



Western Michigan University
ScholarWorks at WMU

Dissertations

Graduate College

12-2005

Higher Education Attorneys' Perceptions Regarding Academic Freedom and Challenges to Academic Freedom

Manuel R. Rupe
Western Michigan University

Follow this and additional works at: <https://scholarworks.wmich.edu/dissertations>



Part of the Education Law Commons, and the Higher Education Commons

Recommended Citation

Rupe, Manuel R., "Higher Education Attorneys' Perceptions Regarding Academic Freedom and Challenges to Academic Freedom" (2005). *Dissertations*. 1055.
<https://scholarworks.wmich.edu/dissertations/1055>

This Dissertation-Open Access is brought to you for free and open access by the Graduate College at ScholarWorks at WMU. It has been accepted for inclusion in Dissertations by an authorized administrator of ScholarWorks at WMU. For more information, please contact wmu-scholarworks@wmich.edu.



HIGHER EDUCATION ATTORNEYS' PERCEPTIONS REGARDING ACADEMIC
FREEDOM AND CHALLENGES TO ACADEMIC FREEDOM

by

Manuel R. Rupe

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Doctor of Philosophy
Department of Teaching, Learning and Leadership
Dr. Louann Bierlein - Palmer, Adviser

Western Michigan University
Kalamazoo, Michigan
December 2005

HIGHER EDUCATION ATTORNEYS' PERCEPTIONS REGARDING ACADEMIC FREEDOM AND CHALLENGES TO ACADEMIC FREEDOM

Manuel R. Rupe, Ph.D.

Western Michigan University, 2005

Higher education attorneys have emerged in recent years as integral participants in the decision and policymaking processes within American higher education institutions. The perceptions of higher education attorneys regarding academic freedom, including professorial, institutional, and student academic freedom, may significantly impact how higher education institutions respond to modern challenges to such freedom. Key challenges to academic freedom as identified in the literature were categorized into four groups for this study (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional challenges.

An Internet-based survey was sent to higher education attorneys who subscribed to the National Association of College and University Attorneys' list serve. The survey included questions regarding the attorneys' (a) personal demographics, (b) institutional characteristics, (c) personal and professional experiences with academic freedom, (d) legal offices' roles and responsibilities related to academic freedom disputes, (e) perceptions regarding professorial, institutional, and student academic freedom, and (f) perceptions regarding the four groups of academic freedom challenges listed above.

Responses from 179 attorneys nationwide revealed considerable support among

higher education attorneys for professorial, institutional, and student academic freedom. Higher education attorneys' perceptions differed significantly based on many of the personal demographics and institutional characteristics explored in the survey, particularly as to the attorneys' professional and institutional experience with academic freedom issues or disputes. However, attorneys' perceptions regarding the three groups of academic freedom did not differ based on age, years of higher education legal experience, or whether their institution was public or private.

Moreover, although this study confirmed the existence of many challenges to academic freedom, it also confirmed that, overall, not all campuses are experiencing significant (or the same) challenges to academic freedom. Additionally, higher education attorneys considered themselves to have adequate resources to keep themselves current on academic freedom issues, and they perceived their institutional administrators as well prepared to address academic freedom issues on their campuses.

UMI Number: 3197564

Copyright 2005 by
Rupe, Manuel R.

All rights reserved.

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform 3197564

Copyright 2006 by ProQuest Information and Learning Company.

All rights reserved. This microform edition is protected against
unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

Copyright by
Manuel R. Rupe
2005

ACKNOWLEDGEMENTS

I would like to thank and acknowledge the following individuals who were instrumental to the completion of my doctoral dissertation: Dr. Louann Bierlein Palmer, my dissertation committee chair, for her consummate expectations of excellence in all aspects of my scholarship; Dr. William Pearch and Dr. Michelle Johnston, my dissertation committee members, for their continuous engagement in my writing and editorial process; Dr. Kristen Salomonson, for her invaluable assistance with the statistical and analytical aspects of my dissertation; Dr. Andrea Beach, for her direction and pedagogy in the development of my dissertation proposal; Scott Hill-Kennedy and Miles Postema, for their collegial support of my doctoral studies; Karl Brevitz and the administrative staff of the National Association of College and University Attorneys, for their sincere interest in supporting my doctoral studies by making their organizational resources available for this study; Rev. Dr. Meredith Rupe and Rev. Pauline Rupe, my parents, for their love of lifelong learning and always teaching by example; and, finally, my wife Michelle, for her loving encouragement, support and sustained engagement in our many discussions of academic freedom, and my children Lauren and Tyler, for their loving hugs and smiles – may they grow to love learning.

Manuel R. Rupe

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	ii
LIST OF TABLES	ix
LIST OF FIGURES	xii
CHAPTER	
I. INTRODUCTION	1
Problem Statement	9
Rationale for the Study	11
Research Questions	15
Definition of Terms	17
Limitations and Delimitations	18
Significance of the Study	20
II. LITERATURE REVIEW	23
The Emergence of Academic Freedom in America	23
The AAUP Statement Defines Academic Freedom	25
Academic Freedom and Extramural Utterances	29
Academic Freedom, Intramural Speech, and Institutional Governance	31
The Discussion of Academic Freedom within the Federal Judiciary	32
Academic Freedom's First Mention	34

Table of Contents--Continued

CHAPTER

The Supreme Court Embraces Academic Freedom.....	35
The Supreme Court and Academic Freedom in the Turbulent 1960s	37
Academic Freedom: Whose Right?	39
Constitutional Academic Freedom	40
Institutional Academic Freedom.....	43
Professorial Academic Freedom	45
Student Academic Freedom.....	47
A Distinction Without Relevance?	49
Challenges to Academic Freedom	50
Judicial and Governmental Challenges to Academic Freedom	51
Internal or Collegial Challenges to Academic Freedom.....	57
Institutional Interference with Academic Freedom	58
Outside or Extra-Institutional Interference with Academic Freedom.....	61
Research Regarding Perceptions of Academic Freedom.....	65
The Role of the College and University Attorney	68
Conclusion	69
III. RESEARCH DESIGN.....	71

Table of Contents--Continued

CHAPTER

Research Questions.....	72
Study Participants	73
Instrumentation and Data Collection	75
Pilot Study.....	77
Survey Distribution.....	78
Study Variables.....	79
Statistical Procedures	81
IV. RESULTS	84
Data Considerations.....	84
Demographic Data and Institutional Characteristics	87
Attorneys' Experiences with Academic Freedom	90
Office and Institutional Roles and Responsibilities.....	93
Bivariate Correlation Analysis.....	95
Attorneys' Perceptions Regarding Academic Freedom.....	96
Professorial Academic Freedom.....	97
Institutional Academic Freedom.....	99
Student Academic Freedom.....	101

Table of Contents--Continued

CHAPTER

Attorneys' Perceptions Regarding Challenges to Academic Freedom.....	103
Judicial or Governmental Challenges	104
Internal or Collegial Challenges	106
Institutional Challenges	108
Outside (Extra-Institutional) Challenges	111
Most Significant Challenge to Academic Freedom	113
Influence of Personal Demographics on Attorneys' Perceptions	115
Age and Perceptions Regarding Academic Freedom	116
Years of Higher Education Experience and Attorneys' Perceptions.....	118
Courses Taught and Perceptions Regarding Academic Freedom.....	122
Educational Sessions on Academic Freedom and Attorneys' Perceptions.....	124
Annual Involvement and Perceptions Regarding Academic Freedom	128
Influence of Institutional Characteristics on Attorneys' Perceptions	130
Institutional Type and Perceptions Regarding Academic Freedom	131
Institutional Classification and Perceptions Regarding Academic Freedom.....	133
Institutional Dispute and Perceptions Regarding Academic Freedom	135
Attorneys' Perceptions and the Literature	138

Table of Contents--Continued

CHAPTER

Bivariate Correlation Analysis.....	138
Impact of Continuing Legal Education on Attorney Understanding.....	138
Additional Comments.....	141
Summary.....	142
V. DISCUSSION	144
Adequate Resources to Identify and Respond to Academic Freedom Challenges.....	144
Institutional Protections for Academic Freedom	145
Support for Academic Freedom.....	145
Significant Challenges to Academic Freedom.....	148
Judicial and Governmental Challenges.....	148
Internal or Collegial Challenges	149
Institutional Challenges	149
Outside Challenges	149
Personal Demographics and Higher Education Attorneys' Perceptions	150
Age.....	150
Years of Higher Education Experience	151
Courses Taught	152

Table of Contents--Continued

CHAPTER

Conference or Continuing Legal Education Sessions Attended	153
Annual Involvement in Academic Freedom Issue	153
Institutional Characteristics and Higher Education Attorneys' Perceptions.....	154
Institution Type	154
Institutional Classification	156
Institutional Academic Freedom Dispute	156
Future Research	157
Summary	158
REFERENCES	162
APPENDICES	188
Appendix A: Historical and Legal Foundations of Academic Freedom.....	189
Appendix B: National Study on Academic Freedom Survey	191
Appendix C: Human Subjects Institutional Review Board Approval Letter.....	208
Appendix D: First E-Mail to Participants	210
Appendix E: Reminder E-Mail to Participants	212
Appendix F: Responses to Open Ended Questions	214

LIST OF TABLES

1. Challenges to Academic Freedom	64
2. Cronbach's Alpha for Seven Academic Freedom Survey Sections.....	86
3. Frequencies and Percentages for Attorney Position	88
4. Frequencies and Percentages for Institutional Categories Represented	88
5. Frequencies and Percentages for Different Courses Taught and Sessions Attended....	89
6. Frequencies and Percentages for Academic Freedom Disputes and Legal Advice.....	90
7. Attorney Experiences with AF: Means, Standard Deviations	91
8. Attorney Experiences with AF: Percentages	92
9. Office/Institutional Roles and Responsibilities: Means, Standard Deviations	93
10. Office/Institutional Roles and Responsibilities: Percentages	95
11. Attorneys' Views Toward Professorial AF: Means, Standard Deviations	97
12. Attorneys' Views Toward Professorial AF: Percentages	99
13. Attorneys' Views Toward Institutional AF: Means, Standard Deviations	100
14. Attorneys' Views Toward Institutional AF: Percentages	101
15. Attorneys' Views Toward Student AF: Means, Standard Deviations	102
16. Attorneys' Views Toward Student AF: Percentages	103
17. Judicial or Governmental Challenges: Means, Standard Deviations	104

List of Tables--Continued

18. Judicial or Governmental Challenges: Percentages	106
19. Internal or Collegial Challenges: Means, Standard Deviations	107
20. Internal or Collegial Challenges: Percentages	108
21. Institutional Challenges: Means, Standard Deviations	109
22. Institutional Challenges: Percentages	110
23. Outside (Extra-Institutional) Challenges: Means, Standard Deviations	111
24. Outside (Extra-Institutional) Challenges: Percentages	113
25. Four Groups of Challenges: Means, Standard Deviations.....	114
26. Most Significant Individual Challenges: Means, Standard Deviations	115
27. Means and Standard Deviations for Younger and Older Attorneys	117
28. T Test Results for Younger and Older Attorneys	118
29. Means and Standard Deviations for Years of Higher Education Legal Experience.....	120
30. Analysis of Variance for Years of Higher Education Legal Experience	121
31. Means and Standard Deviations for College Courses Taught	123
32. T Test Results for College Courses Taught	123
33. Means and Standard Deviations for Legal Education Sessions Attended	125
34. Analysis of Variance for Legal Education Sessions Attended	127
35. Means and Standard Deviations for Annual Legal Advice	129

List of Tables--Continued

36. T Test Results for Annual Legal Advice	130
37. Means and Standard Deviations for Public and Private Institutions.....	131
38. T Test Results for Public and Private Institutions	132
39. Means and Standard Deviations for Research and Non-Research Intensive Institutions.....	134
40. T Test Results for Research and Non-Research Intensive Institutions.....	135
41. Means and Standard Deviations for Institution Dispute Involvement.....	136
42. T Test Results for Institution Dispute Involvement.....	137
43. Sessions Attended and Self Assessment of Academic Freedom (AF) Understanding	139
44. Analysis of Variance for Sessions Attended and Self Assessment of AF Understanding	139

LIST OF FIGURES

1. Challenges to academic freedom.	51
2. Means plot of number of conference or continuing legal education sessions attended and self assessment of understanding of academic freedom.	141

CHAPTER I

INTRODUCTION

The United States Supreme Court, in recognizing for the first time a right under the American Constitution to academic freedom in *Sweeny v. New Hampshire* (1957), eloquently explained:

The essential freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straight jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. (p. 250)

Prior to, and since this constitutional pronouncement of academic freedom as a self evident freedom, colleges and universities have endeavored to understand and meaningfully defend the concept of academic freedom within their learning communities. This challenge continues today.

Academic freedom, a concept which protects a professor's freedom to teach, a student's freedom to learn, and a higher education institution's freedom from governmental interference in its internal affairs, has historically been regarded as necessary for a free and democratic America (Anderson, 1980; Chang, 2001; Hofstadter

& Metzger, 1955; Russell, 1993). However, challenges to academic freedom have emerged and evolved along with the concept of academic freedom, and many of the emerging challenges to academic freedom identified in the literature reflect the complexities of modern America. Unfortunately, professors, students, and higher education institutions readily disregard their responsibility to defend, preserve, and advance academic freedom in the wake of modern challenges, providing opportunities for its erosion by those who do not understand its importance to intellectual discourse, research, and societal advancement (Rabban, 2001).

In recent years, college and university attorneys have emerged as integral participants in the decision and policy making processes within American higher education institutions, including community colleges (Ingels, 1987; Lipka, 2005a; Lipka, 2005b). The perceptions of college and university attorneys regarding how higher education institutions should understand, interpret, and respond to existing and emerging challenges to academic freedom may have important implications for the manner in which higher education institutions defend, preserve and advance academic freedom in the next century. The American judiciary, moreover, has played an increasingly important role in defining and determining the contours of academic freedom. In responding to challenges to academic freedom in the courts, the advocacy of college and university attorneys may significantly impact the direction of academic freedom in American jurisprudential discourse. Indeed, “[i]f courts inevitably will be the arbiters of . . . academic freedom, colleges and universities must bestir themselves to present their views cogently before courts” (Byrne, 2004, p. 141).

The concept of academic freedom, even if “self evident” as described by the U.S.

Supreme Court in *Sweeny v. New Hampshire* (1957), is not inherently easy to define. Like medieval cartographers, many academics, scholars and jurists are able to easily outline the broad contours of American academic freedom, but their quills less readily capture the detailed nuances of the shoreline that is home to the ebb and flow of intellectual discourse. Institutions, professors, and students, may claim the province of academic freedom their sovereign, however, each all too easily disregards their responsibility to defend it as their own (Hamilton, 1995). Academic freedom, therefore, is continually subject to challenges and erosion from those who seek to redefine its shores (Bloom, 1987; Fish, 2001; Menand, 1996).

To understand the significance of academic freedom at American higher education institutions it is important to review, generally, the emergence of academic freedom in America. The American concept of academic freedom has its historical and ideological origins in the post-enlightenment liberal and democratic traditions that emerged in Western Europe and America in the eighteenth and nineteenth centuries (DeGeorge, 1997; Hornosky, 2000). These traditions of freedom and sovereignty, which flourished in German universities at the time, included three elements: freedom to teach, freedom to learn, and freedom of the institution from governmental interference in its internal affairs (Anderson, 1980; Chang, 2001; Metzger, 1955; Ochoa, 1990). From these traditions emerged the American concept of academic freedom, which in recent years, has extended important constitutional protections through the American judiciary that do not exist in other nations (MacWilliams, 2005).

Despite its relatively recent emergence, the concept of academic freedom is regarded at American higher education institutions as a right commensurate with the

rights specifically enumerated in the American Declaration of Independence or the Bill of Rights (Polishook, 1994; Rabban, 1990). American judiciaries did not, however, recognize academic freedom as a freedom protected by and through the First Amendment to the United States Constitution until the 1950s (Byrne, 1989). Prior to this time the existence of and the protections afforded by the specifically enumerated freedoms of the First Amendment, particularly freedom of speech, generally provided the courts with the ability to protect individual academic freedom without having a separate constitutionally established right to academic freedom. This, to an extent, may explain academic freedom's late arrival to jurisprudential recognition (Hanigan, 1992; Laycock & Waelbroeck, 1988).

In the early part of the last century, American academics were becoming increasingly concerned with the challenges associated with institutional intrusion into the classroom (Rich, 2002). These challenges led to the development by the American Association of University Professors (AAUP) of its 1915 Declaration of Principles, which set forth a professor's "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action" (Lynch, 2003, p. 1077). The AAUP also established Committee A to investigate and review instances of institutional interference in the classroom and other challenges to academic freedom at American higher education institutions (Lynch, 2003; Mosier, 1986). The reports presented by Committee A provided academia with important examples of challenges to individual and professorial academic freedom in higher education (Mosier, 1986).

The Declaration of Principles was followed in 1940 by the AAUPs Statement of

Principles on Academic Freedom and Tenure (Statement), which emphasized a professor's freedom to teach, research, publish, and speak extramurally (Cornelius, 2001; Poch, 1993; Staley, 2002). This Statement became the foundation for modern academic freedom in America and established the importance of professorial self-governance and autonomy from institutional interference (Euben, 2002). Since its announcement in 1940, the Statement has been endorsed by scores of scholarly and professional organizations, which are identified on the AAUP's webpage, accorded considerable judicial deference, and incorporated into hundreds of collective bargaining agreements and college and university faculty handbooks (Polishook, 1994; *Roemer v. Board of Public Works of Maryland*, 1976; *Tilton v. Richardson*, 1971). The Statement, in fact, procured such universal acceptance that the AAUP argued before the U.S. Supreme Court in the late 1950s that academic freedom is a "freedom guaranteed by the Constitution" (*Barenblatt v. United States*, 1959, p. 115). Although the First Amendment clearly protects freedom of speech, academic freedom is, notably, not mentioned in the U.S. Constitution nor is it mentioned in any state or federal law (Byrne, 1989; Krieger, 2000). The AAUP's position that academic freedom was a constitutionally protected freedom in and of itself was a remarkable pronouncement, as the courts had not specifically identified academic freedom as a constitutionally established freedom.

By the time the U.S. Supreme Court affirmed academic freedom as a "special concern of the First Amendment," American higher education institutions were immersed in the transformative challenges and opportunities that emerged from the social, political, and civil rights movements in the 1960s and early 1970s (Aby & Kuhn, 2000; Deering, 1985; Lipset, 1996; Lofton, 2001; Thielens, 1996). Academia was becoming

considerably less reticent of professors challenging their students' assumptions or engaging their students in discussions of unconventional ideas (Bird & Brandt, 2002; Scanlan, 1988). Indeed, American society became accepting of the notion in the latter half of the last century that political, economic, scientific, social, religious, and cultural issues may not readily be understood without student exploration, critical inquiry, and intellectual discourse (Joughlin, 1967; Post, 1994).

In the wake of the emergence of academic freedom on American college and university campuses, the U.S. Supreme Court announced that:

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation. It is an atmosphere in which there prevails the "four essential freedoms" of a university – 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. (*Sweeny v. New Hampshire*, 1957)

Scholars and jurists have identified many reasons why academic freedom is important to higher education institutions and its professors and students, which will be explored in greater depth in Chapter 2. Importantly, academic freedom allows professors to teach their courses without fear that they will be terminated simply because the government or their institution does not agree with the viewpoints of the professor (Finkin, 1988; Hiers, 2002; Olivas, 1993; Sandler, 2001). Immediately following World War II, for example, this viewpoint may have included the study of the economic viability of communism, something that easily could have led to the professor being labeled a communist and terminated for such perceived, even if nonexistent, beliefs (*Keyishian v. Board of Regents*, 1967; *Sweeny v. New Hampshire*, 1957). Shortly

following the U.S. Supreme Court cases recognizing academic freedom as a right protected under the American Constitution, Justice Douglas emphasized that “[n]o more direct assault on academic freedom can be imagined than for school authorities to be allowed to discharge a teacher because of his or her philosophical, political or ideological beliefs” (*Board of Regents v. Roth*, 1972, p. 581).

Importantly, a professor’s freedom to teach has as its corollary a student’s freedom to learn. Academic freedom provides students with the opportunity to learn from their professors without institutional or governmental indoctrination (Dewey, 1984; Horowitz, 1993; Magsino, 1973). Thus, for example, students are able to learn about the accomplishments and failures of their government without the risk that their classroom discussions will constitute sedition (*Adler v. Board of Education*, 1952).

Academic freedom also provides higher education institutions with important protections from governmental intrusion into the institution’s internal affairs (Barrow, 1990; Hofstadter, 1996; Lieberwitz, 2002; Partain, 1987). Federal and state legislatures, for example, continually seek to influence institutional research through conditions attached to appropriations, grants, or other funding (Anillo, 1992; DeWolf, 2000; Pock, 1993). By limiting the distribution of research findings, the government limits the ability of other researchers and institutions to benefit from the findings or conclusions of prior research (*Board of Trustees of Leland Stanford Junior University v. Sullivan*, 1991). Thus, the opportunity for prior research to inform emerging research and build bodies of knowledge is made difficult if not impossible.

Academic freedom, like freedoms specifically mentioned in the First Amendment, however, is not absolute or without boundaries (*Clark v. Holmes*, 1972; Gould, 1999;

Hetrick v. Martin, 1973; Leiser, 1994; *Lovelace v. Southeastern Massachusetts University*, 1986; *Martin v. Parrish*, 1986; Metzger, 1993; Strauss, 2004). Important limitations on academic freedom exist. For example, academic freedom is limited to higher education institutions and its professors and students and, thus, its exercise is confined to, and limited by, such institutional status. Additionally, academic freedom is impacted by a myriad of laws, regulations, institutional curriculum and policies, and academic community standards (Gordon, 2003; Oldaker, 1992). Moreover, academic freedom, as with any freedom, brings with it not just rights for higher education institutions, its professors and students, but also responsibilities for all institutional members and for society (Candido, 1997). These responsibilities include defending academic freedom from the many existing and emerging challenges: a responsibility that, to a great extent, belongs to college and university attorneys.

Although academic freedom is celebrated by professional academic organizations, scholars and, to an extent, the judiciaries of the United States, it is a concept that is not well understood by the higher education institutions, professors and students bestowed with the right (Rabban, 1990). In higher education institutions, academic freedom is, therefore, often regarded as a matter of artistic expression that is the responsibility or the exclusive province of the learned professors (Lieberwitz, 2002; Stern, 1994; Weidner, 2001). Rabban (1988) explains that “[a]cademic freedom is not a personal privilege of professorial autonomy, but a means for society to benefit from the products of critical inquiry” (p. 1409). Professors, however, individually and in the aggregate, seem content to, if not complacent in, regarding academic freedom as a truism not necessary to reflect upon let alone defend (Fish, 2000; Weidner, 2001; Weidner, 2003). Thus, colleges and

universities and their professors implicitly reserve to each other the responsibility for academic freedom even while claiming academic freedom as their own (Lynch, 2003). This transference is most commonly accomplished through contractual rights that recognize academic freedom as a right conferred by the institution to the faculty, rather than as a responsibility of both to each other (Jackson, 1999). As a result collaboration between higher education institutions and faculty in responding to challenges to academic freedom are essentially nonexistent.

Problem Statement

As higher education institutions and their constituencies distance themselves, intentionally or unintentionally, from the responsibilities of defending academic freedom, the protections afforded by academic freedom are subjected to continual challenge and erosion. These challenges are as diverse and varied as the individuals, organizations, and institutions that compose modern society, and include challenges based on many different ideological, philosophical, cultural and theological backgrounds (Bird & Brandt, 2002; Chang, 2001; Poch, 1993; Weidner, 2001). In this study, the significant challenges to academic freedom identified by various scholars, researchers and academics are placed into four groups (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional challenges.

Many challenges to academic freedom exist, and perhaps the most pronounced example is a recent challenge to academic freedom within the American judiciary. Sixty years after the AAUP issued its Statement on professorial academic freedom the United States Court of Appeals for the Fourth Circuit concluded that professors do not have a right to academic freedom, and that if a right to academic freedom existed, which the

court suggested was unclear, such right belonged only within public institutions of higher education (*Urofsky v. Gilmore*, 2000). The court concluded that “the [U.S.] Supreme Court, to the extent that it has constitutionalized a right of academic freedom at all, appears to have recognized only an institutional right of self-governance in academic affairs” (*Urofsky v. Gilmore*, 2000, p. 412). Thus, the court explained, although incorrectly, that the judiciary has “never set aside a state regulation on the basis that it infringed a First Amendment right to academic freedom” (*Urofsky v. Gilmore*, 2000, p. 412). Although the court’s decision is binding only in the states of Virginia, Maryland, North Carolina and South Carolina, the decision represented a considerable and dangerous shift in academic freedom discourse within the judiciary (Euben, 2002).

The *Urofsky v. Gilmore* (2000) decision also represented a considerable challenge to academic freedom because it questioned the relevance and existence of academic freedom. Bird and Brandt (2002) caution that “[i]f the foundation of academic freedom is worn away through institutions’ failure to vigorously protect it, the concept will lose its strength as a bulwark of intellectual inquiry” (p. 436). This has created a potential tempest in the relationships that impact higher education institutional governance, particularly if the present erosion of academic freedom is not quelled. Moreover, the limited interest in the court’s decision among colleges and universities suggests that they may collectively be reticent to consider, or perhaps even explore, the potential consequences of the decision.

Absent the emergence of institutionally-based efforts to preserve and advance academic freedom from this and other challenges explored in the literature review, academic freedom’s erosion may become irreversible, and the transformative nature of

the erosion may render the shoreline of intellectual discourse at higher education institutions barren and unrecognizable (Byrne, 2004; Fish, 2001; Gouran, 1989; Menand, 1996). However, despite the complexity of many modern challenges, scripting the requiem of academic freedom seems premature. The continued acknowledgment of academic freedom in the scholarly and judicial discourse in America indicates that many within academia and, to an extent, the judiciary, are not amenable to having academic freedom eroded (*Forum for Academic and Institutional Rights v. Rumsfeld*, 2004; Polishook, 1994). Higher education institutions continue to reference academic freedom to support their institutional objectives, including critical governance issues such as their selection of programs, faculty, and, most recently their students (*Grutter v. Bollinger*, 2003; Leiser, 1994). The perceptions of college and university attorneys regarding challenges to academic freedom may have a significant impact on not only what challenges higher education institutions address, but also how the institutions address such challenges.

Rationale for the Study

The concept of defending a freedom and, in particular, academic freedom, from challenges has many facets. Freedom may be preserved by the exercise of such freedom, by defending the freedom from those who may destroy it, and by educating others about the freedom so that they may exercise, advance, and defend the freedom (Metzger, 1988). Hanigan (1992) explains that “[i]t is a crucial question whether the ways in which the academic freedom of institutions and faculty are socially embodied and protected give adequate scope for the effective exercise of their obligations to others [to defend] the right of academic freedom” (p. 8). Higher education institutions and, to an extent,

professors and students have not always affirmatively defended academic freedom, especially during times when America was involved in military or ideological conflicts, such as the war against communism in the 1950s and 1960s and the current war against terror (Associated Press, 2005; Bird & Brandt, 2002; Hamilton, 1996a).

It is difficult to suggest that institutions of higher education and their professors cannot lament the erosion of academic freedom if they have not defended academic freedom when it is challenged. To a great extent, the complexities of legal issues impacting higher education institutions, including academic freedom, suggest that such institutions and their professors should rely upon their institutional attorneys to identify and defend against challenges to academic freedom. However, the arrival of attorneys at higher education institutions is a relatively recent phenomenon, and the reliance upon such attorneys to unilaterally defend a long-established and enduring right such as academic freedom has risks (Ingels, 1987).

For example, if college and university attorneys are unfamiliar with the academic freedom landscape they may not readily recognize the challenges to academic freedom that may exist. *Urofsky v. Gilmore* (2000) declared that individual professors have no right to academic freedom, yet the relative silence in the higher education legal community following the ruling is telling. Even if such attorneys dismissed the court's conclusions as aberrational, they cannot ignore the dramatic shift in the jurisprudential discourse, and the potential transformation in the academic freedom landscape.

Although academic freedom is generally recognized as essential to higher education's continued existence and meaningful intellectual discourse, no research has explored whether the individuals responsible for preserving and advancing the rights of

higher education institutions - college and university attorneys – recognize the significance of academic freedom at higher education institutions or are able to identify or understand the modern challenges to academic freedom. Although a few researchers have generally explored faculty perceptions of academic freedom, or contrasted faculty perceptions with administrator's perceptions at higher education institutions (Ambrose, 1988; Gray, 1999; Grubiak, 1996; Hanson, 2003; Isaacson, 1985; Keith, 1996; McCart, 1991; Newton, 1996; Warner, 1999), no researcher has studied personal perceptions regarding challenges to academic freedom. Additionally, no research was found that studied college and university attorneys' perceptions regarding any subject. The research that exists regarding personal perceptions of academic freedom, moreover, has been limited to single institutions, states, or regions, and, therefore, the findings of such studies have not been generalizable to other populations (Creswell, 2003).

The absence of research regarding college and university attorneys may be attributable to the fact that institutional attorneys were not present on campuses until the 1960s, at which time the number of college and university attorneys at American higher education institutions increased dramatically (Ingels, 1987). Since the 1970s the presence of college and university attorneys on American campuses has continued to increase (Lipka, 2005a; Lipka, 2005b). Along with this increase in presence has come an increase in the role and responsibility of the college and university attorney in institutional decision making and policy development, including responding to challenges to academic freedom (Ingels, 1987; Kaplin & Lee, 1995; Russell, 1955).

Many college and university attorneys, however, enter academia from law schools that do not educate students regarding academic freedom and from law firms that do not

represent higher education institutions (Ingels, 1987). Therefore, college and university attorneys often have not been educated regarding academic freedom and its significance to their institutions. Professional organizations, such as the National Association of College and University Attorneys (NACUA) and the Council on Law in Higher Education present remarkably comprehensive annual conferences and seminars that address legal issues important to higher education, and the topic of academic freedom, although recognized as an important concept, is typically included in broader discussions of other issues, such as student admissions, faculty relations, or institutional autonomy (Euben, 2002).

The opportunity, therefore, exists to clarify and understand attorneys' perceptions regarding modern challenges to academic freedom at American higher education institutions. Moreover, it is important to explore how attorneys' perceptions differ, if at all, based on different characteristics of the institution or the attorneys themselves. As college and university attorneys are ultimately responsible for the advocacy of academic freedom in the courts, their perceptions regarding challenges to academic freedom may meaningfully impact the nature and progress of such advocacy, which could have tremendous implications for the preservation and defense of academic freedom in the coming years.

The purpose of this study, therefore, is to explore college and university attorneys' perceptions regarding academic freedom and determine whether the perceptions of college and university attorneys regarding challenges to academic freedom are consistent with the significant modern challenges identified by scholars. Additionally, this study determines whether such perceptions differ based on various

personal demographics or characteristics of the higher education institutions in which the attorneys are employed. This study also explores the views of college and university attorneys in terms of their understanding of their role and responsibility, and their institution's role and responsibility, in responding to and defending against challenges to academic freedom.

Research Questions

Academics, scholars, and jurists have provided eloquent definitions of academic freedom and described the significance of academic freedom to teaching, research, and intellectual inquiry and discourse (Byrne, 1989; Finkin, 1988; Joughlin, 1967). Moreover, researchers have identified many of the modern challenges to academic freedom at American higher education institutions (Davis, 1986; Hamilton, 1996b; Horowitz, 1996; Landenson, 1986; Lewis, 1996; Rabban, 1998; Rabban, 2001). College and university attorneys have become important participants in determining how higher education institutions respond to these challenges. Therefore, their perceptions regarding the significance of academic freedom and how higher education institutions should understand, interpret, and respond to existing and emerging challenges to academic freedom have important implications for the manner in which higher education institutions defend, preserve and advance academic freedom. Additionally, their perceptions may considerably impact the progress and development of the concept of academic freedom at American higher education institutions.

This quantitative study, therefore, addresses eight fundamental and interrelated questions:

1. How do college and university attorneys view their professional role and

responsibility for responding to, and defending against, challenges to academic freedom?

2. How do college and university attorneys view their institution's role and responsibility for responding to, and defending against, challenges to academic freedom?

3. What are college and university attorneys' perceptions regarding issues associated with academic freedom at American higher education institutions?

4. What are college and university attorneys' perceptions regarding challenges to academic freedom at American higher education institutions?

5. Of the following challenges to academic freedom, which challenge (in the aggregate) do college and university attorneys consider the most significant (a) challenges related to judicial or governmental interference, (b) challenges related to institutional interference, (c) challenges related to internal or collegial interference, and (d) challenges related to outside or extra-institutional interference?

6. To what extent, if any, do the perceptions among college and university attorneys regarding academic freedom and the challenges to academic freedom differ based on the following personal demographics (a) age, (b) years in higher education practice, (c) prior college teaching experience, (d) prior attendance at an academic freedom continuing education session, and (e) whether the attorney provides legal advice in matters involving academic freedom at least once a year?

7. To what extent, if any, do the perceptions among college and university attorneys differ at American higher education institutions based on the following institutional characteristics (a) whether the institution is public or private, (b) Carnegie classification, and (c) whether the institution has been involved in a dispute where academic freedom was a fundamental issue in the dispute?

8. Are the challenges to academic freedom that are considered significant by scholars also considered significant by college and university attorneys?

The research questions are examined through a survey, developed by the researcher, of National Association of College and University Attorney members in the United States who are practicing law representing an institution of higher education or within a university system. The survey was provided to participants through a text imbedded hyperlink in an e-mail, which directed the participant to the survey hosted on the World Wide Web. The survey included questions regarding the participant's personal demographics and institutional characteristics (see Appendix B). The survey also included a series of statements to which participants responded using a Likert scale as well as two open ended questions. Descriptive statistics, t tests, and analysis of variance were used to analyze the data obtained through the survey.

Definition of Terms

The following terms shall have the following definitions:

Higher education institution shall refer to any accredited community college, college or university that provides at least two or four year post-secondary educational instruction leading to the conferral of an associate, baccalaureate or post-graduate degree.

College and university attorney shall refer to an attorney licensed to practice law in a state within the United States of America and practicing law representing one or more institutions of higher education.

University system shall refer to the organization of higher education in many American states, in which some or all of the public higher education institutions and each of their campuses are part of a larger state university system.

Dissent or dissenting opinion shall refer to a court judge's minority opinion which disagrees with the majority (or plurality) opinion of other court judge's and which has no precedential effect nor is it binding upon other judges or courts (Black, 1990).

Limitations and Delimitations

The concept of academic freedom is closely related to the concept of tenure, which is essentially a permanent appointment of a college or university professor to a position after a successful completion of a probationary period (DeGeorge, 1997; Finkin, 1996). Moreover, generally tenured faculty have a property interest in their appointment, and thus receive greater due process protections than non-tenured faculty who may be reticent to introduce controversial topics in their classroom because of the absence of tenure related protections (Chemerinsky, 1998; Poch, 1993). However, academic freedom is generally considered to be a freedom of institutions of higher education, its professors and students. Professorial tenure, therefore, is not recognized in the literature as a prerequisite to academic freedom, and, in fact, historically was not considered an essential element of academic freedom (Leiser, 1994). Therefore, challenges to academic tenure, although related to a professor's autonomy in scholarly exploration, are not explored in this study.

Additionally, academic freedom is a concept that originated from, and is traditionally associated with, teaching, learning, and research in higher education. Although academic freedom generally extends to teachers in primary and secondary institutions, their rights to academic freedom are limited, to an extent, by the general absence of academic freedom for their institutions and its students (*Bethel School District v. Fraser*, 1986; Forehand, 1988; Oldaker, 1992). Thus, this study is limited to academic

freedom in higher education.

