

2008 CHEA Summer Workshop  
Pentagon City, Virginia  
June 27, 2008  
Robert M. O'Neil, Thomas Jefferson Center for the  
Protection of Free Expression

## **Academic Freedom and the Role of Accreditation**

Let me begin by sharing with you an experience from 35 years ago, the relevance of which I hope you'll appreciate. In the early '70s I became the first public member of the Accrediting Commission of the Association of Theological Schools. At the same time I served briefly as legal adviser to the ATS Board of Trustees. The cause célèbre of the day was a grave academic freedom issue at the Concordia-St. Louis Seminary of the Lutheran Church, Missouri Synod. Concordia had summarily sanctioned several senior faculty members for their refusal to teach the inerrancy of scripture. The administration made clear that other faculty in theology would also risk dismissal if they declined to construe the Bible literally in their classes. Concordia's ATS accreditation was up for review at the time, and on the basis of the treatment of these faculty the Commission proposed several cautionary "notations" on the seminary's continuing membership.

The issue soon reached the ATS Board, where I had agreed to offer legal guidance. Supporting the targeted Concordia policy and its

implementation were three members of the Board in Control of the Missouri Synod's Institutions of Higher Learning, led by a seasoned Lutheran pastor named Klotz. The first trustee to confront the pastors was the president of the Fuller Seminary, who opened by reminding us that, in his words, "I yield to no one in my insistence on inerrancy." But he quickly added, "I cannot conceive of imposing that expectation in the callous way you have done." The final board member to address the issue was Krister Stendahl, who was dean of the Harvard Divinity School, and would shortly return to his native Sweden to head the state church. He was undoubtedly the preeminent Lutheran scholar in this country.

Dean Stendahl stared across the table at Pastor Klotz, and asked rhetorically: "You do this in the name of Martin Luther. Do you know anything about Martin Luther?" That ended the session. The notations were attached to the reaccreditation, and remained there for some years, though were eventually removed. Meanwhile, many aspiring Lutheran pastors chose a breakaway St. Louis divinity school that was promptly nicknamed "Seminex," or Seminary in Exile.

This dramatic experience left me with a fascination for the issues I had seen played out that day in Dayton. It also made me highly receptive to Judith Eaton's gracious invitation to meet with you this morning. Quite

simply, I have felt for many years that the accrediting community has a unique capacity to protect academic freedom, and thus bears a special responsibility to safeguard free inquiry and due process among university faculty. Let me briefly address several facets of the topic, and offer for your consideration a specific proposal for continuing collaboration, hoping there will be ample time for discussion.

First, I recognize that academic freedom already is and remains a high priority for many segments of the accrediting community. I have recently reviewed the applicable policies of the regional associations, and have been impressed by several of the stated expectations or conditions that highlight academic freedom – though I was disappointed by what seemed to me a lack of consistency and uniformity. Here I should add with some chagrin that during the five decennial review teams I chaired – two for WASC and three for SACS, all at major research universities – I barely looked at faculty personnel policies or procedures; my team and I simply noted (and accepted) at face value a stated commitment to major AAUP policies. Clearly I could and should have done more, whatever the Association’s requirements may have demanded of me and my visiting colleagues.

Beyond the regional level, I am also keenly aware of heroic efforts by several specialized or professional groups to address academic freedom

concerns. Since I have been a law teacher for 45 years and served once on the ABA Council on Legal Education, as well as having had substantial involvement in the Association of American Law Schools, I am especially aware of several instances in which those organizations spoke out boldly in defense of academic freedom. The context was most often that of legal clinics – one at the University of Oregon beset by lumber industry pressures a quarter century ago, and more recently Tulane’s Environmental Law Clinic which was gravely threatened by intense pressure from the chemical industry, leading to potentially crippling constraints imposed on clinic activity and student representation by the Louisiana Supreme Court. I have at least anecdotal appreciation of several other occasions on which accrediting associations stepped forward in vigorous defense of academic freedom.

Nonetheless, I have the feeling on the basis of some recent research that a more detailed and substantial data base of such interventions would be extremely helpful. In fact, I suspect each of you could cite at least one heroic example in defense of academic freedom of which I am simply unaware, but of which I’d relish the chance to know more. But we’ll return shortly to the question of how we might refine our understanding of current

practice and potential future engagement. A few other issues need immediate attention.

Next is a quite practical concern. From my own time in the trenches, I would be among the first to ask “why academic freedom in addition to all the myriad other tasks that accrediting teams, commissions, and boards need to address?” It’s a fair question, and deserves a more elaborate answer than our time this morning permits. But let me suggest that there are few clearer measures of the ultimate quality of an institution of higher learning than its commitment to promote and protect free inquiry and fair treatment of its faculty. Conversely, there is no indicium of institutional failure or abdication any clearer than a blatant disregard of those values. Moreover, the beneficiaries of academic freedom are not professors alone, but equally their students whose freedom to learn and pursue inquiries in potentially contentious fields depends integrally upon a climate of academic freedom.

