

Academic Freedom and National Security in a Time of Crisis

Executive Summary

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—Benjamin Franklin

Historical Review of Pennsylvania, 1759

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Report

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The American Association of University Professors established the Special Committee on Academic Freedom and National Security in a Time of Crisis on the first anniversary of the tragic events of September 11, 2001. The committee was charged with assessing risks to academic freedom and free inquiry posed by the nation's response to the attacks on the World Trade Center and the Pentagon. Several imperatives led to the creation of the committee. Among them, still-vivid memories of the McCarthy era yielded an awareness of the degree of vigilance needed to avert a recurrence of the excesses of that time: the sweeping claims of threats to national security, the rampant accusations of guilt by association, and the unchecked powers of law-enforcement agencies. There was also a realization that many organizations that should have been vigilant then (the AAUP among them) were regrettably slow to respond.

In recognizing that now is not the first time that our institutions have been tested by the demands of national security, the committee reaffirms the position taken during World War II by the Association's Committee A on Academic Freedom and Tenure: "Academic freedom is one facet of intellectual freedom; other aspects of that larger concept—freedom of speech, freedom of the press, and freedom of religion—are among the avowed objects for which this war is being fought. It would be folly to draw a boundary line across the area of freedom."

This report rests on the premise that freedom of inquiry and the open exchange of ideas are crucial to the nation's security and that the nation's security and, ultimately, its well-being are damaged by practices that discourage or impair freedom. Measures to ensure the nation's safety against terrorism should therefore be implemented with no greater constraint on our liberties than is necessary. The report questions whether security and freedom are inescapably opposed to one another. In such important areas as scientific research, the free exchange of data may better enable investigators to identify the means for preempting or neutralizing threats posed by information falling into the wrong hands. We contend that in these critical times the need is for more freedom, not less.

The report discusses developments that represent threats to academic freedom. Most have come to the fore since

September 11, 2001, but some arose earlier. The report focuses first on the USA Patriot Act, especially on provisions of this hastily enacted law that gravely threaten academic freedom. The report addresses broad areas of concern, such as the ominous mingling of law-enforcement and intelligence-gathering activities, the impairment of public access to vital information, and the questionable efficacy of these measures in combating terrorism. Specific concerns include the loosening of standards under which government authorities can compel disclosure of electronic communications.

The report looks closely at the act's business-records section, which empowers federal agents to obtain warrants to gather information about the materials individuals borrow from libraries or purchase from bookstores. The agents need only assert that such records may pertain to the investigation of terrorist "or other clandestine intelligence activities." Even more ominous is a "gag" provision in the act, prohibiting any person who has been served with such a warrant from revealing that fact. Although a measure recently introduced in Congress would exempt libraries and booksellers from such demands, other dangerously intrusive provisions of the USA Patriot Act could be made permanent by a proposed repeal of the "sunset" provisions that accompanied the law in its initial form.

A major section of the report is devoted to restrictions on information. It reviews the evolution of federal regulation of classified research and the persistent uncertainty about the extent and location of such research within the academic world. The report recognizes the limited circumstances under which such restrictions may be warranted but points out that secret research is fundamentally at odds with the free circulation of research results. The report expresses reservations about the expansion of such constraints in response to national security concerns.

The report takes a similar view of federal laws that required the licensing of certain exports, including research results, long before September 11. It notes that federal courts have on five recent occasions invalidated on free-speech grounds the procedures used to deny export licenses for the international sharing of cryptography.

Also of concern to the committee is the emphasis the federal government has recently placed on the elusive category of “sensitive but unclassified” information. The report describes the rationale for stricter scrutiny of certain types of information and the historical antecedents to the current debate, but it urges that the extent and nature of restraints on unclassified research, however sensitive, should remain chiefly the responsibility of the scientific community.

