

ACADEMIC FREEDOM: MOVING AWAY FROM THE FACULTY-ONLY PARADIGM

*Arthur Gross-Schaefer*¹

I. INTRODUCTION

Academic freedom has often been viewed as defending the rights of professors in the areas of speech, association, research, publication and teaching. This article reviews these areas from a legal and ethical perspective and proposes a new paradigm based on recognizing that academic freedom provides rights as well as related responsibilities relating to additional stakeholders including students and the university administration. The article suggests an approach to deal with controversial issues based upon the core concepts of *rights, responsibility and respect* in an ethical environment of fairness, decency, compassion and professional excellence.

The Robinson Affair

On January 19, 2009, Dr. William Robinson, Professor of Sociology at the University of California at Santa Barbara (UCSB), forwarded, via email, a photographic essay comparing approximately forty images of Israeli soldiers purportedly in Gaza to Nazis during the Holocaust. He stated in the email that, “Gaza is Israel’s Warsaw – a vast concentration camp that confined and blockaded Palestinians.”² He concluded his short note with, “We are witnesses to a slow-motion process of genocide.”³ He sent the email to, among others, the students on the e-list of his Sociology of Globalization course, which had a Latin American focus. In the classroom he did not discuss the events and issues of the Middle East either prior to or after having sent the email. Two students dropped the course and eventually filed formal complaints against the professor. Professor Robinson was charged with the following allegations in April 2009: sending “highly partisan emails accompanied by lurid photographs”; email was “without educational content”; “no explanation of how the material related to the content of the course” was offered; there was “no avenue to discuss” the offered materials; “the email was not connected to the course,” and these allegations, “if substantially true, may violate the Faculty Code of Conduct.”⁴ In June 2009, a faculty committee set up to investigate the complaint found “no probable cause to undertake disciplinary action in this matter.”⁵

The Robinson case entailed many issues, including claims of procedural justice and due process, as well as the role of outside influence on the academic

¹ Professor of Business Law, Chair of the Department of Marketing and Business Law, Loyola Marymount University, Los Angeles, California, Acting Hillel Rabbi at UCSB January-June, 2009, with special thanks for editing and review to several colleagues, graduate student Research Assistants Callista Nurimba and Brad Onishi, student Research Assistant Warren Terry along with Kathe Segall, Faculty Administrative Assistant.

² Duke Helfand, *Professor’s Comparison of Israelis to Nazis Stirs Furor*, L.A. TIMES, April 30, 2009, available at <http://articles.latimes.com/2009/apr/30/local/me-professor30>.

³ *Id.*

⁴ Memorandum from Professor Martin Scharlemann, the charging officer (April 5, 2009) (responding to Professor’s Robinson memorandum of April 5, 2009 (on file with author).

⁵ E. Lindberg, *UCSB Prof Cleared of Any Misconduct*, DAILY SOUND, June 26, 2009, at www.thedailysound.com/062609ucsbprof.

review process.⁶ However, the main claim made by Robinson and his defenders was that the investigation violated his academic freedom. The Robinson case became controversial, involving student protests, website commentary, local and international newspaper articles, op-ed pieces,⁷ radio talk show discussions, and the convening of an academic panel.⁸ While the official aspect of the Robinson case has been finalized, the issues surrounding claims of academic freedom need further investigation. This article reviews and comments on the appropriateness of the claim of academic freedom primarily in relation to a professor's actions in the classroom.

In addition, this article will dispute the notion that faculty are the only stakeholders with regards to academic freedom. While attempts were made during the Robinson situation to introduce academic rights of student and other groups, those views were largely subordinated in favor of the more normative faculty-only perspective. For example, a faculty member on the academic panel during this incident asserted that only faculty members have academic rights. Accordingly, this article will challenge the Robinson paradigm of academic freedom, predicated on faculty as the single stakeholder, as limiting and self-serving. The article will also assert the presence and acknowledgement of other stakeholders, as well as the urgent need for a new and more nuanced paradigm. As James Baldwin put it, "Not everything that is faced can be changed. But nothing can be changed until it is faced."⁹ It is therefore important to provide a critical look at both the reasons for academic freedom and how the goals of academic freedom can best be accomplished and protected in today's environment where there are competing interests from students and administrators.

This article will review the history and claims of academic freedom, while stressing the necessity for an innovative approach. The article attempts to protect the fundamental rights of academic freedom for professors, while recognizing that students and college administrators have claims to academic freedom as well. The goal in this direction is not to reduce the necessary protections for the academic, but rather to reprioritize those safeguards while understanding the interests of other relevant stakeholder groups. This approach therefore focuses on core values and a stakeholder analysis that balance the rights and responsibilities of everyone involved. The paper is divided into five sections: Part I - The Origins of Academic Freedom; Part II - Academic Freedoms of Research, Association, Speech and Teaching; Part III -Stakeholders' Approach to the Current Challenges to Academic Freedom; Part IV - The Robinson Affair and Academic Freedom; Part V - A New Beginning, Stakeholder Analysis Based on Respect, Rights and Responsibilities.

⁶ A review of the outside influence and procedural claims will be briefly reviewed later in the article.

⁷ Two of the op-ed pieces were written by the author of this article. Arthur Gross-Schaefer, *Academic Freedom Has Its Boundaries*, SANTA BARBARA NEWS-PRESS, May 17, 2009, at G1; Arthur Gross-Schaefer, *Students, Too, Have Academic Rights*, SANTA BARBARA INDEP., May 17, 2009, at 29 [hereinafter *Students, Too*].

⁸ Convened by Committee to Defend Academic Freedom, May 21, 2009.

⁹ James Baldwin, *Sonny's Blues*, in AMERICAN SHORT STORY MASTERPIECE (1987) at www.independent.com/news/2009/may/21/students-too-have-academic-rights/.

II. ORIGINS OF ACADEMIC FREEDOM

Academic freedom has a long philosophical history, dating back to Greece and eventually expanding to European universities. At the same time, there is a history of religious institutions, such as the Roman Catholic Church and later Protestant successors, as well as government authorities, attempting to censor university¹⁰ content, faculty research, and public expression.¹¹ “With the founding of the University of Berlin in 1811, the basic principles of *Lehrfreiheit* (freedom to teach) and *Lernfreiheit* (freedom to learn) were firmly established and became the model” for the rest of the academic community.¹²

In the United States, two concepts of academic freedom have developed. There is the professional model, which is borrowed primarily from Germany and is used by the American Association of University Professors (AAUP); and there is the legal model, which is based on Supreme Court rulings beginning just after World War II.¹³

The AAUP came into existence in 1915 as a response to the firing of a noted Stanford University economist due to his controversial views on immigrant labor and railroad monopolies.¹⁴ Originally formed by a small group of professors, it has since evolved into a national advocacy organization, largely for faculty, which promotes academic freedom as “the fundamental principle” of the academic profession.¹⁵ Consequently, “AAUP remains the leading organization primarily dedicated to protecting the academic freedom of professors.”¹⁶ Subsequent to the establishment of the AAUP in 1915, and especially after its 1944 promulgation of a statement of principles on academic freedom and tenure, the AAUP has become the most frequently cited organization by academics in their attempt to define academic freedom.¹⁷

Legal scholars have also argued that the First Amendment protects academic freedom in public institutions of higher learning.¹⁸ Dating back to the 1957 case *Sweezy v. New Hampshire*,¹⁹ the United States Supreme Court found that academic freedom is a First Amendment right. Moreover, “this simple proposition—that the First Amendment protects academic freedom—stands explicit or implicit in

¹⁰ University will be used broadly to include universities with masters and doctoral programs, four-year college, and community colleges.

¹¹ *Academic Freedom*, BRITANNICA ONLINE ENCYCLOPEDIA, available at Britannica.com/EBcheck/topic/2591/academic-freedom.

¹² *Id.*

¹³ Carl Peter, *The Many Faces of Academic Freedom*, 20 ORIGINS 520-24 (January 17 1991).

¹⁴ Am. Ass'n Univ. Professors, *History of the AAUP* available at aaup.org/aaup/about/history.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Academic Freedom*, *supra* note 11.

¹⁸ J. Peter Byrne, *Academic Freedom*, 99 *Yale Law Journal* 251, 252-53 (1989).

¹⁹ *Sweezy v. New Hampshire*, 354 U.S. 234, 262-63 (1957). See also *Keyishian v. Board of Regents of University of the State of N.Y.*, 385 U.S. 589 (1967); *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985).

numerous additional judicial opinions, often proclaimed in fervid rhetoric.”²⁰ For example, Justice Powell, in the *University of California Regents v. Bakke*²¹ decision, points to wording in *Keyishian v. Board of Regents*²² and *Sweatt v. Painter*²³ supporting academic freedom and notes that, “[a]lthough a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded.”²⁴

The body of case law on academic freedom, coupled with the AAUP guidelines, forms the basis for our current understanding of academic freedom as a fundamental tenet of academic life.²⁵ These concepts are often codified by university guidelines such as the one adopted by the University of California: “The principles of academic freedom protect freedom in inquiry and research, freedom of teaching, and freedom of expression and publication.”²⁶ However, the application of academic freedom to specific situations, especially related to classroom instruction, is subject to substantial interpretation.

III. ACADEMIC FREEDOMS OF RESEARCH, ASSOCIATION, SPEECH, AND TEACHING

Academic freedom involves various aspects including research, publication, organizational affiliation, loyalty oaths, and political speech, as well as speech and activities within the classroom and associated with classroom instruction. Because the classroom provides a captive audience for the professor, and there are substantial power differences between the professor and the students, additional considerations are present when discussing academic freedom related to the classroom. It is important to view these topics, although somewhat briefly, in order to more fully appreciate a nuanced understanding of academic freedom.