This study is also limited to American institutions of higher education. Although many other nations recognize academic freedom, including those nations from which academic freedom is believed to have originated, American academic freedom has important legal foundations and challenges that are uniquely American (Shapiro, 2000). Additionally, study participants include American attorneys, who, in contrast with legal practitioners in other nations, must complete three years of post-baccalaureate studies in law school and generally pass a bar examination in their respective state.

The researcher initially intended to also exclude from this study NACUA members at private law firms that may represent higher education institutions as well as attorneys representing private organizations, such as the AAUP. Private law firms and organizations generally represent many different clients or constituencies in different practice areas, and, therefore, the researcher was initially concerned that they may not be intimately involved in the daily educational operations of higher education institutions in a manner similar to in house or general counsel or university system attorneys. However, as the attorneys in the private law firms and organizations have identified themselves as intimately involved in the representations of higher education institutions through their qualification for membership in NACUA, their preclusion from the study was not supported. Additionally, some of the attorneys recognized as lead authorities regarding academic freedom are members of NACUA but do not represent specific higher education institutions. Thus, this study includes all attorneys who are members of NACUA as further explained in Chapter 3.

Furthermore, this is a quantitative study of college and university attorney

perceptions of a complex concept: academic freedom. The study is intended to have a broad representation of perspectives, and, although a qualitative study (presumably grounded theory or phenomenology) may have provided a greater opportunity to explore the reasons for the attorney's perceptions, this study intentionally is limited to discovering the attorneys' perceptions (Creswell, 2003). Additionally, as this study used a survey instrument to measure perceptions, the participants may have assigned different meanings to certain questions, words, or statements than intended for this study (Locke, Spirduso, & Silverman, 2000). However, subsequent research, if necessary, may appropriately explore the intricate reasons for some of the attorneys' perceptions.

Finally, this study begins with the premise held by many academics, scholars and jurists that academic freedom, like the other freedoms celebrated and preserved in the First Amendment, is good for higher education and society. Without academic freedom, American democracy would be imperiled (*Sweeny v. New Hampshire*, 1957).

Significance of the Study

The statistical findings and conclusions of this study regarding college and university attorneys' perceptions of challenges to academic freedom at American higher education institutions may be beneficial for many different readers interested in academic freedom.

As to the study participants, college and university attorneys, they may benefit from this study in that they may learn more about the perceptions of their contemporaries at other higher education institutions or university systems regarding challenges to academic freedom. Moreover, by identifying differences in perceptions regarding such challenges, attorneys may be able to better understand how they may more effectively

educate themselves, their institutions and the institutions' professors and students, regarding the significance of, and different professional perspectives regarding, challenges to academic freedom.

As to higher education institutions and administrators the findings and conclusions of this study may allow them to better identify and understanding the importance of academic freedom and the significant challenges to academic freedom, even if their institution does not have attorneys within their campus community. Additionally, this study may assist such institutions in identifying opportunities to respond to challenges to academic freedom and to educate their campus communities, including their administrators, faculty, and students, regarding the importance of, and challenges to, academic freedom.

As to professional higher education law organizations such as NACUA and the Council on Law in Higher Education may be able to use the findings and conclusions in the study to identify opportunities to address specific challenges to academic freedom in their conferences and seminars. Moreover, the findings of this study may assist such professional organizations in identifying opportunities to defend against, and respond to, challenges to academic freedom that may be integrated into conference sessions and discussions.

As to law schools, they may be able to use the findings and conclusions of this study to incorporate discussions of academic freedom into their curricula, particularly in the context of First Amendment studies. Attorneys representing higher education institutions are not the only attorneys that impact or address issues related to academic freedom. Many attorneys become judges, legislators, governmental administrators, and

college and university professors, and as they may be in positions to influence the direction and tenor of civil and judicial discourse regarding academic freedom, they would presumably benefit from understanding the perceptions of their contemporaries in the practice of law regarding the modern challenges to academic freedom.

CHAPTER 2

LITERATURE REVIEW

Academic freedom is a complex and, at times, abstract concept that is not easily defined. However, this has not prevented professional organizations, the American judiciary, or scholars and researchers from exploring the concept, defining its significance in higher education, or identifying the modern challenges that exist to academic freedom. This chapter will (a) explore the emergence of academic freedom in America, (b) discuss the AAUP's definition of academic freedom, (c) describe the relationship between academic freedom and extramural and intramural speech, (d) explore the American federal judiciary's discussion of academic freedom, (e) discuss the different types of academic freedom, including constitutional academic freedom, institutional academic freedom, professorial academic freedom, and student academic freedom, (f) identify the existing and emerging challenges to academic freedom including judicial and governmental challenges, collegial challenges, institutional challenges, and extra-institutional challenges, and (g) describe the research regarding perceptions of academic freedom as well as the role of the college and university attorney at higher education institutions. This literature review will also, for the first time, diagram the concept of academic freedom while providing a historical, legal, professional and literary context (see Appendix A).

The Emergence of Academic Freedom in America

The concept of academic freedom in American emerged from the post-enlightenment ideological movements, indeed, revolutions, that swept through Western Europe and American in the eighteen and early nineteenth centuries (Bramhall & Ahrens,

2001; Byrne, 1989; Finken, 1988; Metzger, 1988). The ideological foundations for these revolutions, which included equality, autonomy, sovereignty, and individual freedom, had a significant impact on the emergence of academic freedom at higher educational institutions, particularly in Germany (Olivas, 1993; Smith, 2002; Worgul, 1992). Academic freedom in Germany included three important concepts: *Lehrfreiheit*, or freedom to teach; *Lernfreiheit*, or freedom to learn, and *Freiheit der Wissenschaft*, or an institution's freedom from governmental interference in its internal affairs (see Appendix A).

In America, *Lehrfreiheit* was the first of these freedoms to emerge as professors sought greater autonomy within their institutions (Chang, 2001). In the early part of the last century academic freedom in America was professed to be a concept that promoted "the advancement of knowledge by protecting scholarly investigation and reflection" and the "dissemination of knowledge by protecting scholars who convey their learning through teaching, publication, and extramural utterances" (Eisenberg, 1988a, p. 1367). In contrast, *Freiheit der Wissenschaft*, or institutional academic freedom, conceptually emerged in the last century in response to increased governmental intrusion into the internal affairs of the institution (Barrow, 1990; Hofstadter, 1996; Lieberwitz, 2002; Partain, 1987). Thus, American academic freedom emerged from its revolutionary ideological foundations to become an important response to challenges to professorial autonomy and institutional sovereignty (Metzger, 1955).

In 1930, Lovejoy (1930), a philosopher, university professor, and signatory to the AAUP 1915 Declaration, set forth his influential definition of American academic freedom:

Academic freedom is the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials in the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics. (p. 384)

By the early 1950s, academic freedom in America essentially became a matter of professional ideology and custom and not until 1952 was academic freedom even mentioned in American jurisprudence (Byrne, 1989; Metzger, 1988). However, the absence of academic freedom from jurisprudential discourse is, to a great extent, irrelevant because the ideal of academic freedom and its significance at higher education institutions is not predicated on its “enforceability as law, but rather in the broad based commitment by participants both inside and outside higher education to defend and perpetuate the ideal” (Bird & Brandt, 2002, p. 433). Thus, higher education institutions as well as their professors, students, and, ultimately, their attorneys are responsible for identifying and responding to challenges to academic freedom, regardless of the position of the American judiciary.

The AAUP Statement Defines Academic Freedom

Perhaps the most recognized and oft cited definition of academic freedom is from the Statement, which was developed by AAUP and by the Association of American Colleges, now known as the Association of American Colleges and Universities (AACU). The Statement, which emerged from the AAUP’s 1915 Declaration and as a

response to the increasing challenge to professorial autonomy, addressed three basic academic freedoms, including the freedom of inquiry, research and publication; the freedom of teaching within the university or college; and the freedom of extramural utterance and action (Joughlin, 1967; Lynch, 2003; Poch, 1993; Rowland, 2001)(see Appendix A). In both the Declaration and the subsequent Statement the AAUP justified academic freedom as an expedient means of furthering the academic values of inquiry, dissemination, critical objectivity, and professionalism (Eisenberg, 1988a). Moreover, the AAUP established that “academic freedom stood for the freedom of the academic, not for the freedom of the academy,” and “a violation of academic freedom was seen as something that happened in a university, not something that happened to a university” (Metzger, 1988, p. 1284). Thus, the Statement was clearly limited to the academic freedom, indeed, autonomy, of the individual professor.

The Statement provided that its purpose was “to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities” (1940 Statement, 2004, p. 1). Moreover, the Statement explained that institutions of higher education exist for the common good, and institutional and individual interests should be subservient to the common good which depends upon the uninhibited search for truth and its free exposition (Meikeljohn, 1970). Therefore, under the Statement the preservation of academic freedom in response to challenges was the mutual responsibility of the institution and the individual professors.

The Statement elaborated that “[a]cademic freedom is essential . . . and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the

rights of the teacher in teaching and of the student to freedom in learning” (1940 Statement, 2004, p. 1). The Statement, thus, regarded academic freedom as a right of the professor and the student, to the extent that, absent academic freedom, a student would be deprived of their freedom to learn (See Appendix A).

The Statement acknowledged, however, that academic freedom is a right that is limited, to a great extent, by an institution’s curriculum requirements, institutional and contractual obligations, and the freedoms and rights of students (Buss, 1999). Moreover, the Statement cautioned that academic freedom was not intended to justify unbridled commentary on any subject regardless of the content of the course: “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” (1940 Statement, 2004, p. 1). This section of the Statement was subsequently explained, through the 1970 Interpretive Comments, to provide that “[t]he intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject” (1940 Statement, 2004, p. 1). Thus, the Statement advocated professors’ freedom to teach students the subject they were hired to teach in the manner and using the methods they professionally deemed appropriate, provided such was consistent with academic community standards (Dulles, 1992).

The Statement’s cautionary explanation regarding controversial topics, however, was not intended to place limitations on intellectual discourse. Fish (2001) explained that the Statement’s pronouncement was to ensure that classroom discourse included:

The disinterested search for truth, the separation of knowledge and power, the superiority of knowledge to belief, the submission of all views to the scrutiny of critical deliberation, the stigmatization of no view in advance of its receiving a serious hearing, and the exempting of no view from the requirement that it put itself to the test of all challenges, including those that issue from sources its proponents distrust. (p. 499)

Finally, the Statement, in foreshadowing the federal judiciary's later distinction between professors commenting as members of the public versus as employees of higher education institutions, emphasized the exercise of discretion when engaging in personal as well as professional discourse (Chang, 2001; Nathan, 1984). The AAUP emphasized the important protections that would later be afforded to extramural utterances:

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. (1940 Statement, 2004, p. 1)

Importantly, the U.S. Supreme Court adopted this standard nearly three decades later, although without reference, in *Pickering v. Board of Education* (1968).

Academic Freedom and Extramural Utterances

The freedom of professors as citizens to engage in extramural utterances and comment regarding matters of public concern without fear of dismissal from employment has traditionally been regarded as an important element of academic freedom: it has also been the subject of considerable challenges. For professors at public universities, this expectation is sustained not only by their institution's endorsement of the Statement and its progeny, but also by the First Amendment's protection of freedom of speech (Ferdon, 1990). In *Pickering v. Board of Education* (1968), the Court distinguished between speech made by public employees in their capacity as employees and speech made by public employees in their capacity as citizens. In this case, a school board had fired a teacher for sending a letter to a newspaper criticizing the school board's proposal to raise new revenue. The Court concluded that the "interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public" (p. 573).

However, the Court noted that cases exist wherein "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general" (p. 568). The distinction between the freedom of speech rights of professors as citizens and as teachers has important implications for academic freedom, particularly because teaching is not necessarily limited to classroom speech (Sandler, 2001). Professors, particularly in the social sciences, are continually engaging in intellectual discourse regarding critical issues, often publicly. These issues may include matters such as college and university

governance or issues that may impact (or implicate) their employers. The concern remains that the failure of the courts to provide a safe harbor for professorial academic freedom may have a chilling effect on discourse inside or outside of the classroom (Sandler, 2001).

Fifteen years after the Court's decision in *Pickering v. Board of Education* (1968), the Court in *Connick v. Myers* (1983) considered whether a public employee could be disciplined for sending a survey to her colleagues which included questions that were interpreted by the public employer as insubordinate. In considering whether the public employee's intraoffice speech was protected by the First Amendment, the Court concluded that unless a public employee is addressing a matter of public concern, the employee's speech may not be protected (*Connick v. Myers*, 1983). Moreover, the Court wrote that "[w]hen employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment" (*Connick v. Myers*, 1983, p. 146). The Court's ruling places professors at public institutions in a difficult position, because the Court's language does not adequately define what constitutes a public concern, and to what extent extramural utterances by professors are protected (Getman & Mintz, 1988). Moreover, whether a classroom discussion is of political, social, or other concern to the community, as required by *Connick v. Myers* (1983) is tremendously subjective, particularly given the diverse and at times esoteric matters addressed in higher education classrooms. Thus, restrictions on extramural utterances represent a considerable and ongoing challenge to academic freedom.

Academic Freedom, Intramural Speech, and Institutional Governance

Connick v. Myers (1983) essentially addressed intramural speech, or an employee's "speech critical or in protest of institutional policies or decisions," rather than speech outside of the campus community - regardless of its content (Finkin, 1988, p. 1324). Finkin (1988) explains that since *Connick v. Myers* (1983), various courts have held that speech within the university but outside of the classroom by professors concerning many different aspects of university operation, governance, curriculum as well as personnel and financial matters have been held to be unprotected speech. As to public institutions of higher education, therefore, Finkin (1988) suggests that intramural speech receives little if no protection from the courts.

Justice Brennan, in his dissent in *Minnesota State Board for Community Colleges v. Knight* (1984), issued just a year after the Court decision in *Connick v. Myers* (1983), cautioned that:

If the First Amendment is truly to protect the "free play of the spirit" within our institutions of higher learning, then the faculty at those institutions must be able to participate effectively in the discussion of such matters as, for example, curriculum reform, degree requirements, student affairs, new facilities, and budgetary planning [and not being permitted to do so] would plainly violate the principles of academic freedom enshrined in the First Amendment. (*Minnesota State Board for Community Colleges v. Knight*, 1984, p. 296)

Historically, in fact, higher education institutions were governed by the faculty. Not until the dramatic growth of colleges and universities in the 20th century did a separate and distinct administration emerge to govern the institution (Metzger, 1988; Olivas, 1993).

A critical issue raised by *Pickering v. Board of Education* (1968) and its progeny, therefore, is whether a professor as a public employee at a university should enjoy greater protections under the First Amendment than other public employees or citizens in general (Rabban, 1994; Scarce, 2005; Yudof, 1988). Brest (1988) argues that if protections are to be provided to professors to engage in critical discourse outside of the classroom regarding matters of institutional governance, i.e., intramural speech, then such protections should not be limited to professors, but should be extended to all members of the campus community. Finkin (1988), however, explains that “[t]he core claim of academic freedom concerns not speech as a citizen – the liberty of a professional utterance the academic enjoys in common with fellow citizens – but freedom of professional utterance not shared with the citizenry at large” (p. 1332). Although a discussion at a university may involve an academic matter or issue “of no social or political concern to the larger community . . . , so long as the professor has adhered to a professional standard of care, [academic] discourse is not to be weighed against any consideration of collegial harmony or hierarchical accountability,” (p. 1332), as would be required under *Pickering v. Board of Education* (1968) and *Connick v. Myers* (1983). Although not argued in the literature, scholars seem to implicitly argue that professors should enjoy within their institutions protections or immunities similar to those enjoyed by members of the United States Congress, who, when addressing matters of public concern in “any Speech or Debate in either House, they shall not be questioned in any other Place” (U.S. Const. art. I, § 6).

The Discussion of Academic Freedom within the Federal Judiciary

The definition of academic freedom provided within the Statement has been

incorporated into hundreds of collective bargaining agreements between faculty unions and colleges and universities throughout the United States (Jackson, 1999). Therefore, it is commonly regarded as the legal definition of academic freedom. However, the Statement, although referenced, has never been adopted by the judiciary in defining academic freedom (Lynch, 2003). Academic freedom, therefore, as a legal construct, has been dependent upon the federal judiciary's ability to articulate and apply its own definition. Notably, "it was the judiciary that fashioned constitutional academic freedom, not the legislature or the academy" (Byrne, 1989, p. 338).

As discussed earlier, although academic freedom is celebrated as if it is as inherent or inalienable a right as the rights set forth in the American Declaration of Independence or the Bill of Rights, the U.S. Supreme Court did not mention the concept of academic freedom until 1952. This may be attributable to the slow emergence of academic freedom in America, particularly in contrast with Western European nations. However, it may also be attributable to the fact that governmental interference with pedagogy was typically a state issue, addressed or redressed by the state courts.

In America in the 1950s, the euphoria that emerged following the Second World War was closely followed by fear of the rise of international Communism, the growth of the Soviet empire in Eastern Europe, and the emergence of the Cold War between the nations on either side of the iron curtain that had descended across Europe (Horowitz, 1996). In America societal fear, indeed, in some places hysteria, emerged that communism may spread to the United States. In many states this fear led to the adoption of "loyalty oath" statutes, which required public employees to swear that they would not advocate seditious activities or the overthrow of the American government by force

(*Wieman v. Updegraff*, 1952). These loyalty oath statutes became the first significant governmental challenge to American academic freedom. Public employees, including college and university professors, were reticent to sign such loyalty oaths as they feared the impact such oaths may have on their individual freedoms, including academic freedom. The issue came to a head in 1952 when the U.S. Supreme Court issued its decision in *Adler v. Board of Education* (1952) (see Appendix A).

Academic Freedom's First Mention

In *Adler v. Board of Education* (1952), U.S. Supreme Court Justice Douglas, in his dissent, discussed for the first time in the history of American federal jurisprudence the concept of academic freedom. In this case, the Court upheld a New York law which required the state board of regents to produce a list of organizations which it believed were seditious of the American government and, moreover, to preclude from becoming or continuing as professors any persons who were members of such organizations. Justice Douglas wrote that the process proposed by the State of New York would be “certain to raise havoc with academic freedom,” a term which he used interchangeably in his dissent with “freedom of expression,” a right protected by the First Amendment to the U.S. Constitution (*Adler v. Board of Education*, 1952, p. 509). Justice Douglas elaborated:

What happens under this law is typical of what happens in a police state.

Teachers are under constant surveillance; . . . their utterances are watched for clues of dangerous thought. A pall is cast over the classrooms. There can be no real academic freedom in that environment. Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect. Supineness and dogmatism take the place of inquiry. . . . A problem

can no longer be pursued with impunity to its edges. Fear stalks the classroom.

The teacher is no longer a stimulant to adventurous thinking; she becomes instead a pipe line for safe and sound information. Instruction tends to become sterile; pursuit of knowledge is discouraged; discussion often leaves off where it should begin. (*Adler v. Board of Education*, 1952, p. 510)

Justice Douglas' recognition of the significance of academic freedom in preventing governmental intrusion into the classroom is compelling. Justice Douglas regarded academic freedom as "the pursuit of truth which the First Amendment was designed to protect" (*Adler v. Board of Education*, 1952, p. 511). As Justice Douglas cautioned, the Framers knew "the danger of dogmatism; they also knew of the strength when the mind is free, when ideas may be pursued wherever they lead. We forget these teachings of the First Amendment when we sustain this law" (*Adler v. Board of Education*, 1952, p. 511). Thus, Justice Douglas positioned academic freedom as a fundamental freedom derived from the First Amendment.

Importantly, however, Justice Douglas was the dissenting viewpoint on the Court. Although by the early 1950s academic freedom had been a well understood concept in academic communities, to the Court the notion seemed novel, even if fundamentally it was based upon the well established freedoms of the First Amendment (Byrne, 1989).

The Supreme Court Embraces Academic Freedom

A few years later in 1957, the Supreme Court in *Sweeny v. New Hampshire* (1957) reversed course and concluded that a professor's First Amendment rights were violated when he had been compelled to testify, and held in contempt of court when he refused to testify, regarding his past expressions and associations with persons in the

Progressive Party. Chief Justice Warren, in delivering the opinion of the Court in *Sweeney v. New Hampshire* (1957), explained that liberties in the “areas of academic freedom and political expression” are “safeguarded by the Bill of Rights . . .” and are as self-evident as the truths expressed in the American Declaration of Independence (p. 250). The Court, however, did not rely upon any specific legal precedence, because the concept of academic freedom had previously existed only in the academic context (Betsey, 1984; Schwieso, 1975; Smith, 1980). Thus, with *Sweeney v. New Hampshire* (1957), constitutional status was bestowed upon the concept of academic freedom (see Appendix A). Academic freedom as a legal construct, however, remained an impediment solely to governmental intrusion into the classroom.

In a series of seminal opinions that followed in latter years, the Court would revisit and reaffirm Chief Justice Warren’s opinion in *Sweeney v. New Hampshire* (1957) establishing constitutional academic freedom. In *Shelton v. Tucker* (1960) the Court held unconstitutional on similar grounds an Arkansas law which required teachers, as a condition of employment, to file an affidavit listing every organization to which they belonged or contributed. Later, in *Whitehill v. Elkins* (1967), the Court held unconstitutional on similar grounds a University of Maryland “loyalty oath” requiring employees to affirm that they were not engaged in subversive activities. Subsequently, in *Tilton v. Richardson* (1971), *Presidents Council, District 25 v. Community School Board No. 25* (1972) and *Healy v. James* (1972), the Court reaffirmed academic freedom as a constitutional right and held that “[w]e break no new constitutional ground in reaffirming the Nation’s dedication to safeguarding academic freedom” (p. 180). By the early 1970s, therefore, the Supreme Court had clearly recognized through *Sweeney v. New Hampshire*

(1957) and its progeny a constitutional right of academic freedom, which the Court regarded as synonymous with the protections afforded citizens under the First Amendment.

The political interests and ideological implications of the Court's early academic freedom cases, however, cannot be disregarded. Communism represented a considerable foil to the democratic notions that the Court sought to preserve in its mid-century jurisprudence, and the Court was seldom reticent to remind the nation, and the legislature, that democratic notions were to be sustained in America. Chief Justice Warren set the groundwork in *Sweeny v. New Hampshire* (1957) for the proximate relationship between the fundamentals of democracy and the concept of academic freedom in America:

The essential freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straight jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. (p. 250)

The Supreme Court and Academic Freedom in the Turbulent 1960s

In 1967, the U.S. Supreme Court, drawing from Justice Douglas' dissent in *Adler v. Board of Education* (1952), struck down on First Amendment grounds a New York

sedition statute which required state university professors to sign certificates stating that they were not members of the Communist Party (*Keyishian v. Board of Regents*, 1967). Justice Douglas would later comment that “[n]o more direct assault on academic freedom can be imagined than for the school authorities to be allowed to discharge a teacher because of his or her philosophical, political, or ideological beliefs” (*Board of Regents v. Roth*, 1972, p. 581).

In *Keyishian v. Board of Regents* (1967), Justice Brennan, writing for the majority, stated:

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the marketplace of ideas. The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues rather than through any kind of authoritarian selection. (p. 603)

Keyishian v. Board of Regents (1967) reaffirmed the significance of academic freedom in a democratic nation and its importance in protecting professors from the challenges presented by undue governmental and institutional interference (see Appendix A). The Court would later extend academic freedom to fundamental aspects of higher education institutional governance and autonomy.

By the end of the 1960s, however, the fear of Communism waned and American

society began to focus on the domestic issues of equality of opportunity in education and the emergence of the civil rights movement (Lipset, 1996; Thielens, 1996). The presumption that emerged was that American freedoms preserved in the Bill of Rights, such as academic freedom, were enduring, and they had provided a course of reason in a time of uncertainty, uneasiness, and disquiet (Finken, 1983).

Academic Freedom: Whose Right?

In the early years of the 20th Century American academic freedom scholars and jurists did not consider it necessary or relevant to determine to whom or what academic freedom belonged, so long as challenges to academic freedom were redressed or averted (Van den Haag, 1994). This may be attributable to the fact that the concept of academic freedom emerged from institutions where professors governed the institution, and, thus, the distinction between the institution and its professors or students was meaningless (Byrne, 2004; Gray, 1988). Academic communities recognized the existence of academic freedom, and it was of no consequence that the courts did, or did not, accord a constitutional status to it. As Finken (1983) explained:

Although the roots of the concept of academic freedom go back to the Middle Ages; the idea of academic freedom does not arise from the Constitution in the first instance, nor does it depend upon the courts for its existence. The law of academic freedom involves less the creation of novel first amendment arguments than the more subtle (and yet imperfectly realized) process of constitutional assimilation of an older, largely non-constitutional ideal. (p. 841)

In recent years, however, scholars addressing academic freedom have distinguished among four different but related types of academic freedom: (1) constitutional academic

freedom; (2) institutional academic freedom; (3) individual or professorial academic freedom; and (4) student academic freedom (Mertz, 1988; Woodward, 1999)(See Appendix A).

Constitutional Academic Freedom

Constitutional academic freedom, which is derived from the Fourteenth Amendment's application of the First Amendment freedoms to public institutions, applies to public higher education institutions and their professors and refers to the guarantee of academic freedom preserved through the American Constitution (Byrne, 2004; Hamilton, 1995; Lynch, 2003; Scanton, 1988). Some scholars have argued that constitutional academic freedom should also extend to private higher education institutions, although the courts have not yet adopted such a standard (Gordon, 2003; Poch, 1993).

The First Amendment specifically provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The three seminal constitutional academic freedom decisions of the U.S. Supreme Court in *Adler v. Board of Education* (1952), *Sweeny v. New Hampshire* (1957), and *Keyishian v. Board of Regents* (1967) guaranteed the preservation of academic freedom as a fundamental right commensurate with the rights derivative from the First Amendment. Moreover, the Court relied upon these seminal decisions to conclude that academic freedom applies to both institutional, as well as individual, activities (*East Hartford Education Association v. Board of Education*, 1977; *Regents of the University of California v. Bakke*, 1978).

Whelan (2002) explains that academic freedom may be appropriately understood

as a broader concept or umbrella, under which constitutional, institutional, professorial, and student academic freedom are established. Byrne (1989), in his seminal research on academic freedom, highlighted the important relationship among constitutional academic freedom and professorial and institutional academic freedom. Byrne describing professorial academic freedom as “the liberties claimed by professors through professorial channels against administrative or political interference with research, teaching, and governance,” which he contrasted with institutional academic freedom and described as “the insulation of scholarship and liberal education from extramural political interference . . . [that] should primarily insulate the university in core academic affairs from interference from the state” (p. 255). Thus, constitutional academic freedom protects professors and higher education institutions from intrusions from the state, but it also protects professors from intrusions by their institutions.

Byrne (1989) explains, however, that although the First Amendment protects academic freedom, constitutional academic freedom as a concept is not well defined, and, as a result, has created considerable confusion within the courts and the college and university communities regarding its meaning and application. Moreover, “a sizeable literature of legal commentary asserts that the Supreme Court constitutionalized academic freedom without adequately defining it” (Metzger, 1988, p. 1289). This absence of a clear definition has provided opportunities to narrowly construe, if not dismiss as dicta, the right to academic freedom (Metzger, 1988).

Since the U.S. Supreme Court’s recognition of constitutional academic freedom in 1957, however, the Court has repeatedly referenced the importance of academic freedom as a special concern of the First Amendment. Justice Brennan, in his dissent in

Minnesota State Board for Community Colleges v. Knight (1984), eloquently summarized the Court's enduring recognition of constitutional academic freedom:

The right of academic freedom is rooted in our common understanding that the First Amendment safeguards the free exchange of ideas at institutions of higher learning. This Court's decisions acknowledge unequivocally that academic freedom is a special concern of the First Amendment and that protecting the free exchange of ideas within our schools is of profound importance in promoting an open society. Recognizing that in our society the classroom is peculiarly the marketplace of ideas we have not hesitated to strike down laws that effectively inhibit the free discussion of novel or controversial ideas, or that directly prohibit the teaching of unpopular subject matter. (p. 296)

Importantly, constitutional academic freedom does not apply to private institutions of higher education. However, in recent discussions regarding the possible privatization of highly endowed public higher education institutions that are minimally dependent upon state funding, the fact that such privatization would eliminate constitutional academic freedom has not even been mentioned (Breneman, 2004; Mangan, 2005). Although academic freedom as a constitutional right does not extend to private colleges and universities, many private colleges and universities provide their professors with a contractual or deferential right (through customs and practices) to academic freedom (Eisenberg, 1998; Glickstein, 1998; Woodruff, 1995). Thus, in the absence of constitutional academic freedom, academic freedom preserved as a contractual right is essential to respond to, and defend against, challenges to academic freedom.

Institutional Academic Freedom

Institutional academic freedom, which is related to the established tradition of institutional autonomy, is academic freedom which belongs to institutions of higher education, and, until recently, was presumed to include academic freedom for individual professors within institutions of higher education (Leslie, 1986; Pacholski, 1992).

Rendleman (2002), in discussing the importance of academic freedom to institutions of higher education, explains that “[a]cademic freedom protects university autonomy from outside interference; but more importantly, it enables independent teachers and researchers with academic freedom to be indispensable to the modern university’s teaching and research mission” (p. 362).

Public higher education institutions, in addition to constitutional academic freedom, also enjoy institutional academic freedom, which collectively provide significant protections from governmental interference (Williams, 2002). In fact, “[l]ong before it was linked to academic freedom, the idea that educational institutions should be shielded from the clutch of government has been embodied in . . . constitutional decision[s] prohibiting” governmental interference by state legislatures (Metzger, 1988, p. 1315).

Nearly three decades after the concept of academic freedom was introduced in federal jurisprudence through *Adler v. Board of Education* (1952), the U.S. Supreme Court in *Regents of the University of California v. Bakke* (1978) seemed to reaffirm academic freedom as a fundamental institutional freedom in addressing a challenge to an affirmative action admissions policy at the University of California. Drawing upon the

reasoning in *Sweeny v. New Hampshire* (1957), the Court explained that “[a]cademic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment” (*Regents of the University of California v. Bakke*, 1978, p. 312). The Court, referencing Justice Frankfurter’s concurring opinion in *Sweeny v. New Hampshire* (1957), described the “four essential freedoms that constitute academic freedom:”

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevails “the four essential freedoms” of a university -- 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.” (*Regents of the University of California v. Bakke*, 1978, p. 312; *University of Pennsylvania v. EEOC*, 1990)

Chang (2001), elaborated that “these four essential freedoms . . . mean that a university possessed expansive institutional freedom in faculty appointment and tenure, curriculum, pedagogy and student admissions” (p. 921). Notably, institutional pedagogy, juxtaposed with classroom pedagogy, is best understood as the ability to determine class sizes and course delivery methods, rather than course content or presentation methods (Chang, 2001). The four essential freedoms became, in the jurisprudential context, the essence of institutional academic freedom. However, the Court recognized the interdependence of institutional academic freedom with professorial academic freedom. In *Regents of the University of Michigan v. Ewing* (1985), the Court concluded that “[a]cademic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students . . . , but also, and somewhat inconsistently, on autonomous decision-making

by the academy itself” (p. 227).

Institutional academic freedom is also sustained by regional accreditation boards, which identify academic freedom as an integral element of institutional autonomy and the ability of the institution to provide its students with quality educational programs (Elman, 1994). Thus, academic freedom remains an integral aspect of the ability of higher education institutions to continue or receive their requisite regional accreditation (Gordon, 2003).

Professorial Academic Freedom

Individual or professorial academic freedom is academic freedom that belongs to individual professors and may include protections through constitutional academic freedom as well as contractual rights (Hiers, 2002; Olivas, 1993; Pendleton, 1994).

Dulles (1992) summarizes professorial academic freedom as the freedom of professors to “pursue their scholarly investigations without interference, to publish the results of their research and reflection, and to teach according to their own convictions, provided that they remain in the area of their competence and present the alternative positions with sufficient attention and fairness” (p. 50).

Professional organizations, faculty unions, individual professors and many scholars contend that the right of academic freedom must reside with individual professors (Metzger, 1988). Byrne (1989) emphasizes that “[a]cademic freedom is the only . . . right enjoyed solely by members of a particular profession:” the college and university professor (p. 264). The Statement as well as many collective bargaining agreements with faculty unions supports the position that the right to academic freedom is an individual right of professors (Carrington, 1988). Byrne (1989), furthermore,

explains that individual academic freedom generally addresses the rights of individual professors in relation to university administrators as representatives of the institution, as well as governmental officials as representatives of the state. Professorial academic freedom, thus, is recognized as an important protection from institutional and governmental interference in the classroom (Haddon, 1988).

Professorial academic freedom, Eisenberg (1988b) suggests, includes two interrelated types of academic freedom, including the freedom of the individual professor to pursue teaching and research, and the freedom of faculty peers to judge whether individual professors have fulfilled their professional responsibilities through peer review (see Appendix A). Rabban (1988), addressing the importance of academic freedom to research and peer review, wrote:

Classic discussions of academic freedom stress the freedom of the professor to investigate, teach, and publish, subject only to scholarly standards and professional ethics. Other restrictions on the choice of research or on the expression of scholarly views, whatever their source, violate academic freedom. The social functions performed by professors justify their broad freedom. Critical inquiry and dissemination of research by university professors is essential to the advancement of knowledge. Professors cannot perform these vital roles if others intimidate or punish them for expressing their conventional views. The roles of professors are also undermined by suspicions that nonprofessional considerations have influenced their judgment. (p. 1408-09)

However, as Chang (2001) explained, traditional notions of academic freedom did not specifically demand unlimited, absolute academic freedom. Academics were granted

academic freedom on the condition that they would fulfill the accompanying duty of professional competence and ethics (Chang, 2001).

The recent *Urofsky v. Gilmore* (2000) decision, however, has markedly distinguished institutional and individual academic freedom by concluding that professorial academic freedom does not exist. Smith (2002) warns that “the Fourth Circuit stripped the core of academic freedom by ruling that academic freedom provides no protection to the academic inquiry and research of individual professors” (p. 351). Williams (2002) and Buss (1999), moreover, argue that if academic freedom is intended to protect only institutions from intrusions from the state, and public universities are mere extensions of the state, then in effect academic freedom is ultimately an illusory and incongruous protection provided to the state against itself. Thus, they argue, academic freedom for the institution or its students is meaningless unless accompanied by the concomitant right to professorial academic freedom.

Student Academic Freedom

Although often overlooked in the scholarly discourse on academic freedom, the scholars, organizations and courts that have addressed student academic freedom have concluded that it exists (American Association of University Professors, 2004; American Civil Liberties Union, 1974; *Board of Regents of University of Wisconsin System v. Southworth*, 2000; Dewey, 1984; Euben, 2005; Horowitz, 2003; Magsino, 1973; Pavela, 2005; *Rosenberger v. The Rector and Board of Visitors of the University of Virginia*, 1995; Vigilanti, 1991). Importantly, in its seminal academic freedom decision in *Sweeny v. New Hampshire* (1957), the U.S. Supreme Court established that “[t]eachers and students,” and not simply teachers, “must always remain free to inquire, to study and to

evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die” (p. 250). Subsequently, in *Keyishian v. Board of Regents* (1967) and *Healy v. James* (1972) the Court explained that student academic freedom entitled students to unfettered exposure to diversity of thought (Chang, 2001). Hanigan (1992) argues that “if education is something different than mere indoctrination, there is a freedom appropriate to the student as student, and so properly called academic, which students advance as an immunity claim to noninterference in choice of truths and values they claim as their own” (p. 7). Horowitz (2003) argues that although colleges and universities claim to recognize academic freedom through institutional academic freedom policies or contracts, generally these only protect professorial academic freedom, leaving students subject to indoctrination from professors intent on advocating a particular ideology. Other scholars have argued, however, that while the Constitution affords students at public institutions extensive civil rights, it affords them no rights of academic freedom at all (Byrne, 1989).

