

REAFFIRMATION OF THE PRINCIPLES OF ACADEMIC FREEDOM -- THE FACULTY SENATE OF THE UNIVERSITY OF NEVADA, LAS VEGAS

Summary

Academic freedom is the full and unfettered pursuit of knowledge.

Academic freedom is essential for the betterment of Society. In fact, no goal of higher education is more important than the full protection of academic freedom for all students, teachers, administrators and others taking part in college or university activities. That is because absent academic freedom, institutions of higher education cannot accomplish their two crucial duties for the betterment of Society. The first duty is teaching students not only practical skills but equally important, how to understand, evaluate, invent and challenge ideas. The second duty is enabling faculty members to enlarge their ability to teach and to further the cause of knowledge by pursuing their own research.

Because academic freedom is indispensable, ideas and viewpoints may not be restricted for political, social, religious, economic or humanitarian reasons. Likewise, the pursuit and evaluation of ideas and viewpoints may not be restricted even if some earnestly believe such ideas and viewpoints are dangerous, offensive, harmful, untrue, uncivil, distressing, or, contrary to the betterment of Society. Accordingly, no person or group should be punished, sanctioned, penalized or otherwise disadvantaged in any manner for exercising academic freedom.

Academic freedom has limits; but, those limits are not based on the content or the viewpoint of ideas or opinions. Rather, appropriate limits are comprised of “neutral standards” such as class discussions should be limited to class-related topics, and, research must comport with professionally accepted, unbiased research methods.

The Principles

The Faculty Senate of the University of Nevada, Las Vegas (“UNLV”) states the following regarding academic freedom:

(1) The AAUP –

The Faculty Senate fully subscribes to the principles of academic freedom and educational inquiry set forth by the American Association of University Professors (“AAUP”).¹

(2) NSHE Code –

We recognize and appreciate that the Nevada Board of Regents has promulgated the Nevada System of Higher Education (“NSHE”) Code, Title II, Chapter 2 of which sets forth explicit protections of academic freedom that, we are advised, the Nevada Supreme Court has ruled are legally enforceable.

(3) Unfettered Devotion –

The UNLV Faculty Senate reaffirms its unfettered devotion to the principles of academic freedom as first and paramount among the goals and duties of institutions of higher education (“the Academy”).

(4) Pursuit of Knowledge and the Individual –

Academic freedom is the full and unfettered pursuit of knowledge. As such, academic freedom promotes two fundamental goals: (i) free investigation of ideas which also may be denoted as the pursuit of knowledge, and (ii) liberation of the individual and, thereby, liberation of greater Society.

(5) Life of the Mind –

To fulfill the goals stated above at (4), the Academy must teach and foster “life of the mind,” meaning reverence for ideas coupled with the capacity to think conceptually, thoroughly, creatively, rationally, pragmatically and critically. Life of the mind enables individuals to understand ideas both abstractly and as ways to solve practical problems. Unfettered academic freedom is crucial to imparting life of the mind.

(6) Access to Knowledge -- Free Expression of Opinions –

We believe that to promote life of the mind, an essential role of the Academy is protecting and fostering to the fullest extent feasible, every member’s uninhibited access to knowledge coupled with the free expression of opinions.

(6)(a) Controversy and Orthodoxy –

So long as consistent with applicable academic disciplines’ properly established “neutral methods,”² the free investigations of ideas and expression of opinions should be neither suppressed nor restrained even if addressing highly controversial or sensitive matters, and even if challenging either perceived truth or prevailing orthodoxy.

(6)(b) Welcoming Environment –

The Academy through its offices and members should foster a welcoming and supportive environment wherein all persons feel free to express and to question ideas and opinions without fear. A “welcoming environment,” however, does not and ought not insulate any office, member or guest of the Academy from encountering ideas they might consider offensive, disconcerting or dangerous. Because the full and unfettered pursuit of life of the mind requires the attendant freedom to conceive and to raise controversial ideas, the Academy cannot and should not seek to insulate any office, member or guest from such ideas, nor suppress free inquiry and expression for the purpose of insulating others from the distress such ideas may engender.

(6)(c) Protection and Coverage –

So long as consistent with applicable academic disciplines’ properly established “neutral methods,” academic freedom protects any and all members of the Academy who pursue knowledge regarding any and all appropriate endeavors including but not limited to:

- classroom instruction;
- research;
- formal and informal communication of ideas of any kind in any medium;
- programs, services and events; and,
- service within and without the Academy such as faculty governance, business conducted at faculty meetings, work on faculty committees and similar efforts involving the policies and practices of the Academy and its constituent schools, divisions and departments.

(6)(d) Specific Protections --

All members of the Academy who pursue knowledge within the meaning of academic freedom are entitled to legally and communally enforceable protections from measures motivated in any degree either to infringe academic freedom or in response to the exercise of academic freedom. Such untoward measures include but are not limited to actions that adversely affect:

- security of employment;

-- security of terms and conditions of employment such as rank, salary and perquisites, course assignments, access to research facilities and research support such as grants, research assistants and travel;

-- maintenance of opportunities for advancement such as tenure and promotions; and, -- freedom from discipline, punishment, sanctions, ostracism and similar segregation from and within the Academy.

(6)(e) **Respect for Law** --

Members of the Academy may neither use nor appeal to principles of academic freedom to justify violations of validly established law.