²⁰ Byrne, *supra* note 18. *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 252 (1819) contains the first statement regarding the role of the university to disseminate ideas as a “special concern of the First Amendment.” Although the case was decided using the Contract Clause of the Constitution, the main thrust was to protect the university from an attempt to regulate its curriculum. It is interesting to note that the case, on behalf of Dartmouth, was argued by one of its 1802 graduates, Daniel Webster.

²¹ 438 U.S. 265 (1978).

²² 385 U.S. 589 (1967).

²³ 339 U.S. 629 (1950).

²⁴ 438 U.S. at 312.

²⁵ Clearly, academic freedom has become a firmly established principle, one that is based on several core foundations: 1) The philosophy of intellectual freedom, which originated in Greece, arose again in Europe, especially under the impact of the Renaissance, and came to maturity in the Age of Reason; 2) The idea of autonomy for communities of scholars, which arose in the universities of Europe; and 3) The freedom guaranteed by the Bill of Rights of the federal constitution as elaborated by the courts.

Ralph F. Fuchs, *Academic Freedom-Its Basic Philosophy, Function and History*, 28 LAW & CONTEMP. PROBS. 431(1963).

²⁶ Univ. Cal., *University Policy Regarding Academic Appointees - Academic Freedom*, available at www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf; Stanley Fish, *Conspiracy Theories 101*, N.Y. TIMES, July 23, 2006, available at www.nytimes.com/2006/07/23/opinion/23fish.html.

A. *Freedom of Research*

The principle of academic freedom finds its origins in protecting the intellectual activity of professors. At one time, the professor's ability to research and publish in controversial topics was severely limited, as evidenced by the famous case involving Galileo.²⁷ Academic freedom thus developed into a safeguard allowing professors to pursue controversial topics and their intended and unintended consequences. It has encouraged inquiry into all subjects, including well-established religious or economic concepts. Academic freedom gives professors the right to research in new areas.²⁸ Freedom of research has not been challenged in recent times, suggesting that the fight to protect the intellectual activity of professors has been largely successful. As discussed above, academic freedom has evolved to provide additional protections often associated with the First Amendment, including the freedoms of association and speech.

B. *Freedom of Association*

Claims of academic freedom have also centered on attempts to control a professor's association, especially in the area of loyalty oaths. Beginning in the 1930s and exacerbated by the communist hysteria of the 1950s,²⁹ loyalty oaths prohibited teachers from pursuing or encouraging undesirable political activities. Fortunately, Supreme Court decisions in 1957 and 1967 struck down the requirement of loyalty oaths as unconstitutional.³⁰ Some of the Court's strongest language regarding the relationships between the First Amendment, freedom of association and academic freedom is found in the context of loyalty oaths, as expressed by Justice Brennan:

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.³¹

Consequently, the First Amendment concerns of free association have been clearly linked with academic freedom.

²⁷ Albert Van Helden, *Galileo*, ENCYCLOPEDIA BRITANNICA, available at <http://www.britannica.com/EBchecked/topic/224058/Galileo>.

²⁸ Fish, *supra* note 26.

²⁹ *Academic Freedom*, *supra* note 11.

³⁰ See *Sweezy v. New Hampshire*, 354 U.S. 234, 249–251 (1957); *Keyishian v. Board of Regents of University of the State of N.Y.*, 385 U.S. 589, 597–604 (1967) (striking down loyalty oaths dealing with Communism).

³¹ *Keyishian*, 385 U.S. at 605.

C. *Freedom of Speech and Teaching*

Academic freedom has also been successful in protecting the activities and statements of professors outside the classroom. While there is a strong connection between academic freedom and the First Amendment concerning activities generally taking place outside the classroom, it is less clear how academic freedom and the First Amendment relate to activities whose locus is primarily in the classroom. As one commentator states, “[w]hen the fancy prose is peeled away, most of the so-called ‘academic freedom’ cases are really about either: the government suppression of political speech or the government’s interference with freedom of association (e.g. loyalty oaths, membership in ‘subversive organizations’).”³² Academic freedom itself “is more clearly established in academic literature than it is in the courts”³³ and “its parameters are not well-defined, especially with regard to a teacher’s speech within the classroom.”³⁴ And while the sweeping rhetoric of Justice Brennan in *Keyishian* suggests broad application to the classroom, it has not been “extrapolated to deny schools command of their own courses.”³⁵ Unlike the ties to political speech and association, there is confusion regarding the applicability of constitutional rights to an instructor’s speech.

First, not all speech is fully protected, and therefore there have been numerous attempts to regulate speech within the campus community that may be deemed offensive or hateful.³⁶ In the 1980s and early 1990s, many colleges and universities adopted “speech codes” to limit “offensive” speech based on “race, ethnicity, gender, religion, sexual orientation, or physical disability.”³⁷ Secondly, efforts have been made to control in-class statements by professors, such as an accusation that then Vice President Dick Cheney was responsible for the attack at the World Trade Center,³⁸ and the assertion by Professor Wade Churchill that the attack was justified due to the failings of American foreign policy. Churchill further

³² Ronald Standler, *Academic Freedom in the USA*, available at <http://www.rbs2.com/afree.htm> (1999).

³³ *Cohen v. San Bernardino Valley College*, 883 F. Supp. 1407, 1412 (C.D. Calif. 1995), *aff’d in part & rev’d in part*, 92 F.3d 968 (9th Cir. 1996). *Cohen* dealt with a professor charged with sexual harassment based on in-class speech and his self-described “confrontational teaching style designed to shock his students and make them think and write about confrontational subjects.” *Id.* at 1409-10. He led classroom discussions on topics such as “obscenity, cannibalism, and consensual sex with children.” *Id.* at 1410. He read articles to his class that he had published in *Hustler* and *Playboy* magazines. *Id.* The United States Court of Appeals for the Ninth Circuit found that the policy was “simply too vague as applied to Cohen in this case.” *Cohen v. San Bernardino Valley College*, 92 F.3d 968, 972 (9th Cir. 1996).

³⁴ *Mahoney v. Hankin*, 593 F. Supp 1171, 1174 (S.D.N.Y. 1984).

³⁵ *Bishop v. Aronov*, 926 F.2d 1066, 1075 (11th Cir. 1991). *Bishop* supported the right of the University of Alabama right to instruct a professor to not teach “intelligent design theory.” The court found that the classroom, during instructional time, was not an open forum, and that the university had a right to set the curriculum. *Id.* at 1087.

³⁶ See *Sweezy v. New Hampshire*, 354 U.S. 234 (1957)

³⁷ *Academic Freedom*, *supra* note 11.

³⁸ Professor Steven Jones of Brigham Young University suggested that the government was responsible for the destruction of the World Trade Center, at www.ksl.com/?nid=148&sid=476951. Gene Kennedy, *BYU Professor on Paid Leave for 9-11 Theory*, available at ksl.com/index.php?rind=476951.

described the victims of the World Trade Center as “Little Eichmanns.”³⁹ Accordingly, speech within a university setting can be regulated to render it consistent with the institution’s educational mission.⁴⁰ Thus, university officials have acted and the courts have generally supported their actions, in attempts to control what they believe is inappropriate in an academic environment.

There are several circuit court cases dealing with untenured faculty that affirm the university’s right to set standards of conduct and speech in the classroom, thus suggesting that the university has the ability to review and set guidelines for all professorial conduct in the classroom.⁴¹ Although these cases are limited to only non-tenured faculty, the courts did not provide a clear policy reason for treating tenured and untenured faculty differently in the area of academic freedom. In *Hetrick v. Martin*, during the 1970s a faculty member told her freshman students, “I am an unwed mother” and also discussed the Vietnam War and military draft. Her contract was not renewed and the court found that “it considered her teaching philosophy to be incompatible with the pedagogical aims of the university.”⁴² The court in *Hetrick* also stated that the non-tenured teacher had no right to have her teaching style “insulated from review by her superiors.”⁴³ In *Martin v. Parrish*,⁴⁴ an economics instructor was dismissed for using profane language in the classroom. The court held that the First Amendment protection did not apply and went on to articulate that the language was “not germane to the subject matter in his class and had no educational function.”⁴⁵ The court made a bold statement about the abuse of power wielded by a professor when it asserted that such language was not protected because “it was a deliberate, superfluous attack on a ‘captive audience’ with no academic purpose or justification.”⁴⁶ In *Lovelace v. Southeastern Massachusetts University*,⁴⁷ the issue at bar was the university’s right to review an untenured professor’s grading policy. The court recognized the university’s right to control core university policies, such as course content, homework load, and grading policy. It noted that “the first amendment does not require that each non-tenured professor be made a sovereign unto himself.”⁴⁸

³⁹ Ward Churchill, professor at University of Colorado at Boulder, wrote an essay where he criticized the country’s foreign policy and referenced some of the World Trade Center victims as “Little Eichmanns.” John Aguilar, *Jury: University of Colorado Wrongly Fired Prof. Ward Churchill*, available at <http://www.commondreams.org/headline/2009/04/02-9>. Churchill was fired from the University. A Denver jury in April 2009 agreed that Churchill was wrongly fired and awarded him one dollar in damages. *Id.* In Case No. 06-CV-11473, on July 7, 2009, a District Court judge vacated the monetary award and declined Churchill’s request to order his reinstatement, deciding the university has “quasi-judicial immunity.” In February, 2010, Churchill appealed the judge’s decision. Available at www.insidehighered.com/news/2010/02/22/.

⁴⁰ Robert C. Post, *Subsidized Speech*, 106 *YALE L. J.* 151, 165 (1996).

⁴¹ *Lovelace v. Southeastern Massachusetts University*, 793 F.2d 4219, 419 (1st Cir. 1986); *Hetrick v. Martin*, 480 F.2d 705, 708–709 (6th Cir. 1973); *Martin v. Parrish*, 805 F.2d 583, 584–585 (5th Cir. 1986).

⁴² 480 F.2d at 709.

⁴³ *Id.* at 222.

⁴⁴ 805 F.2d 583 (5th Cir. 1986)

⁴⁵ *Id.* at 584 n.2.