Metzger (1988), however, although recognizing that the courts have never afforded students the right to academic freedom, explains that a student’s freedom to learn, evolved from the German concept of *Lernfreiheit*, was an integral complement to a professor’s autonomy or freedom to teach, or *Lehrfreiheit*, and that each principle required the other to exist. Indeed, the courts have readily recognized that the importance of freedom of speech is not just the right to speak, but the right to have others hear and receive such speech (*Barenblatt v. United States*, 1959; Byrne, 1989; *Epperson v. Arkansas*, 1968). Moreover, historically university students were regarded as knowledgeable enough to determine for themselves their course of study, subject to

degree requirements established by the faculty or their chosen professions (Stuller, 1998).

A Distinction Without Relevance?

Although many scholars have attempted to explain why their chosen category of academic freedom is more significant, or superior, to other categories of academic freedom, such distinction seems of little relevance. Finkin (1983), for example, argues that academic freedom belongs only to the individual professor and is a concept distinct from institutional autonomy or institutional academic freedom, even if conferred by the American Constitution. Hiers (2002) and Wyer (2003), however, suggest that professorial academic freedom and institutional academic freedom are prerequisites of each other. Wentz (1983) seemingly agrees, explaining that “[i]f individual academic freedom is to have meaning, it is necessary that the [academic freedom] of the university as a whole is protected, [because] if the university is subject to direct governmental regulation of thoughts or ideas, an individual’s [right to academic freedom] would be of questionable value” (p. 591).

Buss (1999), in contrast, argues that the dichotomy between professorial and institutional academic freedom is fluid and dependent upon the extent to which the institution has delegated decision making and autonomy to individual or collective professors. Finkin (1983) responds that collapsing institutional and individual academic freedom into one notion erodes the concept of professorial autonomy by making academic freedom a derivative right of the institution. Pavela (2001), however, argues that “[m]any faculty members think that constitutionally protected academic freedom is a special prerogative of professors, [but] to the extent that academic freedom exists at all, it is shared by universities, professors, and students” (p. 21).

Other scholars have explored whether the distinction between institutional and individual academic freedom has any relevance, particularly since professors generally do not have any academic freedom status unless in the employ of a college or university where, in some circumstances, they may even be regarded as acting as the institution itself (Gordon, 2003; Krieger, 2000; Mertz, 1988; *Piarowski v. Illinois Community College*, 1985; Olivas, 1993; Williams, 2002). However, scholars have argued that it is not possible to protect the educational marketplace of ideas “without supporting the rights of individuals to transact in it,” and, thus, “the individual [academic] freedom of the faculty member and the collective right of the institution must be seen as co-existing . . .” (Rajagopal, 2003, p. 26). Regardless of the type of academic freedom being discussed, academic freedom remains a distinct concern for higher education institutions, its professors and students in the wake of modern challenges.

Challenges to Academic Freedom

Many scholars, researchers and academics have lamented the perceived erosion of academic freedom at American institutions of higher education, although they have attributed academic freedom’s erosion to different challenges (Davis, 1986; Hamilton, 1996b; Horowitz, 1996; Landenson, 1986; Lewis, 1996; Rabban, 2001; Rabban, 1998). Other scholars and researchers explain that challenges to academic freedom are continual, and leaders of higher education institutions must understand the concept of academic freedom in order to ensure its preservation in the institution’s academic policies and practices (Buckley, 1986; Poch, 1993; Rabban, 1988; Valletta, 1993; Zito, 1993). However, many modern challenges to academic freedom are complex, and, therefore, determining how to respond to such challenges may be as difficult as determining

whether the challenge represents a significant threat to academic freedom.

These challenges are as diverse and varied as the individuals, organizations, and institutions that compose modern society, and include challenges based on many different ideological, philosophical, cultural and theological backgrounds (Bird & Brandt, 2002; Chang, 2001; Poch, 1993; Weidner, 2001). The different challenges to academic freedom identified by various scholars, researchers and academics may be grouped into the following (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional challenges (see Figure 1).

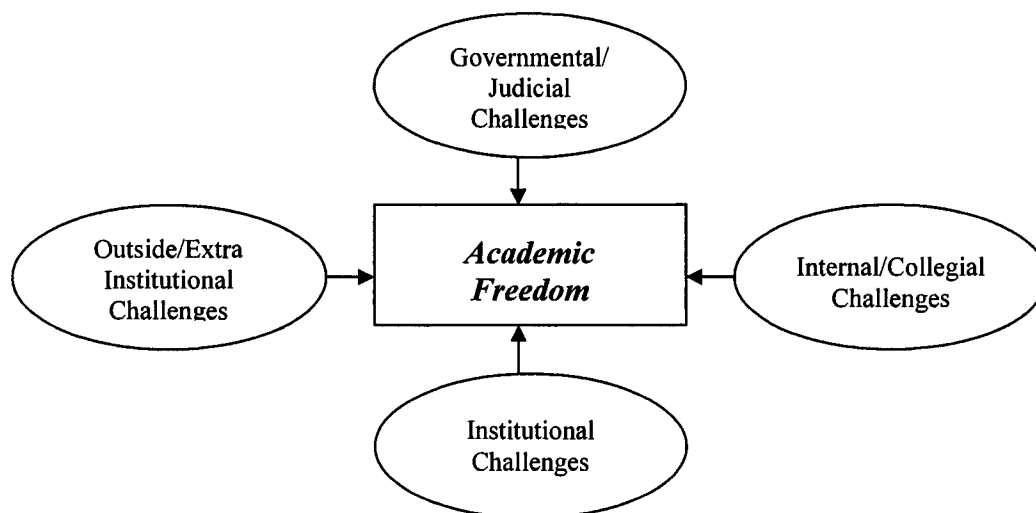


Figure 1. Challenges to academic freedom.

Judicial and Governmental Challenges to Academic Freedom

Judicial, legislative, and general governmental interference with professorial, institutional and student academic freedom represent considerable challenges to academic freedom at American higher education institutions. Such challenges have been described as “a broad effort to exert legislative and judicial control over higher education [which

would] undermine [higher education institutions'] ability to foster the full and open debate that is essential to education" (Courant, 2004). Since the judiciary interprets laws and determines whether laws are permissible under the Constitution, the judiciary has played an increasingly important role in determining the nature and extent of protections provided by academic freedom (Byrne, 2004; Gunther, 1991).

Recent court decisions have presented unexpected challenges to the right of academic freedom, particularly at public higher education institutions which enjoy constitutional academic freedom. Despite clear U.S. Supreme Court precedent establishing academic freedom as a fundamental right for institutions and individuals, a recent lower federal court decision has questioned the relevance if not the existence of academic freedom. As Chang (2001) summarized, "academic freedom jurisprudence has left lower courts with a smattering of cases that fail to address . . . whether academic freedom is an individual right of a professor or an institutional right of a university [or both]" (p. 929). In 2000 the United States Court of Appeals for the Fourth Circuit opined that "to the extent the Constitution recognizes any right to 'academic freedom' above and beyond the First Amendment rights to which every citizen is entitled, the right inheres in the University, not in individual professors . . ." (*Urofsky v. Gilmore*, 2000, p. 412). Moreover, the Court wrote: "The Supreme Court, to the extent that it has constitutionalized a right of academic freedom at all, appears to have recognized only an institutional right of self governance in academic affairs" (*Urofsky v. Gilmore*, 2000, p. 412).

The court's decision may be attributable to the fact that "[a]lthough exalting the importance of freedom of thought and discussion within academic communities in higher

education, [the U.S. Supreme Court's] decisions provided much elegant dicta yet few specific standards by which to govern any right to academic freedom" (Chang, 2001, p. 920). The considerable precedence establishing academic freedom, however, should not be (and presumably was not) disregarded by the mere absence of clarity in the Court's lengthy description of the fundamental importance of academic freedom to democratic values (Harvard, 2001). Indeed, in the same year as the decision in *Urofsky v. Gilmore* (2000), Justice Souter wrote that the U.S. Supreme Court has "long recognized the constitutional importance of academic freedom," although the Court never mentioned the prior decision of *Urofsky v. Gilmore* (2000) (*Board of Regents of the University of Wisconsin System v. Southworth*, 2000, p. 237).

Although the First Amendment affords considerable protections to professors, if academic freedom as a right only belongs to institutions, as suggested in *Urofsky v. Gilmore* (2000), professors are limited to receiving such right by contract or deference from higher education institutions (Olivas, 1993). This approach seems to stand academic freedom on its head, because academic freedom is generally associated with a professor's classroom and, to an extent, research activities. The brick and mortar of the town hall does not enjoy First Amendment protections, but the citizen within the town hall who presents a viewpoint of public concern clearly enjoys such free speech protections. In the same respect, the existence of academic freedom is not dependent upon the brick and mortar of the ivory tower; rather, academic freedom exists through the free exchange of ideas and the exploration of the human intellect (Hiers, 2002).

Moreover, extending the right of academic freedom to higher education institutions is as meaningless as extending freedom of speech to the federal government,

except, arguably, to the extent that higher education institutions may be regarded as expressive associations (*Forum for Academic and Institutional Rights v. Rumsfeld*, 2004). Rights, and, in particular inalienable rights, ultimately exist because they may be exercised by those individuals or groups who possess such rights.

However, in the wake of the court's decision in *Urofsky v. Gilmore* (2000), "[n]ow more than ever, professors' claims to academic freedom cannot be based on blanket assertions of unquestioned rights and prerogatives [to academic freedom]; they must be grounded instead on carefully crafted, widely respected, and consistently practiced professional and ethical standards" (Pavela, 2001, p. 25). Arguably, such "professional and ethical standards" are equivocal and often subjective or arbitrary, providing unsettling opportunities for governmental officials and institutional administrators to interfere with classroom pedagogy (Krieger, 2000).

Other scholars have explained that governmental intrusion in academia, through legislation, regulatory ties to state or federal funding, grants, or appropriations, or through partisan appointments to institutional governing boards, present considerable challenges to academic freedom (Anillo, 1992; Brodsky, 2005; Chronicle of Higher Education, 2005; Cole, 2005; DeWolf, 2000; *Edwards v. Aguillard*, 1987; Fain, 2005; Kreiser, 1993; Marinucci, 2001; Metzger, 1988; Poch, 1993; Remler, 1982; Ryan, 1999; Williams, 2005). The American Council on Education (2005) recently issued, in collaboration with many prominent higher education organizations, a Statement on Academic Rights and Responsibilities, intended to remind federal and state legislatures that "[g]overnment's recognition and respect for the independence of colleges and universities is essential for academic and intellectual excellence" (p. 2). White (2005) summarized that institutional

autonomy and academic freedom are “under relentless assault by legislators, governmental administrators, and others who presume to know better than faculty members and academic administrators how to make financial, managerial, and even pedagogical judgments affecting campus life” (p. B2).

For example, in *Board of Trustees of the Leland Stanford Junior University v. Sullivan* (1991), the United States District Court for the District of Columbia held that the National Institutes of Health (“NIH”) had violated the First Amendment rights of researchers by prohibiting the researchers, as a condition for receiving funding, from discussing their research findings with others without the prior consent of the NIH.

Similarly, in *Rust v. Sullivan* (1991) the U.S. Supreme Court concluded that:

We have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to expenditure of government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment. (p. 200)

Additionally, funding through the United States Department of Defense frequently includes considerable restrictions on the dissemination of research findings because of issues purportedly related to national defense, even if such findings would not represent a risk to national security (Kreiser, 1993). Governmental intrusion into academia in the 1950s and 1960s, importantly, led to the seminal academic freedom decisions describing academic freedom as a “special concern of the First Amendment” in *Adler v. Board of Education* (1952), *Sweeny v. New Hampshire* (1957), and *Keyishian v. Board of Regents* (1967).

Recent legislation at the state and federal level known as the Academic Bill of Rights has been proposed to purportedly protect students from political indoctrination by faculty members (Balch, 2004; *Cooper v. Ross*, 1979; Courant, 2004; Horowitz, 2003; Larkin, 2004; Marklein, 2004; O’Neal, 2005; Pavela, 2005). Advocates of the Academic Bill of Rights claim that it is necessary to promote balance because a significant percentage of college and university professors are liberal or registered Democrats and that such professors are ideologically biased in teaching their subject matter (Burd, 2005; Horowitz, 2003; Rothman, Lichter, & Nevitte, 2005). Respondents contend that the Academic Bill of Rights is unnecessary and emphasize that such legislation would be used to intimidate professors based on the content of their classroom instruction and pedagogy (AAUP, 2005; Ames, Barker, Bonneau, & Carman, 2005; Guttman, 2005; Larkin, 2004). Respondents also note that “balance is a pernicious concept, implying as it does both that all ideas are equally valid and that they can be unproblematically defined in academe as liberal or conservative – especially by outside observers who have only passing knowledge of what is being said or taught” (Willis, 2005, p. B11).

Additionally, it is not uncommon for a politician discontent with a particular professor’s pedagogy or research findings, particularly if critical of the politician’s partisan interests, to seek to undermine academic freedom to shape public opinion (Meikeljohn, 1970). For example, a professor’s research critical of a business or industry essential to a politician’s constituency may find herself and her institution subject to governmental inquiry or review (Slaughter, 1994). These governmental challenges to academic freedom can have a chilling effect on the free intellect, particularly in research.

Internal or Collegial Challenges to Academic Freedom

Many different challenges to academic freedom are created by academics within higher education. In many higher education institutions considerable emphasis is placed on a professor's ability to publish scholarly research. Understandably, professors interested in professional advancement would do well to model their research after the epistemology of the peers who may review their work (Bauerlein, 2005; Byrne, 2004; Kurtz, 2005). Indeed, "professors may compromise the neutral standing of their institutions, for example, by stacking departmental promotion lists with adherents to a particular scholarly school or ideological persuasion, and the institutions would not thereafter reprimand professors for such acts of partisanship, though they have hardly passed unnoticed in its brushes with campus life" (Metzger, 1988, p. 1282). The threat, ultimately, is that a dominant school of thought may go unchallenged, which represents a threat to society and to the accumulation of reliable knowledge necessary for science (Fish, 2003; Fish, 2004; Guterman, 2005; Lock, Spirduso, & Silverman, 2000). Thus, intellectual conformity, particularly in research, represents a continuing challenge for many institutions of higher education and for academic freedom.

Some challenges to academic freedom, however, may be more subtle or nuanced, such as a professor's advancement of political or partisan interests under the guise of academic freedom (Gravois, 2005). Devins (1999) has argued that many professors are undermining academic freedom and the pursuit of truth by taking partisan positions on national issues at the request of special interests without having any particularized expertise or research to support their positions. Devins (1999) elaborates that it is "a perversion of academic freedom to [allow] professional expressions of expert opinion [to

become] nothing more than a plebiscite of personal preferences” (p. 186). Thus, professors may become signatories to a letter addressing issues of considerable social or political importance without considering the contents or the implications of the letter’s position.

Other scholars have lamented the challenges to academic freedom that have emerged from the phenomenon of “political correctness” on college campuses, particularly in the 1990s (Cole, 2005; Horowitz, 2003; Lukianoff, 2005; Rabban, 1998). The problem, as described by some scholars, is that viewpoints are summarily dismissed not on their merits, but because they are perceived by the opposition to be offensive or exclusionary to some (Fain, 2005; Haskell & Levinson, 1988; *Levin v. Harleston*, 1991; Prosser, 1992; Swain, 2005; White, 2005). Cole (2005) cautions, “[t]he result is that it has become increasingly difficult within the academy itself to have an open, civil debate about many topics” (B8). Conversely, some professors have used academic freedom as a premise for engaging in unprotected speech, including sexual or other unlawful harassment (*Bonnell v. Lorenzo*, 2001; Candido, 1997; Woodward, 1999). Scholars have concluded, thus, that many modern challenges to academic freedom originate from those that claim to be exercising their right to academic freedom, when such claim is merely a ruse to avoid criticism or responsibility.

Institutional Interference with Academic Freedom

Institutional challenges to academic freedom, and, in particular professorial academic freedom, are often attributable to institutional responses to freedom of expression within the campus community, particular expressions regarding institutional governance. Often such institutional responses are punitive, having a potentially chilling

effect on campus dialogue and faculty participation in campus decision making. The *Urofsky v. Gilmore* (2000) decision represents an unfortunate opportunity for institutions to undermine, even if unintentionally, professorial academic freedom.

The potential erosion of academic freedom as a right for college and university professors may potentially impact the relationship, indeed, the tenuous balance of power, between faculty and the institution's administration. Gerber (2001) explains that "[m]aintaining and even strengthening substantial faculty participation in institutional governance" is essential, because "[w]ithout shared governance, our colleges and universities would be less likely to foster the unimpeded pursuit and dissemination of knowledge that are necessary for the healthy development of society" (p. 22). However, according to Gerber (2001), absent professorial academic freedom, true shared governance becomes illusory, and professors are subject to internal political pressures or arbitrary administrative fiat. Absent academic freedom for professors, eventually:

Constraints imposed on individual members of the academy can be seen as adversely affecting the right of the academic body as a collectivity. The problem . . . is that the domain of academic freedom may well be constrained by the extent to which individual opinions are seen to advance collective freedom of inquiry. If the academic body does not agree with the views of individual professors, it can easily disown them, leaving them without legal protection for the expressive freedoms. (Rajagopal, 2003, p. 27)

Thus, professors may elect not to discuss a controversial subject for fear that if they did, they may be subject to discipline - or worse, dismissal. The pall over the classroom will have been cast.

Moreover, absent the extension of academic freedom to professors in the classroom, the classroom becomes that which Justice Douglas so gravely feared in his dissent in *Adler v. Board of Education* (1952). Justice Douglas recognized that academic freedom was as necessary to protect professors from the government as it was to protect them from the very educational institutions they served (*Board of Regents v. Roth*, 1972; Uerling, 2000). Recently, professional organizations have expressed considerable concern that “[u]niversity administrators are under pressure to silence faculty and researchers who take unpopular political positions,” and such organizations have cautioned “colleges and universities to resist external pressure to curtail academic freedom” (Anonymous, 2003, p. 57). Indeed, academic freedom protects teachers and professors from the whim and fiat of institutional administrators in the same manner as the First Amendment protects citizens from the government’s intrusion into their thoughts and free expression (Candido, 1997).

Interestingly, in 2003 the U.S. Supreme Court, in upholding the use of racial preferences in admissions at the University of Michigan Law School in *Grutter v. Bollinger* (2003), based its decision in part on the concept of academic freedom and the compelling interest of student diversity at the University of Michigan. The Court, however, did not mention or discuss the *Urofsky v. Gilmore* (2000) decision, leaving for another day a determination as to the relevance and significance (if any) of the case’s discussion of academic freedom (Ware, 2004). Although the immediate erosion of academic freedom due to the court’s decision is unlikely because many institutions of higher education recognize academic freedom as a contractual right, the reality is that a constitutional right clearly affords more enduring protections than a contractual right

(Gunther, 1991; Murphy & Speidel, 1991; Peltason, 1994). As Rabban (2001) recognized, “[a]lthough it is unlikely that the weight of judicial authority will follow the majority in the Urofsky case and deny First Amendment protections to the academic freedom of individual professors, the tension between individual and institutional claims to academic freedom will almost certainly persist” (p. 20). If that tension escalates, the impact for higher educational institutions, and the importance of academic freedom, may rest in the balance.

Recent examples of the erosion of academic freedom include the dismissal or non-continuation by colleges and universities of professors critical of American policies related to the war on terror (Bird & Brandt, 2002). Oldaker (1992) cautions, “[t]he major threat to academic freedom is a result of the lack of unity among . . . administrators, professors and students . . . in a world reeling with social, economic, and political change” (p. 22). Hanigan (1992) affirms that “[t]he continued protection and realization of [the right to academic freedom] will be dependent in part on whether and how [institutions of higher education, professors, and students] respect and support the rights of their partners to academic freedom” (p. 8).

Outside or Extra-Institutional Interference with Academic Freedom

Some scholars have argued that the more significant challenges to freedom to research, and its corollary, the freedom to publish, are presented by restrictions placed on such research and publication by donors and other funding sources. This risk is created when financial contributors place restrictions on their contributions that limit or undermine the ability of researchers to engage in unencumbered scholarly exploration (Clark, 1988; Eisenberg, 1988b; Getman & Mintz, 1988; Slaughter, 1994; White, 2005).

In this sense, a donor or funding source seeks to have research results remain confidential, despite the potential benefits the study data or findings may provide to other significant studies or research, or to society in general (Calvert, 1997; Metzger, 1988). Lieberwitz (2002) cautions that “the public mission of the university and academic freedom are essential to maintaining the legitimacy of the university as an independent institution committed to teaching, learning, and research free from the coercive influences of outside donors” (p. 134). In many respects, a researcher’s freedom to publish the findings of their research parallels the fundamental right of an individual to not only engage in speech protected under the First Amendment, but also to have the citizenry listen to such speech if they so chose.

Some scholars have pointed to outside pressure to limit speech within the classroom and in the university community as undermining academic freedom (Cole, 2005). Other scholars have suggested that the cancellation of speakers at college and university campuses under the guise of concerns related to the safety of the campus community or purported violations of non-existent campaign laws also undermines academic freedom (Kauffman, 2004; Marklein, 2004). For example, during the 2004 American election campaign season the California State University at San Marcos cancelled the speech of filmmaker Michael Moore because of concerns regarding non-existence restrictions on political speeches prior to the election (Kauffman, 2004). Additionally, in 2004 Hamilton College, a small private liberal arts college in New York, canceled a scheduled speech by Ward Churchill, an ethnic studies professor from the University of Colorado, because of comments he made regarding the September 11th terrorist events in an out of class writing (Chu, 2005; Marklein, 2004; White, 2005).

Other scholars have explained that litigiousness, particularly concerning claims of discrimination or harassment, have had a chilling effect on intellectual discourse and academic freedom, inside and outside of the classroom (Baldwin, 1995; DiDomenico, 1995). Discussion of contemporary issues at some higher education institutions such as immigration, affirmative action, race and gender relations, war, and religious fanaticism, therefore, frequently enjoy only cursory discussion (Baldwin, 1995; DiDomenico, 1995; Fish, 2004; Haskell & Levinson, 1988; Prosser, 1992). Higher education institutions continue to struggle with determining how they should respond to, and defend against, such modern challenges to academic freedom from outside of the campus community.

If academic freedom as a right belongs only to the college or university, as the court concluded in *Urofsky v. Gilmore* (2000), individual professors no longer have standing to legally respond to challenges to academic freedom. Colleges and universities, therefore, are placed in the position of having to determine whether to defend itself, its professors, or its students, from myriad challenges to academic freedom (Williams, 2002), and, in many institutions this determination will be made at the advice and direction of the college or university's attorney. The perceptions of college and university attorneys regarding the significance of modern challenges to academic freedom, therefore, may considerably impact the progress and development of academic freedom, particularly if only the institution may legally respond to challenges to academic freedom.

The following table summarizes the challenges to academic freedom within the four groups (see Table 1).

Table 1

Challenges to Academic Freedom

Challenge Group	Challenge
Judicial or Governmental Challenges	<ul style="list-style-type: none"> •Legislative interference with institutional governance through conditions attached to appropriations or other state or federal funding •Governmental restrictions, limitations, or prohibitions placed on the sharing of research data or findings •Judicial interference with university policies or practices related to student admissions, financial aid, or other student recruitment matters •Fourth Circuit's conclusion in <i>Urofsky v. Gilmore</i>, 2000, that professors do not have a constitutional right to academic freedom •Political partisanship in the appointment or election of institutional governing boards
Internal or Collegial Challenges	<ul style="list-style-type: none"> •Professors using their classroom to advance or advocate a particular partisan, political, religious or ideological agenda •Professors claiming protection under academic freedom to justify unprotected speech, i.e., sexual harassment •Professors claiming to be experts on issues and commenting on such issues merely to influence public opinion •Professors encouraging (or discouraging) certain types of research to advance a partisan, political, religious, or ideological agenda •Students using threats of litigation to influence grades or academic evaluations or decisions •Professorial indifference in response to intrainstitutional challenges to academic freedom
Institutional Challenges	<ul style="list-style-type: none"> •Adverse employment action against professors because of their out of class truthful statements critical of the institutional policies or practices of their employer •Institutional efforts to prevent or limit permissible but controversial research •Institutional efforts to determine faculty classroom pedagogy •Academic administrators promoting faculty primarily because they support the administrator's academic or governance positions •Institutional censorship of faculty speech on issues of social, political, or other concern to the campus or greater community
Outside or Extra-Institutional Challenges	<ul style="list-style-type: none"> •Conditions or restrictions placed by private donors on the use and distribution of research data or findings •Threats or intimidation from the public or from private organizations intended to prevent higher education institutions from hosting certain speakers or persons •The threat to faculty from persons or entities outside the institution of being sued for in class or out of class speech •Demands to terminate or remove from positions of influence persons who express viewpoints that are "unpopular" •Organizations seeking to advance "political correctness" rather than viewpoint diversity

Research Regarding Perceptions of Academic Freedom

Few studies have researched personal perceptions of academic freedom within higher education, and those studies have generally explored faculty perceptions regarding professorial academic freedom, or have contrasted the perceptions of faculty with administrators or students regarding academic freedom (Ambrose, 1988; Gray, 1999; Grubiak, 1996; Hanson, 2003; Isaacson, 1985; Keith, 1996; McCart, 1991; Newton, 1996; Warner, 1999). No national quantitative study has researched perceptions regarding academic freedom for any population, and few researchers have studied college and university attorneys. An overview of key studies completed to date follows.

Hanson (2003) completed a recent qualitative study of tenured faculty experiences with the phenomenon of academic freedom at a single public university. She interviewed ten tenured faculty members who had a particular interest in academic freedom and desired to share their experiences. Hanson's (2003) study concluded that professorial autonomy and academic freedom were considered highly valued by the study participants and were preserved through limitations on expression imposed by the faculty members upon themselves as well as imposed by their colleagues and administrators.

Keith (1996), similarly, conducted a qualitative study of faculty attitudes toward professorial academic freedom. He interviewed eighty-nine faculty members at six private higher education institutions in Southern California and found that, across all institutions and disciplines, the faculty considered their academic freedom well protected and identified few threats to academic freedom within their institution. Gray (1999), additionally, researched the manner in which socialization experiences at higher education institutions influenced faculty member's personal perspectives regarding

academic freedom. She surveyed and interviewed new faculty members at public research and traditional liberal arts institutions. Gray's mixed methods study concluded that professional colleagues and graduate school experiences had the greatest influence on faculty member's perceptions of professorial academic freedom.

Other researchers have compared or contrasted faculty perceptions of academic freedom with administrators. Grubiak (1996) surveyed faculty and administrators at community colleges in the state of Washington and found significant differences in the opinions of each group regarding the rights of faculty members to different aspects of academic freedom. Additionally, Grubiak (1996) found that faculty perceptions were influenced by whether or not they had previously served as administrators, and, similarly, administrator's perceptions were influenced by whether or not they had previously served as faculty.

Ambrose (1988), similarly, researched whether differences existed in attitudes and definitions of academic freedom among administrators, academic department chairs, and faculty. Ambrose surveyed administrators, department chairs, and full-time faculty members in the fifteen senior colleges in The University System of Georgia. He found that significant differences existed among administrators, department chairs, and faculty in their attitudes or perceptions regarding academic personnel decisions, freedom of expression, and rights of instruction. The study, however, also found that administrators, department chairs, and faculty "maintain similar attitudes concerning the value, scope, and breadth of academic freedom within the academy" (Ambrose, 1988, p. 15). The study concluded that although administrators, department heads and faculty generally agree regarding the conceptual framework of academic freedom, they generally disagree

regarding the practical application of such framework in the academy.

Newman (1986) researched whether administrators and faculty members had different perceptions regarding academic freedom, although his study, interestingly, was limited to faculty at one college and administrators at thirteen separate higher education institutions in New York. Newman surveyed administrators at thirteen higher education institutions in New York and faculty at one college regarding their perceptions on many different issues including academic freedom, intrainstitutional relationships, institutional governance, and employment relations. In analyzing the data, however, he simply compared the average administrator Likert score with the average faculty Likert score for each survey question, and if the scores had a difference of at least 0.5, he concluded that such difference, or “disparity,” was significant (Newman, 1986, p. 13). Unfortunately, as Newman’s statistical analysis was not based on accepted statistical analysis practices his conclusions regarding statistical significance are questionable (Keppel, 1991). His study, nevertheless, concluded that administrators had more positive perceptions of institutional academic freedom than faculty: conversely, faculty had more positive perceptions of professorial or individual academic freedom than administrators, although the differences in perceptions were not always significant.

Thus, the few studies that have explored perceptions regarding academic freedom have been either limited to faculty perceptions regarding professorial academic freedom, or have contrasted faculty and administrator perceptions regarding academic freedom. Many of the studies, moreover, have been limited to populations from one institution, state, or region, and no study has explored perceptions regarding academic freedom at a national level. Although the findings of the studies are informative, many of them are not

generalizable to other populations, including other university systems or colleges and universities (Glass & Hopkins, 1996).

The Role of the College and University Attorney

Few researchers have studied different aspects regarding the role of the college and university attorney at higher education institutions (Bickel, 1974; Corbally, 1974; Daane, 1985; Ingels, 1987). Ingels (1987) and Bickel (1974) discovered through their research that as higher education issues became more complex, college and university attorneys were playing a more significant role in institutional decision making and in the development of institutional policies. Thus, higher education attorneys often provide advise regarding legal and non-legal matters (Ingels, 1987). Recent studies have pointed to the dramatic increase in the number of in-house attorneys at American college campuses since the 1960s as reflective of the increasing complexity in higher education legal and academic issues (Ingels, 1987; Lipka, 2005a; Lipka, 2005b). Lipka (2005a; 2005b) predicted that “[m]any institutions will continue to expand the size and scope of their legal staffs [in the coming years] . . . to work more closely with [the institution’s many different offices]” (p. A13). Since the 1980s the number of college and university attorneys at American higher education institutions has grown dramatically and current projections suggest that this trend will continue (Lipka, 2005a; Lipka, 2005b; NACUA, 2004).

College and university attorneys are a diverse group, and, in fact, include a greater percentage of women and racial or ethnic minorities than the general attorney population (American Bar Association, 2005; NACUA, 2004). Additionally, college and university attorneys’ practice areas are particularly diverse because the laws and issues impacting

higher education have grown in number and complexity (Ingels, 1987; Lipka, 2005a; Lipka, 2005b). Moreover, because higher education institutions are complex organizations the legal issues impacting such organizations typically include most of the major areas of law practice. Significant practice areas include labor and employment law, constitutional law, contract and property law, and affirmative action (Ingels, 1987).

At many institutions attorneys are integral members of the university administration (Lipka, 2005a; Lipka, 2005b). Higher education attorneys serve on institutional committees, regularly meet with many different clients within the institution, and provide legal advice to the institution's governing board and decision makers (Lipka, 2005a; Lipka, 2005b). Additionally, higher education attorneys frequently conduct educational and training sessions for institutional employees and provide general counsel on institutional policies, business practices and operations (Ingels, 1987). Thus, many attorneys are integral participants in their academic communities.

Although previous studies have generally explored the role of college and university attorneys at higher education institutions, the most recent study is now nearly two decades old. Moreover, no study has explored the perceptions of college and university attorneys regarding academic freedom or the challenges to academic freedom. The findings of this study, therefore, should provide important data and information regarding such perceptions.

Conclusion

Academic freedom, a concept which protects a professor's freedom to teach, a student's freedom to learn, and a higher education institution's freedom from governmental interference in its internal affairs, has historically been regarded as

necessary for a free and democratic America. However, challenges to academic freedom have emerged and evolved along with the concept of academic freedom, and many of the emerging challenges to academic freedom identified in the literature reflect the complexities of modern America. Unfortunately, according to many scholars professors, students, and higher education institutions readily disregard their responsibility to defend, preserve, and advance academic freedom in the wake of modern challenges, providing opportunities for its erosion by those who do not understand its importance to intellectual discourse, research, and societal advancement.

In recent years, college and university attorneys have emerged as integral participants in the decision and policy making processes within American higher education institutions. The perceptions of college and university attorneys regarding how higher education institutions should understand, interpret, and respond to existing and emerging challenges to academic freedom may have important implications for the manner in which higher education institutions defend, preserve and advance academic freedom in the next century. The American judiciary, moreover, has played an increasing important role in defining and determining the contours of academic freedom. In responding to challenges to academic freedom in the courts, the advocacy of college and university attorneys may significantly impact the direction of academic freedom in American jurisprudential discourse.

CHAPTER 3

RESEARCH DESIGN

This non-experimental, cross-sectional quantitative study was designed to research the perceptions of college and university attorneys regarding academic freedom and, in particular, the challenges to academic freedom at American higher education institutions. Quantitative studies often use survey instruments to procure participant data regarding individual perceptions on many different issues (Creswell, 2003; Neuman, 2000). The data collected is then analyzed using various statistical procedures, which allow the researcher to determine whether the data supports, refutes, or elaborates upon existing theory or the literature (Creswell, 2003; Locke, Spirduso & Silverman, 2000; Rudestam & Newton, 2001). This chapter will (a) identify the study research questions and participants, (b) describe the instrumentation and data collection as well as the pilot study, (c) explain the survey distribution, (d) describe the study variables, and (e) identify the statistically procedures.

The overall purpose of the study was to determine whether the perceptions of college and university attorneys regarding academic freedom and, in particular challenges to academic freedom are consistent with the literature, and whether such perceptions in the aggregate differ based on various personal demographics or characteristics of the higher education institutions in which the attorneys are employed. Additionally, this study explores the views of college and university attorneys in terms of their understanding of their role and responsibility, and their institution's role and responsibility, in responding to and defending against challenges to academic freedom.

Research Questions

The perceptions of college and university attorneys regarding challenges to academic freedom at American higher education institutions may determine the direction and voice of academic freedom at higher education institutions and in American judicial discourse. Therefore, this quantitative study answers the following questions:

1. How do college and university attorneys view their professional role and responsibility for responding to, and defending against, challenges to academic freedom?
2. How do college and university attorneys view their institution's role and responsibility for responding to, and defending against, challenges to academic freedom?
3. What are college and university attorneys' perceptions regarding issues associated with academic freedom at American higher education institutions?
4. What are college and university attorneys' perceptions regarding challenges to academic freedom at American higher education institutions?
5. Of the following challenges to academic freedom, which challenge (in the aggregate) do college and university attorneys consider the most significant (a) challenges related to judicial or governmental interference, (b) challenges related to institutional interference, (c) challenges related to internal or collegial interference, and (d) challenges related to outside or extra-institutional interference?
6. To what extent, if any, do the perceptions among college and university attorneys regarding academic freedom and the challenges to academic freedom differ based on the following personal demographics (a) age, (b) years in higher education practice, (c) prior college teaching experience, (d) prior attendance at an academic freedom continuing education session, and (e) whether the attorney provides legal advice

in matters involving academic freedom at least once a year?

7. To what extent, if any, do the perceptions among college and university attorneys differ at American higher education institutions based on the following institutional characteristics (a) whether the institution is public or private, (b) Carnegie classification, and (c) whether the institution has been involved in a dispute where academic freedom was a fundamental issue in the dispute?

8. Are the challenges to academic freedom that are considered significant by scholars also considered significant by college and university attorneys?

