

COMMITTEE REPORT

and in group workshops and listening sessions; and solicited advice and feedback from senior law school administrators, including the General Counsel.

The Committee members who have engaged in this process of research, reflection, and dialogue have been struck by the fragility of academic freedom, both historically and today. Prominent historical examples include efforts to sanction and dismiss faculty who raised dissenting views during World War I, who were suspected of sympathizing with socialism during the McCarthy Era, or who engaged in anti-war and civil rights activism during the 1960s and 1970s. Beyond the academic context, constraints on speech have been used to suppress ideas that the existing majority in power considered dangerous at the time, including women's suffrage, contraception, and interracial marriage. Some observers have drawn parallels between these historical examples and contemporary efforts from both the Left and the Right to limit the teaching of concepts viewed as divisive and to restrict classroom and campus expression to shield community members from ideas and discourse they may find unsettling. In our view, these efforts to restrict expression are overbroad and should be resisted. Historically, legal protections for free speech have been critical in permitting the expression of unorthodox views, especially by those lacking power in a given community. These legal protections are based on the conviction that, if we want freedom to express particular ideas that we cherish, we need to protect and enforce this principle, even for ideas that we find objectionable.

Since 2011, UC Law SF has demonstrated its principled commitment to academic freedom and constructive discussion of controversial viewpoints on numerous occasions. The successful engagement of dissenting views during an event with former Israeli Supreme Court Justice Asher Grunis in September 2018, and the Chancellor and Dean's joint public statement in response to federal government criticism of critical race theory in September 2020, stand out as two notable examples. At the same time, UC Law SF is not immune from the pressures that have been surfacing at other institutions. In March 2022, events surrounding the disruption of a student event featuring Ilya Shapiro prompted ongoing reflection and discussion of core institutional values. Related tensions at the intersection of academic freedom and freedom of expression continue to arise on university campuses nationwide.

Anecdotally, and as evidenced by our 2021 Community Experience Survey and other similar surveys, students at UC Law SF and other institutions of higher education have reported fear of expressing views on matters of law or social policy that they perceive as unpopular or that would subject them to social stigma. Students have also raised concerns about the lack of a sense of belonging and reluctance to engage fully in class discussions, especially when they do not see their own identities and experiences reflected in the classroom. Some faculty have shared their reluctance to teach controversial subjects or cases due to concerns about potential employment repercussions or reputational harm. Other faculty have raised concerns that claims to academic freedom could be used improperly as a shield for prohibited discrimination or harassment. The current climate of political polarization, the explosive growth of social media, the disruption of in-person exchanges and relationship-building during the pandemic, and evolving student expectations about campus expression, have

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contributed to these trends.

Faculty Academic Freedom Policy

Adopted by the Faculty Executive Committee in 2011;
Updated and Approved by the Faculty on April 26, 2023

Preamble

Recognizing that robust First Amendment principles in the United States Constitution and corresponding provisions in the California Constitution bind UC Law SF, as a public institution, and, moreover, that the free exchange of ideas is essential to a free society;

Considering the UC Law SF Faculty Executive Committee's endorsement in 2011 of the American Association of University Professors' Statement of Principles on Academic Freedom and Tenure (1940);

Recognizing also that institutions of higher education may experience pressure from private donors and public funders to exclude, or to amplify, particular viewpoints;

Believing that individual faculty members should be able to engage in teaching (including t

Promoting and Protecting the Free Exchange of Ideas

2.1 Academic freedom and freedom of expression are at the heart of the law school's mission as an institution of higher learning. The goal of education, and especially legal education, is to develop a broad and deep understanding of, and ability to engage on the merits with, a full spectrum of ideas and viewpoints. Vigorous disagreement provides opportunities for us to more effectively articulate, defend, and reflect on our own positions.

2.2 Academic freedom is especially important when the ideas or viewpoints are controversial or unpopular, as orthodox or popular ideas need no protection. It is not appropriate for a law school to prevent or punish the expression of ideas and viewpoints on the grounds that they are controversial, disagreeable, or even offensive.

2.3 Members of the academic community should aspire to civil discourse and to good faith reflection on the different views of others. However, this aspiration may not operate in practice as a restraint on academic freedom and expression, or as a requirement that any faculty member endorse, amplify, or include any particular view.

2.4 The Faculty Code sets out the core professional rights of faculty essential to the preservation of academic freedom at the law school, including, but not limited to, free inquiry and exchange of ideas; the right to present controversial material relevant to a course of instruction; the enjoyment of constitutionally protected freedom of expression; and the right to be judged by one's colleagues, in matters of promotion, tenure, and discipline, solely on the basis of the faculty member's professional

endorsed by UC Law SF.

3.3 The law school should recognize that access to institutional resources and opportunities for professional development could be granted or denied in an inappropriate manner that chills academic freedom and freedom of expression. Law school administrators, in exercising their discretion to distribute law school resources and opportunities for professional advancement (including but not limited to salary increases; faculty development funds; research and case management stipends; sabbaticals; new or continued funding for centers, clinics, and similar programs; the renewal or extension of contracts; administrative roles for faculty; or other generally available resources or opportunities), should base their decisions solely on a faculty member's professional qualifications and performance and, where applicable, the professional merits of the faculty member's proposal. The law school may not use such assessments, or the related distribution of law school resources and opportunities, to interfere with, limit, or sanction a faculty member's exercise of academic freedom or freedom of expression.

3.4 Nothing in Sections 3.2 or 3.3 is meant to preclude access to external project or topic-based contributions, grants, or other awards, including third-party sponsored research, subject-specific chairs, or external donations to law school centers or programs with specific missions.

3.5 Members of the academic community have a responsibility to exercise independent judgment on academic decisions free from interference. Other members of the academic community should endeavor to protect the right of fellow members to make such independent judgments based on the standards of the profession.

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APPENDIX A: PROPOSED RESOLUTION