⁴⁶ 478 U.S. 675 (1986)

⁴⁷ 793 F.2d 419 (1st Cir. 1986)

⁴⁸ *Id.* at 426

The general right to review course policies by a university or college has been supported by a “four freedoms” analysis. In *Regents of the University of California v. Bakke*,⁴⁹ the United States Supreme Court listed the “four essential freedoms” of a university as the rights “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”⁵⁰ Accordingly, the classroom activities by a professor are not clearly First Amendment issues⁵¹ and they should not be constitutionally protected.

1. Classroom Instruction and the First Amendment

Academic freedom does not create a general constitutional right to protect inappropriate behavior by professors in the classroom. Free speech rights find their foundation in the First Amendment of the United States Constitution and have the force of law; but, academic freedom is a very different concept and is primarily “part of academic tradition,” which has been given a quasi-legal status.⁵² Free speech rights and academic freedom are not coextensive; the former is created by force of public law, while the latter is shaped by tradition and private law. In practice, academic freedom is granted to professors primarily through institutional rules and regulations, letters of appointment, faculty handbooks, collective bargaining agreements, and academic custom.⁵³ It is primarily a matter of private law negotiated between the professor and the academic institution.⁵⁴ Therefore, academic freedom is the traditional basis for the professor arguing for free reign in the professor’s choice of classroom instruction method and materials; however, the argument that such choice is based upon First Amendment rights is misplaced. First Amendment protection should not apply to the professor’s choice of classroom instruction method and materials, especially in light of the power differences between professors and students, which will be subsequently discussed.

⁴⁹ 438 U.S. 265 (1978).

⁵⁰ *Id.* at 312 (quoting *Sweeney v. New Hampshire*, 354 U.S. 234, 263 (1957)). See *Palmer v. Board of Education*, 603 F.2d 1271 (7th Cir.1979) (finding first amendment rights of probationary kindergarten teacher not violated by discharging her for refusing to teach patriotic subjects because a public school teacher is not free to disregard the prescribed curriculum concerning patriotic matter; *Clark v. Holmes*, 474 F.2d 928, 931 (7th Cir.1972) (rejecting contention that university teacher has first amendment right to disregard established curriculum content. For a good discussion on the four freedoms, see J. Peter Byrne, *Constitutional Academic Freedom After Grutter: Getting Real about the “Four Freedoms” of a University*, available at <http://scholarship.law.georgetown.edu/fwps/papers/13>).

⁵¹ An alternative argument is that academic freedom includes an individual professor’s right to teach and conduct class without limits as he or she sees fit. The weight of the historical and legal evidence rejects such an understanding. David L. Hudson, Jr., *Sexual Harassment available at* www.firstamendmentcenter.org/speech/pubcollege/topic.aspx?topic=sexual_harassment&print.

⁵² See Standler, *supra* note 32 for a good overview of the history of Academic Freedom and how it is to be differentiated from free speech concepts.

⁵³ Donna R. Euben, *Political and Religious Belief Discrimination on Campus: Faculty and Student Academic Freedom and the First Amendment available at* aap.org/AAUP/AF/Resources.

⁵⁴ Standler, *supra* note 32.

2. Power Differences Between Professor and Students

A professor's pronouncements in a classroom should be treated differently from public statements or loyalty oaths, which are often tied to First Amendment Rights. The 1940 *Statement of Principles on Academic Freedom and Academic Tenure* of the American Association of University Professors asserts: "Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject."⁵⁵ For example, Professor Norman Finkelstein, who was denied tenure⁵⁶ and has become a well known figure in the area of academic freedom, made a telling point in an October 2007 speech at the University of Chicago when he stated, "Inside the classroom, as my students know, I am quite conservative and old fashioned. It is not a soap box, not a lectern for propagandizing and indoctrinating and holding a party line."⁵⁷ Hence, not only is the choice of content important for honest inquiry, but the manner in which the topic is presented in the classroom is also critical. The classroom, with its captive audience, is not a place for a professor's recruitment efforts for a particular political agenda.⁵⁸ Certainly, professors have political views and passionate feelings that can enliven the learning experience. Political passion is, in fact, the engine that drives some of the best teaching.⁵⁹ Furthermore, core concepts often associated with the First Amendment, such as the free marketplace of ideas and seeking the truth, are important notions that are deserving of respect. Nevertheless, there are limits that a professor needs to understand and honor. There is not always a bright line indicating the division between acceptable and unacceptable behavior that one can point to with certainty. Nevertheless, professors need to appreciate the power imbalance and its potential for abuse, especially in the classroom setting.

The significant autonomy of the professor and inequality of power between students and faculty explain a major policy reason for a different standard for classroom behavior than that used for political speech. This inequality has always been present and was even noted at the inception of the AAUP. In the 1915 General Report of the AAUP, faculty were admonished to avoid "taking unfair advantage of the student's immaturity by indoctrinating him with the teacher's own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question, and before he has sufficient knowledge and ripeness of judgment to be entitled to form any definitive

⁵⁵ Am. Ass'n Univ. Professors, *1940 Statement on Principles of Academic Freedom and Tenure* available at www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm.

⁵⁶ While the university suggested that the main reason for the denial revolved around scholarship issues, several commentators including Noam Chomsky suggest outside pressure due to his apparent anti-Israel position was the real cause for the tenure denial. See <http://www.normanfinkelstein.com/article.php?pg=11&ar=1070>.

⁵⁷ Videotape: Norman Finkelstein, *In Defense of Academic Freedom*, available at <http://academicfreedomchicago.org/?q=node/32>.

⁵⁸ Fish, *supra* note 26.

⁵⁹ Robert C. Post, *Academic Freedom and the "Intifada Curriculum,"* *Academe* 165 (May-June 2003).

opinion of his own.”⁶⁰ The student-professor dynamic is not equal. Professors give grades, review theses, and write critical recommendations for students to obtain scholarships and entrance into graduate schools. Professors make decisions about curriculum, personnel hiring and promotion, acceptable scholarship, and a whole range of other activities that empower them. Additionally, their longevity compared to students’ and administrators’ along with the firewalls of tenure and academic freedom give professors enormous power with little oversight.⁶¹ Beyond these obvious aspects, students look to professors for approval and often accept their opinions as “truth” because of their roles and professional titles.⁶² Professors have enormous latitude to use that power to influence, teach, challenge and even abuse the professor-student relationship.⁶³ There are often codes prohibiting dating due to the inequality of the potential relationship. For example, in 2003, the University of California’s nine campuses ruled to ban consensual romantic relationships and stated: “Whenever a faculty member is responsible for academic supervision of a student, a personal relationship between them of a romantic or sexual nature, even if consensual, is inappropriate. Any such relationship jeopardizes the integrity of the educational process.”⁶⁴

As in cases of sexual misconduct, where the issue is in reality centered on the abuse of power, similar power issues surround academic freedom cases. When President Clinton was asked why he engaged in an inappropriate relationship with Monica Lewinsky, he replied, “Because I could.”⁶⁵ The inevitable power difference between teacher and student, whatever the teacher’s intention or motivation, makes it impossible for the student to be placed in a position of power equal to that of a professor.⁶⁶ However, there is a major difference involved when using the concept of sexual misconduct in a discussion of academic freedom: With regards to sexual misconduct, the goal is to prevent someone from using his or her power, while academic freedom attempts to retain a privileged power position.

The current debate over academic freedom may not be about academic issues at all, but rather about who maintains authority within the university. Academic freedom has become a wall that announces “hands off” and “no institution, individual, or group has the right to monitor, question, challenge, or influence what goes on inside the walls of academe.”⁶⁷ Power can be dangerous, as we all know. It is hard to list any

⁶⁰ Am. Ass’n Univ. Professors, *1915 Declaration of Principles on Academic Freedom and Academic Tenure* available at www.aaup.org/AAUP/pubsres/policydocs/contents/1915.htm.

⁶¹ Gary A. Tobin et al., *The Uncivil University*, INST. JEWISH AND COMMUNITY RES. 53 (2005).

⁶² Some faculty believe that it is the students’ responsibility to stand up for oneself and learn to transcend their own perception of intimidation or coercion. Students need to acquire the necessary tools coping skills as they enter adulthood, and especially in the case of undergraduates, professors need to appreciate and use their power responsibly. Ann J. Lane, *Gender, Power, and Sexuality: First, Do No Harm*, CHRON. HIGHER EDUC., May 5, 2006, at B-10.

⁶³ *Students, Too*, *supra* note 7.

⁶⁴ University of California, *General University Policy Regarding Academic Appointees*, FAC. CODE OF CONDUCT Section II. A. 1 (2003).

⁶⁵ Lane, *supra* note 62.

⁶⁶ *Id.*

⁶⁷ Tobin et al., *supra* note 61 at 45.

profession, other than perhaps members of the United States Supreme Court that combines guaranteed employment with virtually unregulated power. And with this power comes the potential for abuse in the classroom by professors. As a university chair for close to a decade, this author has witnessed the power of professors over their students and have been very concerned that professors do not fully appreciate their power to influence and control their students' thinking. This power difference "heightens the vulnerability of the student and the potential for coercion."⁶⁸ Professors, as powerful authority figures, need to appreciate this power dynamic and the responsibilities that come with it. Among these responsibilities is to not take advantage of their influence over students, especially when dealing with controversial issues.