(7) **Contrary Movements** --

The UNLV Faculty Senate disapproves of movements that, while possibly well meaning, infringe on full and complete academic freedom.³

Explanation and Elucidation

I. Introduction -- Why We Have Published this Statement

a. The Outcomes Movement

b. The Academic Justice Movement

II. Basic Principles of Academic Freedom

a. Neutral Methods

b. Full and Free Investigation of Ideas

c. Liberation of the Individual

III. Conclusion

In support of the foregoing propositions, we provide the following detailed explanation.

I. Introduction -- Why We Have Published this Statement

The Faculty Senate of the University of Nevada, Las Vegas (“UNLV”) fully subscribes to the principles of academic freedom and educational inquiry set forth by the American Association of University Professors (“AAUP”).⁴ Moreover, we recognize and greatly appreciate that the Nevada System of Higher Education (“NSHE”) Code includes enforceable protections of academic freedom.⁵ We consider the AAUP’s pronouncements and the NSHE Code, supplemented by the specific propositions listed above under **The Principles**, both fundamental and indispensable to the functioning of undergraduate and graduate educational institutions commonly called “the Academy.”⁶

We write to reaffirm our resolute belief that absent complete adherence to the principles of academic freedom, the Academy cannot properly educate its students, foster the development of its faculty, protect the integrity of its administration and otherwise serve the greater Society that relies on the Academy to produce educated, productive citizens.

Arguably, the principles of academic freedom “speak for themselves,” needing no detailed explanations. However, we believe that the greater Society we serve is entitled to know and to consider not simply what it is, but why academic freedom must prevail over all other interests concerning higher education. Because the Academy exists to teach and to foster freedom of thought and inquiry, the UNLV Faculty Senate believes it prudent not simply to set forth, but to explain without equivocation, hesitation or apology the reasons why the Academy must enforce academic freedom to the fullest. All persons

within and without the Academy are entitled to know why utmost enforcement of academic freedom is the pivotal duty of the Academy, even when the free expression of ideas causes great alarm and distress.

We are concerned, as well, that full academic freedom has been and remains under particularly sharp attack. We believe that the limits some well-meaning individuals and groups propose will stifle and chill the full and free pursuit of ideas thereby jeopardizing the very purpose and value of education. While recent reporting shows an encouraging return to the time-honored principles, proposals to limit academic freedom stubbornly persist. In particular, an alarming number of individuals would deny to others the very freedom of inquiry and expression they claim for themselves.⁷ Therefore, out of respect for the Society we serve, we present the case for academic freedom in detail.⁸

a. The Outcomes Movement

As of this writing, two seemingly widespread movements threaten to compromise, thus risk, academic freedom: the Outcomes Movement and the Academic Justice Movement. We certainly understand that those movements' goals of accountability and fairness are important and proper. However, accountability and fairness may be safeguarded without infringing academic freedom. Insofar as their proponents prioritize the two movements' goals over academic freedom, we believe that priority improperly weakens the educational system these movements seek to foster.⁹

Specifically, the "Outcomes Movement" measures the merit of higher education *predominately* by the number of graduates employed plus the aggregate productivity those graduates generate over time. Based on the Movement's declared pragmatic bent, proponents frequently claim that the Academy inappropriately emphasizes purportedly impractical, abstract theory over practical, outcomes-oriented pedagogy.¹⁰ These critics similarly assert that the Academy encourages esoteric scholarship that neither directly nor substantially promotes economic and social benefits for the communities employing a given institution's graduates. Especially in times of economic restraint, the Outcomes Movement can and has perceived higher education as substantially vocational instruction to attain "boots on the ground," that is, preparing students to perform jobs with appreciation for abstract ideas of secondary importance at best.¹¹

Certainly, no respectable college or university denies that setting practical goals and assessing "outcomes" are not merely useful, but indeed central to those institutions' purpose.¹² The Faculty Senate supports levelheaded programs to set and to assess "outcomes."¹³ Nonetheless, the Outcomes Movement must understand that curricula emphasizing the ability to think both abstractly and critically is the sensible business of colleges and universities generally, not the exclusive province either of a small cadre of elite schools¹⁴ or of certain sub-disciplines within universities.¹⁵

Accordingly, we worry that the Outcomes Movement might *inadvertently* encourage anti-intellectualism. By focusing predominately on data collection, such as job placement and earnings reports, by emphasizing vocational preparation as the prime purpose of higher education, by deemphasizing life of the mind and by placing heavy reliance on standardized testing and similar formal measurements, the Outcomes Movement could encourage "teaching to the test" -- teaching to the data -- to assure continued academic funding.¹⁶ The Outcomes Movement should not result in depriving any graduates the benefits of traditional liberal arts education -- benefits that, as detailed shortly, actually make graduates more productive and efficient in their chosen work.

b. The "Academic Justice" Movement

The second movement, which we denote as the “Academic Justice” movement, urges that academic freedom must be subordinated to assumed truth and purported justice. Accordingly, any argument or inquiry deemed contrary to such truth or justice may be censored and its proponents disciplined, particularly if such inquiry distresses members of the Academy’s community.¹⁷ Although the present impact of the Academic Justice Movement may be unclear,¹⁸ there remains an ongoing and earnest debate whether the expression of ideas may be limited in favor of purported fairness or justice. The Senate notes that the pursuit of academic justice has produced for some members of the Academy an unmistakable sentiment to curtail free speech that is deemed politically or ethically unsuitable.¹⁹

The UNLV Faculty Senate opposes the Outcome and Academic Justice movements or such other theories *to the extent* they impinge on complete academic freedom.²⁰