Study Participants

The research questions were examined through the cross-sectional *National Study on Academic Freedom* survey (see Appendix B), developed by the researcher and approved, along with the study, by Western Michigan University's Human Subjects Institutional Review Board on May 20, 2005 (Appendix C). The study participants included higher education attorneys who are members of the National Association of College and University Attorneys (NACUA) and who subscribe to NACUA's list serve, known as NACUANET. NACUA is recognized as the most comprehensive organization of higher education attorneys in the United States, and, thus, its members represent the largest and most readily and conveniently accessible population for this study. NACUA's list serve NACUANET, which includes 1,680 higher education attorneys, is the most convenient medium for surveying NACUA's members.

NACUA is a national, and to an extent international, professional organization which was established in 1960, and as of 2004 had over 3,000 individual attorney members and nearly 700 higher education institutional members. NACUA membership

includes attorneys that represent public and private colleges and universities, including many ancillary operations, such as technology transfer and research parks and medical centers. NACUA includes attorneys from many different places, and includes an approximately equal percentage of attorneys from (a) general counsel offices, (b) private law firms, (c) state university system offices, (d) state attorney general offices, (e) and private higher education organizations and associations, such as the AAUP (NACUA, 2005).

The higher education attorneys in NACUA provide legal advice and representation to higher education institutions in virtually all practice areas, including labor and employment law, contracts and business law, civil rights and constitutional law, educational and research law, commercial and transactional law, litigation and risk management, and many other practice areas. Therefore, not all higher education attorneys include academic freedom issues in their practice, although it is possible that any practice area may be impacted by an academic freedom issue. However, the approximately 600 general counsel attorneys who are members of NACUA are presumably the most likely to be familiar with specific campus related academic freedom issues, which are addressed in the survey (NACUA, 2005). Thus, of the 1,680 list serve recipients, approximately 330 should be general counsel attorneys.

As discussed in Chapter 1, academic freedom is a remarkably complex concept, and not all higher education attorneys, including those in general counsel offices, will have addressed an academic freedom issue. However, academic freedom issues may impact many different areas of a higher education institution - from classroom pedagogy to research and technology transfer activities; program development to student grading;

faculty union negotiations and grievances to hosting of campus speakers. Therefore, it would have been impractical, if not impossible, to exclude potential study participants from the list serve as any NACUA member may have campus-specific experience with academic freedom issues and may desire to participate in the study.

The researcher sent the 1,680 higher education attorneys who participate in NACUA's list serve an electronic mail (e-mail) on June 2, 2005, informing them of the nature and purpose of the study and inviting them to voluntarily participate in the study by completing the survey, which was provided through a text imbedded hyperlink (see Appendix C). Study participants who used the hyperlink were directed to the survey hosted on the Snap software Internet site. Subsequently, a single reminder e-mail was sent to potential study participants on June 8, 2005, through NACUA's list serve (see Appendix D). The reminder e-mail reminded the potential participants of the opportunity to participate in the study and provided them with a summary of the nature and purpose of the study as well as the hyperlink to the survey.

Instrumentation and Data Collection

The survey, which was developed by the researcher based on questions or issues identified in the literature, was used for this study (see Appendix B). Survey research is recognized as an effective method for measuring characteristics, attitudes and perceptions of a population (Babbie, 2001; Fink, 1995; Fowler, 2002; Monette, Sullivan, & DeJong, 1998). Moreover, surveys are identified as effective instruments for collecting data for exploratory, descriptive, explanatory, or evaluative studies (Dillman & Salant, 1994).

The survey was divided into seven sections: (1) participants' personal demographics; (2) institutional characteristics; (3) personal background and experience

with academic freedom issues; (4) perceptions regarding the role and responsibility of college and university attorneys and higher education institutions regarding academic freedom; (5) perceptions regarding academic freedom, including professorial, institutional, and student academic freedom; (6) perceptions regarding challenges to academic freedom, including judicial or governmental, internal or collegial, institutional, and outside or extra-institutional; and (7) two open ended questions. In the third, fourth, fifth, and sixth sections of the survey participants were asked to respond to statements regarding academic freedom using a Likert scale.

As to the third, fourth, and fifth sections of the survey, the participants were able to select among the following Likert scale responses to the statements: (1) strongly disagree; (2) moderately disagree; (3) moderately agree; and (4) strongly agree. Likert scaling is a common method of index construction or summated rating which is typically used to measure opinions or attitudes of individuals (O'Sullivan & Rassel, 1990).

For perceptions regarding challenges to academic freedom, participants were also asked to respond to statements using a Likert scale. The participants were asked to evaluate to what extent the listed challenges have been an issue or concern to their institution(s) by selecting among the following: (1) not an issue at all; (2) a slight issue; (3) a moderate issue; (4) a large issue; and (5) a very large issue. The use of a Likert scale permits perceptions to be measured and provided a numerical value. Additionally, the survey concluded with two open ended questions providing participants an opportunity to identify what they believe to be the most significant challenge to academic freedom, explain why it is significant, and provide the researcher with any other information the participant considered important.

At the conclusion of the survey participants had an opportunity to select “submit” on the survey which exported the survey responses through the Snap software to an e-mail account hosted on a secure server. Each participant’s response data generated a new e-mail to the researcher which excluded any personally identifiable information, such as the participant’s e-mail address. The researcher, thus, only had access to participant responses and had no ability to determine from whom the responses or data were received, protecting the participant’s anonymity. At the conclusion of the opportunity for participants to complete the survey the data was exported into SPSS for analysis.

Pilot Study

Since the survey was developed by the researcher no prior studies have established the reliability and validity of the survey (Creswell, 2003; Rudestam & Newton, 2001). An initial pilot study of the survey was completed by select college and university attorneys in the State of Michigan. Pilot study participants were asked to address the following issues (a) clarity of the survey questions, statements, and text, (b) survey organization and structure, (c) ease of transition from one section of the survey to another, (d) appropriateness of Likert scale as method of response to statements, and (e) length of time in minutes required to complete the survey. Based on recommendations provided by pilot study participants, modifications were made to the survey to provide clearer survey text, structure, content, and presentation. The data obtained from the pilot study participants, importantly, was not be used in the final research analysis, and the participants in the pilot study were directed not to participate in the final survey.

Survey Distribution

The potential study participants' received an initial electronic mail (e-mail) through the NACUA list serve on June 2, 2005, which informed them of the nature and purpose of the study and provided them with an opportunity to voluntarily participate in the study by completing the study survey, which was available through a hyperlink within the e-mail (See Appendix D). Study participants who used the hyperlink were directed to the survey hosted on the Snap software Internet site. A reminder e-mail was subsequently sent on June 8, 2005, which reminded the potential study participants of the opportunity to participate in the study and provided them with a summary of the nature and purpose of the study as well as the hyperlink to the survey (see Appendix E).

Early June was selected as the most advantageous time to distribute the survey because NACUA's Annual Conference, which is attended by most of the members of NACUA, is held each year in late June. The list serve is closely followed by participants in June because of important announcements related to the Annual Conference. Moreover, NACUA's Annual Conference is usually held at locations where attendees would vacation, and, thus, the percentage of attendees who would extend their stay at conference locations for vacations suggested that such attendees would not also be on vacation in the early part of June if they were to vacation in the late part of June before or after the Annual Conference. Although the researcher considered distributing the survey in the early fall, many legal counsel offices at higher education institutions are immersed in significant matters following the return of students to college and university campuses. NACUA's leadership and the researcher were pleased with the response rate.

E-mail was considered the most appropriate medium for seeking participation for

the following reasons. First, over half of the NACUA members subscribed to NACUA's e-mail list serve, NACUANET. By implication, therefore, nearly all NACUA members used or had readily available access to computers and presumably the Internet. Second, by having participants complete the survey through the Internet they were able to incorporate completion of the survey into their daily computer activities, thereby reducing participant completion times (Fowler, 2002; Schonlau, Fricker, & Elliot, 2002). Moreover, participants did not need to arrange for the return of the survey through the regular mail system, which typically results in a lower response rate than Web-based surveys (Anderson & Kanuka, 2003). Third, although a power analysis may have identified a smaller or random sample of the NACUA population to survey, the fact that e-mail was free to distribute this survey nationally eliminated concerns regarding whether the sample would be representative, and also eliminated postage and photocopying expenses that could have been considerable had the survey been distributed through regular mail (Cohen & Lea, 2004). Moreover, the sample may not have been representative given the diversity of professional positions within NACUA as well as the fact that it would have been nearly impossible to predict, based on the existing research, which attorney groups representing higher education institutions, i.e., general counsel, system attorneys, private law firms, etc., addressed academic freedom issues. Fourth, ecologically the ability to eliminate paper surveys and related mailings eliminated paper waste and did not require deforestation.

Study Variables

The study included 69 different variables. The dependent variables in this study are college and university attorney perceptions regarding academic freedom and

challenges to academic freedom at American higher education institutions (Creswell, 2003). The independent variables included the following personal demographics (a) age, (b) years of experience in higher education practice, (c) position type, including whether the attorney worked in a general counsel office, university system, attorney general office, private law firm, or other, (d) how many different college level courses the participant has taught, (e) how many conferences the participant has attended where the concept of academic freedom was the primary topic, and (f) whether the participant's institution had been involved in a dispute where academic freedom was perceived by the institution to be a fundamental issue in the case.

Age was relevant because it often impacts a person's perception of issues related to education (Bennis & Thomas, 2002; Marcus, 1976). Older persons may have a different context than younger persons regarding whether a challenge to academic freedom is significant based on their life experiences. Similarly, the number of years of personal experience in a particular environment also impacts personal perceptions regarding educational issues (Kershaw, 1994; Klecker & Loadman, 1997; Smith, Hall, & Woolcock-Henry, 2000). Persons who have been practicing law for many years in higher education, regardless of their age, many have different perceptions regarding the significance of challenges to academic freedom because they may have responded to such challenges during their years of practice in higher education. An attorney with prior college teaching experience, moreover, may have a different perspective regarding challenges to academic freedom because of personal experiences with such challenges, particularly related to professorial academic freedom in the classroom.

The independent variables in this study also included the following institutional

characteristics (a) institutional classification as public or private, (b) institutional Carnegie classification, and (c) student enrollment. Public higher education institutions enjoy protections under constitutional academic freedom that private higher education institutions do not enjoy (Hamilton, 1995; Lynch, 2003; Scanton, 1988). However, many private colleges and universities provide their professors with a contractual or deferential right (through customs and practices) to academic freedom (Eisenberg, 1998; Glickstein, 1998; Woodruff, 1995). Thus, whether differences exist between the perceptions of public and private higher education institution attorneys may be significant.

Additionally, an institution's Carnegie classification may influence attorney perceptions regarding challenges to academic freedom. For example, attorneys at large research institutions may have different perspectives regarding challenges to academic freedom than attorneys at small liberal arts institutions because of the different research activities or academic programs at their institution.

Statistical Procedures

The statistical procedures used to test the research hypotheses include the following:

1. *T test*. For research questions comparing two means an independent samples *t* test was performed using the Statistical Package for the Social Sciences (SPSS) software to obtain the requisite means and *p* values. Additionally, homogeneity of variance was confirmed using Levene's test for equality of variance ($H_0: \sigma^2 = \sigma^2$). An alpha level of .05 was used to determine statistical significance in this study (Morgan, Reichert & Harrison, 2002).
2. *One Way ANOVA*. For research questions requiring the comparison of

three or more means a one way, fixed effects analysis of variance (ANOVA) through SPSS was used to test for a statistically significant difference, and Levene's test for equality of variance was used to confirm homogeneity of variance. The SPSS returned table, including the F statistic, p value, and power is also reported. Power refers to the probability of rejecting a null hypothesis, or the presumption that the means being analyzed are equal, when the hypothesis is false. Stated differently it is the probability of not committing a type II error (Glass & Hopkins, 1996).

If a statistically significant difference was detected, a post hoc test was performed using a Tukey Honest Significant Difference test to determine as to which pair or pairs the difference was statistically significant. An alpha level of .05 was used to determine statistical significance in this study (Morgan, Reichert & Harrison, 2002).

3. *Correlation.* A bivariate correlation analysis was performed to determine whether any responses to the questions regarding educational and professional experiences with academic freedom correlated with the questions related to the attorneys' perceptions regarding their office and institutions roles and responsibilities related to academic freedom. A bivariate correlation analysis was also performed to determine whether other questions that seemed similar correlated in a statistically significant manner. If statistically significant, Pearson's product moment correlation coefficient is reported as is the p value (Cohen & Lea, 2004).

4. *Cronbach's alpha.* An exploratory coefficient of reliability analysis of the data was completed by the researcher to determine the appropriateness of combining the data within the seven academic freedom sections of the survey to create new variables. The seven sections included professorial, institutional and student academic freedom as

well as judicial or governmental challenges, internal or collegial challenges, institutional challenges, and extra-institutional or non-governmental outside challenges to academic freedom. The new variables created are the mean of the participants' scores within each of the seven sections. Cronbach's alpha was used to determine whether the variables within each of the seven sections measure the same construct (UCLA Academic Technology Services, 2005). Cronbach's alpha is an index of reliability associated with the variation accounted for by the true score of the underlying construct or variable being measured (Santos, 1999). Cronbach's alpha may range from 0 to 1 and generally 0.7 or greater is an acceptable reliability coefficient in the social sciences and will be used in this study (Nunnally, 1978).

5. *Levene's Test For Homogeneity of Variance.* Levene's test for equality or homogeneity of variance was used for all *t* tests and ANOVAs and equality of variance may be assumed unless it is otherwise noted.

6. *Descriptive Statistics.* For all variables descriptive statistics are provided. Depending upon the variable, the mean, standard deviation and total are reported for each variable as appropriate.

CHAPTER 4

RESULTS

This chapter presents findings from the *National Study on Academic Freedom* survey completed by higher education attorney participants throughout the United States. First, this chapter will present participant demographics and institutional characteristics data. Second, this chapter will answer the research questions set forth in Chapter 3. Specifically, this chapter will present survey data from research Questions 1 and 2 related to higher education attorneys' personal experiences with academic freedom as well as their perceptions regarding the roles and responsibilities of their professional office and their higher education institution related to academic freedom issues. Subsequently, this chapter will explore research Questions 3, 4 and 5 related to higher education attorneys' perceptions regarding academic freedom and challenges to academic freedom. Finally, this chapter will explore research Questions 6 and 7, which address differences in perceptions regarding academic freedom and challenges to academic freedom based on personal demographics and institutional characteristics. Research Question 8, which considers conclusions based on the data analysis, will be addressed in the discussion in Chapter 5.

Data Considerations

The survey included seven sections regarding academic freedom and challenges to academic freedom. Each section included five questions. The three sections regarding academic freedom included professorial, institutional, and student academic freedom. The four sections regarding challenges to academic freedom included judicial or governmental challenges, internal or collegial challenges, institutional challenges, and

extra-institutional or non-governmental, outside challenges to academic freedom.

An exploratory coefficient of reliability analysis of the data was completed by the researcher to determine the appropriateness of combining the data within each of the seven sections to create new variables. The new variables are the mean of the five scores within each of the seven sections. Cronbach's alpha was used to determine whether the variables within each of the seven sections measure the same construct (UCLA Academic Technology Services, 2005). Cronbach's alpha is an index of reliability associated with the variation accounted for by the true score of the underlying construct or variable being measured (Santos, 1999). Cronbach's alpha may range from 0 to 1 and generally 0.7 or greater is an acceptable reliability coefficient in the social sciences and is used in this study (Nunnally, 1978). In the event Cronbach's alpha for the five items within the seven sections was unacceptably low, i.e., less than 0.7, individual items were removed to determine if the removal of such item would improve Cronbach's alpha and the remaining four items would be used to calculate the new variable.

For the professorial academic freedom section Question 26 was recoded so that 1 became a 4, 2 became a 3, 3 became a 2, and 4 became a 1. This recoding was necessary for internal consistency because the question was phrased in the negative, i.e., "professors should not . . .," while the other four questions were phrased in the affirmative, i.e., "professors should" Cronbach's alpha for the professorial academic freedom section was .737. For the institutional academic freedom section, Question 31 was excluded from the section and as a result Cronbach's alpha for the four remaining questions was .772. For student academic freedom, Question 36 was excluded. Cronbach's alpha for the four remaining questions was .756.

As to the four sections regarding challenges to academic freedom, Cronbach's alpha was as follows: judicial or governmental challenges (.765); internal or collegial challenges (.740); institutional challenges (.544); and extra-institutional challenges, with the exclusion of Question 52 (.707). Importantly, as to the institutional challenges section, the exclusion of any of the questions did not result in a sufficient Cronbach's alpha to allow for the combination of the items for analysis. Thus, the questions in the institutional challenges section shall be analyzed separately. Table 2 sets forth the respective Cronbach's alpha for the seven academic freedom sections of the survey. A "Q" appearing before a number in this study shall denote a survey question, followed by the survey question number.

Table 2

Cronbach's Alpha for Seven Academic Freedom Survey Sections

Academic freedom section	Cronbach's alpha
Professorial Academic Freedom (excludes Q26)	.737
Institutional Academic Freedom (excludes Q31)	.772
Student Academic Freedom (excludes Q36)	.756
Judicial or Governmental Challenges	.765
Internal or Collegial Challenges	.740
Institutional Challenges	.544*
Extra Institutional Challenges (excludes Q52)	.707
*Below .700 threshold	

Based on the exploratory coefficient of reliability analysis six new group variables were created and will be used for data analysis.

Demographic Data and Institutional Characteristics

The researcher sent the survey by e-mail to the 1,680 higher education attorneys in the United States who participate in the National Association of College and University Attorney's list serve, which represented the largest and most convenient population for this study. Of the 1,680 attorneys, approximately 330 represented higher education institutions in general counsel offices and, as explained in Chapter 3, were the most likely participants for the survey. The researcher received 179 survey responses ($N=179$) and although this may seem like a low response rate, the sample represents over 50% of the expected or intended population for this study.

Of the participants, the mean age was 48.52 ($SD=7.32$) with a range from age 31 to 65. The participants had a mean number of years of higher education practice of 9.17 ($SD=5.88$), although the number of years of practice experience was positively skewed (1.43) and leptokurtic (3.00). As anticipated by the researcher and set forth in Table 3, 90.4% of the participants were from a general counsel office, 6.7% were system attorneys, 2.2% were from private law firms, and 0.6% (1 participant) was from an attorney general office. The participants were nearly equally divided between representing public and private higher education institutions, with 56.7% ($n=101$) representing public institutions and 43.3% ($n=77$) representing private institutions.

Table 3

Frequencies and Percentages for Attorney Position

	General Counsel	System	Law Firm	Attorney General
Frequency	161	12	4	1
Percentage	90.4	6.7	2.2	.6

Of the participants who served in a general counsel office or represented a single higher education institution, 56.5% represented doctoral or research institutions, 25.4% represented master's college or university, 15.3% represented a baccalaureate college, 2.3% represented an associate or community college and 0.6% (1 participant) represented an institution other than the categories listed above. Table 4 provides a summary of the institutional category data. Of these institutions, the average institutional enrollment was 15,840 ($SD=11,843$) and the median enrollment was 13,500.

Table 4

Frequencies and Percentages for Institutional Categories Represented

Institutional Category	Frequency	Percentage
Doctoral/Research University	100	56.5
Masters College or University	45	25.4
Baccalaureate College	27	15.3
Associate/Community College	4	2.3
Other	1	.6

The participants were nearly equally divided between those who had and had not taught a college level course, with 57.1% responding they had taught zero courses, 33.9% responding that they had taught 1-2 different courses, 5.1% responding that they had taught 3-4 courses, and 4.0% responding that they had taught 5 or more courses. Of the participants, 34.5% had never attended a conference or continuing legal education session which included the concept of academic freedom as the primary topic, while 46.3% had attended 1-2 sessions, 12.4% had attended 3-4 sessions, and 6.8% had attended 5 or more sessions. Table 5 provides a summary of the taught courses and conference sessions data.

Table 5

Frequencies and Percentages for Different Courses Taught and Sessions Attended

	<u>Courses Taught</u>		<u>Sessions Attended</u>	
	Frequency	Percentage	Frequency	Percentage
Zero	101	57.1	61	34.5
1-2	60	33.9	82	46.3
3-4	9	5.1	22	12.4
5 or more	7	4.0	12	6.7

62.9% of the participants' institutions had been involved in a dispute, including litigation, arbitration or similar proceedings, where academic freedom was perceived by the institution's administration to have been a fundamental issue in the case, while 37.1% had not been involved in such a dispute. Additionally, 67.6% of the participants had been asked at least once per year to provide legal advice in matters involving academic freedom, while 32.4% had not been asked to provide such advice. Table 6 summarizes

this data.

Table 6

Frequencies and Percentages for Academic Freedom Disputes and Legal Advice

	<u>Issue in Dispute</u>		<u>Subject of Legal Advice</u>	
	Frequency	Percentage	Frequency	Percentage
Yes	112	62.9	121	67.6
No	66	37.1	58	32.4

Attorneys' Experiences with Academic Freedom

Research Question 1 addressed how college and university attorneys view their professional role and responsibility for responding to, and defending against, challenges to academic freedom. To explore this question, the participants were asked five questions regarding their educational, personal, and professional experiences related to academic freedom, to which the participants selected from four responses in a Likert scale, i.e., 4=strongly agree, 3=moderately agree, 2=moderately disagree, and 1=strongly disagree. The questions are set forth in Table 7 with their respective means (from highest to lowest) and standard deviations.

Table 7

Attorney Experiences with AF: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q16: I have a better understanding of the concept of academic freedom today than I did when I began practicing in higher education.	3.39	.545
Q15: I have access to adequate resources (i.e., professional organizations, colleagues, publications, etc.) to keep me current regarding present challenges to academic freedom (even if not an issue on my campus(es)).	3.34	.511
Q14: Academic administrators at my institution are able to effectively address or respond to academic freedom issues without consulting me or my office.	3.27	.777
Q13: Law schools should be encouraged to include academic freedom readings and discussions in their curriculum or courses.	2.80	.531
Q12: The law school I attended provided me with an adequate introduction to the concept of academic freedom.	2.20	.625

As to question 12, 58.8% ($n=104$) of the participants moderately disagreed that their law school had adequately introduced them to the concept of academic freedom, while 10.7% ($n=19$) strongly disagreed with this statement. 29.9% ($n=53$) moderately agreed with the statement and 0.6%, or one participant, strongly agreed with this statement. As to question 13, 71.5% ($n=128$) of the participants moderately agreed that law schools should be encouraged to teach about academic freedom, while 22.3% ($n=40$) moderately disagreed with such a position. 1.1% ($n=2$) strongly disagreed with this statement and 5.0% ($n=9$) strongly agreed with this statement.

In question 14, 44.1% ($n=79$) strongly agreed that their administrators could independently address academic freedom issues, and 42.5% ($n=76$) moderately agreed

with such statement. Only 14.5% ($n=24$) disagreed moderately or strongly with such statement. Additionally, as to question 15, 62.1% ($n=110$) moderately agreed that they had adequate resources to keep themselves current on modern challenges to academic freedom, to which 36.2% ($n=64$) strongly agreed and only 1.7% ($n=3$) moderately disagreed. None of the participants strongly disagreed with this statement.

As to question 16, 55.1% ($n=97$) of the participants moderately agreed and 42% ($n=74$) strongly agreed that they had a better understanding of the concept of academic freedom at the time of the completion of the survey than they did when they started their higher education practice. A relatively low 2.8% ($n=5$) of the participants moderately disagreed with this statement, and none of the participants strongly disagreed with this statement. Table 8 summarizes the frequency data for survey Questions 12 through 16. In this study, the table abbreviations shall be as follows (a) strongly agree (SA), (b) moderately agree (MA), (c) moderately disagree (MD), (d) strongly disagree (SD), and (e) academic freedom (AF).

Table 8

Attorney Experiences with AF: Percentages

Survey Question	SA%	MA%	MD%	SD%
Q16: Understanding of AF ($n=176$)	42.0	55.1	2.8	0.0
Q15: Adequate Resources ($n=177$)	36.2	62.1	1.7	0.0
Q14: Admin. Address AF ($n=179$)	44.1	42.5	10.1	3.4
Q13: Encourage teaching AF ($n=179$)	5.0	71.5	22.3	1.1
Q12: Adequate Intro. To AF ($n=177$)	0.6	29.9	58.8	10.7

Office and Institutional Roles and Responsibilities

Research Question 2 addressed how college and university attorneys view their institution'(s') role and responsibility for responding to, and defending against, challenges to academic freedom. To explore this question the participants were asked five questions regarding their perceptions related to such academic freedom issues. The participants selected from four responses in a Likert scale, i.e., 4=strongly agree, 3=moderately agree, 2=moderately disagree, and 1=strongly disagree. The questions are set forth in Table 9 with their respective means (from highest to lowest) and standard deviations.

Table 9

Office/Institutional Roles and Responsibilities: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q17: My institutions'(s') policies, practices, customs, or contracts effectively protect the exercise of academic freedom on my campus(es).	3.57	.496
Q20: Issues related to academic freedom at my institution(s) are discussed or addressed more frequently now than they were when I began representing my institution(s).	3.05	.642
Q18: Academic freedom protections should be broader than free speech protections already established under the First Amendment.	2.81	.815
Q21: Campus complaints regarding academic freedom violations should be directed to the institution's legal counsel.	2.31	.705
Q19: My institution(s) should have the right to revoke an invitation to a speaker because of the "controversial" content of the speaker's prior speeches.	1.92	.802

As to question 17, 57.3% ($n=102$) of the participants strongly agreed that their

institution's policies, practices, customs, or contracts effectively protected the exercise of academic freedom on their campus, while 42.7% ($n=76$) moderately agreed with this statement. Notably, none of the participants disagreed moderately or strongly with the statement. As to question 18, 48.9% ($n=87$) of the participants moderately agreed that academic freedom protections should be broader than free speech protections already established under the First Amendment, while 19.1% ($n=34$) strongly agreed with this statement. However, 25.8% ($n=46$) moderately disagreed with this statement and 6.2% ($n=11$) strongly disagreed with this statement.

In question 19, 45.5% ($n=81$) moderately disagreed that their institution should have the right to revoke an invitation to a speaker because of the "controversial" content of the speaker's prior speeches, and 33.1% ($n=59$) strongly disagreed with such statement. 18.0% ($n=32$) moderately agreed and 3.4% ($n=6$) strongly agreed with this statement. Additionally, as to question 20, 62.3% ($n=109$) moderately agreed that issues related to academic freedom at their institution were discussed or addressed more frequently at the time of the survey than when the participant began representing their institution. 21.7% ($n=38$) strongly agreed with such statement, while only 16.0% ($n=28$) disagreed either moderately or strongly with such statement.

As to question 21, 59.9% ($n=106$) of the participants moderately disagreed and 7.9% ($n=14$) strongly disagreed that campus complaints regarding academic freedom violations should be directed to the institution's legal counsel. 26% ($n=46$) moderately agreed and 6.2% ($n=11$) strongly agreed with this statement. Table 10 summarizes the frequency data for survey Questions 17 through 21.

Table 10

Office/Institutional Roles and Responsibilities: Percentages

Survey Question	SA%	MA%	MD%	SD%
Q17: Inst. Policies Protect AF ($n=178$)	57.3	42.7	0.0	0.0
Q20: More AF Issues Now ($n=175$)	21.7	62.3	14.9	1.1
Q18: AF and Free Speech ($n=178$)	19.1	48.9	25.8	6.2
Q21: Legal Respond to AF ($n=177$)	7.9	59.9	26.0	6.2
Q19: Remove Speaker AF ($n=178$)	3.4	18.0	45.5	33.1

Bivariate Correlation Analysis

A bivariate correlation analysis was performed to determine whether any responses to the questions regarding educational and professional experiences with academic freedom correlated with the questions related to the attorneys' perceptions regarding their office and institutions roles and responsibilities related to academic freedom. If the correlation between the responses to the two questions is statistically significant, Pearson's product moment correlation coefficient is reported as is the p value (Cohen & Lea, 2004).

Question 15, for example, asked participants to respond to the statement "I have access to adequate resources (i.e., professional organizations, colleagues, publications, etc.) to keep me current regarding present challenges to academic freedom (even if not an issue on my campus(es))." Question 16, with which Question 15 was highly correlated ($r=.532$, $p<.001$), provided "I have a better understanding of the concept of academic

freedom today than I did when I began practicing in higher education.” Intuitively, if a person has access to academic freedom resources, such information should improve the persons understanding of the concept of academic freedom.

Question 16 also correlated highly with Question 20 ($r=.376$, $p<.001$), which provided that “issues related to academic freedom at my institution(s) are discussed or addressed more frequently now than they when I began representing my institution(s).” Intuitively, if academic freedom issues are discussed or addressed by an attorney with greater frequency, their understanding of the concept of academic freedom should also improve.

Additionally, Question 14 provided “[a]cademic administrators at my institution are able to effectively address or respond to academic freedom issues without consulting me or my office.” Question 14 correlated highly and negatively with Question 21 ($r=-.306$, $p<.001$), which provided “[c]ampus complaints regarding academic freedom violations should be directed to the institution’s legal counsel.” If academic administrators are unable to effectively address an academic freedom issue at an institution, intuitively the campus attorney may prefer to have academic freedom issues brought to the attention of the attorney’s office.

Attorneys’ Perceptions Regarding Academic Freedom

Research Question 3 addressed college and university attorneys’ perceptions regarding issues associated with academic freedom in American higher education institutions. These issues were explored in the professorial, institutional, and student academic freedom sections of the survey. The participants were asked in each section to respond to five statements using a four level Likert scale, i.e., 4=strongly agree,

3=moderately agree, 2=moderately disagree, and 1=strongly disagree.

Professorial Academic Freedom

Table 11 sets forth the means (from highest to lowest) and standard deviations for the professorial academic freedom questions.

Table 11

Attorneys' Views Toward Professorial AF: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q22: Professors should be allowed to teach their subjects in the manner they deem professionally appropriate if such teaching is consistent with academic community standards.	3.64	.536
Q23: Professors should be allowed to conduct research and publish the findings of their research subject only to institutional review board approval and peer review.	3.46	.666
Q25: Professors should be allowed to make truthful statements outside of their classroom critical of institutional policies and practices of their employer.	3.44	.629
Q24: Professors should be allowed to make truthful statements in their classroom critical of institutional policies or practices of their employer if reasonably related to the course.	3.18	.637
Q26: Professors should not be allowed to introduce into their teaching controversial matters which have no relation to her/his subject.	2.90	.628

As to question 22, 67.0% ($n=120$) of the participants strongly agreed that professors should be allowed to teach their subjects in the manner they deem professionally appropriate if such teaching is consistent with academic community standards, while 30.2% ($n=54$) moderately agreed with the statement. Notably, only 2.8% ($n=5$) moderately disagreed with the statement and no participants strongly

disagreed with the statement. As to question 23, 55.4% ($n=98$) of the participants strongly agreed that professors should be allowed to conduct research and publish the findings of their research, subject only to institutional review board approval and peer review, while 36.2% ($n=64$) moderately agreed with such a statement. Only 8.5% ($n=15$) disagreed moderately or strongly with this statement.

In question 24, 56.4% ($n=101$) moderately agreed that professors should be allowed to make truthful statements in their classroom critical of institutional policies or practices of their employer if reasonably related to the course, while 30.7% ($n=55$) strongly agreed with such statement. Only 12.8% ($n=23$) moderately disagreed with this statement and no participants strongly disagreed with this statement. Additionally, as to question 25, 50.6% ($n=90$) strongly agreed that professors should be allowed to make truthful statements outside of their classroom critical of institutional policies or practices of their employer, while 44.4% ($n=79$) moderately agreed with such statement. Only 5.0% ($n=9$) disagreed either moderately or strongly with such statement.

As to question 26, 66.5% ($n=119$) of the participants moderately agreed and 12.8% ($n=23$) strongly agreed that professors should not be allowed to introduce into their teaching controversial matters which have no relation to her/his subject. 18.4% ($n=33$) moderately disagreed and 2.2% ($n=4$) strongly disagreed with this statement.

Table 12 summarizes the frequency data for survey Questions 22 through 26.

Table 12

Attorneys' Views Toward Professorial AF: Percentages

Survey Question	SA%	MA%	MD%	SD%
Q22: Pedagogy Choice ($n=179$)	67.0	30.2	2.8	0.0
Q23: Professors Research ($n=177$)	55.4	36.2	7.9	0.6
Q25: Out of Class Statements ($n=178$)	50.6	44.4	3.9	1.1
Q24: In Class Statements ($n=179$)	30.7	56.4	12.8	0.0
Q26: No Controversial Matters ($n=179$)	12.8	66.5	18.4	2.2

Institutional Academic Freedom

Table 13 sets forth the means (from highest to lowest) and standard deviations for the institutional academic freedom questions. As to question 28, 72.1% ($n=129$) of the participants strongly agreed that a higher education institution should be allowed to provide any course it deems educationally appropriate, while 25.1% ($n=45$) moderately agreed with the statement. Notably, only 2.8% ($n=5$) moderately disagreed with the statement and no participants strongly disagreed with the statement. As to question 28, 82.1% ($n=147$) of the participants strongly agreed that a higher education institution should be allowed to determine for itself on academic grounds who it will hire to teach, while 17.9% ($n=32$) moderately agreed with such a statement. None of the participants moderately or strongly disagreed with this statement.

Table 13

Attorneys' Views Toward Institutional AF: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q28: A higher education institution should be allowed to determine for itself on academic grounds who it will hire to teach.	3.82	.384
Q29: A higher education institution should be allowed to determine, without governmental intrusion, who it will admit to study.	3.76	.466
Q27: A higher education institution should be allowed to provide any course it deems educationally appropriate.	3.69	.520
Q30: A higher education institution should be allowed to determine curriculum, program, and degree requirements with input required only from their faculty and students.	3.39	.681
Q31: A higher education institution should be allowed to regulate a professor's course content if the professor introduces material that has no reasonable relation to the subject being taught.	2.81	.677

In question 29, 77.7% ($n=139$) strongly agreed that a higher education institution should be allowed to determine, without governmental intrusion, who it will admit to study, while 20.7% ($n=37$) moderately agreed with such statement. Only 1.7% ($n=3$) moderately disagreed with this statement and no participants strongly disagreed this statement. Additionally, as to question 30, 49.2% ($n=88$) strongly agreed that a higher education institution should be allowed to determine curriculum, program, and degree requirements with input required only from their faculty and students, while 41.9% ($n=75$) moderately agreed with such statement. Only 8.9% ($n=16$) disagreed either moderately or strongly with such statement.

As to question 31, 57.5% ($n=103$) of the participants moderately agreed and

12.8% ($n=23$) strongly agreed that a higher education institution should be allowed to regulate a professor's course content if the professor introduces material that has no reasonable relation to the subject being taught. 27.4% ($n=49$) moderately disagreed and 2.2% ($n=4$) strongly disagreed with this statement. Table 14 summarizes the frequency data for survey Questions 27 through 31, and shall use the abbreviation HEI to refer to Higher Education Institution.

Table 14

Attorneys' Views Toward Institutional AF: Percentages

Survey Question	SA%	MA%	MD%	SD%
Q28: HEI Determine Who Hire	82.1	17.9	0.0	0.0
Q29: HEI Determine Who to Admit	77.7	20.7	1.7	0.0
Q27: HEI Determine Courses	72.1	25.1	2.8	0.0
Q30: HEI Determine Curriculum	49.2	41.9	7.8	1.1
Q31: HEI Regulate Course Content	12.8	57.5	27.4	2.2

Student Academic Freedom

Table 15 sets forth the means (from highest to lowest) and standard deviations for the student academic freedom questions. As to question 32, 61.8% ($n=110$) of the participants strongly agreed that students have a right to academic freedom, while 36.0% ($n=64$) moderately agreed with the statement. Notably, only 2.3% ($n=4$) disagreed with the statement. As to question 33, 64.4% ($n=114$) of the participants moderately agreed that students have the right to learn without political, religious, or ideological

indoctrination, while 24.3% ($n=43$) strongly agreed with such a statement. Only 11.3% ($n=20$) of the participants moderately or strongly disagreed with this statement.