IV. STAKEHOLDERS' APPROACH TO THE CURRENT CHALLENGES TO ACADEMIC FREEDOM

The emotions, vested interests, the individuals involved, as well as the potential effects on society, all come into play in this very complex issue of academic freedom and classroom behavior. At the outset of this discussion, it is important to affirm the critical importance of exploring "significant and controversial questions" in the classroom.⁶⁹ While a student may not be comfortable with certain subject matters, "students do not have a right to remain free from encountering "unwelcome or inconvenient questions."⁷⁰ At the same time, professors should not abuse their power over students, and need to balance professorial overreaching with the necessity to confront difficult subjects.⁷¹ Although students are not viewed as possessing the full rights supported by academic freedom,⁷² there is support for the claim that students do in fact have academic rights—although ill-defined.⁷³ For example, *Rubin v. Ikenberry*⁷⁴ demonstrates an attempt to balance these issues as the court put forth a standard for review: the professor's comments "do not appear connected to the course content and legitimate objective of teaching students how to teach elementary school social studies" and "the degree of departure from expected course content ... appear(s) extensive." Significantly, students do possess rights supported by academic freedom.⁷⁵ Accordingly, there needs to be an understanding and a standard to help assert the rights

⁶⁸ Laura Kipnis, *Off Limits: Should Students be Allowed to Hook up with Professors?* SLATE, Jan. 2, 2004, available at <http://fray.slate.com/id/2093351>.

⁶⁹ Ass'n Am. Coll. & Univs., *Academic Freedom and Educational Responsibility*, available at http://www.aacu.org/About/statements/academic_freedom.cfm.

⁷⁰ *Id.*

⁷¹ See *Martin v. Parrish*, 805 F. 2d 583 (5th Cir. 1986), The *Martin* court was worried about the use of profane language that "was not germane to the subject matter in the class and had no educational function." *Id.* at 584 n.2. Moreover, the language was not protected because "it was a deliberate, superfluous attack on a 'captive audience' with no academic purpose or justification." *Id.* at 586.

⁷² Standler, *supra* note 32.

⁷³ *West Virginia State Board of Education vs. Barnette*, 319 U.S. 624, 637 (1943)(asserting that student freedoms must be protected).

⁷⁴ 933 F. Supp. 1425, 1442 (C.D. Ill. 1996).

⁷⁵ Standler, *supra* note 32.

of teachers in the classroom in relation to those of students, as well as those of the university. To do so, there must be recognition of students as key stakeholders and an appreciation for their concerns. Stakeholder analysis will be used to identify key groups significantly affected by academic freedom to better understand their perspectives and appreciate how they are impacted. The key stakeholders in any discussion of academic freedom include the professors, students, and administrators.⁷⁶

A. Professors as Non-Exclusive Stakeholders

Professors often feel they are the only stakeholders in discussions of academic freedom. Clearly, when dealing with research and publications, they are generally correct in this assumption. Broadly speaking, “Academic freedom is the freedom of academics to study anything they like; the freedom, that is, to subject any body of material, however unpromising it might seem, to academic interrogation and analysis.”⁷⁷ Academic freedom is seen as a bulwark against attempts to impose limits on a professor’s field of inquiry. The autonomy of faculty research is highly cherished and highly protected and speaks only to the rights of faculty members.⁷⁸

Based on the view of privileged autonomy in research discussed above, faculty have often viewed academic freedom as providing for total independence from any intrusion by administrators, boards of trustees or outside pressure. It is, as suggested by one writer, as if faculty members want a moat around academic freedom, but only on their own terms and when it suits them.⁷⁹ The faculty-only perspective, however, fails to take into account classroom behavior or a notion of accountability of faculty members to students and administrators. Accordingly, the concerns of other potential stakeholders, especially when dealing with classroom-related

⁷⁶ An additional category to be considered could be the general public although inclusion of such a large category is fraught with many dangers. This public stakeholder category is the most difficult group to define for purposes of engaging in a dialogue on academic freedom. The broader the group of public stakeholders the more problematic becomes insularity of the academic community and the greater the threat to the faculty and university to constructively guide debate on academic freedom. However, the general public, or at least those groups or individuals with a direct concern, are frequently overlooked, although as both the primary beneficiary and financial benefactor of higher education, and may have a place in the dialogue on academic freedom. Moreover, if there is an issue at stake that may directly impact a portion of the general public, it would be natural that these public voices should be recognized. The justification for academic freedom “lies not in the comfort or convenience of teachers and students but in the benefit of society.” *Academic Freedom*, *supra* note 11. The public should expect that universities will produce, in addition to a growth of knowledge, good citizens who will help our society move effectively into the future. The public stakeholder can include various community leaders, organizations, university alumni, and parents. Or, there may be a sliding scale developed based on the direct interest of specific public groups or individuals that wish to play a role in a particular situation. These individuals and groups have valid and important views to be considered as they often represent the presumptive beneficiaries from the knowledge obtained--the future citizens developed to contribute to our society. The topic of if and how to involve the general public or limited sections of the public, perhaps on a sliding scale analysis, is an important subject for a separate paper.

⁷⁷ Fish, *supra* note 26.

⁷⁸ Ann J. Lane, *supra* note 62.

⁷⁹ Tobin et al, *supra* note 61, at 67.

activities, are often not only discounted, but also viewed as potential dangerous completion for claims of academic rights.

As pointed out previously, professors shape a student's life by exercising the power to grade, write recommendations, and give assignments. The power structure inherent in the professor-pupil relationship generally makes students feel that "they have little control over the classroom environment or their interactions with the professors."⁸⁰ David Williams, a university president, states, "Ultimately what guides everything is that the students should respect the professor and the professor should respect the student."⁸¹ In addition, students need to be accorded a fundamental ability to think freely and to exercise independent judgments.⁸² However, it is that very issue of the inequality of power in student-professor relationships that is the concern that requires the recognition of students' academic rights.

B. *The Recognition of Student Academic Rights and Role as a Stakeholder*

The general proposition for the need to recognize the academic rights of students is that the classroom is not a platform for professors to air personal views in such a way that interferes with objective inquiry or honest and civil discourse.⁸³ Certainly, professors do share personal perspective and an overly restrictive standard runs the danger of excessive intrusion into the classroom environment. However, this will not cause a concern because it will only be applied in very rare situations when a professor's personal analysis begins to interfere with objective inquiry and the honest review of diverse opinions. Usually, this abnormal situation occurs when a professor is dealing with a contentious topic and has only presented a single view that compromises the academic environment. Accordingly, university students need basic academic rights: the right to not have professors impose political or personal beliefs, the right to receive valid scholarly materials, and the right to have controversial topics fairly discussed by having diverse views represented and carefully examined.⁸⁴ In 1967, "the AAUP's Joint Statement on Rights and Freedoms of Students reinforced and amplified this injunction by affirming the inseparability of the freedom to teach and freedom to learn."⁸⁵

⁸⁰ Lisa Barbella, *The Ethics of the Student-Professor Relationship*, EXPONENT: STUDENT NEWSPAPER OF UAH, Apr. 23, 2008, available at <http://exponent.uah.edu/?p=95>.

⁸¹ *Id.*

⁸² Post, *supra* note 40.

⁸³ Tobin et al., *supra* note 61, at 47.

⁸⁴ *Students, Too*, *supra* note 7.

⁸⁵ See DAVID HOROWITZ, REFORMING OUR UNIVERSITIES, which advocates a campaign for an Academic Bill of Rights. State education codes support students' rights in this area. The California code states that: Students of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the

Under the “professor as only stakeholder” perspective, any gain or recognition of students’ rights may solely be interpreted by some as solely a diminishment of faculty power. However, viewing this as a power struggle misses the fundamental understanding that students should be considered critical stakeholders in a college setting and their concerns deserving of significant consideration. Those concerns include recognition that “the university should be a safe place in which students can study divisive topics.”⁸⁶

The needs and rights of students in the academic freedom discussion are frequently overlooked and therefore it is critical that they are recognized as stakeholders. University students learn that there is no humanly accessible truth that is not in principle open to challenge, and that no party or intellectual faction has a monopoly on wisdom. Therefore, academic freedom is most likely to thrive in an environment of intellectual diversity that protects and fosters independence of thought and speech.⁸⁷ Professors can create this type of robust intellectual atmosphere and can present their own ideologies while at the same time recognizing the basic rights of students by not using their courses “for the purpose of political, ideological, religious or anti-religious indoctrination . . . , as well as observing a core academic duty to promote intellectual pluralism; . . . [and foster] a plurality of methodologies and perspectives.”⁸⁸ Such an environment does not only allow for a more honest exploration of complex issues, it also teaches that controversial topics need to be handled in a respectful and academically appropriate manner. Accordingly, the interests, concerns, and perspectives of students and the university, as represented by their administrators, need to be carefully considered. It is, therefore, an imperative that students and administrators be included as core stakeholders, along with professors, in any complete analysis of academic freedom.

C. *University Administrators as Stakeholders*

University administrators are often the ones caught between the faculty, students and the community. Administrators have a difficult and often untenable position of attempting to please everyone from faculty to students to the public. When contentious situations arise in the area of academic freedom, they often choose not to intervene or leave it to a pre-scripted faculty grievance process. The failure of university administrators to effectively address issues of intellectual diversity and other concerns presented in this article is deeply problematic. Administrators’ self-imposed silence is often seen as *de-facto* support.⁸⁹ True and honest academic freedom will only exist if less popular views that have academic validity are allowed to be fairly shared but not all

substantial disruption of the orderly operation of the school. “California Student Free Expression Law: California Education Code Section 48907.” Retrieved from: http://www.splc.org/law_library.asp?id=6.

⁸⁶ Lane, *supra* note 62.

⁸⁷ HOROWITZ, *supra* note 85.

⁸⁸ *Id.* Horowitz’ “Academic Bill of Rights” has eight principles some of which were selected to be shared in the article.

⁸⁹ Tobin et al., *supra* note 61, at X.

unpopular or minority views have academic validity. For example, when the argument is made to allow other views to be shared, those against this position will sometimes say that this means that those who deny the Holocaust or those who believe in creationism (intelligent design) need to have their positions presented as well. This argument, used to justify keeping out other points of view, misses the major criteria of academically supported positions. It is clear that academics can disagree and their research can lead to different conclusions. It is also clear that certain positions have not garnered general academic support and those positions may not be appropriate for an academic forum.⁹⁰ For the sake of both students and faculty, administrators need to set a tone that supports intellectual inquiry in the classroom as a process of analysis rather than as a demand for allegiance.⁹¹ Administrators must never lose sight of the academic mission to teach students to engage in critical thinking through a variety of academically developed views, materials, and insights.

