



## Foundation for Individual Rights in Education

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As you can see from our directors and board of advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, academic freedom, due process, legal equality, freedom of religion, voluntary association and, in this case, freedom of speech and expression on America's college campuses. FIRE is a nonpartisan and consistent defender of academic freedom nationwide, at both public and private universities. Our web page, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and of our activities.

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We are writing to provide an additional perspective following the New York Civil Liberties Union's December 20, 2004, letter to you regarding the ongoing controversy arising out of the David Project's film *Columbia Unbecoming*. FIRE has enormous respect for the NYCLU and for its commitment to civil liberties, including academic freedom. Unfortunately, however, the NYCLU's summary of the academic freedom interests implicated in this controversy suffers from several shortcomings. It is important to draw the lines properly in this situation, and to distinguish between the requirements of academic freedom as properly understood, the requirements of adhering to professional teaching standards, and the necessity of emphasizing teaching rather than mere political indoctrination. FIRE has considerable experience in dealing with these problems on many campuses, and we wish to bring our considered thoughts on the subject to your attention. We would particularly like to point out where we differ from NYCLU's position, lest that position be reflexively taken as *the* "official" position of the civil liberties/academic freedom advocacy community.

The NYCLU's letter understates the appropriate levels of student academic freedom and overstates the primacy of professors in the academic process. It also understates the university's own academic freedom to define its own mission and to construct a faculty that advances that mission. To be sure, both FIRE and the NYCLU agree on several points. Both FIRE and the NYCLU recognize and

applaud Provost Alan Brinkley's statement that "[s]tudents have a right to learn in an atmosphere that permits an open exchange of ideas." Both groups believe that the threats issued by various public officials have been inappropriate. Yet if the university follows the NYCLU's counsel, it may actually diminish student freedoms and increase the chance of future abuses.

We will not repeat the NYCLU's summary of the allegations contained in *Columbia Unbecoming*, nor will we repeat allegations made in various New York newspapers. At this point, you are no doubt familiar with these reports. Instead, we will directly address our substantive concerns with the NYCLU's letter and suggest an alternative framework for analyzing this problem and resolving the issues raised by the David Project, should the university choose to do so.

### **I. The NYCLU Understates the Appropriate Level of Student Academic Freedom.**

The NYCLU's letter first appears to strike the proper balance, acknowledging the right of students to "criticize the professors for the content of their scholarship, for the nature of their pedagogical style or for what they perceive to be a lack of open-mindedness" while properly noting that students can neither "expect that their views will be unchallenged" nor "expect that their professors will trim their convictions so as not to offend the sensibilities of their students." Later in the letter, however, the NYCLU makes the surprising assertion that because "the attack on Professor Massad and others in the MEALAC Department is fundamentally about their scholarship and political expression," the criticism must be seen as "an assault upon principles of academic freedom and upon political speech."

It is impossible to reconcile the NYCLU's general statements in support of student academic freedom with its specific condemnation of the students' actual critique. It is not the case that criticisms (even vehement criticisms) of scholarship or political expression threaten academic freedom or political speech in any way. In fact, such an "attack" constitutes the exercise of academic freedom and political speech and can serve as a warning to prospective students and potential donors. It is important to note that no person is compelled to attend Columbia, nor is any person compelled to donate money to Columbia. Information concerning the political climate of entire academic departments (and the manner of that expression) is certainly important to students and donors and may dictate whether they choose to attend or support Columbia.

Additionally, the NYCLU's position would unduly limit the ability of students to critique a professor's ideas, beliefs and scholarship in class. According to the NYCLU, a student may offer such criticism "if permitted by the professor to do so." While a professor is certainly free to limit the scope of classroom discussion to the topics discussed in that class – and, of course, to prevent actual disruption of the learning environment – it would violate every reasonable notion of student academic freedom to give professors the ability to open classroom discussion for all comments except those critical of the professor's point of view. Just as students do not have the right to "expect their views will be unchallenged," neither do professors have the right to indoctrinate their students without permitting a murmur of classroom dissent. According to the NYCLU's reasoning, if a professor had not given permission for in-class dissent, a student could be forced to sit through a professor's defense of racial segregation – and even through a classroom discussion in support of segregation – without protest.

Academic freedom is not threatened by student criticism of professors' ideas. It is threatened by disproportionate or inappropriate responses to that criticism. FIRE agrees with the NYCLU that recent demands by government officials that Columbia terminate the relevant professors are unconscionable. Given your history as a scholar and defender of the First Amendment, we do not believe that you would contemplate such an action. Even if all the allegations contained in *Columbia Unbecoming* were proven true, FIRE would not support termination as a sanction.

Further, Columbia should not require professors to scrub their own viewpoints from their classroom presentations. It is vital that professors feel free to share their own ideas with their students and explore and test those ideas through scholarship. Nor should Columbia adopt rules that broaden definitions of "harassment" or "intimidation" of students. "Intimidation" and "harassment" are terms that are frequently misunderstood in higher education and are often used as virtual synonyms for any expression that "offends." Frequently, FIRE must remind universities that sexual or racial "harassment" under federal law and as applied to education refers to a pattern of behavior directed at an individual that is so severe and pervasive as to essentially deny that individual the ability to receive an education. See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999). Regarding intimidation, the Supreme Court wrote in *Virginia v. Black*, 538 U.S. 343 (2003), that "[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death."