Table 15

Attorneys' Views Toward Student AF: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q32: Students have a right to academic freedom.	3.59	.558
Q33: Students have the right to learn without political, religious, or ideological indoctrination.	3.12	.615
Q35: Students have a right to exposure to a diversity of viewpoints in the classroom.	3.09	.693
Q34: Students' freedom to learn is as important as a professor's freedom to teach.	2.95	.697
Q36: Students' right to academic freedom is adequately protected by institutional policies that also protect professorial academic freedom.	2.85	.604

In question 34, 51.4% ($n=92$) moderately agreed that students' freedom to learn is as important as a professor's freedom to teach, while 21.8% ($n=39$) strongly agreed with such statement. 26.8% ($n=48$) moderately disagreed with this statement and no participants strongly disagreed with this statement. Additionally, as to question 35, 53.1% ($n=95$) moderately agreed that students have a right to exposure to a diversity of viewpoints in the classroom, while 28.5% ($n=51$) strongly agreed with such statement. 17.9% ($n=32$) moderately disagreed with this statement and only 0.6% ($n=1$) strongly disagreed.

As to question 36, 68.2% ($n=122$) of the participants moderately agreed and 9.5% ($n=17$) strongly agreed that students' right to academic freedom is adequately protected

by institutional policies that also protect professorial academic freedom. 20.1% ($n=36$) moderately disagreed and 2.2% ($n=4$) strongly disagreed with this statement. Table 16 summarizes the frequency data for survey Questions 32 through 36.

Table 16

Attorneys' Views Toward Student AF: Percentages

Survey Question	SA%	MA%	MD%	SD%
Q32: Student Right to AF ($n=178$)	61.8	36.0	1.7	0.6
Q33: No Indoctrination ($n=177$)	24.3	64.4	10.2	1.1
Q35: Diversity of Viewpoints ($n=179$)	28.5	53.1	17.9	0.6
Q34: Student=Prof. AF ($n=179$)	21.8	51.4	26.8	0.0
Q36: Student AF Protected ($n=179$)	9.5	68.2	20.1	2.2

Attorneys' Perceptions Regarding Challenges to Academic Freedom

Research Question 4 addressed college and university attorneys' perceptions regarding challenges to academic freedom at American higher education institutions. The challenges were addressed in separate sections of the survey and included four groups (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional (nongovernmental) challenges. The participants were asked in each section to indicate the extent to which particular challenges identified in the literature had been an issue or concern at the institutions the participants represented. The participants used a five level Likert scale, i.e., 1=not an issue at all; 2=a slight issue; 3=a moderate issue; 4=a large issue; and 5=a

very large issue. Additionally, the participants were advised that the term “issue” meant that the participant or the participant’s legal office had spent time researching, briefing, litigating, or otherwise responding to an item in some manner. The participants’ responses are summarized in the following sections.

Judicial or Governmental Challenges

Table 17 sets forth the means (from highest to lowest) and standard deviations for the questions related to judicial or governmental challenges to academic freedom.

Table 17

Judicial or Governmental Challenges: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q38: Questionable conditions or restrictions placed by the state or federal government on the use and distribution of research data or findings for state and federally funded research.	2.15	1.049
Q37: Questionable conditions or restrictions attached to state or federal appropriations (e.g. appropriations requiring institutions to limit tuition increases, increase graduation rates, or impacting other governance or policy decisions).	2.00	1.171
Q41: Political partisanship in the appointment or election of institutional governing boards.	1.72	1.073
Q39: Judicial interference with university/college policies or practices related to student admissions, financial aid, and other student recruitment matters.	1.54	1.028
Q40: The Fourth Circuit’s decision in <i>Urofsky v. Gilmore</i> (2000) that professors do not have a constitutional right to academic freedom.	1.29	.792

As to question 37, 50.3% ($n=90$) of the participants responded that questionable conditions or restrictions attached to state or federal appropriations had not been an issue

at all at their campus. However, 14.3% ($n=25$) indicated that such had been a slight issue, while 24.6% ($n=44$) indicated that such had been a moderate issue at their campus. 11.2% ($n=20$) responded that such had been a large or very large issue on their campus. As to question 38, 37.1% ($n=66$) of the participants responded that questionable conditions or restrictions placed by the state or federal government on the use and distribution of research data or findings for state and federally funded research was not an issue at all. 20.2% ($n=36$) of the participants indicated that such was a slight issue, while 34.8% ($n=62$) indicated that such was a moderate issue. 7.9% ($n=14$) responded that such was a large or very large issue.

In question 39, 72.9% ($n=129$) of the participants responded that judicial interference with university/college policies or practices related to student admissions, financial aid, and other student recruitment matters was not an issue at all on their campus, while 10.7% ($n=19$) responded that such was a slight issue. Only 16.4% ($n=29$) of the participants indicated that such was a moderate, large, or very large issue.

As to question 40, 85.3% ($n=151$) of the participants responded that the Fourth Circuit's decision in *Urofsky v. Gilmore* (2000) that professors do not have a constitutional right to academic freedom was not an issue at all on their campus. An equal 5.6% ($n=10$) responded that such was a slight issue and a moderate issue respectively, and only 3.4% ($n=6$) indicated that such was a large or very large issue on their campus.

In question 41, 62.4% ($n=111$) of the participants responded that political partisanship in the appointment or election of their institutional governing board was not an issue at all at their campus. 13.5% ($n=24$) responded that such was a slight issue and

16.9% ($n=30$) responded that such was a moderate issue. However, only 7.3% ($n=13$) indicated that such was a large or very large issue. Table 18 summarizes frequency data for survey Questions 37 through 41. The following abbreviations shall be used in this study for the Likert scale (a) not an issue at all (NI), (b) a slight issue (SI), (c) a moderate issue (MI), (d) a large issue (LI), and (e) a very large issue (VLI).

Table 18

Judicial or Governmental Challenges: Percentages

Survey Question	NI%	SI%	MI%	LI%	VLI%
Q38: Research Cond. ($n=178$)	37.1	20.2	34.8	6.2	1.7
Q37: Approp. Cond. ($n=179$)	50.3	14.0	24.6	7.8	3.4
Q41: Partisanship ($n=178$)	62.4	13.5	16.9	4.5	2.8
Q39: Judicial Inter. ($n=177$)	72.9	10.7	7.9	6.2	2.3
Q40: <i>Urofsky</i> Case ($n=177$)	85.3	5.6	5.6	1.7	1.7

Internal or Collegial Challenges

Table 19 sets forth the means (from highest to lowest) and standard deviations for the questions related to internal or collegial challenges to academic freedom. As to question 42, 43.0% ($n=77$) of the participants responded that professors using their classroom to advance or advocate a particular partisan, political, religious, or ideological agenda was a slight issue at their campus, while 41.9% ($n=75$) responded that such was a moderate issue. 11.2% ($n=20$) indicated that such was not an issue at all, while, conversely, 3.9% ($n=7$) responded that such was a large or very large issue. As to

question 43, 60.9% ($n=109$) of the participants responded that professors claiming protection under academic freedom to justify unprotected speech (i.e., sexual harassment) was not an issue at all on their campus. 28.5% ($n=51$) indicated that such issue was a slight issue, while 6.7% ($n=12$) indicated that such was a moderate issue. Only 3.9% ($n=7$) responded that such was a large or very large issue.

Table 19

Internal or Collegial Challenges: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q42: Professors using their classroom to advance or advocate a particular partisan, political, religious or ideological agenda.	2.40	.783
Q46: Students using threats of litigation to influence grades or academic evaluations/decisions.	1.77	.808
Q43: Professors claiming protection under academic freedom to justify unprotected speech (i.e., sexual harassment).	1.55	.829
Q44: Professors claiming to be experts on issues and commenting on such issues merely to influence public opinion.	1.42	.764
Q45: Professors encouraging (or discouraging) certain types of research to advance a partisan, political, religious, or ideological agenda.	1.40	.694

In question 44, 69.7% ($n=124$) of the participants responded that professors claiming to be experts on issues or commenting on such issues merely to influence public opinion was not an issue at all at their campus, while 22.5% ($n=40$) responded that such was a slight issue. Only 7.9% ($n=14$) of the participants indicated that such was a moderate, large, or very large issue.

As to question 45, 69.3% ($n=122$) of the participants responded that professors

encouraging (or discouraging) certain types of research to advance a partisan, political, religious, or ideological agenda was not an issue at all at their campus. 23.3% ($n=41$) responded that such was a moderate issue, while 7.4% ($n=13$) responded that such was a moderate or large issue. However, no participant indicated that such was a very large issue.

In question 46, 48.6% ($n=87$) of the participants responded that students using threats of litigation to influence grades or academic evaluations/decisions was a slight issue at their campus. 40.2% ($n=72$) responded that such was not an issue at all, while, conversely, 4.5% ($n=8$) indicated that such was a large or very large issue. Table 20 summarizes frequency data for survey Questions 42 through 46.

Table 20

Internal or Collegial Challenges: Percentages

Survey Question	NI%	SI%	MI%	LI%	VLI%
Q42: Prof. Agenda ($n=179$)	11.2	43.0	41.9	2.2	1.7
Q46: Litigation Threats ($n=179$)	40.2	48.6	6.7	3.4	1.1
Q43: Unprotected Sp. ($n=179$)	60.9	28.5	6.7	2.8	1.1
Q44: Expert Opinion ($n=178$)	69.7	22.5	5.1	1.7	1.1
Q45: Agenda Research ($n=176$)	69.3	23.3	5.1	2.3	0.0

Institutional Challenges

Table 21 sets forth the means (from highest to lowest) and standard deviations for the questions related to intra-institutional challenges to academic freedom.

Table 21

Institutional Challenges: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q49: Institutional efforts to determine faculty classroom pedagogy.	1.73	.616
Q51: Institutional censorship of faculty speech on issues of social, political, or other concern to the campus or greater community.	1.28	.561
Q50: Academic administrators promoting faculty primarily because they support the administrator's academic or governance positions.	1.24	.522
Q48: Institutional efforts to prevent or limit permissible but controversial research.	1.19	.496
Q47: Termination of professors because of their out of class truthful statements critical of institutional policies or practices of their employer.	1.09	.362

As to question 47, 92.7% ($n=166$) of the participants responded that termination of professors because of their out of class truthful statements critical of institutional policies or practices of their employer was not an issue at all on their campus. 7.2% responded that such was a slight or moderate issue. However, no participants indicated that such issue was a large or very large issue. As to question 48, 85.1% ($n=149$) of the participants responded that institutional efforts to prevent or limit permissible but controversial research was not an issue at all on their campus. 11.4% ($n=20$) indicated that such issue was a slight issue, while only 3.5% ($n=6$) indicated that such was a moderate or large issue. No participants consider such issue a very large issue.

In question 49, 56.7% ($n=101$) of the participants responded that institutional efforts to determine faculty classroom pedagogy was a slight issue at their campus, while 35.4% ($n=63$) responded that such was not an issue at all. Only 7.9% ($n=14$) of the

participants indicated that such was a moderate or large issue, and no participant consider such a very large issue.

As to question 50, 80.2% ($n=142$) of the participants responded that academic administrators promoting faculty primarily because they support their administrator's academic or governance positions was not an issue at all on their campus. 16.4% ($n=29$) responded that such was a slight issue, while only 3.4% ($n=6$) responded that such was a moderate or large issue. However, no participant indicated that such was a very large issue.

In question 51, 77.1% ($n=138$) of the participants responded that institutional censorship of faculty speech on issues of social, political, or other concern to the campus or greater community was not an issue at all at their campus. 18.4% ($n=33$) responded that such was a slight issue, while only 4.5% ($n=8$) responded that such was a moderate or large issue, and no participant indicated that such was a very large issue. Table 22 summarizes frequency data for survey Questions 47 through 51.

Table 22

Institutional Challenges: Percentages

Survey Question	NI%	SI%	MI%	LI%	VLI%
Q49: Inst. Pedagogy ($n=178$)	35.4	56.7	7.3	0.6	0.0
Q51: Inst. Censorship ($n=179$)	77.1	18.4	3.9	0.6	0.0
Q50: Pol. Promotion ($n=177$)	80.2	16.4	2.8	0.6	0.0
Q48: Limit Research ($n=175$)	85.1	11.4	2.9	0.6	0.0
Q47: Prof. Termination ($n=179$)	92.7	5.0	2.2	0.0	0.0

Outside (Extra-Institutional) Challenges

Table 23 sets forth the means (from highest to lowest) and standard deviations for the questions related to outside or extra-institutional challenges to academic freedom.

Table 23

Outside (Extra-Institutional) Challenges: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q56: Organizations seeking to advance “political correctness” rather than viewpoint diversity.	1.79	.816
Q53: Threats or intimidation from the public or from private organizations intended to prevent higher education institutions from hosting certain speakers or persons.	1.78	.813
Q52: Conditions or restrictions placed by private donors on the use and distribution of research data and findings.	1.62	.788
Q55: Demands to terminate or remove from positions of influence persons who express viewpoints that are “unpopular.”	1.49	.747
Q54: The threat to faculty from persons or entities outside the institution of being sued for in class or out of class speech.	1.35	.660

As to question 52, 55.6% ($n=99$) of the participants responded that conditions or restrictions placed by private donors on the use and distribution of research data and findings was not an issue at all on their campus, while 28.7% ($n=51$) responded that it was a slight issue. 14.0% ($n=25$) responded that such was a moderate issue and only 1.7% ($n=3$) responded that it was a large issue. None of the participants responded that such was a very large issue. As to question 53, 42.1% ($n=75$) of the participants responded that threats or intimidation from the public or from private organizations

intended to prevent higher education institutions from hosting certain speakers or persons was not an issue at all on their campus. An equal 42.1% ($n=75$), however, responded that such was a slight issue. 12.4% ($n=22$) indicated that such was a moderate issue, and 1.7% ($n=3$) responded that such was a large issue. No participant responded that such was a very large issue.

In question 54, 73.1% ($n=128$) of the participants responded that the threat to faculty from persons or entities outside the institution of being sued for in class or out of class speech was not an issue at all at their campus, while 20.6% ($n=36$) responded that such was a slight issue. 12.4% ($n=22$) of the participants responded that such was a moderate issue, while only 3.4% ($n=6$) responded that such was a large or very large issue at their campus.

As to question 55, 63.3% ($n=112$) of the participants responded that demands to terminate or remove from positions of influence persons who express viewpoints that are “unpopular” were not an issue at all on their campus. 28.2% ($n=50$) responded that such was a slight issue, while only 8.5% ($n=15$) responded that such was a moderate or large issue. However, no participant indicated that such was a very large issue.

In question 56, 42.7% ($n=76$) of the participants responded that organizations seeking to advance “political correctness” rather than viewpoint diversity was not an issue at all on their campus, while 39.3% ($n=70$) responded that such was a slight issue. 14.6% ($n=26$) responded that such was a moderately issue, while only 3.4% ($n=6$) responded that such was a large issue, and no participant indicated that such was a very large issue. Table 24 includes frequency data for survey Questions 52 through 56.

Table 24

Outside (Extra-Institutional) Challenges: Percentages

Survey Question	NI%	SI%	MI%	LI%	VLI%
Q56: Advance P.C. (<i>n</i> =178)	42.7	39.3	14.6	3.4	0.0
Q53: Outside Threats (<i>n</i> =178)	42.1	42.1	12.4	2.8	0.6
Q52: Donor Restrict. (<i>n</i> =178)	55.6	28.7	14.0	1.7	0.0
Q55: Removal Threats (<i>n</i> =177)	63.3	28.2	5.1	3.4	0.0
Q54: Threats to Speech (<i>n</i> =175)	73.1	20.6	5.1	0.6	0.6

Most Significant Challenge to Academic Freedom

Research Question 5 asked, “[o]f the following challenges to academic freedom, which challenge (in the aggregate) do college and university attorneys consider the most significant (a) challenges related to judicial or governmental interference, (b) challenges related to institutional interference, (c) challenges related to internal or collegial interference, and (d) challenges related to outside or extra-institutional interference.” As discussed above, the participants were asked to select among the following responses: 1=not an issue at all; 2=a slight issue; 3=a moderate issue; 4=a large issue; and 5=a very large issue. Importantly, the five survey questions under institutional challenges have been combined for the descriptive statistics for this question although Cronbach’s alpha would only be .544 if such data was used for analytical purposes. The means and standard deviations (from highest to lowest mean) are set forth in Table 25.

Table 25

Four Groups of Challenges: Means, Standard Deviations

Variable	<i>M</i>	<i>SD</i>
Judicial/Gov'tal Challenge	1.73	.742
Internal or Collegial Challenge	1.71	.546
Outside/Extra-Inst. Challenge	1.55	.528
Institutional Challenge	1.31	.308

In the aggregate, judicial or governmental challenges were the most significant ($M=1.73$, $SD=.742$), while internal or collegial challenges were the second most significant ($M=1.71$, $SD=.546$). Importantly, with the Likert scale used for this study even the most significant challenge in the aggregate did not, on average, rise to the level of being even “a slight issue” on the participant’s campuses.

Interestingly, of the twenty questions regarding challenges to academic freedom, the most significant individual challenge ($M=2.40$, $SD=.783$) was “[p]rofessors using their classroom to advance a particular partisan, political, religious or ideological agenda,” although on average this challenge was considered between being a slight and moderate issue on participant’s campuses. The second and third most significant individual challenges were related to state or federal governmental conditions or restrictions related to the use and distribution of research data ($M=2.15$, $SD=1.049$) or related to appropriations ($M=2.00$, $SD=1.171$). The five most significant individual challenges to academic freedom based on participant means are set forth in Table 26.

Table 26

Most Significant Individual Challenges: Means, Standard Deviations

Question	<i>M</i>	<i>SD</i>
Q42: Professors using their classroom to advance or advocate a particular partisan, political, religious or ideological agenda.	2.40	.783
Q38: Questionable conditions or restrictions placed by the state or federal government on the use and distribution of research data or findings for state and federally funded research.	2.15	1.049
Q37: Questionable conditions or restrictions attached to state or federal appropriations (e.g. appropriations requiring institutions to limit tuition increases, increase graduation rates, or impacting other governance or policy decisions).	2.00	1.171
Q56: Organizations seeking to advance “political correctness” rather than viewpoint diversity.	1.79	.816
Q53: Threats or intimidation from the public or from private organizations intended to prevent higher education institutions from hosting certain speakers or persons.	1.78	.813

Influence of Personal Demographics on Attorneys’ Perceptions

Research Question 6 asked to what extent, if any, do the perceptions among college and university attorneys regarding academic freedom and the challenges to academic freedom differ based on various personal demographics. Each of the personal demographics explored in the survey will be discussed in the following section, excluding the variable position type because 90.4% of the participants were from a general counsel office, and, thus, any interoffice statistical comparisons among general counsel, attorney general, system, or private law firm attorney participants would not

have been reliable. As set forth above, the three sections regarding academic freedom include professorial, institutional, and student academic freedom, and the four sections regarding challenges to academic freedom include judicial or governmental challenges, internal or collegial challenges, institutional challenges, and extra-institutional or non-governmental, outside challenges to academic freedom.

Age and Perceptions Regarding Academic Freedom

This first sub-question of research Question 6 addressed whether higher education attorneys' perceptions regarding academic freedom and challenges to academic freedom differed based on age. The researcher restated the question as to whether statistically significant differences existed between younger and older higher education attorneys' regarding their perceptions of academic freedom and challenges to academic freedom. The variable age was recoded into a new variable and divided equally into younger and older participants. Younger participants were defined as all participants 48 years of age or younger ($n=93$). Older participants were defined as all participants 49 years of age or older ($n=85$). The mean scores and standard deviations for the new groups are set forth in Table 27, and equality of variance was confirmed using Levene's test.

Table 27

Means and Standard Deviations for Younger and Older Attorneys

Variable	<u>M</u>		<u>SD</u>	
	Younger	Older	Younger	Older
Professorial AF	3.15	3.19	.427	.440
Institutional AF	3.65	3.68	.382	.407
Student AF	3.18	3.18	.446	.529
Judicial/Gov'tal Chall.	1.62	1.85	.737	.733
Internal Chall.	1.63	1.79	.567	.511
Outside Chall.	1.48	1.63	.475	.574
Q47: Termination	1.12	1.07	.413	.300
Q48: Research Limits	1.21	1.17	.545	.439
Q49: Pedagogy	1.72	1.75	.617	.615
Q50: Promotion	1.23	1.25	.492	.560
Q51: Censorship	1.29	1.27	.582	.543

An independent samples *t* test was completed to determine whether statistically significant differences existed between the younger and older groups. The results of this *t* test are set forth in Table 28. The independent samples *t* test detected a statistically significant difference between younger and older higher education attorneys' perceptions regarding judicial and governmental challenges to academic freedom ($t_{171}=-2.043$, $p=.043$). However, no other statistically significant differences in perceptions between younger and older higher education attorneys were detected.

Table 28

T Test Results for Younger and Older Attorneys

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	173	-.535	.593
Institutional AF	176	-.584	.560
Student AF	173	.000	1.000
Judicial/Gov'tal Chall.	171	-2.043	.043*
Internal Chall.	172	-1.916	.057
Outside Chall.	170	-1.769	.079
Q47: Termination	176	.874	.383
Q48: Research Limits	172	.473	.637
Q49: Pedagogy	175	-.383	.702
Q50: Promotion	174	-.343	.732
Q51: Censorship	176	.233	.816
*Statistically significant at alpha=.05			

Years of Higher Education Experience and Attorneys' Perceptions

The second sub-question of research Question 6 was whether statistically significant differences existed among higher education attorneys' with low, moderate, and high number of years of experience in higher education regarding their perceptions of academic freedom and challenges to academic freedom. The years of higher education experience variable was recoded into a new variable. The "low" experience group included attorneys who practiced law in higher education for 1-5 years ($n=61$), the "moderate" experience group included attorneys who practiced for 6-11 years ($n=66$), and the "high" experience group included attorneys who practiced for 12 or more years ($n=52$). The mean scores and standard deviations for the three groups are set forth in Table 29, and equality of variance was confirmed using Levene's test. In two instances,

internal challenges ($F_{2,172}=3.622, p=.029$) and Question 48 ($F_{2,172}=7.523, p=.001$) regarding limitations on controversial research, equality of variance was violated. However, ANOVA is robust to violations of equality of variance in balanced designs and, in this study, the number of participants in the three groups is nearly equal (Glass & Hopkins, 1996).

A one way, fixed effects ANOVA was completed to determine whether statistically significant differences existed among higher education attorneys with low, moderate, and high years of higher education experience. If a statistically significant omnibus difference was detected, a post hoc Tukey test was performed to determine as to which pair the difference was statistically significant. The results of the ANOVA are set forth in Table 30.

The ANOVA detected a statistically significant difference among the low, moderate, and high groups as to judicial and governmental challenges ($F_{2,172}=3.238, p=.042$) as well as internal challenges ($F_{2,174}=5.627, p=.004$). Importantly, the observed power was relatively high for both groups, with judicial and governmental challenges having an observed power of .611, and internal challenges having an observed power of .855. A post hoc Tukey test was performed to determine as to which pair of groups, i.e., low, moderate, and high, was the difference statistically significant. As to the judicial and governmental challenge, the difference between the low and high groups was statistically significant ($p=.044$). As to the internal challenges, the difference between the high and moderate groups was statistically significant ($p=.003$). Thus, the low and moderate group did not differ in a statistically significant manner for any of the variables.

Table 29

Means and Standard Deviations for Years of Higher Education Legal Experience

Variable	Group	<i>M</i>	<i>SD</i>
Professorial AF	Low	3.14	.435
	Moderate	3.16	.431
	High	3.17	.432
Institutional AF	Low	3.59	.408
	Moderate	3.69	.400
	High	3.73	.356
Student AF	Low	3.23	.461
	Moderate	3.07	.462
	High	3.25	.535
Judicial/Gov't Chall	Low	1.61	.759
	Moderate	1.67	.689
	High	1.94	.752
Internal Chall	Low	1.67	.648
	Moderate	1.58	.432
	High	1.91	.493
Outside Chall	Low	1.51	.502
	Moderate	1.50	.485
	High	1.69	.597
Q47: Termination	Low	1.11	.412
	Moderate	1.11	.397
	High	1.06	.235
Q48: Research Limits	Low	1.23	.563
	Moderate	1.09	.344
	High	1.25	.560
Q:49: Pedagogy	Low	1.62	.662
	Moderate	1.82	.556
	High	1.75	.622
Q50: Promotion	Low	1.22	.490
	Moderate	1.29	.548
	High	1.20	.530
Q51: Censorship	Low	1.28	.609
	Moderate	1.32	.559
	High	1.28	.561

Table 30

Analysis of Variance for Years of Higher Education Legal Experience

Source	<i>df</i>	<i>F</i>	<i>p</i>	<i>Obs Pwr</i>
Professorial AF Error	2 173	.524 (.188)	.593	.135
Institutional AF Error	2 176	2.111 (.153)	.124	.429
Student AF Error	2 173	2.373 (.235)	.096	.475
Judicial/Gov'tal Chall. Error	2 170	3.238 (.536)	.042*	.611
Internal Chall. Error	2 172	5.627 (.283)	.004*	.855
Outside Chall. Error	2 170	2.165 (.276)	.118	.439
Q47: Termination Error	2 176	.394 (.132)	.675	.113
Q48: Research Limits Error	2 172	1.890 (.243)	.154	.389
Q49: Pedagogy Error	2 175	1.586 (.376)	.208	.333
Q50: Promotion Error	2 174	.512 (.274)	.600	.133
Q51: Censorship Error	2 176	.350 (.317)	.705	.106

Note. Parenthetical data is the mean square errors.

*Statistically significant at alpha=.05

Courses Taught and Perceptions Regarding Academic Freedom

The third sub-question of research Question 6 was whether statistically significant differences existed between higher education attorneys' that had and had not taught college level courses as to their perceptions of academic freedom and challenges to academic freedom. The variable related to the number of different college level courses taught was recoded into a new variable and divided into participants that had and had not taught a college level course. This resulted in two relatively equal groups, with 43.6% ($n=78$) having taught at least one college level course and 56.4% ($n=101$) having no college level teaching experience.

Levene's test for equality of variance was completed and in three instances, student academic freedom ($F=4.855, p=.029$), Question 47 ($F=4.033, p=.046$) regarding termination of professors because of their out of class statements critical of their institutional employer, and Question 51 ($F=3.903, p=.05$) regarding institutional censorship of faculty speech, equality of variance was violated. As to these three variables, therefore, equality of variance is not assumed. The means and standard deviations are reported in Table 31.

An independent samples t test was completed to determine whether statistically significant differences in perceptions existed between participants that had no college teaching experience and those that had taught at least one college level courses. The results of this t test are set forth in Table 32.

Table 31

Means and Standard Deviations for College Courses Taught

Variable	<u>M</u>		<u>SD</u>	
	0 Courses	1+ Courses	0 Courses	1+ Courses
Professorial AF	3.15	3.21	.406	.463
Institutional AF	3.63	3.71	.395	.389
Student AF	3.13	3.26	.431	.551
Judicial/Gov'tal Chall.	1.57	1.94	.648	.805
Internal Chall.	1.66	1.78	.577	.498
Outside Chall.	1.53	1.58	.549	.502
Q47: Termination	1.12	1.06	.407	.295
Q48: Research Limits	1.16	1.22	.447	.553
Q49: Pedagogy	1.70	1.77	.592	.647
Q50: Promotion	1.21	1.27	.456	.599
Q51: Censorship	1.24	1.33	.617	.070

Table 32

T Test Results for College Courses Taught

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	174	-.988	.324
Institutional AF	177	-1.263	.208
Student AF	136	-1.744	.083
Judicial/Gov'tal Chall.	171	-3.316	.001*
Internal Chall.	173	-1.402	.163
Outside Chall.	171	-.634	.527
Q47: Termination	176	1.043	.299
Q48: Research Limits	173	-.761	.448
Q49: Pedagogy	176	-.678	.498
Q50: Promotion	175	-.791	.430
Q51: Censorship	148	-1.106	.270

*Statistically significant at alpha=.05

The independent samples t test detected a statistically significant difference between higher education attorneys that had and had not taught college level courses as to their perceptions regarding judicial and governmental challenges to academic freedom ($t_{171} = -3.316, p = .001$). However, no other statistically significant differences were detected in perceptions between higher education attorneys who had and had not taught college level courses.

Educational Sessions on Academic Freedom and Attorneys' Perceptions

The fourth sub-question of Research Question 6 was whether statistically significant differences existed in perceptions among higher education attorneys' based on the number of conference or continuing legal education sessions the attorneys attended that included the concept of academic freedom as the primary topic. Of the participants, 46.3% ($n=82$) had attended 1-2 sessions, 34.5% ($n=61$) had not attended any sessions; 12.4% ($n=22$) had attended 3-4 sessions, and 6.8% ($n=12$) had attended five or more sessions. The mean scores and standard deviations for the four groups are set forth in Table 33, and equality of variance was confirmed using Levene's test. In one instance, Question 47 ($F_{3,173} = 4.381, p = .005$) regarding termination of professors because of their statements critical of their institutional employer, equality of variance was violated. However, ANOVA is generally robust to violations of equality of variance and, in this study, statistically significant differences were not noted for Question 47 as to this ANOVA (Glass & Hopkins, 1996).

Table 33

Means and Standard Deviations for Legal Education Sessions Attended

Variable	Group	<i>M</i>	<i>SD</i>	Group	<i>M</i>	<i>SD</i>
Professorial AF	<i>Zero</i>	3.03	.454	<i>3-4</i>	3.32	.435
	<i>1-2</i>	3.22	.385	<i>5+</i>	3.20	.512
Institutional AF	<i>Zero</i>	3.56	.417	<i>3-4</i>	3.72	.380
	<i>1-2</i>	3.71	.373	<i>5+</i>	3.77	.376
Student AF	<i>Zero</i>	3.03	.481	<i>3-4</i>	3.42	.553
	<i>1-2</i>	3.18	.432	<i>5+</i>	3.54	.498
Judicial/Gov't Chall	<i>Zero</i>	1.41	.567	<i>3-4</i>	2.14	.878
	<i>1-2</i>	1.80	.742	<i>5+</i>	2.11	.712
Internal Chall	<i>Zero</i>	1.58	.471	<i>3-4</i>	1.99	.789
	<i>1-2</i>	1.71	.490	<i>5+</i>	1.96	.531
Outside Chall	<i>Zero</i>	1.36	.445	<i>3-4</i>	1.69	.720
	<i>1-2</i>	1.67	.506	<i>5+</i>	1.64	.482
Q47: Termination	<i>Zero</i>	1.07	.250	<i>3-4</i>	1.23	.612
	<i>1-2</i>	1.09	.358	<i>5+</i>	1.08	.289
Q48: Research Limits	<i>Zero</i>	1.15	.404	<i>3-4</i>	1.14	.351
	<i>1-2</i>	1.23	.598	<i>5+</i>	1.25	.452
Q:49: Pedagogy	<i>Zero</i>	1.74	.630	<i>3-4</i>	1.62	.669
	<i>1-2</i>	1.76	.579	<i>5+</i>	1.67	.651
Q50: Promotion	<i>Zero</i>	1.19	.473	<i>3-4</i>	1.18	.501
	<i>1-2</i>	1.29	.577	<i>5+</i>	1.25	.452
Q51: Censorship	<i>Zero</i>	1.26	.513	<i>3-4</i>	1.18	.501
	<i>1-2</i>	1.32	.626	<i>5+</i>	1.33	.492

A one way, fixed effects ANOVA was completed to determine whether statistically significant differences existed based on the number of conference or continuing legal education sessions the attorneys attended that included the concept of academic freedom as the primary topic. If a statistically significant omnibus difference was detected, a post hoc Tukey test was performed to determine as to which pair or pairs the difference was statistically significant. The results of the ANOVA are set forth in Table 34.

The ANOVA detected a statistically significant difference among the groups as to perceptions regarding professorial academic freedom ($F_{3,173}=3.461, p=.018$); student academic freedom ($F_{3,173}=6.350, p<.001$); judicial and governmental challenges ($F_{3,170}=7.733, p<.001$); internal challenges ($F_{3,172}=4.128, p=.007$); and extra-institutional or outside challenges ($F_{3,170}=4.283, p=.006$). Importantly, the observed power was relatively high for all groups, including professorial academic freedom (.768); student academic freedom (.965); judicial and governmental challenges (.987); internal challenges (.844); and extra-institutional or outside challenges (.858).

A post hoc Tukey test was performed to determine as to which pair or pairs of groups the difference was statistically significant. As to professorial academic freedom, the difference between the groups that attended zero conferences and 1-2 conferences ($p=.041$) and zero conferences and 3-4 conferences ($p=.039$) was statistically significant.

Table 34

Analysis of Variance for Legal Education Sessions Attended

Source	<i>df</i>	<i>F</i>	<i>p</i>	<i>Obs Pwr</i>
Professorial AF Error	3 170	3.461 (.181)	.018*	.768
Institutional AF Error	3 173	2.391 (.152)	.070	.591
Student AF Error	3 170	6.350 (.221)	.000*	.965
Judicial/Gov'tal Chall. Error	3 167	7.733 (.496)	.000*	.987
Internal Chall. Error	3 169	4.128 (.844)	.007*	.844
Outside Chall. Error	3 167	4.283 (.266)	.006*	.858
Q47: Termination Error	3 173	1.124 (.132)	.341	.300
Q48: Research Limits Error	3 169	.419 (.251)	.739	.132
Q49: Pedagogy Error	3 172	.324 (.375)	.808	.112
Q50: Promotion Error	3 171	.568 (.277)	.637	.166
Q51: Censorship Error	3 173	.392 (.321)	.759	.126

Note. Parenthetical data is the mean square errors.

*Statistically significant at alpha=.05.

As to student academic freedom, the difference was statistically significant between the groups that attended zero conferences and 3-4 conferences ($p=.006$) and zero conferences and 5 or more conferences ($p=.004$). As to judicial and governmental challenges to academic freedom, the differences were statistically significant between zero and all other groups including participants that had attended 1-2 sessions ($p=.009$), 3-4 sessions ($p<.001$), and 5 or more sessions ($p=.016$). For internal challenges to academic freedom, the difference was statistically significant between the zero session group and the 3-4 session group ($p=.013$) and for outside challenges to academic freedom, the difference was statistically significant between the zero session group and the 1-2 session group ($p=.008$). Importantly, only the group of participants who attended zero conferences differed in a statistically significant manner with other groups. Thus, participants that attended 1-2, 3-4, or 5 or more conferences did not differ from each other in a statistically significant manner as to their perceptions regarding academic freedom or challenges to academic freedom.

Annual Involvement and Perceptions Regarding Academic Freedom

The fifth subsection of Research Question 6 was whether statistically significant differences existed between attorneys who had and had not been asked at least once per year to provide legal advice in matters that involved academic freedom as to their perceptions regarding academic freedom and challenges to academic freedom. Of the participants, 67.6% ($n=121$) had provided annual academic freedom advice while 32.4% ($n=58$) had not.