The first of two seminal cases in this area are *Sweezy v. New Hampshire*,⁹² which affirms the university's rights in regard to hiring of faculty, student admissions, curriculum, and classroom teaching. In *Hazelwood School District v. Kuhlmeier*, Justice White held that universities have the right to control instructional materials and programs "that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."⁹³ However, this control is not present when it is evident that the event is not associated with the school and is clearly being sponsored by a private party⁹⁴ or student group.⁹⁵

Moreover, the courts have been very clear that the university can exercise legitimate review to help ensure actions in the classroom are reasonably "related to legitimate pedagogical concerns."⁹⁶ Reasonable regulation of classroom speech does not infringe on First Amendment rights.⁹⁷ In 2008, a Federal district court in *Stronach v. Virginia State University*⁹⁸ ruled that academic freedom resides with the university

⁹⁰ NEIL HAMILTON, ZEALOTRY AND ACADEMIC FREEDOM: A LEGAL AND HISTORICAL PERSPECTIVE 2 (1998).

⁹¹ Fish, *supra* note 26.

⁹² 354 U.S. 234 (1957). See discussion on the Four Freedoms articulated by Justice Frankfurter. *Id.* at 255.

⁹³ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271 (1988).

⁹⁴ *Widmar v. Vincent*, 454 U.S. 263, 454 (1981) (stating that Christian group wanted to be given same status to use the school facility as other non-campus groups).

⁹⁵ *Board of Education of Westside Community School v. Mergens*, 496 U.S. 226, 253 (1990) (supporting the rights of student initiated clubs).

⁹⁶ *Bishop v. Aronov*, 926 F. 2d 1066, 1074 (11th Cir. 1991). Still others will analyze using the "reasonably related to legitimate pedagogical concerns" standard from the high school press-censorship case *Hazelwood School District v. Kuhlmeier*, 484 U.S. at 273. *Vanderhurst v. Colorado Mountain College District*, 208 F.3d 908, 910-11 (10th Cir. 2000) made reference to this standard.

⁹⁷ When we consider that the expression in this case was not political, that it was regulated rather than suppressed . . . we are driven to conclude that the defendants did not infringe the plaintiff's First Amendment rights merely by ordering him to move the art to another room in the same building. *Piarowsky v. Illinois Community College*, 759 F.2d 625, 629 (1985). *Id.* at 632-33.

⁹⁸ No. 3:07-CV-646-HEH, at *4 (Jan. 15, 2008). See *Urofsky v. Gilmore*, 216 F. 3d 401, 414, 415 (4th Cir. 2000) (court noting that professors do not have a First Amendment right of academic freedom to determine for themselves the content of their courses and scholarship); *Lovelace v. SE Mass. University*, 793 F.2d 419, 425 (1st Cir. 1986); *Edwards v. California University of Pennsylvania*, 156 F.3d 488, 491, (3d Cir. 1998) (holding that the First Amendment does not allow a university professor to decide what is taught in the

or college and not with an individual professor. The United States Supreme Court has said “laws regulating the time, place or manner of speech stand on a different footing than laws prohibiting speech altogether.”⁹⁹ First Amendment jurisprudence provides that restrictions on time, place, and manner of speech are constitutional if they are content neutral, that is, they do not treat speech differently based on content; they are narrowly tailored to serve a governmental interest; and they leave ample alternative means of expression.¹⁰⁰

University administrators, on behalf of the institutions that they guide and direct, have been given the legal right and the responsibility to exert appropriate leadership for what happens in the classroom. The university, through its administration, is able to regulate speech if the regulations are reasonable and nondiscriminatory or capricious.¹⁰¹ The four freedoms enumerated by Frankfurter along with other recognized rights provide the tools and direction for responsible involvement. Simply put, administrators also have a stake in the academic integrity of classroom instruction and therefore are appropriate, necessary, and critical stakeholders in the discussion of academic freedom.

V. THE ROBINSON AFFAIR AND ACADEMIC FREEDOM

The Robinson affair¹⁰² raises many of the issues surrounding academic freedom as it is currently constructed. Primarily, the Robinson affair dealt with classroom conduct, which is one of the most legally ambiguous areas in the academic freedom debate. Accordingly, this article suggests the need for each university to

classroom but rather protects the university’s right to select the curriculum); *Brown v. Amenti*, 247 F.3d 69, 75 (3d Cir. 2001) (holding “a public university professor does not have a First Amendment right to expression via the school’s grade assignment procedure”).

⁹⁹ *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 93 (1977).

¹⁰⁰ Azhar Majeed, *Time, Place and Manner at the University of Michigan and Elsewhere*, available at <https://thefire.org/article/8972.html>. However, the mere act of calling something a “time, place and manner” regulation does not end the discussion; it only starts it. In the case of UCF’s “free assembly areas,” [The University’s President’s] conclusionary statement [that this was a time and manner regulation] ignored the fact that his school’s policy limited demonstrations to four small areas on campus and completely banned them anywhere else on campus. This would not appear to be the type of reasonable “time, place and manner” regulation that the Supreme Court has long indicated, going back to its 1989 decision in *Ward v. Rock against Racism*, is acceptable in a public forum when “narrowly tailored” to achieve a legitimate government purpose. Azhar Majeed, *Time, Place and Manner at the University of Michigan and Elsewhere*, available at <https://thefire.org/article/8972.html>. By definition, ‘time, place and manner’ restrictions are content-neutral, narrowly focused restriction on speech or expressions that serve a governmental purpose. For the University’s purposes, danger of slipping and falling on a discarded flier outside the Fishbowl is akin to the chaos that might ensue following the warning of a fictitious fire. Discarded fliers and publications, the University claims, are a form of unregulated speech that presents an unnecessary threat to people in the area. [The University of Central Florida] created “free assembly areas,” which were four areas on the university’s campus selected “for the conduct of political activity and other exercises of free speech.” See Andy Kroll, *Litter, legal Ambiguity and Your First Amendment Rights*, MICH. DAILY, February 20, 2008, available at <http://www.thefire.org/article/8963.html>.

¹⁰¹ *Doe v. The University of Michigan*, 721 F. Supp. 852, 858 (E.D., Mich. 1989) (overturning a policy on Discrimination and Discriminatory Harassment of Students that was too vague and overbroad).

¹⁰² *Supra* notes 2-8.

develop its own statement on academic freedom in the classroom, after listening to the ideas and concerns of all the critical stakeholders (faculty, students, and administration), not only with respect to the importance of sheltering the academic endeavor from the influences of coercion or societal pressures, but also with reference to core concepts of rights, responsibility and respect in an ethical environment reflecting core values of fairness, decency, compassion and professional excellence.

The extent and number of outside groups and individuals weighing in on the Robinson matter indicated just how important issues surrounding academic freedom are perceived. For example, The Anti-Defamation League (ADL) of Santa Barbara, whose letter of protest stated that although the professor's writings were protected by the First Amendment and academic freedom, "we rely upon our rights to say that your comparisons of Nazis and Israelis were offensive, unhistorical, and have crossed the line well beyond legitimate criticism of Israel."¹⁰³ Professor Robinson claimed in interviews that the charges were being taken seriously only because: "I have criticized the policies of the State of Israel."¹⁰⁴ The Santa Barbara ADL director responded: "The question is at what point is academic freedom crossing over into the intimidation of students."¹⁰⁵ Stand With Us, a pro-Israel organization, sent a letter to the Vice Chancellor asking that the case be investigated and began a letter-writing campaign to "Support UCSB Investigation of Professor's Faculty Code Violations."¹⁰⁶ A Committee to Defend Academic Freedom at UC Santa Barbara was established and it created a web site declaring that the basis of the complaints was Robinson's critique of Israel and that the Israeli-Palestinian issue should not be discussed in a class on globalization.¹⁰⁷ That committee also began a letter-writing campaign asking the Chancellor to halt the investigation. Other parties involved in the debate included the Simon Wiesenthal Center in Los Angeles, the AAUP, and several student-based organizations. Most of these outside groups and individuals presented their opinions on various aspects of the

¹⁰³ Scott Jaschik, *Crossing a Line*, INSIDE HIGHER ED., Apr. 23, 2009, available at insidehighered.com/news/2009/04/23/ucsb

¹⁰⁴ Doug Henwood (April 29, 2009), *Zionist Lobby Targets Another Tenured Professor*, COUNTERPUNCH, Apr. 29, 2009, available at www.counterpunch.org/henwood04292009.html; KPFs' Middle East in Focus with Don Bastani (April 29, 2009); Jaschik, *supra* note 103.

¹⁰⁵ Jaschik, *supra* note 103. In addition, there was a meeting with the head of the ADL and with Jewish faculty that had no particular agenda but has been portrayed as being called for "no other reason than to say that we want Professor Robinson prosecuted." Henwood, *supra* note 104.

¹⁰⁶ Email from news@standwithus.com, entitled *Action Alert-Sign the Petition and write to UC Santa Barbara*, (Apr. 30, 2009) (on file with author).

¹⁰⁷ Message from Committee to Defend Academic Freedom at UC Santa Barbara (Apr. 22, 2009) (on file with author). CDA publicized letters from professors around the world to support Professor Robinson including letters from Noam Chomsky and a statement from the California Scholars for Academic Freedom. Committee to Defend Academic Freedom at UCSB, *Scholars condemn attack on academic freedom at UC-Santa Barbara*, available at <http://sb4af.wordpress.com/2009/04/28/scholars-condemn-attack-on-academic-freedom-at-uc-santa-barbara/>: See the web site for the Committee to Defend Academic Freedom at UCSB, which lists letters of support from various scholarly organizations and outside groups such as AAUP, National Lawyers Guild, California Scholars for Academic Freedom, Middle East Studies Association of North America, and FIRE. This Committee on Academic Freedom subsequently organized a panel with four UCSB professors that took place on May 21, 2009.

case including the appropriate use of materials made available to students when dealing with controversial topics. Other critical topics that arose during the Robinson affair included the fairness of the academic panel, the role of outside parties who had a particular interest in the Robinson situation, the need to review current standards of academic freedom, and a reconsideration of the faculty-only paradigm in regard to academic freedom. An exploration of these areas will allow for a deeper appreciation of the challenges and possible suggested guidelines to avoid future conflicts when dealing with academic freedom.