II. The Basic Principles of Academic Freedom

As earlier emphasized, academic freedom is the full and unfettered pursuit of knowledge. As such, academic freedom promotes optimal fulfillment of two fundamental goals. The first goal is free investigation and invention of ideas. The second goal is liberation of the individual which thereby fosters liberation of greater Society. Both goals are integral for the enjoyment of, to borrow the phrasing of this Nation’s founders, “Life, Liberty and the pursuit of Happiness.”²¹ Because we believe pursuing these two goals is the fundamental purpose of the Academy, the Senate cannot endorse limits on academic freedom that frustrate these goals.

a. “Neutral Methods”

Before detailing these twin goals, however, we wish to clarify that lest it be misapplied, academic freedom is subject to what commonly is called “*neutral standards*,” “unbiased standards,” or some similar title. We have chosen “neutral methods” to denote research and analysis standards adopted by and appropriate to a particular study or discipline. As explained below, such standards should be “neutral” meaning the adopted standards neither inherently promote nor inherently frustrate any particular outcomes or viewpoints; neither do the adopted standards rely on standards and measures irrelevant to the particular study or discipline. Such standards provide necessary rigor thereby assuring that academic freedom is neither impeded nor distorted.²²

We understand that many scholars deny that any human evaluator can act in a purely “neutral” or unbiased manner, meaning evaluating the sense and merits of reviewed materials in a way that is utterly devoid of all arguable prejudices or irrelevant influences. But, even accepting that human frailty bars perfection, the necessary goal of education is striving to the fullest extent to render judgments as bereft of bias as possible. Educators accept that evaluating the merits of any research or scholarship should not be based on irrelevant factors such as personal prejudice, politics, bribery and similar untoward influences detached from the true merits of reviewed work.²³ We believe that the Academy can and does recognize and suppress such untoward influences well enough to promulgate and to abide by relevant, appropriate standards that may be called “neutral.”

In this regard, perhaps most prominently, academic freedom does not permit unprofessional conduct such as asserting indisputably untrue facts or arguing theories without providing apposite bases in support. Consequently, educational disciplines maintain discrete, well-conceived, sufficiently neutral standards of research and analysis to assure both the reliability of outcomes and the intellectual rigor of debate. Members of the Academy cannot claim that academic freedom allows them to defy the duly established, reasonable methods of their chosen disciplines.²⁴

Similarly, recognizing that not all constituents of the Academy enjoy equal power, academic freedom does not justify misuse of authority, exemplified by coercion overt or subtle.²⁵ For example, especially within the classroom, teachers may aggressively challenge students but may not abuse teaching authority by demeaning, threatening or similar untoward conduct.²⁶ Likewise, academic freedom does not permit teachers to assess students' work on criteria irrelevant to the given course or discipline such as race, sex or similar irrational bases. Academic freedom requires that the work product of members of the Academy be judged solely on criteria relevant to the nature of such projects because irrelevant standards by definition reveal nothing about the merits or demerits of any given project. Since they defy academic inquiry, irrelevant criteria fall outside the cloak of academic freedom.

b. Free and Full Investigation of Ideas

Classically, academic freedom protects the free and full investigation and debate of ideas, particularly concepts, viewpoints and policies "which may be politically, socially or scientifically controversial."²⁷ While this aspect sometimes is denoted as the pursuit of "truth,"²⁸ the better understanding in that truth, such as it may be, is part of a greater quest for ideas -- for knowledge.²⁹ The NSHE Code, then, aptly recognizes that the larger category "knowledge" is part of the coverage of academic freedom.³⁰ This essential role of the Academy might be summarized as the accumulation and dissemination of knowledge coupled with the free expression of opinions as part of intellectual inquiry.

Absent academic freedom, forces within and without the Academy could coerce their preferred orthodoxies as the price of maintaining the status of teacher, administrator or student. *But, stifling intellectual inquiry is the antithesis of education, threatening to substitute politics and partisanism for learning.* Consequently, academic freedom's pursuit of ideas -- of truth and knowledge -- inures to research, publishing in all its forms, in-class instruction and general campus conduct.³¹ So urgent is academic freedom that famously the Academy, and sometimes the State, protects academic freedom with enforceable policies assuring job and status security, prominent among them tenure.³²

Understandably and sensibly, the Academy has concluded that along with teaching hands-on skills, researching and imparting abstract concepts is essential to understanding both particular disciplines and discrete topics. Thus, life of the mind is integral to academic freedom's protection of the free and full investigation of ideas.³³ *Identically, the ability to handle abstract concepts often is essential in one's daily life, particularly successfully pursuing work and careers.* Academic research and instruction provides necessary depth and breadth of perception, enabling individuals pragmatically to pursue occupations and other projects with the greatest possible success and advancement.

In that regard, the study of concepts has two distinct but interrelated benefits particularly with regard to work and careers. First, understanding the theoretical bases of a given discipline or project enhances the likelihood of successfully fulfilling that project and attaining high ranking within the given field. Education requires knowing *why* something is as it is, not simply how to do something with little or no regard for the theories explaining the nature and functioning of the particular thing. Persons who know the *hows* but not the *whys* cannot fully understand and, thus, lack complete capacity to perform their work as well as possible.

Second, the very pursuit of abstract principles itself hones individuals' intellectual capacities even if given learning is not immediately related to either particular work or a general vocation.³⁴ For example, those who prior to graduation studied Philosophy may be more productive and efficient in their chosen

professions because Philosophy enhances their overall intellectual capacities and rational curiosity, making them able to appreciate more quickly and fully the intricacies of their various occupations.³⁵

Importantly, the freedom to pursue knowledge covers more than discerning new ideas and enhanced old ones. Academic freedom includes both challenging and demanding reaffirmation of accepted propositions, even when doing so is unpopular, uncomfortable and highly controversial.³⁶ For essentially two reasons, no idea should be considered so sacrosanct that it is beyond debate. First, possibly that which is considered *truth* in fact might not be fully true or true at all. Only continued challenge and investigation can verify what has been determined to be true. Limiting or proscribing such sustained investigation means we cannot be sure that the particular truth is unchallengeable because of its truthfulness rather than due to the political machinations of powerful individuals or groups.