Levene's test for equality of variance was completed and in four instances, student academic freedom ($F=6.682$, $p=.011$), judicial and governmental challenges

($F=14.416$, $p<.001$), Question 48 ($F=7.542$, $p=.007$) regarding limitations on controversial research, and Question 51 ($F=8.067$, $p=.005$) regarding institutional censorship of faculty speech, equality of variance was violated. As to these four variables, therefore, equality of variance is not assumed and the related data shall be reported. The mean scores and standard deviations for participants who had and had not provided annual academic freedom legal advice are set forth in Table 35.

Table 35

Means and Standard Deviations for Annual Legal Advice

Variable	<u>M</u>		<u>SD</u>	
	No	Yes	No	Yes
Professorial AF	2.99	3.28	.448	.386
Institutional AF	3.56	3.73	.397	.374
Student AF	2.98	3.30	.411	.495
Judicial/Gov'tal Chall.	1.37	1.96	.563	.751
Internal Chall.	1.55	1.82	.497	.549
Outside Chall.	1.39	1.65	.458	.549
Q47: Termination	1.09	1.10	.339	.379
Q48: Research Limits	1.12	1.23	.375	.555
Q49: Pedagogy	1.64	1.79	.598	.620
Q50: Promotion	1.18	1.27	.493	.540
Q51: Censorship	1.20	1.33	.471	.606

An independent samples t test was completed to determine whether statistically significant differences in perceptions existed between attorneys who had and had not been asked at least annually to provide advice on academic freedom matters. The results of the t tests are set forth in Table 36.

Table 36

T Test Results for Annual Legal Advice

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	173	-4.509	.000*
Institutional AF	176	-2.925	.004*
Student AF	154	-4.565	.000*
Judicial/Gov'tal Chall.	161	-5.783	.000*
Internal Chall.	172	-3.285	.001*
Outside Chall.	170	-3.203	.002*
Q47: Termination	176	-.129	.897
Q48: Research Limits	169	-1.504	.134
Q49: Pedagogy	175	-1.645	.102
Q50: Promotion	174	-1.116	.266
Q51: Censorship	163	-1.636	.104

*Statistically significant at alpha=.05

The independent samples *t* test detected a statistically significant difference between higher education attorneys who had and had not been asked annually to provide legal advice regarding academic freedom matters as to the perceptions regarding professorial academic freedom ($t_{173}=-4.509, p<.001$), institutional academic freedom ($t_{176}=-2.925, p=.004$), student academic freedom ($t_{154}=-4.565, p<.001$), judicial or governmental challenges ($t_{161}=-5.783, p<.001$), internal or collegial challenges ($t_{172}=-3.285, p=.001$), and extra-institutional or non-governmental, outside challenges to academic freedom ($t_{170}=-3.203, p=.002$).

Influence of Institutional Characteristics on Attorneys' Perceptions

Research Question 7 asked to what extent, if any, do the perceptions among college and university attorneys differ at American higher education institutions based on

various institutional characteristics including (a) whether the institution was public or private, (b) Carnegie classification, and (c) whether the institution had been involved in a dispute where academic freedom was a fundamental issue in the dispute.

Institutional Type and Perceptions Regarding Academic Freedom

The first subsection of research Question 7 was whether statistically significant differences existed between attorneys who worked at public versus private higher education institutions as to their perceptions regarding academic freedom and challenges to academic freedom. Of the participants, 56.7% ($n=101$) were from (or represented) public higher education institutions and 43.3% ($n=77$) were from (or represented) private higher education institutions.

Levene's test for equality of variance was completed and in three instances, judicial and governmental challenges ($F=11.401$, $p=.001$), internal challenges ($F=4.884$, $p=.028$), and Question 47 ($F=14.511$, $p<.001$) regarding termination of professors for statements critical of their institutional employer, equality of variance was violated. As to these three variables, therefore, equality of variance is not assumed and the related data shall be reported. The mean scores and standard deviations for participants from public and private higher education institutions are set forth in Table 37.

An independent samples t test was completed to determine whether statistically significant differences in perceptions existed between attorneys from public and private higher education institutions. The results of the t tests are set forth in Table 38.

Table 37

Means and Standard Deviations for Public and Private Institutions

Variable	<u>M</u>		<u>SD</u>	
	Public	Private	Public	Private
Professorial AF	3.15	3.19	.439	.425
Institutional AF	3.66	3.68	.413	.367
Student AF	3.22	3.12	.492	.477
Judicial/Gov'tal Chall.	2.04	1.33	.682	.618
Internal Chall.	1.77	1.63	.624	.407
Outside Chall.	1.56	1.54	.535	.521
Q47: Termination	1.14	1.04	.448	.195
Q48: Research Limits	1.21	1.16	.542	.434
Q49: Pedagogy	1.80	1.65	.667	.532
Q50: Promotion	1.25	1.22	.541	.503
Q51: Censorship	1.31	1.25	.561	.566

The independent samples *t* test detected a statistically significant difference between public and private higher education attorneys' perceptions regarding judicial and governmental challenges to academic freedom ($t_{166}=7.132, p<.001$), and Question 47 ($t_{144}=2.002, p=.047$) regarding termination of a professor due to statements critical of an institutional employer.

Table 38

T Test Results for Public and Private Institutions

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	173	-.625	.533
Institutional AF	176	-.325	.746
Student AF	173	-1.201	.232
Judicial/Gov'tal Chall.	166	7.132	.000*
Internal Chall.	169	1.851	.066
Outside Chall.	170	.251	.802
Q47: Termination	144	2.002	.047*
Q48: Research Limits	172	.741	.460
Q49: Pedagogy	175	1.624	.106
Q50: Promotion	174	.398	.691
Q51: Censorship	176	.706	.481

*Statistically significant at alpha=.05

Institutional Classification and Perceptions Regarding Academic Freedom

The second sub-question of research Question 7 asked to what extent, if any, do perceptions among college and university attorneys differ based on the classification of the institution the attorneys represented. Participants selected among doctoral or research university (56.5%), master's college or university (25.4%), baccalaureate college (15.3%), associates or community college (2.3%), and other (.6%). To facilitate data analysis, doctoral and research universities were recoded as "research intensive" institutions (56.5%) and all other institutional classifications were recoded "non-research intensive" institutions (43.5%). This is consistent with the descriptions of the Carnegie classifications upon which the options were based.

Levene's test for equality of variance was completed and in four instances

equality of variance was violated, including Question 47 ($F=11.401, p=.001$), Question 48 ($F=4.884, p=.028$), Question 49 ($F=14.511, p<.001$), and Question 51. As to these four variables, none of which include statistically significant differences at to this research sub-question, equality of variance is not assumed and the related data shall be reported. The mean scores and standard deviations for participants from public and private higher education institutions are set forth in Table 39.

Table 39

Means and Standard Deviations for Research and Non-Research Intensive Institutions

Variable	<u>M</u>		<u>SD</u>	
	Research	Non-research	Research	Non-research
Professorial AF	3.23	3.09	.430	.425
Institutional AF	3.71	3.61	.391	.392
Student AF	3.26	3.09	.476	.491
Judicial/Gov'tal Chall.	1.96	1.44	.718	.670
Internal Chall.	1.79	1.62	.572	.496
Outside Chall.	1.68	1.40	.498	.526
Q47: Termination	1.12	1.06	.409	.293
Q48: Research Limits	1.23	1.13	.533	.440
Q49: Pedagogy	1.67	1.81	.515	.717
Q50: Promotion	1.21	1.27	.482	.571
Q51: Censorship	1.32	1.23	.634	.451

An independent samples t test was completed to determine whether statistically significant differences existed between attorneys at research and non-research intensive institutions as to their perceptions regarding academic freedom and challenges to academic freedom. The results of this t test are set forth in Table 40.

Table 40

T Test Results for Research and Non-Research Intensive Institutions

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	174	2.076	.039*
Institutional AF	177	1.589	.114
Student AF	174	2.342	.020*
Judicial/Gov'tal Chall.	171	4.827	.000*
Internal Chall.	173	2.088	.038*
Outside Chall.	171	3.676	.000*
Q47: Termination	175	1.080	.282
Q48: Research Limits	172	1.424	.156
Q49: Pedagogy	136	-1.496	.137
Q50: Promotion	175	-.651	.516
Q51: Censorship	175	1.135	.258

*Statistically significant at $\alpha=.05$

The independent samples *t* test detected a statistically significant difference between attorneys at research and non-research institutions as to their perceptions regarding professorial academic freedom ($t_{171}=-2.043, p=.043$); student academic freedom ($t_{171}=-2.043, p=.043$); judicial and governmental challenges to academic freedom ($t_{171}=-2.043, p=.043$), internal challenges to academic freedom ($t_{171}=-2.043, p=.043$); and outside or extra-institutional challenges to academic freedom ($t_{171}=-2.043, p=.043$).

Institutional Dispute and Perceptions Regarding Academic Freedom

The third subsection of Research Question 7 was whether statistically significant differences in perceptions regarding academic freedom and challenges to academic freedom existed between attorneys whose institutions had and had not been involved in a

dispute (i.e., litigation, arbitration, etc.) where academic freedom was perceived by institutional administrators as being a fundamental issue in the case. Of the participants, 62.9% ($n=112$) had been involved in such a dispute while 37.1% ($n=66$) had not been involved in such a dispute.

Levene's test for equality of variance was completed and in four instances, student academic freedom ($F=6.682, p=.011$), judicial and governmental challenges ($F=14.416, p<.001$), Question 48 ($F=7.542, p=.007$), and Question 51 ($F=8.067, p=.005$), equality of variance was violated. As to these four variables, therefore, equality of variance is not assumed and the related data shall be reported. The mean scores and standard deviations for the participants that had and had not been involved in an academic freedom dispute are set forth in Table 41.

Table 41

Means and Standard Deviations for Institution Dispute Involvement

Variable	<u>M</u>		<u>SD</u>	
	No Dispute	Dispute	No Dispute	Dispute
Professorial AF	2.99	3.28	.447	.386
Institutional AF	3.56	3.73	.397	.374
Student AF	2.98	3.30	.412	.496
Judicial/Gov'tal Chall.	1.37	1.96	.563	.751
Internal Chall.	1.55	1.82	.497	.549
Outside Chall.	1.39	1.65	.458	.549
Q47: Termination	1.09	1.10	.339	.379
Q48: Research Limits	1.12	1.23	.375	.555
Q49: Pedagogy	1.64	1.79	.598	.620
Q50: Promotion	1.18	1.27	.493	.540
Q51: Censorship	1.20	1.33	.471	.606

An independent samples *t* test was completed to determine whether statistically significant differences in perceptions existed between attorneys whose institutions had and had not been involved in an academic freedom dispute. The results of the *t* tests are set forth in Table 42.

Table 42

T Test Results for Institution Dispute Involvement

Variable	<i>df</i>	<i>t</i>	<i>p</i>
Professorial AF	173	-4.509	.000*
Institutional AF	176	-2.925	.004*
Student AF	154	-4.565	.000*
Judicial/Gov'tal Chall.	160	-5.783	.000*
Internal Chall.	172	-3.285	.001*
Outside Chall.	170	-3.203	.002*
Q47: Termination	176	-.129	.897
Q48: Research Limits	169	-1.504	.134
Q49: Pedagogy	175	-1.645	.102
Q50: Promotion	174	-1.116	.266
Q51: Censorship	162	-1.636	.104
*Statistically significant at alpha=.05			

The independent samples *t* test detected a statistically significant difference between attorneys who had and had not been involved in an academic freedom dispute as to their perceptions regarding professorial academic freedom ($t_{173}=-4.509, p<.001$); institutional academic freedom ($t_{176}=-2.925, p=.004$); student academic freedom ($t_{154}=-4.565, p<.001$); judicial and governmental challenges to academic freedom ($t_{160}=-5.783, p<.001$); internal challenges to academic freedom ($t_{172}=-3.285, p=.001$); and outside or extra-institutional challenges to academic freedom ($t_{170}=-3.203, p=.002$).

Attorneys' Perceptions and the Literature

Research Question 8 asked whether the challenges to academic freedom that are considered significant by scholars also considered significant by college and university attorneys. This question will be answered in the discussion in Chapter 5.

Bivariate Correlation Analysis

Although not asked in the research questions, the researcher noted that the *t* tests that were statistically significant for Question 10 were also statistically significant for Question 11. Question 10 asked participants whether their institution had been “involved in a dispute where academic freedom was perceived by institutional administrators to be a fundamental issue in the case.” Question 11, with which Question 10 is highly correlated ($r=.286, p<.001$), asked participants whether they had been asked at least once per year “to provide legal advice in matters that involve academic freedom.” Intuitively, if an attorney’s institution had been involved in an academic freedom dispute the attorney likely provided advice on such dispute, although perhaps not annually.

Impact of Continuing Legal Education on Attorney Understanding

The researcher also conducted an extensive exploratory analysis of the data. As part of such exploration the researcher conducted a one way ANOVA to determine whether any statistically significant differences existed in attorneys’ self assessment of their understanding of the concept of academic freedom based on the number of conference or continuing legal education sessions they attended which included the concept of academic freedom as the primary topic. The attorneys’ self assessment contrasted their understanding of academic freedom as of the date of the survey with when they began practicing law in higher education. Table 43 sets forth the number of

sessions the participants attended as well as the means and standard deviations for the participants' self assessment knowledge of academic freedom in contrast with when they started practicing law in higher education.

Table 43

Sessions Attended and Self Assessment of Academic Freedom (AF) Understanding

Sessions	Freq.	<i>M</i>	<i>SD</i>
Zero	58	3.10	.484
1-2	82	3.44	.523
3-4	22	3.77	.429
5 or more	12	3.83	.389

Levene's test for equality of variance was violated ($F_{3,170}=8.476, p<.001$).

ANOVAs are generally robust to violations of equality of variance, and in this test the observed power was very high (1.000). The results of the one way ANOVA are set forth in Table 44.

Table 44

Analysis of Variance for Sessions Attended and Self Assessment of AF Understanding

Source	<i>df</i>	<i>F</i>	<i>p</i>	<i>Obs Pwr</i>
Attendance	3	14.521	.000*	1.000
Error	170	(.242)		

Note. Parenthetical data is the mean square errors.

*Statistically significant at alpha=.05

The ANOVA detected a statistically significant difference in attorneys' self assessment of their understanding of the concept of academic freedom based on the number of conference or continuing legal education sessions they attended which included the concept of academic freedom as the primary topic ($F_{3,170}=14.521, p<.001$). A post hoc Tukey test was performed and the difference between groups was statistically significant between participants who had attended (a) zero and 1-2 ($p=.001$), (b) zero and 3-4 ($p<.001$), (c) zero and 5 or more ($p<.001$), (d) 1-2 and 3-4 ($p=.027$), and (e) 1-2 and 5 or more ($p=.050$). In fact, the only groups that did not differ in a statistically significant manner were the 3-4 and 5 or more groups. Although intuitive, the means plot in figure 2 also demonstrates visually that participants' self assessment of the improvement of their understanding of academic freedom increases as the number of conference or continuing legal education sessions increases, although the increase begins to level at 5 or more sessions.

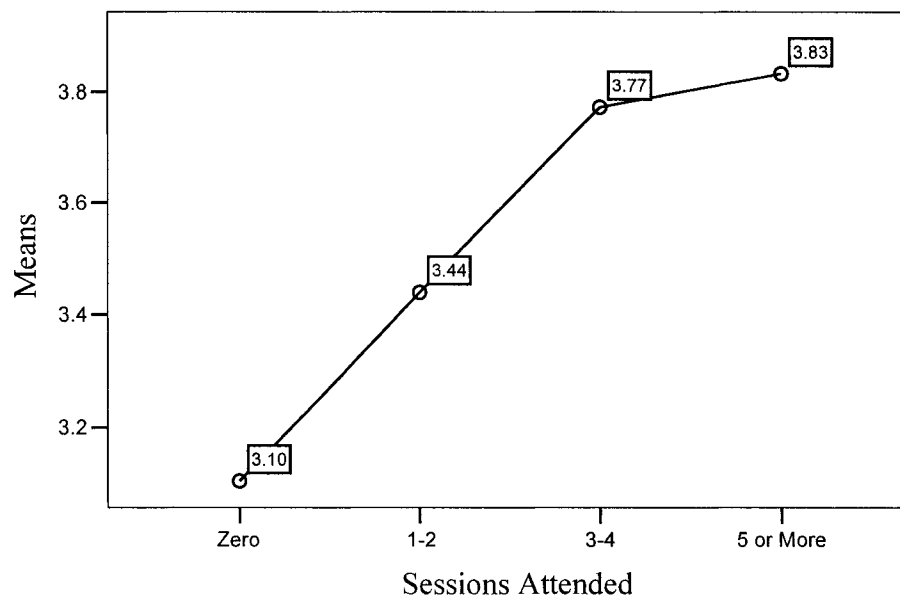


Figure 2. Means plot of number of conference or continuing legal education sessions attended and self assessment of understanding of academic freedom.

Additional Comments

At the conclusion of the survey, participants were asked two opened ended questions. The first question, to which 33% of the participants responded, asked, “[w]hat do you think will be the most significant challenges to academic freedom in the next five years?” and “[w]hy?” The comments, which are included in Appendix F, Table F1, paralleled many of the challenges identified in Chapter 3 and are reported under the four groups of challenges (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional challenges.

As to judicial or governmental challenges, thematically governmental interference and regulation of institutional governance as well as political partisanship were identified

as significant issues. For internal or collegial challenges, balancing the interests of professors and students, tenure, and the impact of the use of non-tenured faculty were prominent issues. As to institutional challenges, institutional autonomy and censorship were significant. For outside or extra-institutional challenges, of importance were the impact of special interests on institutional and non-institutional governance as well as the growing role of the media and the public in institutional interests.

The second question, to which 7.8% of the participants responded, asked participants to “[p]lease provide any additional comments that you would like to share.” Most of the comments, which are included in Appendix F, Table F2, related to the survey instrument.

Summary

This study found that, overall, higher education attorneys considered themselves to have adequate resources to keep themselves current as to academic freedom issues. The study also found that attorneys perceived their institutional administrators on their campuses to be well prepared to address issues related to academic freedom, which the attorneys considered well protected by institutional policies and practices.

Importantly, this study also found considerable support among higher education attorneys for the three groups of academic freedom: professorial, institutional, and student academic freedom. Attorneys’ perceptions regarding professorial, institutional and student academic freedom differed based on various personal demographics and institutional characteristics, including (a) how many academic freedom educational sessions the attorney attended (professorial, student), (b) institutional involvement in an academic freedom issue (professorial, institutional, student), (c) institutional

classification (professorial, student), and (d) whether the institution had been involved in academic freedom dispute (professorial, institutional, student). However, attorneys' perceptions regarding the three groups of academic freedom did not differ based on age, years of higher education experience, or whether the institution was public or private.

Of the four groups of challenges to academic freedom, including (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) outside or extra-institutional challenges, judicial or governmental challenges were the most common challenges on the attorneys' campuses, while internal or collegial challenges were a close second, although neither group was, on average, even a slight issue on such campuses. Additionally, higher education attorneys' perceptions regarding challenges to academic freedom differed based on various personal demographics and institutional characteristics, including (a) age (judicial or governmental challenges), (b) years of higher education experience (judicial or governmental challenges; internal challenges), (c) whether or not the attorney taught a college level course (judicial or governmental challenge), (d) how many academic freedom educational sessions the attorney attended (judicial or governmental challenges; internal challenges; and outside challenges), (e) institutional involvement in an academic freedom issue (judicial or governmental challenges; internal challenges; and outside challenges), (f) whether the institution was public or private (judicial or governmental challenge; Question 47), (g) institutional classification (judicial or governmental challenges; internal challenges; and outside challenge), and (h) whether or not the institution had been involved in an academic freedom dispute (judicial or governmental challenges; internal challenges; and outside challenge).

CHAPTER 5

DISCUSSION

In this chapter the researcher will discuss the findings of this study, and, in particular, explore generalizations supported by the statistical results of this study. Importantly, because this study included a convenience sample rather than a random sample, the findings, although informative, may not necessarily be generalized to the entire higher education attorney population (Cohen & Lea, 2004). The findings, however, do provide important information regarding higher education attorneys' perceptions regarding academic freedom and challenges to academic freedom. The findings in the previous chapter will, in this chapter, inform the discussion of the research questions, including research Question 8, which asked whether the challenges to academic freedom that are considered significant by scholars are also considered significant by college and university attorneys.

Adequate Resources to Identify and Respond to Academic Freedom Challenges

Importantly, as explored in Research Question 1, most higher education attorneys moderately agree that they have a better understanding of academic freedom than when they started practicing higher education law. Higher education attorneys who attended conferences or continuing legal education sessions that primarily addressed academic freedom had a greater view of their understanding of the concept of academic freedom. However, because most participants did not study academic freedom in law school, higher education attorneys may not have been familiar with the concept of academic freedom until they began their practice in higher education.

Additionally, the majority of the participants believed they had adequate

resources to keep themselves current regarding academic freedom issues, and they considered the administrators at their institution able to independently address academic freedom concerns. This may explain why the participants were less than moderately in agreement with having their legal office be responsible for responding to academic freedom issues on their campus. Thus, while higher education attorneys view themselves well positioned to identify and respond to challenges to academic freedom, such attorneys may defer to their administrative colleagues to address such challenges.

Institutional Protections for Academic Freedom

As explored in research Question 2, most participants agreed that adequate institutional protections existed on their campus or campuses to protect academic freedom, which is important because most participants also agreed that academic freedom issues were becoming more prevalent on their campus or campuses. Moreover, moderate support existed for providing broader protections to academic freedom than is required under the First Amendment, suggesting a considerable deference among higher education attorneys to the importance of constitutional academic freedom on American campuses.

Support for Academic Freedom

One of the primary and most important findings of this study, as explored in research Question 3, is that the participants indicated moderate to strong support for professorial, institutional, and student academic freedom. Importantly, higher education attorneys are emerging as integral participants in the development and implementation of institutional practices and policies. The perceptions of higher education attorneys regarding how their legal offices and institutions should understand, interpret, and respond to existing and emerging issues related to academic freedom may have important

implications for the manner in which such institutions defend, preserve and advance academic freedom. Moreover, the advocacy of higher education attorneys may significantly impact the direction and tenor of academic freedom in American jurisprudential discourse. Therefore, the overall positive perceptions of higher education attorneys regarding academic freedom portends that such attorneys may be vigorous advocates for academic freedom on their campuses and in the courts.

As to professorial academic freedom, higher education attorneys indicated their greatest support for the notion that professors should be allowed to teach their subjects in the manner they deem professionally appropriate, provided the teaching is consistent with academic community standards. This perception is consistent with the AAUP Statement and the research of Dulles (1992), Hiers (2002), and Pendelton (1994). Moreover, consistent with the conclusions reached by Chang (2001), Olivas (1993), and Rabban (1998), most of the participants strongly (55.4%) or moderately (36.2%) agreed that professors should be allowed to conduct research and publish the findings of their research, subject only to institutional review board approval and peer review. Thus, higher education attorneys hold highly positive perceptions of professorial academic freedom.

Participants' perceptions regarding institutional academic freedom were also positive. Over 72% of the participants strongly agreed that higher education institutions should be allowed to independently determine who it will hire to teach, admit to study, and what courses it will provide, which was described by jurists and scholars as the essential academic freedoms of a university (*Regents of the University of California v. Bakke*, 1978; Rendleman, 2002; *Sweeny v. New Hampshire*, 1957). Interestingly,

however, nearly 30% of the participants disagreed that an institution should be allowed to regulate a professor's course content if the professor introduces material that has no reasonable relation to the subject being taught. Thus, nearly one third of the participants seemed willing to extent greater academic freedom protections to professors in the classroom than is recognized by the AAUP, which, in its Statement advises professors to "not introduce into their teaching [a] controversial matter which has no relation to their subject" (1940 Statement, 2004, p. 1).

As to student academic freedom, nearly all of the participants (97.8%) agreed that students have a right to academic freedom, a concept which is the subject of great debate in the literature and academia today (Byrne, 1989; Horowitz, 2003; Pavela, 2005). Additionally, more than 80% of the participants agreed that students have the right to learn without political, religious, or ideological indoctrination, and, moreover, that students have a right to exposure to a diversity of viewpoints in the classroom. Thus, higher education attorney participants supported some of the fundamental elements of the controversial Academic Bill of Rights, although this is not to suggest that such attorneys support the need for, or all elements of, such Bill of Rights. Thus, although 73.2% of the participants viewed a students' freedom to learn as important as a professor's freedom to teach, 77.7% also agreed that students' right to academic freedom was adequately protected by institutional policies that also protect professorial academic freedom. Contrary to the position of Horowitz (2003), therefore, the participant attorneys did not seem to support the contention that legislation or a separate policy was necessary to protect student academic freedom.

Significant Challenges to Academic Freedom

This study explored four different groups of challenges to academic freedom identified in the literature review in Chapter 2 including (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) extra-institutional or non-governmental, outside challenges. The findings for each of these groups of challenges, which were explored in research Question 4 in Chapter 4, will be discussed. Overall, however, although each group of challenges to academic freedom was a large or very large issue on a few campuses, at most campuses the groups of challenges were generally a slight issue or not an issue at all. Thus, although this study confirmed that the challenges to academic freedom identified in the literature are present on many campuses, this study also confirmed that few campuses are experiencing significant challenges to academic freedom (Bird & Brandt, 2002).

Judicial and Governmental Challenges

As to judicial or governmental challenges, only two of the five issues addressed in the five survey questions were, on average, a slight issue on college and university campuses, and as to four of the issues, most of the participants reported that such matters were not an issue at all. However, at least 6, and as many as 20, of the participants considered one of the five issues a large or a very large issue on their campus. Thus, although none of the issues was more than a slight issue on average, all of the issues were at least a large issue on as few as 6 and as many as 20 campuses, depending on the issue. The two most significant issues, importantly, involved questionable conditions or restrictions placed by the state or federal government on the use and distribution of research data and findings ($M=2.15$, $SD=1.049$) or on the use or receipt of governmental

appropriations ($M=2.00$, $SD=1.171$).

Internal or Collegial Challenges

As to internal or collegial challenges, only one of the five issues addressed in the five survey questions was, on average, a slight issue on college and university campuses, although two of the issues were, on average, between a slight issue and not an issue at all. However, at least 4, and as many as 8, of the participants considered one of the five issues a large or a very large issue on their campus. Thus, although none of the issues was more than a slight issue on average, all of the issues were at least a large issue on a few campuses. The two most significant issues were professors using their classroom to advance or advocate a particular partisan, political, religious or ideological agenda ($M=2.40$, $SD=.783$), and students using threats of litigation to influence grades or academic evaluations or decisions ($M=1.77$, $SD=.808$).

Institutional Challenges

As to institutional challenges, none of the five issues addressed in the five survey questions was, on average, a slight issue on college and university campuses, although one of the issues was, on average, between a slight issue and not an issue at all. All but one of the issues, however, was considered by at least one of the participants to be a large issue on their campus. The most significant issue was institutional efforts to determine faculty classroom pedagogy ($M=1.73$, $SD=.616$). However, as to the other four issues, at least 77.1% of the participants responded that such issues were “not an issue at all” on their college campuses.

Outside Challenges

As to outside, non-governmental challenges, none of the five issues addressed in

the five survey questions was, on average, a slight issue on college and university campuses, although three of the issues were, on average, between a slight issue and not an issue at all. However, at least 2, and as many as 6, of the participants considered one of the five issues a large or a very large issue on their campus. Thus, although none of the issues was more than a slight issue on average, all of the issues were at least a large issue on at least two campuses. The most significant issue was organizations seeking to advance “political correctness” rather than viewpoint diversity ($M=1.79$, $SD=.816$).

Interestingly, of the twenty questions regarding challenges to academic freedom, the most significant individual challenge professors using their classroom to advance a particular partisan, political, religious or ideological agenda, although on average this challenge was considered between being a slight and moderate issue on participant’s campuses. The second and third most significant individual challenges were related to state or federal governmental conditions or restrictions related to the use and distribution of research data or related to appropriations.

Personal Demographics and Higher Education Attorneys’ Perceptions

In research Question 6, the researcher explored whether the perceptions among higher education attorneys regarding academic freedom and challenges to academic freedom differed based on various personal demographics. The differences and absences of differences in perceptions based on such personal demographics will be explored below.

Age

Younger and older attorneys had significant differences in their perceptions regarding judicial or governmental challenges to academic freedom. Although not

explored in this study, this may be attributable to the fact that older attorneys have experienced the tremendous growth in the myriad of federal and state laws and regulations that impact higher education since the 1960s (Bickel & Ruger, 2004). Interestingly, however, younger and older attorneys did not have significant differences in their perceptions regarding professorial, institutional, and student academic freedom, nor did they have significant differences in their perceptions regarding other groups of challenges to academic freedom. One may have expected that older attorneys, being primarily from a generation with greater loyalty to their institutional employer and further removed from the classroom in years than their younger counterparts, may have had a more favorable perception of institutional academic freedom than student academic freedom (Bennis & Thomas, 2002). However, although older attorneys ($M=3.68$, $SD=.407$) had slightly more favorable perceptions than younger attorneys ($M=3.65$, $SD=.382$) regarding institutional academic freedom, older ($M=3.18$, $SD=.529$) and younger ($M=3.18$, $SD=.446$) attorneys had nearly identical perceptions regarding student academic freedom. Perceptions regarding academic freedom, therefore, may transcend age or existing generational differences.

Years of Higher Education Experience

Attorneys with high years of professional experience in higher education had the most favorable perceptions of professorial, institutional, and student academic freedom, although the differences among attorneys in the high, moderate, and low years of experience groups was not significant. Additionally, attorneys with high years of professional experience also had the greatest occurrence of “issues” related to judicial or governmental challenges, internal or collegial challenges, and outside or extra-

institutional challenges to academic freedom.

Importantly, significant differences in perceptions did not exist between the low and moderate years of experience group, but significant differences were detected between the low and high group as to their perceptions regarding judicial and governmental challenges and between the moderate and high group as to their perceptions regarding internal or collegial challenges. These differences in perceptions may be explained by the fact that attorneys with more years of experience may be in higher level positions within their office, and, therefore, may have more opportunities to be made aware of, or involved with, significant academic freedom issues on their campus or campuses.

Courses Taught

Attorneys who had taught at least one college level course had slightly more favorably perceptions of professorial academic freedom, institutional academic freedom and student academic freedom than attorneys who had not taught any college courses. One may have expected these differences to be significant because attorneys who teach may have experienced an academic freedom issue in their classroom or had a greater appreciation for academic freedom considerations. However, the differences were not significant. Moreover, attorneys who had taught at least one college level course had more experience with judicial and governmental challenges, institutional challenges, internal or collegial challenges, and outside or extra-institutional challenges, than attorneys who had no teaching experience. Importantly, however, the difference was significant only for experience with judicial or governmental challenges ($t_{171} = -3.316$, $p = .001$).

Conference or Continuing Legal Education Sessions Attended

Attorneys who had attended zero conferences or continuing legal education sessions that included the concept of academic freedom as a primary topic had less favorable perceptions of professorial, institutional, and student academic freedom than attorneys who had attended such sessions. The difference was significant as to professorial and student academic freedom. Notably, as explored in Chapter 4, the more sessions an attorney had attended the higher their self assessment of their knowledge of academic freedom, and potentially, the greater their appreciation of the importance of academic freedom in higher education. Additionally, attorneys who had attended zero sessions also had the least experience with academic freedom issues on their campuses. In fact, attorneys who had attended zero sessions had significant differences in experiences with academic freedom issues (in contrast with those that had attended 1 or more sessions) as to judicial or governmental challenges, internal or collegial challenges, and outside or extra-institutional challenges to academic freedom. Importantly, only the group of attorneys who attended zero conferences differed significantly with the other groups of attorneys, including those who had attended 1-2 conferences, 3-4 conferences, and 5 or more conferences.

Annual Involvement in Academic Freedom Issue

Attorneys who had been asked at least once per year to provide legal advice in matters that involved academic freedom had more favorable perceptions of professorial, institutional, and student academic freedom than attorneys who had not provided such advice. Moreover, the difference in perceptions between those that had and had not

provided such advice was significant as to all three groups. This may be attributable to the fact that attorneys with more experience with academic freedom may have a better appreciation for the importance of academic freedom on a college campus.

Additionally, attorneys who had been asked at least once per year to provide legal advice in matters that involved academic freedom had more experience with academic freedom issues on their campuses than attorneys who did not. In fact, as to judicial or governmental challenges, internal or collegial challenges, and outside or extra-institutional challenges to academic freedom, attorneys who had provided annual academic freedom advice had significantly different (and greater) levels of experience with academic freedom challenges. Intuitively, if an attorney is providing legal advice at least once per year on academic freedom issues then such issues likely are more common on their campuses than on campuses where attorneys are not providing such annual advice.

Institutional Characteristics and Higher Education Attorneys' Perceptions

In research Question 7, the researcher explored whether the perceptions among higher education attorneys regarding academic freedom and challenges to academic freedom differed based on various institutional characteristics. The differences and absences of differences in perceptions based on such personal demographics will be explored below.

Institution Type

Attorneys at public and private higher education institutions did not have significantly different perceptions regarding professorial, institutional and student academic freedom. As explained in Chapter 2, constitutional academic freedom does not

apply to private higher education institutions (Byrne, 2004; Hamilton, 1995; Lynch, 2003; Scanton, 1988). Therefore, professors and students at private institutions rely upon academic freedom protections to be provided through contractual or deferential rights, such as customs and practices (Eisenberg, 1998; Glickstein, 1998; Woodruff, 1995). The absence of difference in perceptions regarding academic freedom between attorneys at private and public institutions is important, particularly because professors at private institutions must rely upon their institutions (and, indirectly the institution's attorneys) to advocate for and sustain their contractual or deferential rights to academic freedom.

Not surprisingly, attorneys at public institutions had significantly greater experience with issues related to judicial or governmental challenges to academic freedom. Public institutions are subject to the protections provided by constitutional academic freedom and the potential First Amendment litigation related to such protections. Private institutions, however, are not covered by the First Amendment. Moreover, public institutions receive a portion of their funding through state appropriations, and, therefore, even with constitutional or institutional autonomy are often subject to conditions or restrictions impacting institutional governance that are tied to the institution's receipt of such appropriations.

Additionally, attorneys at public institutions had significantly different (and greater) experience than attorneys at private institutions with the issue of termination of professors because of their out of class statements critical of their college or university. This may be attributable to the fact that professors at public universities are protected by the First Amendment while professors at private universities are not protected by the First Amendment. Thus, the dismissal or prospective dismissal of a professor at a public

institution for the professor's statements critical of the institution may involve extensive legal review at a public institution that may be unnecessary at a private institution.

Institutional Classification

Attorneys at research intensive institutions, importantly, had more favorable perceptions of professorial, institutional, and student academic freedom than attorneys at non-research intensive institutions. Moreover, the difference in perceptions between attorneys at research and non-research institutions was significant for professorial and student academic freedom.

Additionally, attorneys at research intensive institutions had significantly different (and greater) experiences with issues related to challenges to academic freedom, including judicial and governmental challenges, internal or collegial challenges, and outside or extra-institutional challenges. This may be attributable to the fact that at least one question within each group of challenges related to research issues, and intuitively research intensive institutions are more likely than non-research intensive institutions to address academic freedom issues related to institutional research.

Institutional Academic Freedom Dispute

Attorneys whose institutions had been involved in an academic freedom dispute had more favorable perceptions of professorial, institutional, and student academic freedom than attorneys whose institutions had not been involved in such a dispute. Moreover, the difference in perceptions between those whose institutions had and had not been involved in an academic freedom dispute was significant as to all three groups. This may be attributable to the fact that attorneys involved in academic freedom disputes may have a greater appreciation for the importance of academic freedom on their campus or

campuses.