A. Classroom Related Materials and Dealing with Controversial Topics

Classroom materials and presentations should pass a reasonable academic standard of norms and subject relevance as well as provide diverse points of view when academically appropriate. The word “academic” presumes an examination of a topic with materials that the professor believes have been created through a rigorous academic process, an appropriate exposure to divergent views, and a general environment that allows students to arrive at their own conclusions. However, when these prescriptions fail to occur, the entire educational enterprise is undermined and loses integrity.

Clearly, any attempt to create guidelines must allow for the introduction of controversial issues related to the subject being taught. Censorship does not apply here, as

any idea can be brought into the classroom if the point is to inquire into its structure, history, influence and so forth. But no idea belongs in the classroom if the point of introducing it is to recruit your students for the political agenda it may be thought to imply.¹⁰⁸

The photo essay Robinson emailed appears problematic in its failure to adhere to a reasonable standard of scholarship.¹⁰⁹ The photo essay did not come from an academic journal; it reached Professor Robinson in the course of general Internet circulation, and there is nothing to suggest that it had been subjected to an academic review for accuracy or validity. Several of the photographs appear to have been cropped and labeled in such a way as to portray a desired result and in some cases were factually incorrect.¹¹⁰ The case for academic freedom would have been stronger if the topic had a clearly articulated relationship to the course subject matter, if the professor had sent out additional materials that complied with relevant professional

¹⁰⁸ As was noted by Professor Fish, “It is perfectly possible to teach a viewpoint without embracing and urging it. But the moment a professor does embrace and urge it, academic study has ceased and been replaced by partisan advocacy.” Fish, *supra* note 26.

¹⁰⁹ Post, *supra* note 40.

¹¹⁰ For example, a well known Holocaust photo showing a German soldier pointing his rifle at a nude woman, apparently about to murder her, was cropped so that only the picture of the German soldier pointing a gun was depicted. While the photo essay suggested it was about the Warsaw Ghetto, several photographs were not related to the Warsaw Ghetto. There were even photographs that appeared to be from the earlier Israeli-Lebanon conflict and not related to Gaza. See Alan Levine, *Israeli Not Nazis* SANTA BARBARA INDEPENDENT, July 30, 2009, available at <http://www.independent.com/news/2009/jul/30/israelis-not-nazis/>.

standards that would have presented an opposing point of view, and if there had been open discussion allowing for a critical review of the issues addressed by the materials. Often, there are allegations that any type of criticism of Israel will likely produce an emotional response.¹¹¹ In fact, Jewish groups supported Robinson's right to criticize Israel, but believed that the method he chose was inappropriate due to the one-sidedness of the material that appeared to lack academic integrity with no follow-up classroom discussion allowing for a diversity of positions to be fairly examined.¹¹² When dealing with known controversial topics, there is an academic duty to provide pedagogically justified material which does not violate pertinent academic norms and allows for an open and honest discussion of the material.

B. *Ancillary Academic Activities*

Unfortunately, programs, either officially presented by a university-affiliated organization or one that has the imprimatur of an academic university program, are, at times, intentionally one-sided when dealing with controversial issues such as Israel and Palestine.¹¹³ The Robinson affair appears to be a case in point. The Committee to Defend Academic Freedom (CDAF) created a panel of UCSB professors to review the issues presented by the case, including:

the mishandling of the case by the academic senate; history, definitions of, and debates surrounding academic freedom; placing the Robinson case within the historical context following Israel's Operation Cast Lead, where criticisms of said operation have been stifled;" and "how the Holocaust has been understood and deployed in the public sphere, as well as the analytical and pedagogical use of historical comparisons.¹¹⁴

¹¹¹ "If you are critical of Israel, in any way shape or form," argues Nubar Hovepian, the Middle East Center Associate Director for Development at the University of Pennsylvania, "you risk being labeled as anti-Semitic and therefore dismissed." They completely turn the tables, pointing out that Jews are hiding behind charges of anti-Semitism to silence critics of Israel. Tobin et al., *supra* note 61, at 93. Criticizing Israel is not anti-Semitic. Criticizing only Israel certainly embodies anti-Israelism and may have tinges of anti-Semitism when some of the same core stereotypical beliefs about Jews have been off-loaded onto Israel such as "Israeli's don't respect other religious traditions, greatest threat to world peace," *Id.* at 99. "If only the Palestinian-Israeli issue were resolved, than all of the problems that exist in the Arab world that emanate from repressive regimes, including poverty, abuse of human rights, and abrogation of individual freedoms would be solved." *Id.* at 101 "Anti-Israelism is anti-Semitism rewrapped and repackaged. It reflects the ancient myths about Jews – their power, their sinister behavior, and their ability to control the world." *Id.* at 101. Those who support Israel are simply dismissed as puppets of Jewish organizations or Zionists. "Zionism is racism," Israel is a European colony,' Israel is Apartheid...all these canards are commonly promoted on campus today. Israel is whatever racial politics tend to despise. *Id.* at 117.

¹¹² *Id.*

¹¹³ A panel on the Gaza situation presented by the Department of History only presented professors who allegedly were known to have anti-Israel biases. As a positive reaction to that type of presentation, a series of panels were created intentionally to showcase the need to present divergent views on Israeli-Palestinian issues called the Shalom/Salam Dialogues.

¹¹⁴ Posting of Committee to Defend Academic Freedom at UCSB (July 19, 2009), *available at*

Not surprisingly, all four of the panelists concluded that Professor Robinson was protected by academic freedom, called for the charges to be dropped, and used the forum to discuss the Israeli-Palestinian issue from a general anti-Israel perspective. There was no panelist who was invited to present a different point of view regarding either the charges against Professor Robinson or the many anti-Israeli statements offered by the panelists. Unlike an earlier panel dealing with the Israeli-Palestinian issue sponsored by the History Department at UCSB, which was criticized for having no pro-Israel panelist, it is fair to point out that the CDAF is not a university department and therefore its event was not a university-sponsored event. However, because all the panel members were well-known professors and the event took place in a university facility, this event may reasonably have been viewed by the public and students as bearing the imprimatur of the school.¹¹⁵ Whether or not this panel is to be regarded as a university-sponsored activity, it should be the role of faculty, students, and administrations to articulate and promote appropriate considerations and core values as a critical part of the academic enterprise. Such considerations should include standards of academic excellence that allow for divergent views to be reasonably presented, guided by the values of fairness, decency, compassion and professional excellence, which have too often been “missing in action” on our college campuses: fairness, compassion, decency and professional excellence, as those terms are more fully explained in the following paragraphs.

1. Fairness is embodied in a commitment to present a diversity of academically appropriate perspectives on controversial topics.¹¹⁶
2. Compassion is the ability to acknowledge deep emotions in others and is critical to establishing an environment that promotes open dialogue. Sympathetic consciousness of others’ distress, even if one disagrees with their views, often leads to meaningful dialogue.¹¹⁷ When there is no compassion, then there is no true dialogue. When the goal is simply to win, and not to understand one another, then communication is reduced to an adversarial debate, and the potential for open dialogue and compromise is lost.
3. Decency can be defined as “due regard to what is becoming; conformity to the standard of propriety or good taste.”¹¹⁸ More commonly, it is understood to express the values of basic goodness, kindness, and civility. However, when contentious issues are involved, it is important that an element of civility is

<http://sb4af.wordpress.com/2009/07/19/footage-of-cdafs-forum-on-academic-freedom-is-up-on-youtube/>.

¹¹⁵ See *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 272 (1988).

¹¹⁶ Tobin et al., *supra* note 61, at 90.

¹¹⁷ *Compassion*, AMERICAN HERITAGE COLLEGE DICTIONARY p. 292 (2002). The definition provided is a “deep awareness of the suffering of another coupled with the wish to relieve it.” *Id.*

¹¹⁸ *Decency*, AMERICAN HERITAGE COLLEGE DICTIONARY P. 366 (2002). The definition provided is “the state or quality of being decent [characterized by conformity to standards of propriety or morality].”

maintained. Breaches in civility have a chilling impact on open discussions, stifling the expression of conflicting opinions, and are toxic to academic freedom.¹¹⁹

4. The core value of professional excellence means, in this context, that when a professor is engaged in a program with an academic expectation, academic responsibility for rigorous standards of scholarship and conduct apply. The exercise of academic freedom is subject to academic responsibility. Academic responsibility includes the “need to maintain the highest level of professional conduct and accept accountability for the actions . . . take[n].”¹²⁰ Professors with strong opinions especially need to provide a safe venue to express and explore competing ideas and beliefs. Speech that is demeaning, hurtful, and intentionally insensitive, devalues another human being, is simply inappropriate in the classroom or at ancillary university programs, if not at all times, and is counterproductive to the creation of the highest ideals of the academic environment.

The AAUP reminds faculty that their unique position “imposes special obligations” and “they should remember that the public may judge their profession and their institution by their utterances” and therefore, they “should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others.”¹²¹ Professors should always adhere to high standards of integrity, decency, compassion, and professional excellence when being presented as scholars. Trained academics must be able to move beyond their own biases as academic professionals to involve students and others in complex and nuanced issues when they are within an academic environment.