All too often, FIRE has seen ideological disputes degenerate into competing (and specious) claims of harassment or intimidation that result in improper censorship. FIRE believes that existing federal, state, and local laws are sufficient to protect students from true harassment, and that the best remedy for most of the abuse described in *Columbia Unbecoming* is public exposure and criticism.

In addition to the traditional academic freedom concerns, there are professional standards implications for professors who consistently indoctrinate rather than teach, and who impose political litmus and legitimacy tests on their students' views. Columbia should not ignore such unprofessional conduct and make the assumption that such conduct is automatically and reflexively worthy of protection. The American Association of University Professors (AAUP) acknowledges that professors have ethical obligations towards their students. Paragraph 2 of the AAUP's *Statement on Professional Ethics* states:

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

As Columbia investigates the allegations in *Columbia Unbecoming*, it should determine whether any professors have violated this ethical standard.

## **II. The NYCLU Overstates the Primacy of Professors in the Academic Process.**

The NYCLU advances a vision of professorial autonomy that places professors essentially beyond the reach of meaningful criticism and rebukes those “outside” the academy who seek change in one of our nation’s most important educational and cultural institutions. While FIRE agrees with the NYCLU that “faculty members must retain broad latitude to think as they will and to write as they think,” FIRE cannot agree that professors have the right to “suffer no recriminations, from outside the academy, for the content of their scholarship.” Nor can FIRE agree that “critics outside the academy must avoid seeking to support their substantive arguments with threats and sanctions.”

Not all threats and sanctions are equal. As noted above, it is entirely inappropriate for public officials to threaten professors or seek sanctions against professors based on the professors’ political beliefs or scholarship. It is not inappropriate, however, for students or alumni to refuse to attend or support institutions that advance ideas they find reprehensible or that create ideologically uniform and oppressive academic departments. A scholar is entitled to shout his ideas from the rooftops, but he or she is not also entitled to do so in front of an audience or to do so while being bankrolled by those who deeply disagree with those ideas. Furthermore, as a matter of adhering to the professional standards noted above, a professor has an obligation to teach rather than to indoctrinate. It is obvious that the line between education and indoctrination can sometimes be vague, but in many cases it is quite clear. There are some allegations in this case that, if proven true, would indicate that the line has clearly been crossed at Columbia. This should be of concern to any administration of a liberal arts college.

Let us not forget that decisions to attend a university or write a check for its support are also expressive acts. There is a substantive difference between the concern expressed by Arthur Lovejoy when he observed that “the distinctive social function of the scholar’s trade cannot be fulfilled if those who pay the piper are permitted to call the tune” and the decision made by donors when they choose from the various causes they have the option of supporting. FIRE, the NYCLU, and Columbia are all donor-supported organizations, and each of us would agree that we are not *entitled* to receive support from any individual or organization. Once such support is given (the piper is actually paid), however, it would be inappropriate to allow donors to dictate the scholarship or political expression of the organizations they support. We also understand that simply because a donor has given in the past, they are in no way obligated to give in the future – even if we may disagree with the reasoning behind such a decision.

In short, Columbia’s professors do have the academic freedom to express their ideas and conduct the scholarship that has been so roundly criticized. This freedom, however, does not (and should not) come without consequences. Just as sectarian schools are not able to attract the same number of students and donors that an ideologically diverse, secular college often attracts, so will ideologically uniform and oppressive schools and departments suffer in both enrollment and support. If professors seek to create such environments, they have that right, but they may find themselves teaching to half-full classrooms in a school with a smaller endowment. No student or

donor should be fooled into applying to or supporting a university that promises a liberal arts education but delivers rank political indoctrination. If what Columbia delivers is in dispute, a clear disclosure of the facts is crucial so that society can make judgments, draw conclusions, and act accordingly. Sunlight, as Justice Brandeis said, is the best disinfectant.

### **III. As a Private University, Columbia Has the Right to Define its Own Mission and Purpose and to Construct a Faculty that Advances that Mission.**

In its letter, the NYCLU warns Columbia against insisting on “ideological balance” within the MEALAC Department, calling such an idea “seductive but ultimately flawed.” We would formulate the issue differently. As a private university, Columbia has the constitutional right to self-consciously advance its own mission and message. FIRE has been consistent on this message since its founding. While we have often battled private universities, we do so only when an institution represents itself as valuing free speech, due process, individual rights, or intellectual diversity and then fails to keep its own promises. There is no value in allowing a university to promise free speech but deliver selective repression, or to promise due process but deliver arbitrary justice.