Additionally, attorneys whose institutions had been involved in an academic freedom dispute had more experience with issues related to academic freedom challenges than attorneys whose institutions had not been involved in such a dispute. In fact, as to judicial or governmental challenges, internal or collegial challenges, and outside or extra-institutional challenges to academic freedom, attorneys whose institutions were involved in such disputes, not surprisingly, had significantly different (and greater) levels of experience with such academic freedom challenges.

Future Research

Additional research, quantitative or qualitative, may be beneficial to explore further the findings of this study. This study, for example, found that at a few campuses certain challenges to academic freedom were perceived as a large or very large issue, although most challenges were not perceived as an issue at all on most campuses. Additional research, perhaps a qualitative study, may be beneficial to determine how attorneys at higher education institutions that have experienced a significant academic freedom dispute have responded to such dispute, and whether best practices may be identified that would provide guidance to attorneys and institutions engaged in an academic freedom dispute.

Subsequent research could also explore whether the perceptions of institutional administrators, particularly academic administrators, are consistent with the perceptions of their institutional attorneys regarding academic freedom and challenges to academic freedom. This study's survey could easily be modified to accommodate such research, and the research may assist in developing education opportunities to understand

similarities and differences in such perceptions.

Finally, three groups of academic freedom were explored in three sections of the survey, i.e., professorial, institutional, and student academic freedom. Subsequent research could survey on an institutional, state, regional or national level the perceptions of professors, institutional administrators, and students regarding the three groups of academic freedom. The findings, including whether differences in perceptions exist among such groups, may allow institutions to better educate their administrators, professors, and students, regarding the differences (and similarities) in perceptions regarding academic freedom, and how these differences (and similarities) may impact the intra-institutional relationships among these groups.

Summary

Prior to this study no research had explored higher education attorneys' perceptions regarding any educational issue. In fact, no national study had researched perceptions regarding academic freedom for any population. Although a few studies have researched personal perceptions regarding academic freedom at an institutional, state, or regional level, such studies have generally explored faculty perceptions regarding professorial academic freedom, or have contrasted the perceptions of faculty with administrators or students (Ambrose, 1988; Gray, 1999; Grubiak, 1996; Hanson, 2003; Keith, 1996; Isaacson, 1985; McCart, 1991; Newton, 1996; Warner, 1999). This study, therefore, presents findings and conclusions from the first national study on academic freedom, and is the first national study to explore higher education attorneys' perceptions on any issue.

This study, particularly, explored higher education attorneys' perceptions

regarding academic freedom and challenges to academic freedom. Overall, this study found a high level of support among college and university attorneys for the three major groups of academic freedom, including professorial, institutional, and student academic freedom. As to the four groups of challenges to academic freedom, including (a) judicial or governmental challenges, (b) internal or collegial challenges, (c) institutional challenges, and (d) extra-institutional or outside challenges, although each group included issues that were significant on a few campuses, most issues were not significant or even present on many campuses. Thus, although this study confirmed the existence of many of the challenges to academic freedom identified in the literature, this study also confirmed that, overall, not all campuses are experiencing significant (or the same) challenges to academic freedom.

Additionally, this study sought to determine whether higher education attorneys' perceptions of academic freedom and challenges to academic freedom differ based on various personal demographics or institutional characteristics. Notably, this study found that younger and older attorneys did not have significantly different perceptions regarding professorial, institutional, or student academic freedom, nor did attorneys with high, moderate, and low years of experience in the higher education legal practice. However, higher education attorneys who annually provided legal advice on academic freedom issues had significantly different and more positive perceptions regarding professorial, institutional, and student academic freedom than attorneys who had not provided annual academic freedom advice. Significant differences in perceptions regarding these three groups of academic freedom were also found between attorneys whose institutions had, and had not, been involved in an academic freedom dispute, with

attorneys from institutions that were involved in such a dispute having more positive perceptions as to each of the three groups of academic freedom.

Additionally, attorneys from research intensive institutions had significantly greater experience with challenges to academic freedom than attorneys at non-research intensive institutions. Not surprisingly, attorneys from public higher education institutions, which are covered under the First Amendment, had significantly greater experience with judicial or governmental challenges to academic freedom than attorneys at private institutions. However, despite different experiences, public and private higher education attorneys did not have different perceptions regarding professorial, student, or institutional academic freedom.

This study also explored the views of college and university attorneys in terms of their understanding of their role and responsibility, and their institution's role and responsibility, in responding to and defending against challenges to academic freedom. This study found that higher education attorneys view themselves and their institutional administrators as well positioned to identify and respond to challenges to academic freedom. Study participants also considered their institutions as having adequate institutional protections for the growing number of academic freedom issues on their college and university campuses. However, nearly one third of the participants had never attended an educational or conference session which included the concept of academic freedom as the primary topic.

Finally, despite the complexity of many modern challenges to academic freedom, this study found that scripting the requiem of academic freedom, as some scholars have recommended, seems premature. The continued acknowledgment of academic freedom

in the scholarly and judicial discourse in America and the findings of this study suggest that academic freedom continues to be recognized as an essential element of American higher education. The academic freedom landscape may change as the waves of challenges slowly reshape its shores, but using data from this study as indicators of support, academic freedom will endure and continue to provide a course of reason in the search for truth, particularly in times of uncertainty, uneasiness, and disquiet.

REFERENCES

- Aby, S. H., & Kuhn, J. C. (2000). *Academic freedom: A guide to the literature*. Westport, CT: Greenwood Press.
- Adler v. Board of Education, 342 U.S. 485 (1952).
- Ambrose, C. M. (1988, November). *A comparison of faculty members' and administrators' definitions of, and attitudes toward, academic freedom*. Paper presented at the Annual Meeting of the Association for the Study of Higher Education, St. Louis, MO. (ERIC Document Reproduction Service No. ED303087).
- American Association of University Professors (1915). General report on the committee on academic freedom and tenure. *American Association of University Professors Bulletin*.
- American Association of University Professors (2004). Joint statement on rights and freedoms of students. Retrieved December 21, 2004, from <http://www.aaup.org/statements/Redbook/Studentrights.htm>.
- American Association of University Professors (2005). AAUP statement on the academic bill of rights. Retrieved February 1, 2005, from <http://www.studentsforacademicfreedom.org/achive/december>.
- American Bar Association (2005). *Miles to go: Progress of minorities in the legal profession* (3rd ed.). Chicago, IL: American Bar Association Commission on Racial and Ethnic Diversity in the Profession.
- American Civil Liberties Union (1970). *Academic freedom and civil liberties of students in colleges and universities*. New York: American Civil Liberties Union.

- American Council on Education (2005). *Statement on Academic Rights and Responsibilities*. Washington, DC.
- Ames, B, Barker, D. C., Bonneau, C. W., & Carman, C. J. (2005). Hide the Republicans, the Christians, and the women: A response to “politics and professional advancement among college faculty.” *The Forum: A Journal of Applied Research in Contemporary Politics*, 3(2), 7.
- Anderson, S. D., Jr. (1980). An analysis of the meaning of academic freedom in American higher education, 1860-1920. *Dissertation Abstracts International*, 41 (07), 2951A. (UMI No. 8102063).
- Anderson, T., & Kanuka, J. (2003). *E-Research: Methods, strategies and issues*. Boston: Allyn & Bacon.
- Anillo, A. I. (1992). The national endowment for the humanities: Control of funding versus academic freedom. *Vanderbilt Law Review*, 66, 455-486.
- Anonymous, (2003). Resolving academic freedom: Professional groups defend intellectual openness. *Academe*. 89(3), 55-58.
- Associated Press (2005). Professor resigns after 9/11 essay prompts protest. Retrieved January 31, 2005, from <http://www.cnn.com/2005/US/01/31/professor.resigns.ap/index.html>.
- Babbie, E. (2001). *Survey research methods* (9th ed.). Belmont, CA: Wadsworth.
- Balch, S. H. (2004). The antidote to academic orthodoxy. *The Chronicle of Higher Education*, 50(33), B7.
- Baldwin, F. N., Jr. (1995). The academics, “hate speech” and the concept of academic intellectual freedom. *Florida Journal of Law and Public Policy*, 7, 41-93.

- Barenblatt v. United States, 360 U.S. 109 (1959).
- Barrow, C. L. (1990). Academic freedom and the university title vii suit after University of Pennsylvania v. EEOC and Brown v. Trustees of Boston University. *Vanderbilt Law Review*, 43, 1571-1606.
- Bauerlein, M. (2005). The ideological corruption of scholarly principles. *The Chronicle of Higher Education*, 52(3), B8.
- Bennis, W., & Thomas, R. (2002). *Geeks and geezers: How era, values and defining moments shape leaders*. Cambridge, MA: Harvard Business School Press.
- Bethel School District v. Fraser, 478 U.S. 675 (1986).
- Betsey, N. (1984). The second circuit strikes a balance between academic freedom and individual employment rights. *Brooklyn Law Review*, 50, 627-655.
- Bickel, R. D. (1974). Role of college or university counsel. *Journal of Law and Education*, 3(1), 73-80.
- Bickel, R. D., & Ruger, P. H. (2004). The ubiquitous college lawyer: From academic freedom to technology transfer, legal issues now reach into almost every corner of campus life. *The Chronicle of Higher Education*, 50(42), B1.
- Bird, R. K., & Brandt, E. B. (2002). Academic freedom and 9/11: How the war on terrorism threatens free speech on campus. *Communication Law and Policy*, 7, 431-459.
- Black, H. C. (1990). *Black's law dictionary* (6th ed.). St. Paul, MN: West Publishing Co.
- Bloom, A. (1987). *The closing of the American mind: How higher education has failed democracy and impoverished the souls of today's students*. New York: Simon and Schuster.

Board of Regents of the University of Wisconsin System v. Southworth, 529 U.S. 217 (2000).

Board of Regents v. Roth, 408 U.S. 564, 581 (1972).

Board of Trustees of the Leland Stanford Junior University v. Sullivan, 773 F. Supp. 472 (D.D.C. 1991).

Bonnell v. Lorenzo, 241 F.3d 800 (6th Cir. 2001).

Bramhall, E. H., & Ahrens, R. Z. (2001). Academic freedom and the status of the religiously affiliated university. *Gonzaga Law Review*, 37, 227-254.

Breneman, D. W. (2004). *Are the states and public higher education striking a new bargain?* (Public Policy Paper Series No. 04-02). Washington, DC: Association of Governing Boards of Universities and Colleges.

Brest, P. (1988). Protecting academic freedom through the first amendment: raising the unanswered questions. *Texas Law Review*, 66, 1359-1362.

Brodsky, M. H. (2005). We are part of the problem. *The Chronicle of Higher Education*, 52(3), B8.

Buckley, W. F. (1986). *God and man at Yale: The superstitions of "academic freedom"*. Chicago: Regency Books.

Burd, S. (2005). Congressional panel battles over student aid, for-profit colleges, and academic freedom. Retrieved July, 21, 2005, from <http://www.chronicle.com/prm/daily/2005/07/2005072101n.htm>.

Buss, W. G. (1999). Academic freedom and freedom of speech: Communicating the curriculum. *The Journal of Gender, Race and Justice*, 2, 213-278.

Byrne, J. P. (1989). Academic freedom: A "special concern of the first amendment". *Yale*

- Law Journal*, 99, 251-340.
- Byrne, J. P. (2004). The threat to constitutional academic freedom. *Journal of College and University Law*, 31, 79-142.
- Calvert, C. (1997). Smoking out big tobacco: Some lessons about academic freedom, the world wide web, media conglomeration, and public service pedagogy from the battle over the Brown and Williamson documents. *Pepperdine Law Review*, 24, 391-453.
- Candido, A. H. (1997). A right to talk dirty? Academic freedom values and sexual harassment in the university classroom. *The University of Chicago Law School Roundtable*, 4, 85-128.
- Carrington, P. D. (1988). Freedom and community in the academy. *Texas Law Review*, 66, 1577-1589.
- Chang, A. W. (2001). Resuscitating the constitutional "theory" of academic freedom: A search for a standard beyond Pickering and Connick. *Stanford Law Review*, 53, 915-966.
- Chemerinski, E. (1998). Is tenure necessary to protect academic freedom? *American Behavioral Scientist*, 41(5), 638-651.
- Chronicle of Higher Education (2005). A chilly climate on the campuses. *The Chronicle of Higher Education*, 52(3), B7.
- Chu, J. (2005). Fighting words 101: Politicians are trying to legislate free speech on college campuses: Is it a good idea. *Time Magazine*, 165(11), 38-39.
- Clark v. Holmes, 474 F.2d 928 (7th Cir. 1972).
- Clark, R. M. (1988). The impact of corporate sponsored research on selected dimensions

- of academic freedom. *Dissertation Abstracts International*, 50 (03), 634A. (UMI No. 8914561).
- Cohen, B. H., & Lea, R. B. (2004). *Essentials of statistics for the social and behavioral sciences*. Hoboken, NJ: John Wiley and Sons, Inc.
- Cole, J. R. (2005). The new McCarthyism. *The Chronicle of Higher Education*, 52(3), B7.
- Connick v. Myer, 461 U.S. 138 (1983).
- Cooper v. Ross, 472 F. Supp. 802 (E.D. Ark. 1979).
- Corbally, J. E. (1974). University counsel: Scope and mission. *Journal of College and University Law*, 2(1), 1-4.
- Cornelius, L. M. (2001). "A special concern of the first amendment": The legal limits of faculty academic freedom and administrative authority in primary, secondary, and post-secondary education. *Dissertation Abstracts International*, 62(03), 854A. (UMI No. 3009892).
- Courant, P. N. (2004). *Provost's remarks to senate assembly*. Retrieved January 31, 2005, from the University of Michigan Web site:
<http://www.provost.umich.edu/speeches/SenateAssembly.html>.
- Creswell, J. W. (2003). *Research design: Qualitative, quantitative, and mixed methods approaches* (2nd ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Daane, R. K. (1985). The role of university counsel. *Journal of College and University Law*, 12(3), 399-410.
- Davis, M. (1986). Academic freedom, impartiality, and faculty governance. *Law and Philosophy*, 52, 263-276.

- Deering, T. E. (1985). Academic freedom: Issues and controversies, 1963-1985. *Dissertation Abstracts International*, 47 (03), 808A. (UMI No. 8611731).
- DeGeorge, R. T. (1997). *Academic freedom and tenure: Ethical issues*. Lanham, MA: Rowman and Littlefield Publishers, Inc.
- Devins, N. (1999). Bearing false witness: The Clinton impeachment and the future of academic freedom. *University of Pennsylvania Law Review*, 148, 163-190.
- Dewey, J. (1984). The social significance of academic freedom. *Education Digest*, 50(1), 37-39.
- DeWolf, D. K. (2000). Academic freedom after Edwards. *Regents University Law Review*, 13, 447-482.
- DiDomenico, T. E. (1995). Silva v. University of New Hampshire: The precarious balance between student hostile work environment claims and academic freedom. *St John's Law Review*, 69, 609-632.
- Dillman, D. A., & Salant, P. (1994). *How to conduct your own survey*. New York: John Wiley and Sons, Inc.
- Dulles, A. (1992). The teaching mission of the church and academic freedom. In Worgul, G. S., Jr. (Ed.). *Issues in academic freedom* (pp. 42-56). Pittsburgh, PA: Duquesne University Press.
- East Hartford Education Association v. Board of Education, 562 F.2d 838 (2nd Cir. 1977).
- Edwards v. Aguillard, 482 U.S. 578 (1987).
- Eisenberg, H. B. (1988a). Academic freedom and academic values in sponsored research. *Texas Law Review*, 66, 1363-1404.

- Eisenberg, H. B. (1988b). Defining the terms of academic freedom: A reply to professor Rabban. *Texas Law Review*, 66, 1431-1439.
- Eisenberg, H. B. (1998). Mission, marketing, and academic freedom in today's religiously affiliated law schools. *Regent University Law Review*, 11, 1-16.
- Elman, S. E. (1994). Academic freedom and regional accreditation: Guarantors of quality in the academy. In Benjamin, E., & Wagner, D. R. (Eds.). *Academic freedom: An everyday concern* (pp. 11-19). San Francisco: Jossey-Bass Inc., Publishers.
- Epperson v. Arkansas, 393 U.S. 97 (1968).
- Euben, D. (2005, March). *Political and religious belief discrimination on campus: Faculty and student academic freedom and the First Amendment*. Paper presented at the meeting of the National Association of College and University Attorneys, Tempe, AZ.
- Fain, P. (2005). Trustee election at Dartmouth is seen as 'battle for academic freedom'. Retrieved May 5, 2005, from <http://www.chronicle.com/prm/daily/2005/05/2005051504n.htm>.
- Ferdon, D. R. (1990). The influence of the first amendment on academic freedom. *Dissertation Abstracts International*, 51(05), 1517A. (UMI No. 9027704).
- Fink, A. (1995). *The survey handbook*. Thousand Oaks, CA: Sage Publication.
- Finkin, M. W. (1983). On "institutional" academic freedom. *Texas Law Review*, 61, 817.
- Finkin, M. W. (1988). Intramural speech, academic freedom, and the first amendment. *Texas Law Review*, 66, 1323-1349.
- Finkin, M. W. (1996). *The case for tenure*. Ithaca, NY: ILR Press.
- Fish, S. (2000). What's sauce for one goose: The logic of academic freedom. In Kahn, S.

- E., & Pavlich, D. (Eds.). *Academic freedom and the inclusive university* (pp. 1-12). Vancouver, BC: UBC Press.
- Fish, S. (2001). Holocaust denial and academic freedom. *Valparaiso University Law Review*, 35, 499.
- Fish, S. (2003). A university is not a political party. Retrieved January 31, 2005, from http://www.studentsforacademicfreedom.org/essays/political_party.html.
- Fish, S. (2004). Why we built the ivory tower. Retrieved January 31, 2005, from <http://www.studentsforacademicfreedom.org/achive/June2004>.
- Fish, S. (2005). One university, under God? What will succeed high theory and race, gender, and class as the center of intellectual energy in academe? Religion. *The Chronicle of Higher Education*, 51(18), C1.
- Forehand, W. E. (1988). Tinkering with Tinker: Academic freedom in the public schools: Hazelwood School District v. Kuhlmeier, 108 s. ct. 562 (1988). *Florida State University Law Review*, 16, 159-183.
- Forum for Academic and Institutional Rights v. Rumsfeld, No. 03-4433. 2004 U.S. App. LEXIS 24598 (3rd Cir. Nov. 29, 2004).
- Fowler, F. J., Jr. (2002). *Survey research methods (applied social research methods)* (3rd ed.). Thousand Oaks, CA: Sage Publication.
- Gerber, L. G. (2001). Inextricably linked: Shared governance and academic freedom. *Academe*, 87(3), 22-24.
- Getman, J. G., & Mintz, J. W. (1988). Academic freedom in a changing society. *Texas Law Review*, 66, 1247-1264.
- Glass, G. V., & Hopkins, K. D. (1996). *Statistical methods in education and psychology*

- (3rd ed.). Boston: Allyn and Bacon.
- Glickstein, H. A. (1998). Academic freedom in religiously affiliated law schools: A Jewish perspective. *Regent University Law Review*, 11, 17-21.
- Gordon, J. D. (2003). Individual and institutional academic freedom at religious colleges and universities. *The Journal of College and University Law*, 30, 1-46.
- Gould, J. (1999). Title ix in the classroom: Academic freedom and the power to harass. *Duke Journal of Gender Law and Policy*, 6, 61-81.
- Gouran, D. S. (1989, November). *Academic freedom and the management of higher education: An administrative perspective*. Paper presented at the Annual Meeting of the Speech Communication Association, San Francisco, CA.
- Gravois, J. (2005). Law professors lean left, study finds. *The Chronicle of Higher Education*, 52(5), A24.
- Gray, M. (1988). Academic freedom and nondiscrimination: Enemies or Allies? *Texas Law Review*, 66, 1591-1615.
- Grubiak, M. J. (1996). A comparison of Washington state community college faculty and administrators' opinions and beliefs on academic freedom and tenure. *Dissertation Abstracts International*, 57 (12), 5030A. (UMI No. 9716844).
- Grutter v. Bollinger, 539 U.S. 306 (2003).
- Gunther, G. (1991). *Constitutional law* (12th ed.). Westbury, NY: The Foundation Press, Inc.
- Guterman, L. (2005). Scientists censor what they study to avoid controversy and 'lunatic-proof' their lives, researchers find. Retrieved February 11, 2005, from <http://www.chronicle.com/prm/daily/2005/02/2005021104n.htm>.

- Guttman, A. (2005). Academic freedom or government intrusion. *The Chronicle of Higher Education*, 52(3), B13.
- Haddon, P. A. (1988). Academic freedom and governance: A call for increased dialogue and diversity. *Texas Law Review*, 66, 1561-1575.
- Hamilton, N. W. (1995). *Zealotry and academic freedom: A legal and historical perspective*. New Brunswick, NJ: Transaction Publishers.
- Hamilton, N. W. (1996a). Symposium on zealotry and academic freedom. *William Mitchell Law Review*, 22, 333-355.
- Hamilton, N. W. (1996b). Buttressing the defense of academic freedom: Buttressing the neglected traditions of academic freedom. *William Mitchell Law Review*, 22, 549-571.
- Hanigan, J. P. (1992). A right to dissent: American or catholic?: Ethical reflections on academic freedom. In Worgul, G. S., Jr. (Ed.). *Issues in academic freedom* (pp. 1-23). Pittsburgh, PA: Duquesne University Press.
- Hanson, S. M. (2003). Tenured faculty members' perceptions regarding academic freedom: A phenomenological study. *Dissertation Abstracts International*, 64 (08), 2721A. (UMI No. 3100584).
- Harvard Law Review Association (2001). Fourth circuit upholds Virginia statute prohibiting state employees from downloading sexually explicit material. *Harvard Law Review*, 114, 1414-1420.
- Haskell, T., & Levinson, S. (1988). Academic freedom and expert witnessing: Historians and the sears case. *Texas Law Review*, 66, 1629-1659.
- Healy v. James, 408 U.S. 169,180-81 (1972).

- Hetrick v. Martin, 480 F.2d 705 (6th Cir. 1973).
- Hiers, R. H. (2002). Institutional academic freedom vs. faculty academic freedom in public colleges and universities: A dubious dichotomy. *The Journal of College and University Law*, 29, 35-110.
- Hofstadter, R. (1996). *Academic freedom in the age of the college*. New Brunswick, NJ: Transaction Publishers.
- Hofstadter, R., & Metzger, W. P. (1955). *The development of academic freedom in the united states*. New York: Columbia University Press.
- Hornosky, J. (2000). Academic freedom in social context. In Kahn, S. E., & Pavlich, D. (Eds.). *Academic freedom and the inclusive university* (pp. 36-47). Vancouver, BC: UBC Press.
- Horowitz, D. (2003). *Battle for academic freedom*. Los Angeles: Academic Freedom Information Center.
- Horowitz, D. (2003, December 5). The professor's Orwellian case. *FrontPageMagazine.com*. Retrieved January 31, 2005, from <http://www.studentsforacademicfreedom.org/achive/december>.
- Horowitz, I. L. (1996). Contrasts and comparisons among McCarthyism, 1960s student activism and 1990s faculty fundamentalism: Culture, politics and McCarthyism: a retrospective from the trenches. *William Mitchell Law Review*, 22, 357-368.
- Ingels, E. D. (1987). The role of the college and university attorney at institutions of higher education. *Dissertation Abstracts International*, 48 (03), 576A. (UMI No. 8714270).
- Isaacson, C. E. (1985). Tenure and academic freedom within higher education (faculty,

- unions, collective bargaining). *Dissertation Abstracts International*, 46 (05), 1203A. (UMI No. 8513127).
- Jackson, J. (1999). Express and implied contractual rights to academic freedom in the United States. *Hamline Law Review*, 22, 46-499.
- Joughlin, L. (1967). *Academic freedom: A handbook of the American Association of University Professors*. Madison, WI: University of Wisconsin Press.
- Kaplin, W. A., & Lee, B. A. (1995). *The law of higher education: A comprehensive guide to legal implications of administrative decision making* (3rd ed.). San Francisco: Jossey-Bass Inc., Publishers.
- Kauffman, B. (2004, September 15). Debate over cancelled Moore appearance rages on campus. *North County Times*. Retrieved February 10, 2005, from http://www.nctimes.com/articles/2004/09/15/news/top_stories/22_51_229_14_04.txt.
- Keith, K. M. (1996). Faculty attitudes toward academic freedom. *Dissertation Abstracts International*, 58 (01), 105A. (UMI No. 9720245).
- Keppel, G. (1991). *Design and analysis: A researcher's handbook* (3rd ed.). Englewood Cliffs, NJ: Prentice-Hall, Inc.
- Kershaw, C. (1994, April). *Teachers' perceptions about their quality of school life according to their school setting, gender and years of teaching experience*. Paper presented at the Annual Meeting of the American Educational Research Association, New Orleans, LA. (ERIC Document Reproduction Service No. ED373048).
- Keyishian v. Board of Regents, 385 U.S. 589 (1967).

- Klecker, B., Loadman, W. E. (October, 1997). *Exploring teacher job satisfaction across years of teaching experience*. Paper presented at the Annual Meeting of the Mid-Western Educational Research Association, Chicago, IL. (ERIC Document Reproduction Service No. ED413316).
- Kreiser, B. R. (1993). AAUP perspectives on academic freedom and United States intelligence agencies, *Journal of College and University Law*, 19(3), 251-257.
- Krieger, D. L. (2000). May public universities restrict faculty from receiving or transmitting information via university computer resources? Academic freedom, the first amendment, and the internet. *Maryland Law Review*, 59, 1398-1430.
- Kurtz, C. M. (2005). The death of John Stuart Mill. *The Chronicle of Higher Education*, 52(3), B12.
- Ladenson, R. F. (1986). Is academic freedom necessary? *Law and Philosophy*, 5, 59-87.
- Larkin, G. (2004, September 22). What's not to like about the academic bill of rights. Retrieved January 31, 2005, from http://www.aaup-ca.org/Larkin_abor.html.
- Laycock, D., & Waelbroeck, S. E. (1988). Academic freedom and the free exercise of religion. *Texas Law Review*, 66, 1455-1474.
- Leiser, B. M. (1994). Threats to academic freedom and tenure. *Pace Law Review*, 15, 15-67.
- Leslie, D. W. (1986). Academic freedom for universities. *The Review of Higher Education*, 9(2), 135-157.
- Levin v. Harleston, 770 F. Supp. 895 (S.D.N.Y. 1991).
- Lewis, L. S. (1996). McCarthyism and academic freedom: The 1950s and 1990s: Similarities and noteworthy differences. *William Mitchell Law Review*, 22, 415-

420.

- Lieberwitz, R. L. (2002). The corporattization of the university: Distance learning at the cost of academic freedom? *The Boston Public Interest Law Journal*, 12, 73-135.
- Lipka, S. (2005a). Risk management: College legal staffs continue to grow. *The Chronicle of Higher Education*, 51(18), A13.
- Lipka, S. (2005b). The lawyer is in: Alligators, athletics and the internet: General counsels' growing role covers a range of issues. *The Chronicle of Higher Education*, 51(43), A19.
- Lipset, S. M. (1996). Student activism and academic freedom: From the sixties to the nineties: A double-edge sword at work. *William Mitchell Law Review*, 22, 451-460.
- Locke, L. F., Spirduso, W. W., & Silverman, S. J. (2000). *Proposals that work: A guide for planning dissertations and grant proposals* (4th ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Lofton, S. K. (2001). A historical and legal context of faculty academic freedom in American higher education. *Dissertation Abstracts International*, 62 (04), 1349A. (UMI No. 3010956).
- Lovejoy, A. O. (1930). Academic freedom. In *Encyclopaedia of the social sciences* (Vol. 1). New York: The Macmillan Company.
- Lovelace v. Southeastern Massachusetts University, 793 F.2d 419 (1st Cir. 1986).
- Lukianoff, G. (2005). The chill is nothing new. *The Chronicle of Higher Education*, 52(3), B10.
- Lynch, R. B. (2003). Pawns of the state or priests of democracy? Analyzing professors'

- academic freedom rights within the state's managerial realm. *California Law Review*, 91, 1061-1108.
- MacWilliams, B. (2005). Imposing an ideology in Belarus. *The Chronicle of Higher Education*, 51(25), A36.
- Magsino, R. F. (1973). The courts, the university, and the determination of student academic freedom. *Dissertation Abstracts International*, 35 (01), 323A. (UMI No. 7409190).
- Mangan, K. S. (2005). Berkeley law dean calls for partial privatization of his school. *The Chronicle of Higher Education*, 51(19), A25.
- Marcus, E. E. (1976, October). *Effect of age on perception of the utility of participation in education*. Paper presented at the Annual Meeting of the Gerontological Society, New York, NY. (ERIC Document Reproduction Service No. ED141691).
- Marinucci, K. A. (2001). Probing the nation: Americanism, public universities, and the politics of academic freedom: 1918-1946. *Dissertation Abstracts International*, 64 (04), 1520A. (UMI No. 3051078).
- Marklein, M. B. (2004, March 16). Proposed 'academic bill of rights' makes inroads. *USA Today*.
- Martin v. Parrish, 805 F.2d 583 (5th Cir. 1986).
- McCart, C. L. (1991). Using a cultural lens to explore faculty perceptions of academic freedom. *Dissertation Abstracts International*, 52(04), 1224A. (UMI No. 9127379).
- Meiklejohn, A. (1970). *Freedom and the college*. Freeport, NY: Books for Libraries Press.

- Mertz, E. (1988). The burden of proof and academic freedom: Protection for institution or individual? *Northwestern University Law Review*, 82, 492-539.
- Metzger, W. P. (1955). *Academic freedom in the age of the university*. New York: Columbia University Press.
- Metzger, W. P. (1988). Profession and constitution: Two definitions of academic freedom in America. *Texas Law Review*, 66, 1265-1322.
- Metzger, W. P. (1993). Professional and legal limits to academic freedom. *Journal of College and University Law*, 20(1), 1-14.
- Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271, 296-97 (1984).
- Monette, D. R., Sullivan, T. J., & DeJong, C. R. (1998). *Applied social research: Tool for the human services* (4th ed.). Fort Worth, TX: Harcourt Brace College Publishers.
- Morgan, S. E., Reichert, T., & Harrison, T. R. (2002). *From numbers to words: Reporting statistical results for the social sciences*. Boston: Allyn and Bacon.
- Mosier, G. C. (1986). The American Association of University Professors: Their professional sanction for enforcement of academic freedom and tenure: 1930-1970. *Dissertation Abstracts International*, 47 (09), 3331A. (UMI No. 8701045).
- Murphy, E. J., & Speidel, R. E. (1991). *Studies in contract law* (4th ed.). Westbury, NY: The Foundation Press, Inc.
- Nathan, B. (1984). The second circuit strikes a balance between academic freedom and individual employment rights. *Brooklyn Law Review*, 50, 627-655.
- National Association of College and University Attorneys Directory of Membership and Services*. Retrieved January 10, 2005, from <http://www.nacua.org>.
- Neuman, W. L. (2000). *Social research methods: Qualitative and quantitative*

- approaches* (4th ed.). Boston: Allyn and Bacon.
- Newman, J. F. (1986). *An examination of the perceptions of academic freedom of Dowling College faculty members and administrators in general*. Ft. Lauderdale, FL: Nova University. (ERIC Document Reproduction Service No. ED297672).
- Nunnally, J. (1978). *Psychometric theory*. New York: McGraw-Hill.
- Ochoa, A. S. (Ed.). (1990). *Academic freedom*. Washington, DC: National Education Association.
- Oldaker, L. L. (1992, November). *Threats to academic freedom in higher education*. Paper presented at the annual meeting of the National Organization on Legal Problems of Education National Conference, Scottsdale, AZ.
- Olivas, M. A. (1993). Reflections on professional academic freedom: Second thoughts on the third "essential freedom". *Stanford Law Review*, 45, 1835-1858.
- O'Neal, R. M. (2005). Freer for some, more inhibited for others. *The Chronicle of Higher Education*, 52(3), B7.
- O'Sullivan, E., & Rassel, G. R. (1999). *Research methods for public administrators*. New York: Longman Publishing.
- Pacholski, S. L. (1992). Title vii in the university: The difference academic freedom makes. *University of Chicago Law Review*, 59, 1317-1336.
- Partain, J. J. (1987). A qualified academic freedom privilege in employment litigation: protecting higher education or shielding discrimination? *Vanderbilt Law Review*, 40, 1397-1432.
- Pavela, G. (2001). A balancing act: Competing claims for academic freedom. *Academe*, 87(6), 21-25.

- Pavela, G. (2005). Academic freedom for students has ancient roots. *The Chronicle of Higher Education*, 51(38), B8.
- Peltason, J. W. (1994). *Understanding the constitution* (13th ed.). Ft. Worth, TX: Harcourt Brace and Company.
- Pendleton, W. V. (1994). The freedom to teach. In Benjamin, E., & Wagner, D. R. (Eds.). *Academic freedom: An everyday concern* (pp. 11-19). San Francisco: Jossey-Bass Inc., Publishers.
- Piarowski v. Illinois Community College, 759 F.2d 625 (7th Cir. 1985).
- Pickering v. Board of Education, 391 U.S. 563 (1968).
- Poch, R. K. (1993). *Academic freedom in American higher education: Rights, responsibilities and limitations* (ASHE-ERIC Higher Education Report No. 4). Washington, DC: Association for the Study of Higher Education. (ERIC Document Reproduction Service No. ED366263).
- Polishook, I. H. (1994). Academic freedom and academic contexts. *Pace Law Review*, 15, 141-157.
- Post, D. W. (1994). Critical thoughts about race, exclusion, oppression, and tenure. *Pace Law Review*, 15, 69-110.
- Presidents Council, District 25 v. Community School Board No. 25, 409 U.S. 998 (1972).
- Prosser, S. H. (1992). The new academic politics: A synthesis of contemporary criticism and the implications for academic freedom. *Dissertation Abstracts International*, 53 (01), 83A. (UMI No. 9217463).
- Rabban, D. M. (1988). Does academic freedom limit faculty autonomy? *Texas Law Review*, 66, 1405-1430.

- Rabban, D. M. (1994). Academic freedom, professionalism, and intramural speech. In Benjamin, E., & Wagner, D. R. (Eds.). *Academic freedom: An everyday concern* (pp. 77-88). San Francisco: Jossey-Bass Inc., Publishers.
- Rabban, D. M. (1998). Can academic freedom survive postmodernism? *California Law Review*, 86, 1377-1389.
- Rabban, D. M. (2001). Academic freedom: Individual or institutional? *Academe*, 87(6), 16-20.
- Rajagopal, B. (2003). Academic freedom as a human right: An internationalist perspective. *Academe*, 89(3), 25-28.
- Regents of the University of California v. Bakke, 438 U.S. 265 (1978).
- Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985).
- Remler, C. A. (1982). Academic freedom privilege: An excessive solution to the problem of protecting confidentiality. *University of Cincinnati Law Review*, 51, 326-352.
- Rendleman, D. (2002). Academic freedom in Urofsky's wake: Post September 11 remarks on "who owns academic freedom?" *Washington and Lee Law Review*, 59, 361-369.
- Rich, A. A. (2002). A legal-historical study of public college and university faculty free speech rights under the first amendment and academic freedom. *Dissertation Abstracts International*, 63 (12), 4246A. (UMI No. 3076202).
- Rosenberger v. The Rector and Board of Visitors of the University of Virginia, 515 U.S. 819 (1995).
- Rothman, S., Lichter, S. R., & Nevitte, N. (2005). Politics and professional advancement among college faculty. *The Forum: A Journal of Applied Research in*

Contemporary Politics, 3(1), 2.