The report also addresses elevated barriers to entry into the United States by noncitizens, especially foreign students, noting that the original version of the USA Patriot Act adopted by the U.S. House of Representatives would have barred foreign students from working in research laboratories. The federal government’s current system for monitoring foreign students and visiting scholars while they are in the United States—SEVIS (the Student and Exchange Visitor Information System)—has been confounded by repeated delays in its full implementation and by serious practical difficulties in its application. Given the pace at which university recruitment of foreign visitors must often proceed, such delay and confusion threaten international scholarly collaboration. The report expresses doubt whether the system can ever operate effectively. It also notes with alarm, as a further threat to transnational scholarship, the apparent expansion of academic subjects and foreign nations to which intensive surveillance applies.

The final section of the report considers the effect of national responses to September 11 on the campus climate for academic freedom. Several potentially serious incidents have occurred, starting with a professor’s intemperate statement to his first-year class on the afternoon of September 11, 2001: “Anyone who can blow up the Pentagon gets my vote.” With a few notable exceptions, these challenges have been resolved in ways that seem compatible with academic freedom. The same is true of curricular issues that have surfaced since September 11, including one at the University of North Carolina, Chapel Hill, in summer 2002. Yet another incident at the State University of New York, New Paltz, had a less satisfactory conclusion. Similarly, some controversial visiting speakers have fared well—for example, at the Universities of Colorado and Michigan and Harvard University—but others have been less fortunate, such as those invited to speak at the College of the Holy Cross in Massachusetts and Rockford College in Illinois.

The report concludes with several cautions and a series of recommendations. Among the cautions, the report notes that the impact of September 11 on academic freedom is far from over; the special committee will therefore continue to assess conditions for academic freedom. The report also draws attention to the hazards of self-inflicted wounds. These include the plausible but erroneous advice of one professional organization that those served with a subpoena for records under the

USA Patriot Act could not even consult their attorneys, and the similarly unsound views of some scholarly journal editors that they could receive manuscripts from “suspect” countries but could not furnish editorial advice or guidance to the authors of the manuscripts.

Recommendations

Specific recommendations are directed to our faculty, administrative, and association colleagues, first at the national level and then at the campus level.

NATIONAL LEVEL

To our faculty colleagues, and to organizations that speak for the academic community at the national level, we offer these specific recommendations.

1. First and foremost, we must acknowledge that the threat of terrorism is real and that new security measures are necessary to deal with this threat.

2. We should, however, pursue every opportunity to remind our friends, families, neighbors, and colleagues outside the university community of the vital and durable values of academic freedom and free inquiry. We should explain that basic precepts of academic freedom are not “negotiable,” citing specific examples of society’s failure adequately to protect those values during the McCarthy era.

3. Recognizing the extent of shared concerns and common interests, we should collaborate as fully as possible with those national higher education groups that may formally represent the views of presidents and chancellors, but that have in recent months forcefully advanced the interests of the entire academic community.

4. We should welcome and develop opportunities for collaboration with the academic disciplinary organizations and learned societies that have a major mission to preserve the flow of scholarly communications within the domestic and international academic communities. Such collaboration might include making common cause in litigation, such as the filing of joint amicus briefs (a longstanding AAUP practice) to bring to the courts constitutional challenges to the gravest and deepest threats to academic and institutional freedoms.

5. We should actively support measures in Congress and elsewhere (such as the recently introduced Freedom to Read Protection Act) that would relieve or reduce specific burdens upon, and threats to, academic freedom and free inquiry.

6. We should resist and oppose efforts to extend or expand current restrictions, at least until ample time has passed to assess measures now in place and determine areas in which those measures are inadequate to protect national security.

7. We should urge the exercise of far more vigilant and effective congressional oversight of the actions of federal agencies that may impair academic freedom and free inquiry, in the belief that such oversight is an essential ingredient of

the creation and delegation of agency powers such as those conferred by the USA Patriot Act.

8. We should resist or seek to repeal efforts to regulate unduly, or to make secret, the results of lawful research projects under novel uses of the “sensitive but unclassified” rubric.

9. We should seek to return the status of legally classified research as nearly as possible to what it was prior to September 11, recognizing that in specific and newly sensitive research areas special review and approval procedures designed and implemented by the academic community may be warranted, at least during current exigent times.