Second, even if extant investigation properly has discerned something to be true, full study requires more than the Academy's unsupported assertion of that given truth. Rather, the Academy must present for review and challenge the record purportedly proving that truth -- a record that indeed might be improved upon as well as possibly contested by future study. Prohibiting persons from presenting dangerous thoughts, including contesting even seemingly unassailable actuality, does not disprove those dangerous thoughts but rather only evinces that someone or some group can coerce orthodoxy.³⁷

We recognize the alarming actuality that sometimes, exercising academic freedom, particularly questioning orthodoxy, can cause not simply discomfort, but more severe harm particularly to innocent persons.³⁸ Likewise, there is a great and too often underappreciated need to acknowledge dignity and respect, particularly to those who may have limited influence or who may feel innately estranged within the Academy. The Academy might well rally around the harmed person and attempt to show bigoted skeptics the errors of their beliefs. Moreover, as emphasized throughout this statement, academic freedom does not protect challenges to orthodoxy, or indeed *any* intellectual assertions, that fail to follow established, neutral methods or defy historical or scientific fact, as, for instance, pure and absolute "Holocaust deniers." But otherwise, even if the vast majority lucidly deems skeptics' claims appalling, such skeptics must not be penalized for to do so would inflict punishment through the imposition of political power.³⁹

In this regard, it is worth reiterating that a welcoming and inclusive environment is not and ought not be a "safe zone" from which individuals enjoy freedom from hearing upsetting and distressing ideas.⁴⁰ The nature of ideas is to stimulate thought which often means contemplating unpleasant, disturbing and distressing concepts. Doubtless, even in public areas, discourse is subject to content and viewpoint neutral rules regarding time, plan and manner.⁴¹ Appropriately neutral rules notwithstanding, if persons could proscribe the dissemination of ideas because they upset others, few ideas would be ripe for debate.

c. Liberation of the Individual

Statements on academic freedom tend to accent the pursuit of knowledge. However, the UNLV Faculty Senate believes that liberation of the individual -- that is, the ability and opportunity to enjoy liberty -- is equally essential because liberty safeguards respect of human dignity, which is the innate due of every human being. Only when human dignity is protected can persons freely pursue and use their educations. Moreover, if its members cannot enjoy individual liberty, then Society itself cannot be free and fair. Thus, the personal and societal liberty interests vouchsafed by academic freedom are as worthy of full enforcement as is the already discussed pursuit and dissemination of knowledge.

We understand “liberty” to mean pursuing self-chosen goals to attain happiness in a moral fashion, that is, seeking personal fulfillment while respecting the dignity of others.⁴² Liberated persons pursue happiness by seeking to discover who they are, what they want and how they wish to define their respective standings in Society. Additionally, liberated persons learn and employ various methods to attain their chosen happiness. But, as mentioned, there is a moral restriction: liberty does not permit any person to pursue happiness by demeaning the dignity of other persons, that is, by simply using other persons either against their will or without their knowledge.⁴³

We strongly believe that a traditional liberal arts education in an environment of complete academic freedom provides an especially unique and rich opportunity for individuals to attain their fullest possible liberty. We so believe because, especially in Modernity, appreciating life of the mind coupled with wide-ranging higher education allows individuals arguably the best ability to pursue happiness in a moral and socially productive fashion. To that end, higher education affords the precise and pointed training to attain *thorough* life of the mind -- the ability to think and the appreciation of thinking conceptually -- that essentially is unavailable elsewhere. In particular, higher education imparts life of the mind both abstractly and as applied in various courses of study, thereby better enabling individuals to discover who they want to be and how best to achieve their chosen selves within the moral strictures of human dignity.

While to a greater or lesser degree abstract theorizing may be characteristic of work and similar projects, those ventures use life of the mind instrumentally. That is, rather than to promote the personal liberty and to broaden the mind of employees, an employer trains its workers only for the benefit of that employer -- to make any given employee a better worker, no more than that. And, of course, any relevant abstract ideas likely are very specific, limited to the necessities of the given business and not always easily translatable to the workers’ other endeavors. *By contrast, formal education, particularly within the Academy, embraces as its very purpose imparting life of the mind for the benefit and to promote the liberation – the pursuit of happiness – of each person.* The Academy provides a singular opportunity for individuals to liberate themselves -- to realize who they are, what they want and how best to attain their happiness.

Importantly, we in no manner argue that human dignity is the byproduct of education. Rather, dignity is inherent within each person. Neither do we suggest that individuals who do not hold academic degrees are either unworthy of respect or incapable of respecting the dignity of others. Nor do we assert that liberty is unattainable absent a liberal arts education. Rather, as part of their innate dignity, we believe that all individuals are *entitled* to the personal emancipation derived from what commonly is denoted as a liberal arts education. That is, every person has the inherent right to enjoy the freedom -- the liberty -- that comes from the very ability to think conceptually, abstractly and pragmatically. Such is required for optimal self-fulfillment. Accordingly, we steadfastly assert that every person has the concurrent right to pursue life of the mind through higher education.

