

Report of the Committee on Academic Freedom
Academic Senate, University of California Berkeley
Frank Newman, chairman

At the Representative Assembly meeting on May 20, 1958, the Committee on Academic Freedom was directed to ‘report to the Assembly at its next meeting’, after investigation and study relating to the following resolution (proposed by Professor David Rynin):

It is the considered view of the Academic Senate of the University of California, that the professional duty of faculty members requires them to refuse to disclose to anyone under any circumstances information regarding the beliefs of students present or past obtained in the course of instructing them, whether on a formal class basis or informally on other occasions. Such disclosure constitutes a betrayal of confidence morally repugnant and destructive of the very conditions of effective teaching. As an awareness of this policy on the part of the students is essential for Academic Freedom, the freedom to learn and to teach, the Senate makes public this announcement for the guidance of its members and the enlightenment of its students.

In general, teachers and other officials of the University have supplied to prospective employers whatever information seemed relevant to the question whether a student or former student would serve well as an employee. That information has been given voluntarily, as an aid to students and as a public service. No prospective employer or other interested person has a right to demand such information; and even when the inquiry comes from the Civil Service, Military Intelligence, or the FBI, there is no legal obligation (apart from duties created by the University), to provide answers. Legal obligations arise only after a lawfully issued subpoena has been duly served, typically in the form of a command from a court or legislative committee.

The system of University recommendations obviously should be retained. Students, former students, and the community as a whole benefit greatly from the system; and it seems clear that teachers should regard as part of their University assignment the supplying of information as to the ability, character, and promise of students and former students. Further, to maintain the integrity of the system there must necessarily be reported not only facts that are favorable, but also those that are derogatory. If a student has performed miserably in class, if he has cheated in examinations, if he is loud-mouthed or lazy or a procrastinator, then – to the extent relevant – the bad should be mentioned with the good. To hold otherwise would (1) involve dishonest reporting with respect to that student, and (2) prejudice students whose records include only favorable facts, because prospective employers would learn that derogatory information was being withheld in some cases and might, accordingly, question the reliability of reports in other cases.

Critical comments regarding poor performance, cheating, boorishness, laziness, and procrastination are not inconsistent with the aims of higher education. Like prospective

employers, the University legitimately concerns itself with such sins; and its tolerance of them is properly limited. When we turn, however, to “loyalty-security sins” the situation is quite different. The University can hardly dictate to prospective employers and other inquirers a list of political and religious beliefs, attitudes, activities, and associations that ought not be regarded as sinful. But many loyalty-security inquiries – whether they relate to government, private employment, military service, or other affected occupation – call for evidence of beliefs, attitudes, activities, and associations that a university should not supply if it aspires to be a free university. The kinds of inquiries we have in mind are illustrated by the following two items, excerpted from memoranda written in 1956 by a member of this committee.

(1) “Mr. _____ of the Civil Service Commission (Yukon 6-3111) left my office a few minutes ago. He was inquiring with respect to a man who graduated from the School in 1947. In addition to the usual questions concerning ability, character, honesty, and loyalty (including associations) ... [he] wanted to know whether I remembered any discussions in class with the investigatee. [He] ... introduced this question with the comment that he understood that discussions in class here at the University can often become quite heated. I said that I remembered no discussions with the man. [He] ... then asked if I could remember even whether the investigatee’s responses were generally conservative or liberal....”

(2) [An Army Intelligence question concerning a student then in school]

“How about his political thinking?

(I don’t mean Democrat or Republican.)”

The Essential Freedom of the University

University Regulation No. 5, revised June 15, 1944, states: “Essentially the freedom of a university is the freedom of competent persons in the classroom....”

If it were generally known by students that their political and religious freedom to disclose beliefs, to express attitudes, to recount activities, and to refer to associations did not protect them from faculty response to loyalty-security inquiries, many students, in the classroom and in academic consultations, would apply rules of caution differing markedly from the rules of free inquiry we now tend to take for granted. If academic discussion involves, for example, recognition of Red China, or Communists and the Supreme Court, or race relations, or NATO, or atheism, and if students realize that certain comments regarding those matters, when subsequently reported by the teacher in response to routine inquiries, may cause the inquirer to raise his eyebrows, to jot down additional notes, or to contemplate further investigation – then some students who otherwise would freely discuss those matters are going to avoid making that

kind of comment. Moreover, their timidity will not merely be the timidity we recognize among students who choose never to go “against the grain”. Instead, it will be the product of a fear much more direct and immediate than any fear of informal social pressure; it will affect students who do have ideas they would like to articulate, and who understand what free inquiry should mean. The president of an Eastern university many [*sic*] have stated a desirable aim some years ago, when he “...railed against students who shun controversy for fear of losing some future Government clearance (‘If silence is the price of Government service, it is too high a price to pay’).” And most students might willingly accept his challenge, were civilian service for the Government the only risk. But how many among a student body can choose similarly to jeopardize their opportunities to serve honorably in the armed forces, to work profitably in businesses that handle classified contracts, or (if they have a scholarly bent) to participate in project research that is classified?

Recommended Resolution

Having considered Professor Rynin’s text and other possible wordings, your committee recommends the adoption of the following resolution:

This Faculty asserts that freedom of discussion in the classroom and in academic consultation is fundamental in higher education. The essential freedom of a university can be seriously jeopardized in those subjects which are held controversial in some quarters and at some moments in history. Therefore, reports by a teacher concerning the beliefs, attitudes, activities, and associations of a student regarding religion, politics, and public affairs in general are not permissible when the reports are based on information acquired by the teacher in the course of instruction or in the course of other student-teacher relations that involve the student’s academic program.

It will be noted that this resolution is not a criticism of the Government’s loyalty-security program. It is rather a pronouncement of a minimal safeguard that protects student participation in the kind of university instruction and counseling we maintain is fundamental....

Excerpts from a manuscript in the Frank Newman Papers, Law School Archives, University of California, Berkeley. Footnotes have been omitted.