- Rowland, J. (2001). The dubious threat of graduate teaching assistant collective bargaining to academic freedom. *Boston College Law Review*, 42, 941-966.
- Rudestam, K. E., Newton, R. R. (2001). *Surviving your dissertation: A comprehensive guide to content and process* (2 ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Russell, C. (1993). *Academic freedom*. London: Routledge.
- Rust v. Sullivan, 500 U.S. 173 (1991).
- Ryan, M. (1999). Fair use and academic expression: Rhetoric, reality, and restriction on academic freedom. *Cornell Journal of Law and Public Policy*, 8, 541-590.
- Sandler, C. (2001). Copyright ownership: A fundamental of "academic freedom." *Albany Law Journal of Science and Technology*, 12, 231-261.
- Santos, J. R. (2005). *Cronbach's alpha: A tool for assessing the reliability of scales*. *Journal of Extension*, 37(2), 1-5.
- Scanlan, J. A. (1988). Aliens in the marketplace of ideas: The government, the academy, and the McCarran-Walter act. *Texas Law Review*, 66, 1481-1546.
- Scarce, R. (2005). A law to protect scholars. *The Chronicle of Higher Education*, 51(49), B24.
- Schonlau, M., Fricker, R. D., Jr., Elliot, M. N. (2002). *Conducting research surveys via e-mail and the web*. Santa Monica, CA: Rand.
- Schwieso, R. F. (1975). An analysis of protections afforded faculty in public higher education by the constitution of the United States in matters of academic freedom, tenure, and due process. *Dissertation Abstracts International*, 36 (08), 5095A. (UMI No. 7602059).

- Shapiro, B. (2000). The role of universities in a changing culture. In Kahn, S. E., & Pavlich, D. (Eds.). *Academic freedom and the inclusive university* (pp. 29-35). Vancouver, BC: UBC Press.
- Shelton v. Tucker, 364 U.S. 479 (1960).
- Slaughter, S. (1994). Academic freedom and the state. *The Journal of Higher Education*, 59(3), 241-262.
- Smith, B. P., Hall, H. C., & Woolcock-Henry, C. (2000). The effects of gender and years of experience on explanatory style of secondary vocational teachers. *Journal of Vocational Education Research*, 25(1), 21-33.
- Smith, B. R. (1980). An analysis of court cases pertaining to academic affairs: Their implications for academic freedom in the classroom. (Doctoral dissertation, University of Southern California, 1980). *Dissertation Abstracts International*, 40 (10), 5280A.
- Smith, S. E. (2002). Who owns academic freedom?: The standard for academic free speech at public universities. *Washington and Lee Law Review*, 59, 299-360.
- Staley, W. D. (2002). Beyond academic freedom: Due process and the American college faculty. *Dissertation Abstracts International*, 63 (12), 4482A. (UMI No. 3074103).
- 1940 Statement of principles on academic freedom and tenure and related documents.*
Retrieved June 1, 2004, from <http://www.aaup.org/statements/Redbook/1940stat.htm>.
- Stern, C. S. (1994). Academic freedom and artistic expression. In Benjamin, E., & Wagner, D. R. (Eds.). *Academic freedom: An everyday concern* (pp. 11-19). San

Francisco: Jossey-Bass Inc., Publishers.

- Strauss, J. S. (2004). Dangerous thoughts? Academic freedom, free speech, and censorship revisited in a post-September 11th America. *Washington University Journal of Law and Policy*, 15, 343-367.
- Stuller, W. S. (1998). High school academic freedom: The evolution of a fish out of water. *Nebraska Law Review*, 77, 301-343.
- Swain, C. M. (2005). Religious, philosophical, and socioeconomic diversity. *The Chronicle of Higher Education*, 52(3), B12.
- Sweeny v. New Hampshire, 354 U.S. 234 (1957).
- Tepker, Jr., H. F., & Harroz, Jr., J. (1997). On balancing scales, kaleidoscopes, and the blurred limits of academic freedom. *Oklahoma Law Review*, 50, 1-43.
- Thielens, W. (1996). McCarthyism and academic freedom: Why wasn't the damage worse? Some answers from the academic mind. *William Mitchell Law Review*, 22, 421-450.
- Tilton v. Richardson, 403 U.S. 672, 694 (1971).
- UCLA Academic Technology Services, (2005). *SPSS FAQ: What does Cronbach's alpha mean?* Retrieved July 1, 2005, from <http://www.ats.ucla.edu/stat/spss/faq/alpha.html>.
- Uerling, D. F. (2000). Academic freedom in k-12 education. *Nebraska Law Review*, 79, 956-975.
- University of Pennsylvania v. Equal Employment Opportunity Commission, 493 U.S. 198 (1990).
- Urofsky v. Gilmore, 216 F.3d 401 (4th Cir. 2000).

U.S. Const. amend. I.

U.S. Const. art. I, § 6.

Valletta, T. R. (1993). Faculty academic freedom at private colleges and universities:

Knowledge assessment of chief academic officers. *Dissertation Abstracts International*, 54 (08), 2917A. (UMI No. 9400670).

Van den Haag, E. (1994). Academic freedom and tenure. *Pace Law Review*, 15, 5-14.

Vigilanti, J. A. (1991). The autonomy of the student in higher education: An interdisciplinary examination of academic freedom in catholic universities. *Dissertation Abstracts International*, 52 (03), 868A. (UMI No. 9123128).

Ware, L. (2004). Strict scrutiny, affirmative action, and academic freedom: The University of Michigan cases. *Tulane Law Review*, 78, 2097-2115.

Warner, C. D. (1999). Opinions of administrators, faculty, and students regarding academic freedom and student artistic expression. (Doctoral dissertation, Virginia Polytechnic Institute and State University, 1999). *Dissertation Abstracts International*, 60 (07), 2335A.

Weidner, D. J. (2001). Thoughts on academic freedom: Urofsky and beyond. *University of Toledo Law Review*, 33, 257-268.

Weidner, D. J. (2003). Academic freedom and the obligation to earn it. *Journal of Law and Education*, 32, 445-472.

Wentz, J. A. (1983). Balancing academic freedom and civil rights: Toward an appropriate privilege for the votes of academic peer review committees. *Iowa Law Review*, 68, 585-600.

Whelan, D. (2002). The show must go on as academic freedom saves the day: But where

does academic freedom end and the establishment clause begin and has the seventh circuit restricted the limited public forum in *Linnemeir v. Board of Trustees of Purdue University*. *Villanova Sports and Entertainment Law Journal*, 9, 449-479.

White, L. (2005). Which legal issues will keep colleges busy in the year 2012? *The Chronicle of Higher Education*, 51(38), B2.

Whitehill v. Elkins, 389 U.S. 54 (1967).

Wieman v. Updegraff, 344 U.S. 183, 195 (1952).

Williams, K. (2002). Loss of academic freedom on the internet: The fourth circuit's decision in *Urofsky v. Gilmore*. *The Review of Litigation*, 21, 493-526.

Williams, W. (2005). Ineligible research. *The Chronicle of Higher Education*, 52(3), B24.

Willis, E. (2005). The pernicious concept of balance. *The Chronicle of Higher Education*, 52(3), B11.

Woodruff, M. B. (1995). Academic freedom: A comparative study of the formal, written statements of religious, public and private institutions of higher education in America. *Dissertation Abstracts International*, 56 (03), 845A. (UMI No. 9524252).

Woodward, L. M. (1999). Collision in the classroom: Is academic freedom a license for sexual harassment? *Capital University Law Review*, 27, 667-708.

Worgul, G. S., Jr. (1992). Truth, cultural pluralism and academic freedom. In Worgul, G. S., Jr. (Ed.). *Issues in academic freedom* (pp. 143-154). Pittsburgh, PA: Duquesne University Press.

Wyer, K. L. (2003). A most dangerous experiment? University autonomy, academic

freedom, and the concealed weapons controversy at the University of Utah. *Utah Law Review*, 2003, 983-1018.

Yudof, M. G. (1988). Intramural musings on academic freedom: A reply to professor

Finkin. *Texas Law Review*, 66, 1351-1357.

Zito, A. M. (1993). An investigation of faculty and department chairs' levels of

knowledge concerning faculty academic freedom litigation in private colleges and

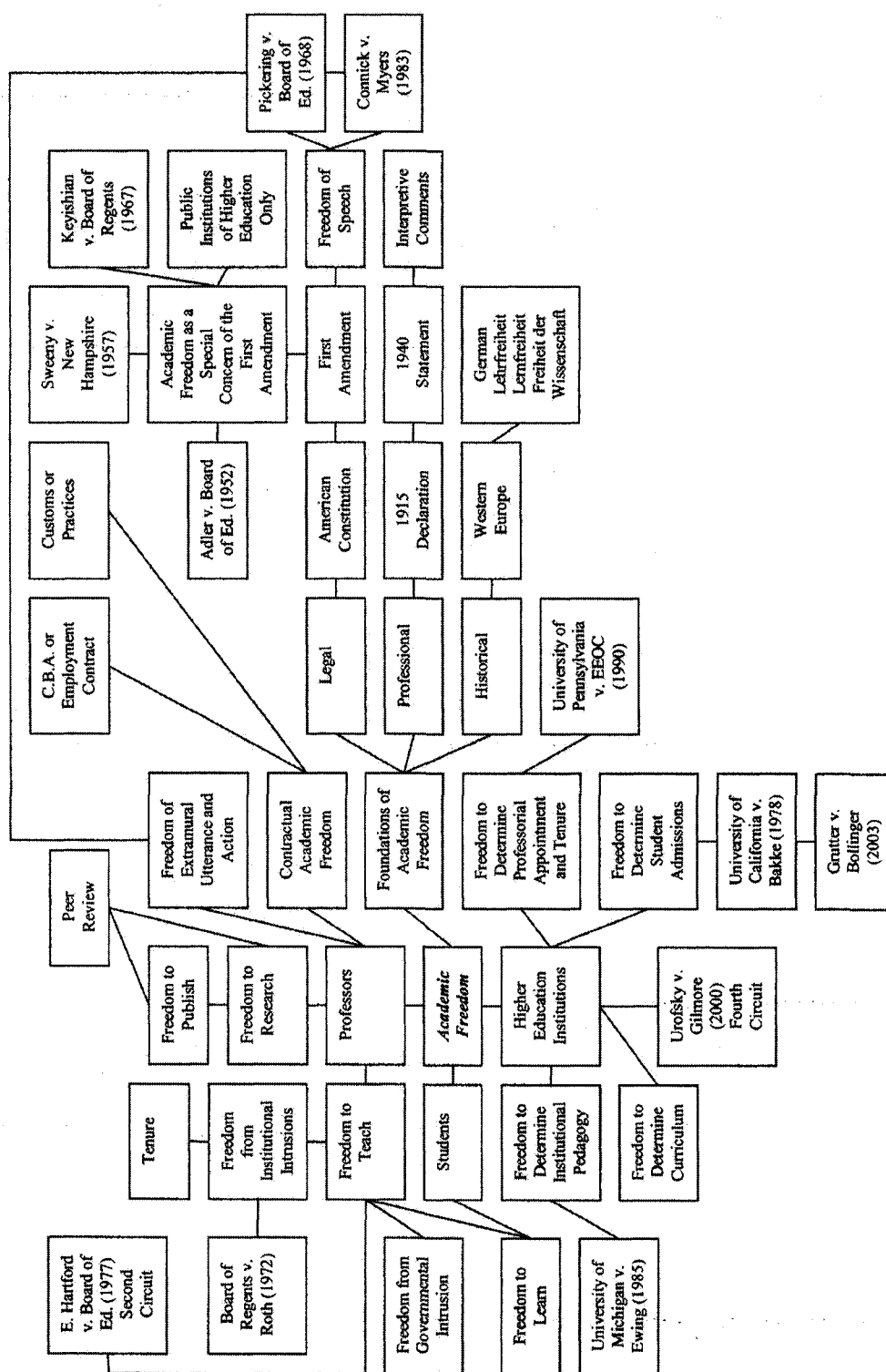
universities. *Dissertation Abstracts International*, 54 (04), 1262A. (UMI No.

9325005).

APPENDICES

Appendix A

Historical and Legal Foundations of Academic Freedom



Appendix B

National Study on Academic Freedom Survey

National Study on Academic Freedom

Western Michigan University, Department of Teaching, Learning, and Leadership

Principal Investigator: Dr. Louann Bierlein Palmer **Student Investigator:** Manuel R. Rupe
Title: National Study on Academic Freedom

Thank you for taking the time to participate in this study. This survey should take approximately 15 minutes to complete. All responses will remain confidential and in submitting your survey responses no personally identifiable information (i.e. your e-mail address) will remain attached to your survey responses.

During the course of the survey, you may choose to not answer any question, and leave it blank. If you choose not to participate in the survey you may close out of the program at any time prior to hitting the 'submit' button and your answers will not be recorded.

Completing this survey indicates your consent for the researcher to use your answers. The Human Subjects Institutional Review Board has approved this consent document for use for a period of one year. The document was approved on May 20, 2005. Do not participate in this study after May 19, 2006.

If you have any questions or problems, please contact the researcher, Manuel R. Rupe at 231-591-3894 or at rupem@ferris.edu. You may also contact the dissertation Chair, Louann Bierlein Palmer at 269-387-3465 or at l.bierleinpalm@wmich.edu; the Human Subjects Institutional Review Board at Western Michigan University at 269-387-8293; or the Vice President for Research at Western Michigan University at 269-387-8298 if questions or problems arise during the course of the study.

Q1 Please indicate your consent to participate in this study.

☐ I Consent

☐ I Do Not Consent

Page 1/13

Reset Next >>

National Study on Academic Freedom

Note to Participant: Your participation in this national study may benefit college and university attorneys, higher education institutions, and higher education law associations and organizations in identifying important issues related to academic freedom and modern challenges to academic freedom. The goals of the following survey include: (a) to learn about basic demographics and other characteristics of university attorneys and the institution(s) you represent; (b) to learn about your general perceptions of academic freedom; and (c) to learn about your perceptions as a college and university attorney regarding challenges to academic freedom.

- Q2 Please indicate your current age.
Number in years
- Q3 How many years have you participated in higher education practice?
Number in years
- Q4 Which of the following best describes your current position? (Please select only one).
- ☐ General Counsel Office (In-House)
 - ☐ System Attorney
 - ☐ Attorney General Office
 - ☐ Private Law Firm
 - ☐ Other
- Q5 What type of institution do you represent?
- ☐ Public
 - ☐ Private

Page 2/13

<< Back Reset Next >>

National Study on Academic Freedom

If your current position is in a general counsel office (in-house) or as an attorney who represents a single higher education institution, please answer questions 6 and 7. Otherwise, please continue on to question 8.

Q6 Please indicate the category of the higher education institution you represent.

- ☐ Doctoral/Research University
- ☐ Master's College or University
- ☐ Baccalaureate College
- ☐ Associate/Community College
- ☐ Other

Q7 Please indicate the student enrollment of your institution to the nearest 1,000 (e.g. 15,000)
Number in
thousands

Q8 To date, I have taught the following number of *different* college-level courses.

- ☐ 0
- ☐ 1-2
- ☐ 3-4
- ☐ 5 or more

Q9 To date, I have attended the following number of conference(s) or continuing legal education session(s) which included the concept of academic freedom as the primary topic.

- ☐ 0
- ☐ 1-2
- ☐ 3-4
- ☐ 5 or more

Q10 My institution has been involved in a dispute (i.e. litigation, arbitration, etc.) where academic freedom was perceived by institutional administrators to be a fundamental issue in the case.

- ☐ Yes
- ☐ No

Q11 I am asked at least once per year to provide legal advice in matters that involve academic freedom.

- ☐ Yes
- ☐ No

Page 3/13

<< Back Reset Next >>

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

The next series of questions explore the issue of academic freedom in-depth. Please indicate your level of agreement with each statement by marking the appropriate response. The term "my institution" refers to the institution(s) you represent.

Personal Experience and Academic Freedom

- Q12** The law school I attended provided me with an adequate introduction to the concept of academic freedom.
- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree
- Q13** Law schools should be encouraged to include academic freedom readings and discussions in their curriculum or courses.
- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree
- Q14** Academic administrators at my institution are able to effectively address or respond to academic freedom issues without consulting me or my office.
- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree
- Q15** I have access to adequate resources (i.e. professional organizations, colleagues, publications, etc.) to keep me current regarding present challenges to academic freedom (even if not an issue on my campus(es)).
- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree
- Q16** I have a better understanding of the concept of academic freedom today than I did when I began practicing in higher education.
- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Office and Institutional Roles and Responsibilities

Q17 My institution's(s') policies, practices, customs, or contracts effectively protect the exercise of academic freedom on my campus(es).

- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

Q18 Academic freedom protections should be broader than free speech protections already established under the First Amendment.

- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

Q19 My institution(s) should have the right to revoke an invitation to a speaker because of the "controversial" content of the speaker's prior speeches.

- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

Q20 Issues related to academic freedom at my institution(s) are discussed or addressed more frequently now than they were when I began representing my institution(s).

- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

Q21 Campus complaints regarding academic freedom violations should be directed to the institution's legal counsel.

- ☐ Strongly Disagree
☐ Moderately Disagree
☐ Moderately Agree
☐ Strongly Agree

Page 5/13

<< Back Reset Next >>

National Study on Academic Freedom

Professorial Academic Freedom

- Q22** Professors should be allowed to teach their subjects in the manner they deem professionally appropriate if such teaching is consistent with academic community standards.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q23** Professors should be allowed to conduct research and publish the findings of their research, subject only to institutional review board approval and peer review.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q24** Professors should be allowed to make truthful statements in their classroom critical of institutional policies or practices of their employer if reasonably related to the course.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q25** Professors should be allowed to make truthful statements outside of their classroom critical of institutional policies or practices of their employer.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q26** Professors should *not* be allowed to introduce into their teaching controversial matters which have no relation to her/his subject.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Page 6/13

<< Back Reset Next >>

National Study on Academic Freedom

Institutional Academic Freedom

- Q27 A higher education institution should be allowed to provide any course it deems educationally appropriate.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q28 A higher education institution should be allowed to determine for itself on academic grounds who it will hire to teach.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q29 A higher education institution should be allowed to determine, without governmental intrusion, who it will admit to study.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q30 A higher education institution should be allowed to determine curriculum, program, and degree requirements with input required only from their faculty and students.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree
- Q31 A higher education institution should be allowed to regulate a professor's course content if the professor introduces material that has no reasonable relation to the subject being taught.
- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Page 7/13

<< Back Reset Next >>

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Student Academic Freedom

Q32 Students have a right to academic freedom.

- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Q33 Students have the right to learn without political, religious, or ideological indoctrination.

- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Q34 Students' freedom to learn is as important as a professor's freedom to teach.

- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Q35 Students have a right to exposure to a diversity of viewpoints in the classroom.

- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Q36 Students' right to academic freedom is adequately protected by institutional policies that also protect professorial academic freedom.

- ☐ Strongly Disagree
- ☐ Moderately Disagree
- ☐ Moderately Agree
- ☐ Strongly Agree

Page 8/13

<< Back Reset Next >>

National Study on Academic Freedom

The last series of questions explore contemporary challenges to academic freedom. Please indicate the extent to which these challenges have been an issue or concern at your institution (s) during your tenure. The term "issue" means that you or your office has spent time researching, briefing, litigating, or otherwise responding to an item in some manner.

Judicial or Governmental Challenges

Q37 Questionable conditions or restrictions attached to state or federal appropriations (e.g. appropriations requiring institution(s) to limit tuition increases, increase graduation rates, or impacting other governance or policy decisions).

- ☐ Not an Issue at All
- ☐ A Slight Issue
- ☐ A Moderate Issue
- ☐ A Large Issue
- ☐ A Very Large Issue

Q38 Questionable conditions or restrictions placed by the state or federal government on the use and distribution of research data or findings for state and federally funded research.

- ☐ Not an Issue at All
- ☐ A Slight Issue
- ☐ A Moderate Issue
- ☐ A Large Issue
- ☐ A Very Large Issue

Q39 Judicial interference with university/college policies or practices related to student admissions, financial aid, and other student recruitment matters.

- ☐ Not an Issue at All
- ☐ A Slight Issue
- ☐ A Moderate Issue
- ☐ A Large Issue
- ☐ A Very Large Issue

Q40 The Fourth Circuit's decision in *Urofsky v. Gilmore* (2000) that professors do not have a constitutional right to academic freedom.

- ☐ Not an Issue at All
- ☐ A Slight Issue
- ☐ A Moderate Issue
- ☐ A Large Issue
- ☐ A Very Large Issue

Q41 Political partisanship in the appointment or election of institutional governing boards.

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

Page 2 of 2

- ☐ *Not an Issue at All*
- ☐ *A Slight Issue*
- ☐ *A Moderate Issue*
- ☐ *A Large Issue*
- ☐ *A Very Large Issue*

Page 9/13

<< Back

Reset

Next >>

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Internal or Collegial Challenges

- Q42** Professors using their classroom to advance or advocate a particular partisan, political, religious, or ideological agenda.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q43** Professors claiming protection under academic freedom to justify unprotected speech (i.e. sexual harassment).
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q44** Professors claiming to be experts on issues and commenting on such issues merely to influence public opinion.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q45** Professors encouraging (or discouraging) certain types of research to advance a partisan, political, religious, or ideological agenda.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q46** Students using threats of litigation to influence grades or academic evaluations/decisions.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue

☐ *A Very Large Issue*

Page 10/13

<< Back

Reset

Next >>

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Institutional Challenges

- Q47** Termination of professors because of their out of class truthful statements critical of institutional policies or practices of their employer.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q48** Institutional efforts to prevent or limit permissible but controversial research.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q49** Institutional efforts to determine faculty classroom pedagogy.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q50** Academic administrators promoting faculty primarily because they support the administrator's academic or governance positions.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q51** Institutional censorship of faculty speech on issues of social, political, or other concern to the campus or greater community.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue


<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Extra-Institutional Challenges (Non-Governmental)

- Q52 Conditions or restrictions placed by private donors on the use and distribution of research data and findings.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q53 Threats or intimidation from the public or from private organizations intended to prevent higher education institutions from hosting certain speakers or persons.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q54 The threat to faculty from persons or entities outside the institution of being sued for in class or out of class speech.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q55 Demands to terminate or remove from positions of influence persons who express viewpoints that are "unpopular."
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue
 - ☐ A Very Large Issue
- Q56 Organizations seeking to advance "political correctness" rather than viewpoint diversity.
- ☐ Not an Issue at All
 - ☐ A Slight Issue
 - ☐ A Moderate Issue
 - ☐ A Large Issue

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

 *A Very Large Issue*

Page 12/13

<< Back

Reset

Next >>

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

National Study on Academic Freedom

Q57 What do you think will be the most significant challenges to academic freedom in the next five years? Why?

Please type
your
responses in
the box on the
right. Thank
you.

Q58 Please provide any additional comments that you would like to share.

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/nationalstudyonacad...> 6/7/2005

Appendix C

Human Subject Institutional Review Board Approval Letter

WESTERN MICHIGAN UNIVERSITY



Human Subjects Institutional Review Board

Date: May 20, 2005

To: Louann Bierlein Palmer, Principal Investigator
Manuel Rupe, Student Investigator for dissertation

From: Mary Lagerwey, Ph.D., Chair

A handwritten signature in cursive script that reads "Mary Lagerwey".

Re: HSIRB Project Number 05-05-11

This letter will serve as confirmation that your research project entitled "Higher Education Attorneys' Perceptions Regarding Academic Freedom" has been **approved** under the **exempt** category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

Please note that you may **only** conduct this research exactly in the form it was approved. You must seek specific board approval for any changes in this project. You must also seek reapproval if the project extends beyond the termination date noted below. In addition if there are any unanticipated adverse reactions or unanticipated events associated with the conduct of this research, you should immediately suspend the project and contact the Chair of the HSIRB for consultation.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: May 20, 2006

Walwood Hall, Kalamazoo, MI 49008-5456
PHONE: (269) 387-8293 FAX: (269) 387-8276

Appendix D

First E-Mail to Participants

[Subject line:] [Non-legal]National Study on Academic Freedom

Dear Fellow NACUA Members:

This National Study on Academic Freedom is a part of my dissertation research on *higher education attorneys' perceptions regarding challenges to academic freedom*. Below is a link to the web-based survey for this study and as a fellow NACUA attorney I invite you to voluntarily participate in this study.

The survey will take up to 15 minutes to complete. Your responses will be confidential and you may chose not to answer any question. The benefit of your participation includes helping to identify, at a national level, significant challenges to academic freedom. A summary of the findings and conclusions of this national study will be shared with NACUA and its members. You may receive a reminder e-mail in one week inviting you to participate in this study which you may disregard if you've already participated.

If you have any questions or concerns, please call me at (231) 591-3894 or e-mail me at rupem@ferris.edu, or contact my dissertation chair, Louann Bierlein Palmer at Western Michigan University (269) 387-3596, or l.bierleinpalmer@wmich.edu.

To begin the survey, please click on the following link:

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/>

Sincerely,

Manuel R. Rupe

Appendix E

Reminder E-mail to Participants

[Subject line:] [Non-legal]Reminder: National Study on Academic Freedom

Dear Fellow NACUA Members:

This is a reminder and invitation to those of you who have not participated in the National Study on Academic Freedom that you still have an opportunity to participate. The survey will take up to 15 minutes to complete. Your responses will be confidential and you may chose not to answer any question. The benefit of your participation includes helping to identify, at a national level, significant challenges to academic freedom. A summary of the findings and conclusions of this national study will be shared with NACUA and its members.

If you have any questions or concerns, please call me at (231) 591-3894 or e-mail me at rupem@ferris.edu, or contact my dissertation chair, Louann Bierlein Palmer at Western Michigan University (269) 387-3596, or l.bierleinpalm@wmich.edu.

To begin the survey, please click on the following link:

<http://www.snap-surveys.com/ferris/nationalstudyonacademicfreedom/>

Sincerely,

Manuel R. Rupe

Appendix F
Responses to Open Ended Questions

Table F1

Participants' comments regarding most significant challenge to academic freedom

Judicial or Governmental Challenges
Diffusing the politization [of] the two major parties and their influence on college campuses and the perception of liberal faculty vs. legislation against political indoctrination of students.
Legislative reactions to Ward [Churchill's] situation.
Outside public pressure on the "liberal academy" to conform to more conservative viewpoints or face possible loss of funding.
Governmental, especially federal, constraints. Resources are being increasingly devoted to compliance with a tidal wave of new regulations responding to technological advances, the fear of terrorism, and changing cultural values. At the same time per capita availability of funds will decline as tax cuts, inflation and other priorities eat away at the value of these benefits.
Attempts to influence or control publication of faculty sponsored research based upon "security" concerns of the material published and controlling access to research by foreign students and researchers under the same rubric. We are seeing more and more grant agreements that have onerous prepublication reviews and which attempt to impose on the university obligations to self-control publication on certain issues.
Political efforts to guarantee that political viewpoints are represented among faculty or students; political efforts to require the teaching of material that is politically or religiously popular but academically unsound.
The increasing acceptance of partisan divisiveness and of the notion that liberals and conservatives should not seek common ground. This has a number of causes and manifestations and it's not easy to retain any optimism that balance and neutrality can be restored. Academic freedom assumes that all value the basic premise that discourse leads to survival of the fittest among arguments. Presently unquestioning loyalty and a refusal to even acknowledge facts passes for thought or expertise.
Federal regulation of student admissions and financial aid.
The implementation of the UofM affirmative action decisions re/admissions and financial aid
Big issues seem to be biomedical research and gov'tal ties on it and what is acceptable classroom speech

HIPAA seems to give medical researchers headaches but I've seen this all before – they'll find a way

Biggest challenge will be state legislatures attempting to take over univ. governance/decision-making – tie funding to specific reqs. etc.

The Republican controlled White House and Congress, to whom the term “academic freedom” is synonymous with “liberal elitism,” and from whom there seems to be a profound lack of respect for academia. The related trend toward “No Child Left Behind” type standards (which stifle creativity and innovation because of their insistence on “uniform standards”) and the mistakenly nostalgic notion that permissiveness in academia is a recent, and unwelcome, phenomenon, do not bode well for academic freedom.

Lack of state funding to hire enough faculty

Political partisanship and its influence on institutional policies and practices especially at public universities and especially in relation to social policy agendas

Federal efforts like NCLB may pass over into higher ed., which would be a mess.

Post 9/11 it seems the issue is whether the feds will extend USA Pat. and other fed. Laws to restrict sharing/access to research.

Being new to higher ed. I'm just learning about how this impacts the classroom but faculty seem to refer to it any time the admin. suggests something related to academic issues

For our university (we are part of a system) a consistent challenge is state dept. of ed. and labor efforts to tell us what to do with curriculum and programs based on state data.

Gov'tal reg. of research

I work at a major research institution and the trend seems to be toward more regulation of research activities by the fed. gov't.

Urofsky was a wake up call for our university – it's impact remains to be seen and probably (hopefully) will not effect other states outside of the 4th [circuit].

Our institution expected dramatic changes post-Urofsky v. Gilmore but nothing really materialized. If other circuits follow this standard, however, it could be a wake up call for higher education.

The most significant challenge will come from national and state legislation actions under the guise of accountability to assure “fairness” in light of the growing “cold war” toward

terrorism and response to religious interests.

Internal or Collegial Challenges

The challenge is pretty obvious. University faculty are, with relatively few exceptions, composed of individuals whose political views range from left to extreme left. Because of this environment, there will be continuing complaints about the absence of balance in courses. This challenge will be highest for publicly support institutions. Critics from the right will not relax their efforts, which can be embarrassing (at least) for administrations, until the Left acknowledges that it doesn't own academia. That is not likely to happen soon.

Ongoing struggle – diversity interests and problems with perception of “political correctness” on campus

Over reliance on adjuncts and TAs in the classroom could have profound implications to a.f.

Increasing pressure to use teaching assistants or adjuncts means fewer tenured faculty and our faculty senators have been pressing this issue and will probably continue to do so.

For private higher eds big issue is whether religion as part of the curriculum limits and/or impacts academic freedom

Continued abuses by faculty in the name of “academic freedom.”

Balancing the rights of students with the rights of faculty. There is far greater interest among students in asserting their rights and far greater attention paid by political leaders to the issue.

Depends on what you mean by academic freedom – for faculty the big issue seems to be tenure and ability to do research unencumbered by teaching responsibilities – but where does that leave students?

My office/university has experienced a jump in student complaints about faculty discussing matters that seemingly have nothing to do with the course (biology instructor discussing fault of Bush policies in Iraq, etc.)

At the university I work w/in our system students pressed for more technology options in the classroom – but some older faculty have resisted claiming academic freedom protects their right to teach the “way they want.”

Institutional Challenges

Balancing tenure rights with need for productivity in faculty.

Attempts by institutions to suppress positive commentary on Islam or commentary by Muslims in academia, because of the worsening situation in the Middle East. Attempts by some institutions to mainstream political correctness and the suppress commentary by those who disagree with such thought.

Professors tell us its lack of tenure – not so sure.

As to private, religious higher ed. inst. – we rely more on contracts/policies than 1st Amendment determinations

At our campus the increased dependence on our online courses has led some profs to complain that such limits their academic freedom rights

Academic freedom seems under attack from many difference places – governing boards seem bent on blowing in the political wind any time anything seemingly controversial takes place on our campus – so governance and intrusion seem big issues to continue.

The big issue here is institutional autonomy which we consider a part of academic freedom.

Depends on who you ask – at my univ. post-tenure review has earned the ire of faculty and is viewed as the end of academic freedom – admin. doesn't see it that way.

Not sure it'll be the most significant challenge, but the growth in online programs/courses etc. seem to present a fundamental challenge to free exposition.

Outside or Extra-Institutional Challenges

Right wing influence on the government to force it values on the academic community. It is already happening at the Dept. of Ed. in Title IX enforcement. Threats of litigation and litigation from the same groups to counteract attempts at diversity.

Publication controls linked to funding.

A push to hire faculty with conservative views, which is being spearheaded by David Horowitz and the Students for Academic Freedom.

The concept of student academic freedom – does it exist? What is its scope? Because of the David Horowitz student bill of rights movement.

Conservatives trying to force their views within academia.

Probably public outcry against faculty who share opinions on public matters

Public/media obsession with controversial comments or faculty writings etc.

Professors becoming afraid to talk about political events/issues – the like, for fear their comments will be subject to spin by students/media etc.

To the extent institutions face pressure from lawmakers or outside groups about faculty, curricula, or viewpoint diversity, it will largely be a product of institutional or individual abuse of whatever freedom they have. I've read about and witnessed at other campuses how irresponsible speech and behavior have roused the attention of outsiders, usually for ill. My institution, however, has faced little to no trouble in these regards because our faculty care more about their teaching and their students than about gaining celebrity or martyrdom among the professoriate for taking controversial stands.

Pressure from right-wing entities to influence government decision regarding higher education.

“Unpopular” extramural utterances will be increasingly seized upon by interest groups to apply pressure on universities to terminate tenured faculty. In-class statements by faculty that some deem to be offensive will be seized upon by internal and external interest groups to apply pressure to terminate tenured faculty. If the expression of so-called unpopular or offensive views is barred, education will lose one of its most valued characteristics – teaching young people to sort through various points of view to make up their own minds.

Our univ. had a highly public incident with a professor's extracurricular comments; the p.r. fallout was a big lesson in 1st Amend. in higher ed – media/public perception issues will persist for years to come.

Surprisingly of late it seems our alumni (who elect a member to the board) have a renewed interest in free speech in/outside the classroom and we'll see what direction this interest takes on our board

Dealing with undue influence and the perception thereof, associated with academic research funded by commercial business. Drug companies in particular are beginning to be seen by the public as acting out of greed, not the public interest, and corrupting the search for truth that is at the heart of academic research and publication. Our legislature continues to pressure us for what they describe as more accountability through higher student graduation rates and undergrad. graduation in 4 yrs.

Not sure this is a challenge, but parental intrusion in the grading process – calling professors, dept. heads, etc. seems to be a growing problem

Large corporate donors are attaching longer – more strings to their research and grant funding which is making [our] office a lot busier.

My university's board (after some intense lobbying by the AAUP) adopted an academic freedom policy that extended const. protections to individual faculty presumed to be taken away by Urofsky – this policy may be challenged but to date hasn't been.

Table F2

Participants' general comments

Comments Regarding Academic Freedom
<p>Student's academic freedom is less broad than a professor's academic freedom because the professor has the expertise and is charged with teaching within the bounds of an approved course curriculum. Students may challenge ideas or theories promulgated by the professor, but they do not have the right to demand that a diversity of readings be introduced etc. Students should be free to express their views within the normal rules of classroom decorum, but they do not have the right to dictate course content.</p> <p>Lots of research related Qs – not really an issue at CCs although academic freedom is important</p> <p>I represent a small, private, liberal arts college and we generally do not have academic freedom problems on campus but we have student speech code problems from time to time.</p> <p>If law schools are “encouraged” to include academic freedom discussions in their courses – isn't that interfering with their academic freedom?</p>
General Survey Comments
<p>Please make your dissertation available to us once defended. Good luck.</p> <p>Good survey – a bit long.</p> <p>I had to guess on some because I'm not always privy to every academic rights issue on our campus which is fairly decentralized.</p> <p>Neutral option would've been nice to have in survey</p> <p>Good survey</p> <p>Nice survey set up.</p> <p>This would be a nice survey to distribute to chief academic officers at higher ed. inst. As they may have more perspective and experience.</p> <p>Not much applied to me or my college. Gook luck.</p>