Furthermore, any society that frustrates individuals’ quest for intellectual fulfillment is oppressive. Conversely, by fostering individuals’ quest for intellectual fulfillment, a society increases not only aggregate happiness but as well overall productivity because a satisfied populace likely will work harder and better than a frustrated one.⁴⁴ Therefore, Society benefits when its Academies foster the liberty of its students and educators through promoting life of the mind.

The Academy violates these principles if it teaches in a vocational fashion, stressing *how* to do something over the *whys* of doing something. Students who are not firmly encouraged to appreciate the *whys* but only the *hows* have incomplete knowledge. They may be able to perform certain work, but lack the capacity to develop by innovating and altering their environments. They may be limited only to

repeating what has been done before, thus unable to contribute to the advancement of the given work or project.⁴⁵ This not only disserves the students who rely on the Academy, but likewise disserves the greater Society that would have to import the experts for whom its graduates would work. Thus, for the sake of the individual and the sake of Society, the Academy provides graduates who are educated in such life of the mind as given work might demand yet be unwilling to so train its own workers.

III. Conclusion

For the foregoing reasons the UNLV Faculty Senate reaffirms its unfettered, unconstrained devotion to the principles of academic freedom as first and paramount among the goals and duties of the Academy.

So subscribed this ___ day of ___, 2017 by an affirmative vote of the UNLV Faculty Senate.

¹ The AAUP's foundational document Statement of Principles on Academic Freedom and Tenure, 1940, remains among the most reliable and comprehensive basic expressions of the nature and extent of academic freedom. The AAUP has augmented its 1940 Statement with a series of supplements and reports. See, <http://www.aaup.org/our-programs/academic-freedom/resources-academic-freedom>.

² The important issue of "neutral methods" is explained in the Explanation and Elucidation below at part IIa.

³ As explained in parts I a and b in the Explanation and Elucidation below, The UNLV Faculty Senate in this document opposes two current movements of some prominence, the Outcomes Movement and the Academic Justice Movement, only to the extent that they infringe on academic freedom.

⁴ See *supra*, endnote 1.

⁵ 2 Nevada System of Higher Education ("NSHE") Code § 2.1 *et seq.*

⁶ While the same principles likely have their counterparts in elementary and high school level education, our expertise lies in higher education. Therefore, in no manner intimating that its precepts are inapplicable in other settings, we limit this statement to academic freedom's essentiality for the Academy.

⁷ As one frustrated commentator bluntly (and ungrammatically) but accurately lamented during an interview, "I think everyone understands that *they* have a free-speech right, but they don't necessarily understand why *you* should have one." Cecelia Capuzzi Simon, Fighting for Free Speech on America's Campuses, Education Life, The New York Times, (August 1, 2016),

<http://www.nytimes.com/2016/08/07/education/edlife/fire-first-amendment-on-campus-free-speech.html?emc=eta1>, (quoting an interview with Greg Lukianoff, coauthor with Jonathan Haidt of, The Coddling of the American Mind, The Atlantic, (Sept. 2015),

[http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/.](http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/)) (emphasis added).

⁸ We believe this Explanation and Elucidation covers the most important points; but, as no document is perfectly complete, the Faculty Senate certainly retains its right to add to and otherwise amend this Reaffirmation.

⁹ The subject of this Reaffirmation of Academic Freedom is limited, as the title suggests, to the issue of academic freedom. Therefore, this writing does not address situations in which the UNLV Faculty Senate might decide to oppose the Outcomes and Academic Justice movements, or other movements, on bases other than probable impingement on academic freedom.

¹⁰ *E.g.*, Tyler Kingkado, *Pat McCrory Lashes Out Against 'Educational Elite' And Liberal Arts College Courses*, The Huffington Post (February 2, 2013) (discussing several American politicians' criticisms of

liberal arts education), accessed at: http://www.huffingtonpost.com/2013/02/03/pat-mccrory-college_n_2600579.html

¹¹ E.g., Christopher B. Nelson, *Assessing Assessment*, (Nov. 24, 2014), <https://www.insidehighered.com/views/2014/11/24/essay-criticizes-state-assessment-movement-higher-education>; J.M. Anderson, *Three Cheers for Useless Education*, (Nov. 29, 2011), <http://www.nas.org/articles/three-cheers-for-useless-education> (both articles criticizing the Outcomes Movement).

¹² E.g., Association of American Colleges & Universities, *Higher Education Learning Outcomes Assessment Movement Moves Away from Standardized Tests, According to New National Survey*, (Feb. 17, 2016); generally, National Institute for Learning Outcomes Assessment, *Higher Education Quality: Why Documenting Learning Matters*, (May 2016),

http://www.learningoutcomesassessment.org/NILOA_statement.html.

¹³ See e.g., ETS, *A Culture of Evidence: an Evidence-Centered Approach to Accountability for Student Learning Outcomes* (2008) (noting, *inter alia*, that particularly for liberal arts instruction, assessing outcomes should respect goals such as cultivating “creativity,” “student engagement with learning,” and “general education skills, such as the abilities to communicate clearly and effectively and to break down and analyze complex information to solve problems.” (*Id.* at 12)), accessed at: https://www.ets.org/Media/Education_Topics/pdf/COEIII_report.pdf

¹⁴ E.g., Peter St. Onge, *The Words We Want To Hear about UNC*, *The Charlotte Observer*, (Jan. 7, 2016), <http://www.charlotteobserver.com/opinion/editorials/article53559450.html> (quoting North Carolina Governor Pat McCrory, “If you want to take gender studies, that’s fine. Go to a private school, ...”).