Especially because defending academic freedom and free expression is not always easy, and can sometimes be downright onerous, there are often temptations to pursue the easy escape and avoid such an obligation. Yet such a path is not without its perils, as institutions that have chosen such a seemingly alluring escape have learned from months in court, hundreds of thousands in legal expenses, impaired capacity to recruit and retain eminent

faculty, and a host of other sometimes hidden costs. So apart from principle, practical considerations also counsel making academic freedom a paramount institutional priority. There are other and more elaborate answers to the quite fair question “why bother?” but we must leave the inquiry there for the moment.

We turn now to a related, equally pragmatic issue: Why not leave all this to organizations like AAUP, NEA, AFT and such, for which academic freedom and faculty welfare comprise a central mission? Here the answer is somewhat less obvious. While taking nothing away from the catalytic role of such groups, most notably the powerful impact of AAUP censure, the accrediting community offers a degree of authority and influence unlike that of any other segment of the academic community. If, for example, in the encounter with which I began, Dean Stendahl had been serving on a faculty investigating committee rather than on the board of the accrediting association, I’m not sure that Pastor Klotz and his Lutheran colleagues would have been as deeply chastened as they were upon facing the board of the association from which they sought continuing accreditation. As the rest of us know fully from our own experience on both sides of the process, accreditors get people’s attention in ways that few if any others are capable

of doing. It is not simply the specific legal consequences of the granting or denial of continuing accreditation, significant though such effects surely are.

Equally important, I believe, is the uniquely collegial judgment that an accrediting association passes upon one of its peers. It is largely for that reason that I welcome CHEA's plan to involve university trustees and regents more fully in the accrediting process – a commitment, I might note, that I urged the trustees of the Association of Governing Boards to endorse in the Statement of Board Accountability that AGB's Board adopted about a year and a half ago. Let me also add that the process of review and accreditation is nearly unique to this country – a lesson I learned at the first meeting of Chinese and US University Presidents, held a quarter century ago in Beijing. When we discovered that it was accreditation about which our Chinese counterparts most urgently needed to learn from us as a condition of substantial deregulation, I offered a graphic example. A few months earlier, I had chaired the WASC decennial review team at UCLA. Since Chancellor Chuck Young and I were among the ten US delegates, he and I reviewed together our recent experience. After the session, several of our Chinese colleagues sought out Chuck - in genuine amazement – to ask how he could possibly have allowed such a group of outsiders to pass judgment on his institution.

We explained that under our system we had no choice, and that in fact such visits were typically far more beneficial than intrusive. Our Chinese colleagues left the session still shaking their heads skeptically. The incident offers a curious if coincidental irony: At the time of our visit, UCLA was in the final stages of preparing to host the 1984 summer Olympics, just as Beijing is doing at this very moment. Meanwhile, I might add, the Chinese university leaders have continued to blend interest in and puzzlement about our system of accreditation. Sadly, the deregulation they had been promised proved somewhat illusory – but that is definitely a theme for another day.

Let me add a rather different practical dimension to my case for greater attention to the condition of academic freedom: Accreditation also offers a degree of flexibility and a range of potential sanctions that other appraisers of academic freedom lack. If an aggrieved faculty member contemplates litigation, for example, he or she either files a lawsuit in court or decides not to do so. If the issue goes to court, the mere filing of a complaint invokes the full panoply of the legal process, typically taking many months or even years, and entailing huge costs on both sides. If an AAUP inquiry is launched, and a report appears in *Academe*, either censure will be voted – the Association’s ultimate sanction – or it will not.

Occasionally a creative alternative will emerge (as I am keenly aware most recently from having chaired the AAUP Special Committee on the effects of Katrina on New Orleans institutions) but the availability of intermediate sanctions is regrettably rare. When it comes to accreditation, however, the range of options is far broader, as I know from having evolved a creative solution to a sticky issue when I chaired a SACS decennial review team a decade or so ago. So my appeal for a heightened emphasis on academic freedom in the accrediting process reflects not only the imperative I noted earlier, but also a capacity that other potential guardians simply lack.

We turn now to a question that surely merits attention as part of my plea this morning: What should accreditors seek or require as proof of institutional commitment to academic freedom? Let me clarify one potential misunderstanding: It would not be appropriate to require a formal tenure system, even though at most institutions faculty tenure serves to protect academic freedom. Hampshire College, founded in the late 1960s without tenure, has never incurred any AAUP sanction or even rebuke, and I assume has passed a series of New England Association reviews with flying colors. Nor is there any magic in a particular probationary period; the University of California has long had an eight year limit rather than the more common

(and AAUP recommended) seven years, and increasing numbers of medical schools allow up to ten years for all clinical and some basic science faculty.

The point is not that any external body need or should impose absolute standards in such matters, but rather should insist that institutions make clear the standards they have adopted – in Hampshire’s case, for example, regular review and usual but not universal review of five year contracts for its faculty – and that those standards be rigorously observed and applied in a manner that comports with due process.