C. Appropriateness of Outside Community Groups or Individuals to Comment on Academic Freedom

It is both ethically and factually wrong to conclude that what happens on a university campus does not affect the wider community. The initial reason for protecting the academy from external influences was primarily focused on research

¹¹⁹ A stronger meaning of civility became fixed in our American tradition when it was used by Mr. Welch to address Senator McCarthy, “Have you no sense of decency, sir, at long last? Have you left no sense of decency?” McCarthy-Welch Exchange, Army-McCarthy Hearings in Washington, D.C. (June 1954), available at <http://www.americanrhetoric.com/speeches/welch-mccarthy.html>. When during the May 21, 2009 Robinson panel, a Nobel Prize winner was abruptly cut off when trying to suggest the panel was not balanced and when blanket accusations and generalizations were being offered to denigrate civic groups such as the ADL, the words of Mr. Welch echoes, “Have you no sense of decency?” Everyone wants to be treated with respect and not be the subject of gossip, half truths, and words intended to demean.

¹²⁰ Tobin et al., *supra* note 61, at III.

¹²¹ Sara Dogan, *Professors, Too, Have a First Amendment Right to Embarrass Themselves in Public*, available at <http://www.studentsforacademicfreedom.org/news/2215/WilliamWoodward911DenierDefense083106.htm>.

interests. Neither the government nor educational institutions should be impediments to an academic's pursuit of the truth. The AAUP already exerts a major influence as an "outside" player in the area of academic freedom, but it lacks any effective counter balance. The AAUP was created by professors for professors, and is not an independent organization. It does not claim a neutral stance; on the contrary, its website states that its mission is to protect faculty's academic freedom. Its policy statements give great latitude to professors. Much like other labor organizations, the AAUP is structurally partisan to the interests of professors by claiming they should be protected from scrutiny due to academic freedom. However, the AAUP's pronouncements and standards are not binding regulations and do not have the force of law; the AAUP is not an accrediting body.¹²²

Consequently, to balance the commanding influence of the faculty and the AAUP, outside groups, especially those who are directly implicated in the subject matter at hand, should speak out appropriately concerning values of academic excellence and fairness, and their concerns should be taken seriously.¹²³ Outside organizations may play a critical role as a counterbalance by providing a necessary check on the power exercised by faculty and the AAUP in defining academic standards in the classroom.

D. *Review of Current Academic Standards*

While academic freedom and freedom of speech share a critical noun, they are terms of art that are discrete concepts, serving different objectives and deriving from distinct sources of authority. Freedom of speech, with limitations, focuses on the right of individuals, excluding recognized abridgements to the First Amendment, such as hate speech, to say what they want. Academic freedom implies a special privilege assigned by society for those trained in academic inquiry so that they are better able to pursue the truth using the skills acquired through academic studies and degrees. Academic freedom guarantees that a line of inquiry can be extended to its furthest reaches without hindrance of ideology, politics, or other outside influences.¹²⁴ This allows for "unfettered exploration of unpopular ideas, but only within the context of meaningful scholarship"¹²⁵ and requires research to be undertaken with the highest scholarly standards. However, academic freedom, absent any standard of academic quality in terms of materials, inquiry, fair discussion or respect for students' rights, should lose its protected status. It trivializes academic

¹²² For example, the Northwest Association of Schools and of Colleges and the Universities reviewed Brigham Young University Academic Freedom statement and found it in compliance with the 1940 statement, while the AAUP has found Brigham Young University to be in violation. *See also Report - Academic Freedom and Tenure: Brigham Young University*, Academe, Sept. – Oct. 1997, at 53, 66 (calling the climate for academic freedom "distressingly poor").

¹²³ Not all outside parties may be viewed as helpful. For example, during the Robinson affair, statements by some community representatives focused the issue on anti-Semitism while the official charges of the university intentionally omitted any reference to anti-Semitism. The UCSB Hillel and representatives of the Santa Barbara Jewish Community also wanted to keep the highly provocative charge of anti-Semitism out of the discourse.

¹²⁴ Tobin et al., *supra* note 61, at 27.

¹²⁵ *Id.* at 2

aspirations, and becomes divorced from its very *raison d'être* -to seek objective truth.¹²⁶ It has been cynically noted that, “Academic freedom has evolved from protection against political influences to job security— an employment contract rather than an intellectual contact.”¹²⁷ Academic freedom was never intended to protect bad scholarship or biased teaching. When the notion of “highest standards of scholarship” is missing from any analysis of academic freedom, then academic freedom ceases to be about the lofty focus of seeking truth and instead looks to preserve the unlimited autonomy of the faculty, including the right to politically proselytize their students.

Many commentators and scholars have noted the trend of some professors who use their positions to express a single view when there are other academically valid concepts, which by definition sacrifices honest inquiry. One writer put it quite succinctly, “Whatever happened to a free market place of ideas?”¹²⁸ The writer further lamented, “When did our desire to be political missionaries upstage our mission as educators?”¹²⁹ Some professors have moved “far from teaching the mechanics of knowledge, they are in fact preachers.”¹³⁰ Without clear standards of what academic freedom means in the classroom, there is a danger of the continuation of this trend of academic freedom protecting anything a professor wishes to do in the classroom.¹³¹ The AAUP has set no clear expectation for academic standards in the classroom; such an absence begs for outside parties to weigh in and have their concerns taken seriously.

Education is fundamentally about exploring and critically examining a broad range of academically supported ideas, not about training students for political activism, advocacy and “speaking truth to power.”¹³² Professor Stanley Fish offers a

¹²⁶ The standards include the pursuit of truth, objective research, scholarship and teaching that is free of bias.” *Id.* at 47.

¹²⁷ *Id.*

¹²⁸ It has been cynically noted that, “Academic Freedom has evolved from protection against political influences to job security— an employment contract rather than an intellectual contact.” Gil Troy, Current State of Academic Freedom, available at www.oah.org/pubs/nl/2005may/troy.html.

¹²⁹ *Id.*

¹³⁰ Anne Neal et al., *Conformity on Campus*, available at https://thefire.org/public/pdfs/5664_3854.pdf.

¹³¹ For example, Regarding Professor Robinson’s email, the AAUP National President Cary Nelson stated: “historical comparisons are protected by academic freedom, whether or not they are endorsed by a majority of other scholars, even if the analogies are debatable, provocative, or reprehensible.” Jaschik, *supra* note 103. The AAUP’s statement implies that any comparison is protected by academic freedom as long as it is done by a professor; and at the same time, the AAUP fails to set forth guidelines for what work may be considered to embody the “highest standards of scholarship.”

¹³² Roberta Seid, professor from University of California at Irvine commenting in an email sent regarding the Robinson situation:

I think three things have changed over the last 25 years 1) Many academics, imbued with 60’s ideology, came to believe that education should be about training students for political activism, advocacy, and ‘speaking truth to power,’ not exploring and critically examining a broad range of ideas; 2) Post-modernism, activist ideology, and ‘post colonialism’ led to a degradation of what constituted academic standards and, at least in my field, to [the] abuse and misuse of evidence; and 3) A ferocious political orthodoxy began to prevail among faculty that has led, in my opinion, to a startling ‘dumbing down’ and to institutionalization of one view—the suppression of free exchange of ideas. Ironically, the generation that called for ‘student power’ and

corrective on this perspective:

All you have to do is remember that academic freedom is just that: the freedom to do an academic job without external interference. It is not the freedom to do other jobs, jobs you are neither trained for nor paid to perform. While there should be no restrictions on what can be taught—no list of interdicted ideas or topics—there should be an absolute restriction on appropriating the scene of teaching for partisan political ideals.¹³³ Teachers who use the classroom to indoctrinate make the enterprise of higher education vulnerable to its critics and shortchange students in the guise of showing them the true way.¹³⁴

Ultimately, the classroom should be a place of learning, not a place to recruit students to a particular political ideology, where only one point of view is presented when dealing with complex and controversial issues.

E. Faculty-Centered Paradigm Reconsidered

The faculty-centered paradigm of academic freedom does not merely ignore other stakeholders, at times it operates to the extreme detriment of the other stakeholders. As Gary A. Tobin, Aryeh K. Weinberg and Jenna Ferer wrote in *The Uncivil University*, Jewish students have revealed that, in certain classes, they avoid expressing their opinion to evade the possibility of confrontation and humiliation.¹³⁵ Even graduate students and untenured and tenured professors feel this pressure, and thus either keep quiet, self-censor their comments, distance themselves, or choose to follow outwardly the new politically correct position.¹³⁶ These groups certainly do not feel protected by academic freedom; rather, they are victims of its misuse as it presents a one-sided perspective by silencing competing ideas. Neil Hamilton warns that, on college campuses: “Suppression of others results when extreme proponents

influence over academic offerings etc., is now the professoriate, and is demanding absolute professor power with no oversight. It is also tragic to see how professors who question or disagree with these views are bullied into silence. The Robinson case is an example of all these trends.

Roberta Seid email dated June 27, 2009.

¹³³ Alan Charles Kors and Harvey A. Silverglate suggest that “self appointed ‘progressives’ (on college campuses) seek to enforce moral and political orthodoxies through abuse and coercion rather than reason.” Alan Charles Kors & Harvey A. Silverglate, *The Shadow University: The Betrayal of Liberty on America’s Campuses*, FREE PRESS: NY, back cover summary (1998).

¹³⁴ Fish, *supra* note 26.

¹³⁵ Tobin et al., *supra* note 61, at 107.

¹³⁶ During the Robinson Affair, the author spoke with well respected tenured professors, untenured professors, graduate students and several undergraduate students who felt intimidated and due to this hostile environment were not attending programs, were intentionally reducing the tenor and extent of their involvement and statements both in and outside the classroom.

of an ideology embrace zealotry to impose and enforce ideology.”¹³⁷ He tracks major trends where an ideology takes hold and becomes a “belief unshakable in its correctness” that becomes a substitute for the “thorough gathering of the relevant evidence, accuracy in its recording and use, careful and impartial consideration of the weight of the evidence, analytical reasoning from the evidence to the proposition, and internal consistency”¹³⁸ required for valid academic teaching and research.