¹⁵ While many educators, politicians and other concerned individuals have criticized extreme varieties of the Outcomes Movement, e.g., Kingkado, *supra* endnote 11, we believe such zeal remains highly influential especially in times of economic distress.

¹⁶ E.g., Kingkado, *supra*, endnote 11. Mr. Kingkado’s article noted that North Carolina Governor Pat McCrory, “said he’d propose legislation to change the higher education funding formula in the state ‘not based on how many butts in seats but how many of those butts can get jobs.’” *But see*, St. Onge, *supra* endnote 15, (criticizing Gov. McCrory’s statement as contrary to the proper goals of education and as bad policy because, quoting Florida State Senator Joe Negron, “It has been proven that liberal arts majors who pursue careers in business do very well.”)

¹⁷ A typical recent reaffirmation of the Academic Justice movement is found at Sandra Y.L. Corn, *The Doctrine of Academic Freedom, Let’s Give Up On Academic Freedom In Favor Of Justice*, *The Harvard Crimson*, February 18, 2014, <http://www.thecrimson.com/column/the-red-line/article/2014/2/18/academic-freedom-justice/>.

¹⁸ See, endnote 7 *supra*, discussing recent backlashes against promoting certain principles of “academic justice” over academic freedom.

¹⁹ E.g., Cecelia Capuzzi Simon, *Fighting for Free Speech on America’s Campuses*, *Education Life*, *The New York Times*, (August 1, 2016), <http://www.nytimes.com/2016/08/07/education/edlife/fire-first-amendment-on-campus-free-speech.html?emc=eta1>, (discussing Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind*, *The Atlantic*, (Sept. 2015),

<http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>;

David Brooks, *The Shame Culture*, Op-Ed, *N.Y. Times*, (March 15, 2016), <http://www.nytimes.com/2016/03/15/opinion/the-shame-culture.html?emc=eta1&r=0>, (decrying what the author perceived as a growing trend in the Academy that, “Many people carefully guard their words, afraid they might transgress one of the norms that have come into existence. Those accused of incorrect thought face ruinous consequences. When a moral crusade spreads across campus, many students feel compelled to post in support of it on Facebook within minutes. If they do not post, they will be noticed and condemned.”);

Nicholas Kristof, Mizzou, *Yale and Free Speech*, Op-Ed, N.Y. Times, (Nov. 11, 2015), <http://www.nytimes.com/2015/11/12/opinion/mizzou-yale-and-free-speech.html?emc=eta1> (“Yes, universities should work harder to be inclusive. And, yes, campuses must assure free expression, which means protecting dissonant and unwelcome voices that sometimes leave other people feeling aggrieved or wounded.”);

Suzanne Nossel, *Who Is Entitled To Be Heard?*, Op-Ed, N.Y. Times, (Nov. 12, 2015), <http://www.nytimes.com/2015/11/12/opinion/who-is-entitled-to-be-heard.html?emc=eta1> (criticizing the trend at universities that, “In recent years speakers have been disinvited, campus events disrupted and activists threatened for speaking their minds.”).

To cite another example, hundreds of students at Amherst College demanded from the college’s administration that, “students who had posted ‘Free Speech’ and ‘All Lives Matter’ posters to go through ‘extensive training for racial and cultural competency’ and possibly discipline.” Anemna Hartocollis, *With Diversity Comes Intensity in Amherst Free Speech Debate*, U.S., The New York Times, (Nov. 28, 2015), <http://www.nytimes.com/2015/11/29/us/with-diversity-comes-intensity-in-amherst-free-speech-debate.html?emc=eta1&r=0>. These students’ demands were not embraced by the entire Amherst community. “Alumni took to the college’s website by the hundreds to complain that this generation was trying to sanitize history and impose a repressive orthodoxy on a place that should be a free market of ideas.” *Id.*

Similarly, a 2016 Gallup polling agency survey disclosed that, “While 76 percent [of surveyed students] agreed that students should not be able to prevent the news media from covering campus protests, nearly half supported reasons for curtailing that coverage: biased reporting (49 percent), the right to be left alone when protesting (48 percent) and the right to tell their own story on the internet and social media (44 percent).” Simon, *supra* endnote 17.

²⁰ We believe our assertions fully comport with the positions set forth by the AAUP. *E.g.*, AAUP, *Civility*, <https://www.aaup.org/issues/civility> (and AAUP documents discussed therein).

²¹ The Declaration of Independence, par. 2 (July 4, 1776).

²² Not surprisingly, such standards comport with the beneficial aspects of the Academic Freedom and Outcomes movements.

²³ For instance, all disciplines agree that retaining, promoting or tenuring faculty either because they are well liked or they promise to endow a faculty position is illegitimate if their scholarship or teaching is substandard.

²⁴ *E.g.*, 2 NSHE Code § 2.1.3. Logically then, no person as a matter of academic freedom may impinge on the academic freedom of others. *Cf.*, *id.* at § 2.3.5.

²⁵ In this regard, academic freedom shares the basic concerns regarding dignity and respect stressed by the Academic Justice movement.

²⁶ To offer a prominent example, through the instruction, grading and review process, teachers hold considerable power over students. As experts in their fields, teachers may supplement their lessons with personal opinions, that is, beliefs, attitudes and feelings regarding the subjects taught. Indeed, students may benefit from the wisdom such opinions impart. Moreover, as objective grading criteria, teachers may demand that students understand divergent opinions related to relevant topics. *E.g.*, AAUP, *Civility*, <https://www.aaup.org/issues/civility> (quoting, among other documents, AAUP, *Freedom in the Classroom*, “[Any assertion] that students have a right not to have their most cherished beliefs challenged ... contradicts the central purpose of higher education, which is to challenge students to think hard about their own perspectives, whatever those might be.”).