10. We should insist upon fair procedures for noncitizens who seek visas or other approvals to study, teach, or collaborate with researchers in the United States, and we should pursue special efforts to make such visitors feel welcome on U.S. college and university campuses. Specifically, we should continue to advocate the clarification and fair implementation of programs that have been approved, such as SEVIS, to monitor students and scholars from other nations. The effective implementation of such programs is especially important for the advancement of knowledge in scientific fields, which continue to benefit from and depend on the skills and insights of non-citizens of the United States.

11. We should expand efforts to apprise both the academic community and the public of potential new concerns about threats to academic freedom and free inquiry by marshalling contacts with the media, including specialized educational media. AAUP state conferences, chapters, and all faculty unions, with their links to statewide media and state political offices, are particularly well suited to assume such a role, as well as to monitor state antiterrorist initiatives.

CAMPUS LEVEL

To our colleagues at the campus level, however their collective views may best be expressed, we offer these specific recommendations.

1. The faculty should undertake a systematic review of institutional policies on academic freedom and free expression to ensure that the policies contain adequate safeguards against political pressures from within and outside the institution. Specific attention should be given to the freedom to invite and hear controversial speakers, to freedom of political utterance on and off the campus, and to freedom of teaching. Reference to AAUP policies and reports, which have withstood the test of earlier challenges, would be appropriate and beneficial. These policies make clear that the freedom to invite to campus those who hold varied views should not be constrained by any notion of “balance”—that any view, even the most repugnant, should be heard. On freedom of teaching, institutional policy should recognize that so long as an instructor has observed professional standards of care in draw-

ing conclusions on a subject and has treated students with respect, he or she is free to engage in passionate advocacy no less than in dispassionate dissection.

2. It is essential that, with full and meaningful faculty participation, institutional policies be established to protect academic freedom against governmental constraints and threats of the type this report has described. These policies would address such vital issues as acceptance of classified research grants and contracts, access to personal computer files, and sharing of information with external agencies about library and student records. Where pertinent policies already exist, they should be reviewed and refined, with faculty governance bodies playing a central role in that review process, to ensure the adequacy and efficacy of the policies in addressing current threats to academic freedom. The existence (or absence) of such policies should be widely publicized at each institution.

3. The office or person responsible for maintaining and enforcing such policies should be clearly identified within the institutional structure, making certain that adequate accountability exists to ensure the highest level of responsibility for actions (or omissions) that may imperil academic freedom.

4. Faculty organizations bear a responsibility for establishing and maintaining regular contact with the offices and individuals charged with interpreting and applying relevant policies; those organizations should also keep their colleagues and the campus community well informed on the stewardship of vital faculty, staff, and student interests.

5. Recognizing the special importance of potentially sensitive information being turned over to government hands, we believe that it is essential to know what information is collected (by the college and university itself and by external agencies) about members of the campus community, as well as by whom and for what purposes. It is also critical to guard against the misuse of such information for unauthorized, potentially damaging, purposes.

6. It may be especially valuable in perilous times for faculty to establish substantially closer ties with several campus offices with which they may be unfamiliar unless an urgent personal need takes them there—the offices of the dean of students or the chief student personnel administrator, the director of international student affairs, the campus police, and the university legal or general counsel. These offices are likely to have heightened responsibilities in tense times and may be helpful in anticipating potential trouble spots. Moreover, in the performance of their regular functions, they may assist in reducing potential risks to academic freedom.

7. Where an administration or a governing board has firmly defended academic freedom against external threats, faculty commendation and support would not only be welcome within the institution, but also highly visible beyond the campus. Recent examples of such leadership occurred,

for example, in the university systems of North Carolina and Texas, on the CUNY board, and in Columbia University's administration.

8. Faculty, faculty unions, and other faculty organizations should use the mechanisms available to them, including all-campus programs, teach-ins, and campus print and broadcast media, to inform the entire university community of faculty concerns about national security measures and the effect of these measures on academic freedom and free inquiry of faculty, staff, and students. There must also be resistance to pressures from individuals and groups, on and off the campus, who seek to bar speakers whose views they oppose, to ban events for purposes they loathe, or to punish or silence faculty, students, and staff whose opinions they cannot abide. ✍

Special Committee on Academic Freedom and National Security in a Time of Crisis

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