Let me offer one other helpful example: AAUP recognizes that a tenured appointment may be terminated for “cause” but wisely never defines that vital term. While certain transgressions are widely understood to constitute “cause” – for example, blatant acts of plagiarism or sexual harassment – so many other possible departures from academic norms fall under that rubric that their enumeration would be impossible as well as unwise. An institution’s handbook might offer a few examples of “cause” – and those examples might well vary with the nature and mission of the institution – but any attempt to create a comprehensive catalogue or laundry list is doomed to failure.

In short, how academic freedom is to be defined and protected is properly left in substantial part to each institution. For starters, an

accrediting association wishing to highlight its concern for academic freedom might ask several things of its members: First, a clear statement of institutional (and governing board) commitment to free inquiry and the pursuit of knowledge in and beyond the classroom and laboratory; second, a set of procedures that ensure due process for any faculty member charged with a violation of accepted academic norms and values; and third, a specific report on the current condition of academic freedom on that campus as an essential element of the institution's self-study. I would also urge that the review or visiting team be specifically charged with assessing carefully both the published or posted statements regarding academic freedom and due process, and the adequacy of the institution's own assessment of academic freedom, including attention to the involvement of faculty in that assessment.

Implicit in this proposal lurks one other obligation, which I offer in full recognition that it might occasionally create new problems while solving old ones: When an academic freedom issue has been reported, or widely noted in the news media, at an institution soon scheduled for a visit or review related to accreditation, both the association staff and the visiting team should be expected to inquire specifically into the issue and include its findings in the report. Such inquiries do not invariably have negative

outcomes; I have more than once become aware of smoke that indicates no fire, and have welcomed the chance to report as baseless a false charge of academic freedom abuse. In such cases, it has seemed to me the accreditors performed a valuable service not only to the larger academic community but especially to the institution being reviewed.

Conversely, if the accrediting process overlooks or bypasses a serious academic freedom charge of which the campus and the larger academic community are keenly aware, then it seems to me a clean bill of health for the campus leaves untested a vital element of the process. Leaving the task entirely to AAUP or to a local faculty organization is in my view not acceptable. While I am not for a moment suggesting that I have knowledge of any such actual dereliction, my concern is that in the absence of formal standards and expectations an oversight could occur. My hope today is to urge a commitment that will substantially reduce such potential, as well as enhancing the accrediting process.

Earlier I promised I would close with a specific proposal for the good of the order. I am currently the director of the Ford Foundation's Difficult Dialogues Initiative. We have just completed our initial two years of supporting twenty seven major grants at institutions ranging from Yale to Bunker Hill Community College and UT-Austin to Mars Hill College,

designed to help those campuses better address tensions along racial, religious and gender lines, and also implicating conflicts over sexual orientation, Middle East policy and others contentious topics. We are soon to begin a second phase, running from late summer of this year to the fall of 2010, with a smaller number of grantees drawn from the first group. The same issues will be paramount, as you might expect on the basis of our success in the initial phase. But at the Ford Foundation's urging and with its support, we will devote substantially greater attention to academic freedom. Specifically, we are working with several groups that hold the capacity and commitment to enhance the protection of academic freedom. On Wednesday of this week I chaired a panel at the annual meeting of the National Association of College and University Attorneys; the panel members were higher education lawyers who had taken bold positions on academic freedom issues, buttressing the commitment of the institutions they served. We are in the process of assembling comparable groups of trustees and regents, working with the Association of Governing Boards, and eventually a group of senior university administrators who have taken courageous stands on such matters.

Such an effort would be manifestly incomplete without an accrediting component. So as I indicated informally to Judith when we met in her office

last week, I would welcome and would hope to support similar collaboration with CHEA. It might profitably take several forms. First, I would like much more systematically to compile and review both existing association policies and expectations regarding academic freedom, and examples of situations where those policies have been applied, along the lines of the few I noted earlier but of which I am certain far more exist. Second, I would hope to convene a small working group of interested people from the accrediting community; as I assured Judith last week, I do have a modest budget for this purpose within the Ford grant to the Thomas Jefferson Center. That group would review existing policy and practice, and might be willing to suggest ways in which to enhance the visibility of academic freedom. A statement or report might well emerge as a result of this collaboration.

Finally, I would be honored and delighted to work with or offer guidance to any accrediting group that may wish to review its current posture with respect to academic freedom and possibly develop new approaches. Quite clearly one size does not fit all. Indeed, for reasons comparable to those I cited earlier in defense of widely disparate institutional policies, the vastly different roles and responsibilities of the accrediting associations surely counsel against any attempt at uniformity or standardization. What I do hope is that some efforts along these lines may

be welcome, and that some form of collaboration may emerge from our session together this morning.

I almost forgot a poignant postscript. When I read a few weeks ago of the death of Krister Stendahl, I recalled our one collaboration. Though I had never considered Martin Luther a defender of academic freedom, he surely was such on that memorable day in Dayton. And the eminent theologian who invoked his authority in support of free inquiry and scholarship remains my inspiration for the topic that brings us together this morning.