However, given the power imbalance, teachers may not so much as intimate, much less require that students embrace or claim to embrace teachers’ personal opinions as the requisite either for receiving

benefits such as high grades or for avoiding detriments such as low grades. The very idea of free thought bristles at any coercion to endorse opinions. *Cf., id.* (quoting, AAUP, The Committee A Statement on Extramural Utterances, “The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness to serve.”).

²⁷ 2 NSHE Code at § 2.1.2.

²⁸ *E.g.*, AAUP 1940 Statement, *supra* endnote 1 at ¶ 1.

²⁹ Theorists may differ whether, given a particular context, truth exists, whether all contentions to establish such truth themselves necessarily are true, and, if truth exists, whether it can be proved unconditionally as such. While such debate is part of academic freedom, the definition of academic freedom need not and ought not be constrained. Indeed, were *truth* the sole quest, there would be neither professional nor moral objections to mandating belief in and proscribing all inquiry or debate questioning such truth. Therefore, the Faculty Senate prefers the concepts of “ideas” and “knowledge” as demarcating academic freedom.

³⁰ “The continued existence of the common good depends upon the free search for truth *and knowledge and their* free exposition.” 2 NSHE Code § 2.1.1 (emphasis added).

³¹ *Id.* at §§ 2.3.1-2.3.3. The Faculty Senate notes in passing a disturbing trend within the federal courts demarcating certain academic business and debates as internal employment matters not protected by the free speech clause of the U.S. Constitution’s First Amendment. *E.g.*, AAUP, *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*, <http://www.aaup.org/report/protecting-independent-faculty-voice-academic-freedom-after-garcetti-v-ceballos>. While some purely internal matters might not implicate the academic freedom aspect of free speech, we fear that the courts are prone to remove policy and personnel matters from First Amendment coverage despite their intimate relation to academic freedom. Such jeopardizes academic freedom at government run institutions where the First Amendment is applicable.

We hope the federal courts will limit and reverse this trend. We note as well that private regulation of state and private higher education *via* accrediting institutions assures academic freedom regardless whether identical protections are or are not available under the U.S. Constitution. Moreover, states such as Nevada have codified affirmative academic freedom protections that may well fill any gaps in First Amendment coverage. Lastly, the federal courts recognize that full academic freedom protections may be incorporated as legally enforceable provisions of employment contracts. Insofar as it does not already do so, we urge the NSHE system to so incorporate such express protections.

³² For example, tenure at State educational institutions in Nevada is covered by 2 NSHE Code Chs. 3 and 4.

³³ As set forth *supra* under **The Principles, (5)**, “life of the mind” “mean[s] reverence for ideas coupled with the capacity to think conceptually, thoroughly, creatively, rationally, pragmatically and critically. Life of the mind enables individuals to understand ideas both abstractly and as ways to solve practical problems.”

³⁴ *See*, Carol Marie Cropper, *Philosophers Find the Degree Pays Off in Life and Work*, *BusinessDay*, N.Y. Times, Dec. 26, 1997, <http://www.nytimes.com/1997/12/26/business/philosophers-find-the-degree-pays-off-in-life-and-in-work.html?pagewanted=all> (noting that while jobs in academia are hard to obtain, evidence suggests that philosophy students successfully obtain work in business and other professions. “[F]or the most part [philosophy students] are convinced that their studies, which covered logic and ethics among other topics, helped them in their jobs and their lives.”); *see also, e.g.*, George Anders, *That 'Useless' Liberal Arts Degree Has Become Tech's Hottest Ticket*, *Forbes.com*, (August 17, 2015), <http://www.forbes.com/sites/georgeanders/2015/07/29/liberal-arts-degree-tech/#77162b2d5a75>; Jeffrey Dorfman, *Surprise: Humanities Degrees Provide Great Return On Investment*, *Forbes.com*, (Nov. 20,

2014), <http://www.forbes.com/sites/jeffreydorfman/2014/11/20/surprise-humanities-degrees-provide-great-return-on-investment/#257aaf9f94a9>;

Carolyn Gregoire, *The Unexpected Way Philosophy Majors Are Changing the World of Business*, The Huffington Post, (March 6, 2014), http://www.huffingtonpost.com/2014/03/05/why-philosophy-majors-rule_n_4891404.html.

³⁵ Accordingly, insofar as it fails to appreciate how life of the mind -- the ability to reason abstractly -- is indispensable to the practical application of ideas, the Outcomes Movement not only underestimates academic freedom but also impedes its own goals of maximizing efficiency and productivity. Surely, that Movement's worthy objectives ought not be the tool to undermine academic freedom by disparaging the capacity to conceptualize.

³⁶ *E.g.*, 2 NSHE Code § 2.1.2.

³⁷ Therefore, any support by the Academic Justice movement to punish persons for questioning even evident truth such as the overall immorality of racism, is out of place in the Academy. *E.g.*, AAUP, *Civility*, <https://www.aaup.org/issues/civility>

³⁸ For example, we believe, as we think most persons rightly believe, that discrimination based on sexual dispositions is immoral except in very limited instances. Accordingly, skeptics' contentions that benign dispositions of gender or sexuality such as LGBTQ are unnatural or evil may cause anguish, disaffection, censure, lost opportunities and other underserved injuries to persons who have done no palpable wrong and have caused no palpable harm.

