 567 (2001).

[FN3]. See Alison Schneider, *To Many Adjunct Professors, Academic Freedom Is a Myth*, *CHRON. HIGHER EDUC.*, Dec. 10, 1999, at A18.

[FN4]. The Supreme Court has articulated this theme in thunderous rhetoric:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of multitude of tongues, [rather] than through any kind of authoritative selection."

Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (quoting United States v. Associated Press, 52 F. Supp. 362, 372 (S.D.N.Y. 1943)). It is worth noting that the first classroom speaker whose teaching benefited from Supreme Court protection was not a full-time professor, but a guest speaker in a class who held no academic position. See Sweezy v. New Hampshire, 354 U.S. 234 (1957).

[FN5]. A strong recent statement of this long-standing educational ideal is articulated in MARTHA NUSSBAUM, *CULTIVATING HUMANITY* 48 (1997):

We cannot and should not hope to produce a nation of students who can write excellent papers about Socratic arguments, although this is a sensible goal for some institutions. We can, I think hope to produce a nation full of students . . . who have examined their beliefs Socratically to some extent and have mastered techniques by which they can push that inquiry further, students whose moral and political beliefs are not simply a function of talk- radio or peer pressure, students who have gained

confidence that their own minds can confront the toughest questions of citizenship.

[FN6]. J. Peter Byrne, Academic Freedom, A "Special Concern of the First Amendment," 99 YALE L.J. 251 (1989).

[FN7]. J. Peter Byrne, Academic Freedom Without Tenure?, New Pathways Working Paper No. 5, American Association of Higher Education, 6 (1997).

[FN8]. These issues are dealt with in much greater depth in Byrne, *supra* note 6, at 301-11 and 332-39.

[FN9]. My experience at Georgetown University Law Center illustrates this. Like many institutions, we have wanted in recent years to greatly expand our course offerings dealing with legal issues generated by high technology industries. Our full-time faculty has cautiously hired one tenure-track professor with significant expertise; at the same time, we have introduced more than a dozen new courses and seminars taught by highly competent adjuncts who work at the forefronts of these issues in government, the private bar, and the public interest community. The short duration of the formal commitment we have had to make to each adjunct permitted us to move quickly and take chances in making these new offerings available to our students.

[FN10]. See *supra* note 3.

[FN11]. See Byrne, *supra* note 6, at 283-88.

[FN12]. AAUP, The Status of Non-Tenure-Track Faculty, ACADEME Jul.-Aug. 1993, at 39 [hereinafter Non-Tenure Track Faculty].

[FN13]. It begs the question to argue that the academic freedom of part-time faculty should be improved by giving them tenure or long-term contracts. Of course, that is true. See generally Byrne, *supra* note 7. But greater job security will mean fewer part-time positions and diminished academic flexibility. The employment relation we are considering presents difficult questions because market forces and educational developments have fostered it. The challenge is to enhance academic freedom for part-time faculty positions, which will not soon disappear.

[FN14]. See Part-Time Faculty, *supra* note 1, at 30-31.

[FN15]. As Committee A of the AAUP put it in 1981: "The underlying concept is that responsibility for academic quality falls upon those who, fully committed to academic life, have shaped and taught the courses central to the academic mission of their institution." Part-Time Faculty, *supra* note 1, at 31.

[FN16]. There are, of course, substantial educational benefits to such peer review. When appraisals are negative, improvements may occur or the adjunct should not be reappointed. Letting the adjunct go in such circumstances, if based on academic grounds, promotes rather than violates academic freedom. The AAUP recommends: "The performance of faculty members on renewable term appointments, full-time and part-time, should be regularly evaluated with established criteria appropriate to their positions." Non-Tenure-Track Faculty, *supra* note 12, at 45. Education and adjunct faculty both also can benefit from the inclusion of adjuncts in curricular planning processes.

[FN17]. The system might well work without the monetary awards when violations are found. Moreover, some may feel that it provides too great an incentive for aggrieved part-time faculty to request faculty review. On the other hand, the amounts of money should not be very large and the faculty reviewers will have discretion not to pursue complaints that appear without merit. Having some money at stake should increase the seriousness with which questions are examined.

[FN18]. See Michaelson, *supra* note 2, at ¶ 3. Of course, any faculty member can sue a public university alleging a violation of the First Amendment. Having a full definition of academic freedom in a faculty handbook may temper the court's instinct to equate the classroom with a public forum.

[FN19]. See Byrne, *supra* note 6, at 306.

[FN20]. An example of this is Silva v. University of New Hampshire, 888 F. Supp. 293 (D.N.H. 1994). The court there--erroneously, in my view--viewed a professor's irrelevant sexual metaphors or jokes in class, which offended several women students, as fully protected by the First Amendment. The overall case is complicated by the University's hysterical overreaction to Professor Silva's conduct. See Report, Academic Freedom and Tenure: University of New Hampshire, ACADEME, Nov.-Dec. 1994, at 70. Committee A found serious procedural deficiencies in the actions of the university, while affirming that the professor's conduct related to his professional performance and should have been assessed by a "faculty hearing body" following an adequate hearing. See *id.* at 79.

[FN21]. See *supra* note 3.

[FN22]. American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments, 64 A.A.U.P. BULL. 108 (1978), reprinted in POLICY DOCUMENTS & REPORTS 3 (8th ed. 1995).

[FN23]. The problem of how to define academic freedom legally is discussed in Byrne, *supra* note 7.

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