In many cases, academic freedom acts as a rallying cry for faculty self-interest to protect freedom of research or to preserve unchallenged power over classroom instruction. In Professor Robinson’s case, attempts were made to thwart the investigation even before it began through the gathering of petitions, obtaining support letters from the AAUP, and obtaining letters from other faculty. Efforts to scrutinize faculty, even in cases of misconduct, are often connected thematically to repressive assaults on academic freedom.¹³⁹ To avoid “us vs. them” mentality, the core value of academic integrity should be the guiding principle that unites faculty, students and administrators in the common pursuit of knowledge.

VI. A NEW BEGINNING: STAKEHOLDER ANALYSIS BASED ON RESPECT, RIGHTS, AND RESPONSIBILITIES

Stakeholder analysis identifies the stakeholders, their key interests and their impacts, and then puts forth potential strategies for obtaining support or reducing obstacles in highly controversial issues such as academic freedom.¹⁴⁰ Rather than fostering a siege mentality when issues of academic freedom are raised, stakeholder analysis honors the important traditions of objectivity and diversity of those seeking the truth. The key component to any stakeholder analysis is stakeholder identification and information gathering, whereby the perspectives, beliefs, fears and hopes of the stakeholders are expressed and understood. Therefore, this paper asserts that the key stakeholders in any discussion on academic freedom include relevant stakeholders beyond just the faculty. Unfortunately, too often academic freedom discussions only address the perspective of faculty members, which in effect silences and diminishes other stakeholders’ perspectives. When a faculty member asserts academic freedom, it is based upon the belief that professors have “earned a right to independence and protection by virtue of their education, their scholarly research, and a vigorous peer review process.”¹⁴¹ Such a bracketed view of academic freedom silences the

¹³⁷ HAMILTON, *supra* note 90, at 2.

¹³⁸ *Id.*

¹³⁹ Tobin et al., *supra* note 61, at 45.

¹⁴⁰ Kenneth E. Goodpaster, *Business Ethics and Stakeholder Analysis*, BUSINESS ETHICS QUARTERLY, January 1991, at 53–58; Peter Drucker, *The Coming of the New Organization*, HARVARD BUS. REV., January-February 1988, at 1–19; Rhonda Levine (May 13, 2009), 3 Great Examples of Stakeholder Analysis Matrix, available at <http://www.brighthub.com/office/project-management/articles/3713.aspx>; *The Guide to Managing for Quality - Stakeholder Analysis - A Joint Effort of Management Sciences for Health and the United Nations Children’s Fund*, available at <http://erc.msh.org/quality/ittools/itstkan.cfm>.

¹⁴¹ Geoffrey Raymond, *Written comments from panel on Academic Freedom at UCSB*, available at

perspectives of students and administrators. This mindset contributes to people taking sides and disregarding dissenting opinions. Moreover, because discussions regarding academic freedom regard issues of power and territory, it is important that core values help to guide these important considerations.

A. *Rights, Responsibility, and Respect Model*

The First Amendment Center, based in Nashville, Tennessee, identifies the critical perspectives of the key stakeholder through the use of a Rights, Responsibility, and Respect Model.¹⁴² It is important to acknowledge the *rights* either obtained by law or granted by society, while at the same time acknowledging the universal *responsibility to respect* the rights of others. Moreover, the manner in which we debate is critical as we endeavor to live with our differences in an open society that requires a strong commitment to treat one another with respect and civility. This model has been used to deal with the controversial issue of religion and public education and was developed because “civic values” are a crucial component of education. Such values teach “respect for universal rights and mutual responsibilities, within which the deep differences of belief can be negotiated.”¹⁴³

A serious re-evaluation of the faculty-centered paradigm of academic freedom needs to be undertaken. Utilizing this First Amendment Center’s model, universities, even if they have existing policies, need to re-examine their own policies on academic freedom after taking serious time to listen to the various stakeholders in order to more fully understand their perspectives. Such an undertaking should begin with a survey of stakeholder groups to identify key rights and responsibilities toward academic freedom in the classroom. Following this information gathering phase, representatives from the key stakeholder groups would negotiate a code of ethics on academic freedom in the classroom for that particular university, using the “rights, responsibility and respect” model. Implicit in this process is the dilution of the overpowering role of the AAUP as the prevailing body in developing guidelines defining academic freedom, particularly as it pertains to the classroom. While the AAUP’s voice is critical to this discussion, other stakeholders need to have their voices heard as well.

Any discussion of this re-evaluation process will be challenging. The AAUP has enjoyed immense power in defining the terms of the discussion, as have faculty-centered advocates. Any attempt at moving toward a new paradigm diminishes entrenched interests and will most likely cause an emotional debate to ensue. There is a telling quip regarding anyone with a vested interest that it stands to reason, that nobody votes themselves out of power. Due to the potential for polarization and unyielding positions, it will be important to strive for an inclusive collaborative approach to this re-evaluation process. A similar complex undertaking, entitled the “December Dilemma,” was done in Santa Barbara, California, in the early 1990’s, to

<http://sb4af.wordpress.com/2009/06/06/text-of-raymond-talk-at-af-forum/>.

¹⁴² *Id.*

¹⁴³ *Id.*

deal with religious programs in public schools.¹⁴⁴ Representatives from the various stakeholder groups (teachers, administrators, religious leaders, parents) met for several months to forge a set of guidelines and educational goals concerning teaching about religious holiday activities in public schools. This Santa Barbara model was widely published not only for the resulting guidelines, but for its effective, cooperative stakeholders-based process.¹⁴⁵ It was not an easy process and it took a long time, but it did work, and such an inclusive procedure should be applied to the issue of academic freedom.

Ideally, potential guidelines developed by each university and college would reflect that institution's stakeholders' understanding of academic freedom and of classroom teaching. The idea of creating guidelines uniquely developed for each university community is not unprecedented; the AAUP in 2002 suggested that in order to deal with the complex issue of consensual sexual relationships between professors and students, each school needed to address the problem in its own way.¹⁴⁶ Additionally, mission statements and codes of conduct have been developed on a case-by-case basis in order to promote appropriate behavior in a given university setting.

B. *Robinson Guidelines*

The Robinson case can be used to develop guidelines that provide a positive direction for dealing more effectively with issues relating to academic freedom. This author suggests:

1. *Faculty along with other important key stakeholders, such as students and administrator, should have their rights and responsibilities recognized and supported in a respectful manner.*
2. *Classroom materials and presentations should pass a reasonable academic standard of academic norms and subject relevance, as well as provide diverse points of view when academically appropriate.¹⁴⁷*
3. *All programs, panels, and projects either sponsored or related to the mission of the university should ensure that diverse opinions are reasonably presented and that civic values of respect are honored.*

¹⁴⁴ Arthur Gross-Schaefer & Michelle Britton Bass, *Conflict between Law and Religion: A Peaceful Solution for the teaching of December Holidays*, 60 SOC. EDUC. 309 (1996).

¹⁴⁵ Arthur Gross-Schaefer & Michalle Britton Bass, *A Successful Parent's Incentive to Change how Public Schools Deal with December Holidays*, 14 COOPERATIVE LEARNING 9–10 (1995).

¹⁴⁶ Paul R. Abramson, *The Right to Romance*, BOSTON GLOBE, Sept. 30, 2007, at www.boston.com/news/globe/ideas/articles/2007/09/30/the_right_to_romance.

¹⁴⁷ Certainly, not all materials used in a classroom must pass a standard of academic rigor as certain non-academic articles or items may be introduced for purposes directly related to the course in order to prompt discussion or analysis. The primary goal is that materials are related to the course and educationally appropriate.

4. *Core values such as fairness, decency, compassion, and professional excellence should be considered at all times and especially when dealing with controversial presentations and topics.*

These four guidelines are grounded in the core principle that academic freedom remains a critical concept supporting the university's mission as a "free market place of ideas" nurturing divergent views and encouraging students to hear different sides of a debate.¹⁴⁸ Encouraging academically supported ideas to be honestly shared in classroom discussions embraces "the widest range of viewpoints in accord with the standards of scholarly inquiry and professional ethics."¹⁴⁹

The concept of an ivory tower excluding all intrusion and embracing the idea that the classroom belongs to professors and only to professors under all circumstances is outdated and archaic. Rather, the classroom is critical to the development of our society as it trains our next generation to explore and seek the truth wherever it may be found. Therefore, the classroom belongs to no one particular group but to those who wish to move us into the future with integrity as we honestly quest for the truth.

VII. CONCLUSION

The prevailing paradigm of a faculty-only based academic freedom has become a bastion to protect all actions taken by a professor and bar any outside influences regarding classroom instruction. A broader stakeholder analysis allows students, the faculty, and administrators to feel that their concerns have been acknowledged and appreciated in the fulfillment of the purpose of a university to be involved in a search for truth. An expanded stakeholder paradigm, acknowledging the perspectives of each of the stakeholders through a paradigm of rights, responsibility and respect, is a cooperative model committed to mutual understanding, mutual goal setting and a shared vision of academic freedom for all the critical stakeholders involved in the academy. In this way, the general purpose of the academic enterprise will be supported and not subverted for other purposes.

Developing a code on academic freedom for the classroom that stresses core values of fairness, compassion, decency, and excellence establishes an environment of integrity and civility. Such an environment promotes open-minded and respectful discussion of various viewpoints, especially when dealing with controversial topics. Through this process, the university can model a community of thoughtfulness, where even the most difficult issues can be raised in an environment of inquiry, and where a search for truth can be pursued knowing that good people can disagree as to what is really the "truth." We need to view academic freedom as a mandate for honest inquiry and dialogue, which will enable us to deal with controversial issues with the core values of fairness, decency, compassion and professional excellence.

¹⁴⁸ Troy, *supra* note 128.

¹⁴⁹ University of California, *General University Policy Regarding Academic Appointees - Academic Freedom* (Rev. September 29, 2003) available at <http://www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf>.