³⁹ Indeed, the NSHE Code recognizes:

The Nevada System of Higher Education is committed to the solution of problems and controversies by the method of rational discussion. Acts of physical force or disruptive acts which interfere with Nevada System of Higher Education activities, freedom of movement on the campuses or freedom for students to pursue their studies are the antithesis of academic freedom and responsibility, as are acts which in effect deny freedom of speech, freedom to be heard and freedom to pursue research of their own choosing to members of the faculty or to invited guests of the Nevada System of Higher Education. 2 NSHE Code § 2.1.4.

⁴⁰ The Senate expresses no opinion in the Reaffirmation regarding the movement on some campuses to devise "safe zones" where, for instance, "individuals affected by homophobia, hateful acts, and sexual violence can safely go for support and assistance. By placing the Safe Zone symbol on their office door, desk, or backpack, Safe Zone allies signify that their space is a safe place to talk and seek help." Kansas State University, Safe Zone, <https://www.k-state.edu/safezone/>; *see also, e.g.*, Indiana University of Pennsylvania, Safe Zone Program, <http://www.iup.edu/safezone/>; Rhodes College, Safe Zones, <https://www.rhodes.edu/content/safe-zones>.

⁴¹ For example, academic freedom is not offended by rules requiring that, with rare and limited exceptions, discrete topics discussed in a given course be limited to subjects germane to that course. For example, NSHE Code sec. 2.3.3. states, "**Freedom in the Classroom**. A member of the faculty is entitled to freedom in the classroom in discussing a subject, but the faculty member should be careful not to persist in discussing matters, which have no relation to the subject taught." Because the very purpose of the course is to impart relevant information, rules restricting irrelevant topics are appropriate to protect the course's integrity.

Along somewhat different lines, law and logic aptly differentiate legitimate dissemination of ideas from harassment. For instance, individuals may enjoy the seclusion of their private rooms, such as on-campus housing. Accordingly, academic freedom does not protect a speaker who, standing outside the closed private dormitory room of a student, shouts insults, vitriol or simply harangues the unwilling listener with polite arguments and assertions. Even within the Academy, some zones of personal privacy exist.

However, members and guests of the Academy who enter the numerous areas of open discourse cannot demand to be free from non-harassing exposure to unpleasant ideas, regardless whether at that moment, in that place they choose the role of passive listener rather than active participant in the particular debate or discussion. Thus, for example, a person sitting in the Student Union cannot insist that those at the next table cease discussing something the person finds upsetting or inappropriate. Of course, as noted in the text, academic freedom is subject to appropriately subject-neutral time, place and manner rules. If, for example, those at the next table are using inappropriately loud voices, the objector can insist that they lower their voice to an appropriate level. Similarly, the objector may choose to reposition herself out of earshot in which case, if the others follow her insisting that she hear their conversation, the objector has a valid claim of harassment.

⁴² There is, of course, a political aspect to “liberty.” Liberty sometimes is recognized or defined as a set of rights belonging to human beings that government must both respect and protect, and that government may not abridge. For the purposes of this writing, perhaps the most important explication of that aspect of liberty comes from the Declaration of Independence’s bold and apt assertion that “all [Persons] are created equal and are endowed by their Creator with certain unalienable Rights, among these are Life, Liberty and the Pursuit of Happiness.

“That to secure these rights, Governments are instituted among [Persons], deriving their just powers from the consent of the governed, . . .” The Declaration of Independence, pars. 2, 3 (July 4, 1776).

⁴³ This very brief definition is based on principles often associated with moral and political philosophy of The Enlightenment era, much of which influenced the drafters of the Declaration of Independence.

An example might help illustrate how these abstract concepts work. Jane decides that she will be happiest by studying to become a physician. To maximize her pursuit of that happiness – to exercise her liberty – Jane decides to study as hard as she can, to compete for scholarships, to make helpful contacts in the greater community, and, to engage in useful extra-curricular activities. All of these are perfectly acceptable pursuits so long as Jane does not use other people in immoral ways. If Jane cheats on her tests or lies to get scholarships and jobs, she abuses her liberty by obtaining unearned advantages, thereby denying those advantages to persons who had earned them. Lying and cheating are classic examples of immoral conduct. Specifically, lying and cheating impugn the dignity of others by depriving those others of benefits – herein rightful competition with other students and access to financial aid – not on merit but by deceit.

⁴⁴ *E.g.*, Michael Addady, Study: Being Happy at Work Really Makes You More Productive, *Fortune*, (Oct. 29, 2015), <http://fortune.com/2015/10/29/happy-productivity-work/>; A Happy Worker Is a Productive Worker, *The Huffington Post, The Blog* (Sept. 30, 2013), http://www.huffingtonpost.com/marilyn-tam/how-to-be-happy-at-work_b_3648000.html (“Unhappiness among workers in America is costing a shocking \$300 billion per year in lost productivity, the Gallup-Healthways estimates.”); New Study Shows We Work Harder When We Are Happy, *Warwick News & Events*, http://www2.warwick.ac.uk/newsandevents/pressreleases/new_study_shows/ (“Happiness makes people more productive at work, according to the latest research from the University of Warwick.”).

⁴⁵ As one commentator noted, “The danger of equating higher education with skills training is that students are only taught instrumental knowledge and remain ignorant of the general interests of human beings. They are molded for the marketplace, for doing and getting, rather than taught the art of thought. They become unreflective experts who possess learning without wisdom and habit without philosophy or reflection, as [noted attorney and education theorist] Harold Laski once remarked.” Anderson, *supra* endnote 12.