Likewise, Columbia has the right to hire a faculty that advances the mission it has decided upon. For example, sectarian schools often hire only those faculty candidates who agree with the school’s profession of faith and monitor faculty expression to ensure that professors continue to teach the faith according to the school’s mandate. While comparatively few students choose to attend such schools, they have the unquestioned freedom to exist and to operate according to their chosen faith and ideology. This is a crucial aspect of *institutional* academic freedom – the freedom to which the university as an institution is legally and morally entitled.

Similarly, if Columbia chose to create the nation’s foremost “anti-Zionist” MEALAC department, it would have the right to do so. If it chose to create such a department, however, it should also be as open and honest about its mission and purpose as sectarian schools are about their missions and purposes. Full disclosure is required, both as a contractual obligation to its students and donors and as a moral requirement of the openness and transparency so crucial in higher education. If, however, Columbia’s goal is for its academic departments to be ideologically and intellectually diverse, it is not inconsistent with academic freedom for Columbia to take steps to ensure such diversity. In fact, because truly ideologically diverse faculty departments create opportunities for a wide variety of scholars, this kind of diversity could enhance – rather than threaten – academic freedom in the broadest sense.

To be clear, FIRE has opposed and will continue to fight any attempts to police the expression of any individual student or professor under the rubric of “diversity,” “balance,” or “offense,” and FIRE would oppose any attempt by the university to force an individual professor to have a more “balanced” political perspective. While forcing individual professors to “balance” their own opinions would violate academic freedom, no such principle prevents Columbia from bringing in scholars with different points of view. Nor does this principle prevent Columbia from asking that its professors conduct themselves in conformance with the AAUP’s ethical standards. Rest assured that we are *not* talking here of some artificial social engineering that assures some mathematical balance of various political views. Rather, we are talking of an environment that is

open and welcoming of a variety of views, including those which clash with the views of a majority of the members of a given academic department. Liberal arts institutions must avoid the tyranny of established orthodoxies that do not allow for difference, much less for vigorous dissent. This kind of openness is essential in order to avoid falling into the trap of indoctrination in lieu of education.

At present, the allegation is that Columbia's MEALAC department is dominated by an "anti-Zionist" viewpoint. If true (and FIRE has seen no compelling evidence indicating the presence of strong alternative viewpoints in the MEALAC faculty), the question is whether such dominance is an expression of Columbia's goals for this department. Because FIRE has seen nothing in Columbia's promotional literature to suggest that it prides itself on the uniform thinking of any of its departments, it is incumbent upon the university to take steps to investigate if this ideological dominance is the case, and, if the accusations appear justified, what steps can be taken – consistent with respecting the academic freedom of current faculty – to provide for more diverse points of view.

In the case of racial homogeneity, it is often assumed that uniformity occurs as a result of overt discrimination. FIRE makes no such assumption in this case, but it may be reasonable to assume that conservative or pro-Israeli scholars view Columbia as inhospitable to their point of view. It would not violate academic freedom to take immediate steps (through aggressive recruitment or decisive public statements) to remedy this perception and to let the public, students, alumni, and donors know that Columbia is a liberal arts institution in the finest sense of that term – that it welcomes a variety of intellectual and academic positions even on the most contentious issues of the day.

President Bollinger, as a highly regarded scholar of the First Amendment, you are no doubt familiar with the magisterial opinion penned for the Supreme Court by Justice Robert Jackson in *West Virginia Board of Education v. Barnette*, in which the Court made it clear that the government did not have, and should not have, the power to impose upon its students any official, orthodox position as to what is correct in politics or any other area of human knowledge and belief. Hence, the government could not force a student to pledge to the flag in violation of religious belief and personal conscience. If Columbia chooses to embrace intellectual diversity and openness, it should heed the underlying moral principle in *Barnette* and avoid establishing a political orthodoxy to which its students are effectively forced to adhere. It hardly violates institutional or professorial academic freedom to insist that a university president has an obligation to prevent campus repression and indoctrination.

FIRE's recommendations in this case are simple. First, Columbia should affirm the students' right to dissent but should refrain from establishing any grievance procedures that provide greater protection from "harassment" or "intimidation" than that afforded by applicable law (rightly and constitutionally understood). Second, Columbia should affirm the academic freedom of the professors in question and reject any calls for formal discipline that rely upon the professors' viewpoint as grounds for such discipline. Third, if any professors have deprived students of their rights to debate and dissent and, therefore, have violated the ethical standards outlined by the AAUP, Columbia should intervene to ensure that students' rights are robustly protected. Finally, if Columbia believes that intellectual diversity and freedom of intellectual

inquiry are important values, it should state that clearly and then take steps to ensure that it delivers such diversity. Scholars with dissenting viewpoints should be sought out and welcomed into the Columbia community, and the MEALAC department (as well as all departments) should strive to become a true marketplace of ideas, not simply a vendor for the dominant ideology.

Thank you for taking the time to read and consider the arguments in this letter. FIRE is happy to answer any questions or to meet to discuss any or all of these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D French'.

David French  
President

cc:

Alan Brinkley, Provost, Columbia University  
David Stern, Chair, Board of Trustees, Columbia University  
Evan Davis, Vice Chair, Board of Trustees, Columbia University  
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