



University of Denver FACULTY FORUM

SPEAKING OUT ON ACADEMIC FREEDOM

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From Cathryn Potter

Faculty Senate President

“INSTITUTIONS of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

“College and university professors 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 of Principles on Academic Freedom and Tenure, American Association of University Professors

As we watch the drama unfold at the University of Colorado, many of us are thinking and talking more about “academic freedom” than is usual. We are engaged because we are members of an academic community. We also have opportunities to explain academic freedom and the importance of tenure to varied audiences.

These discussions with friends, at church, on airplanes, and in coffee shops lead me to appreciate the dangers and opportunities we face during this time of public scrutiny. Dangers are related to increasingly vocal anti-intellectual, anti-academy voices in politics and in popular discourse. This morning’s *Denver Post* (March 1) contains the following two presentations: an affirmation of academic freedom and expression of concern about “new McCarthyism” from CU president Betsy Hoffman, and the first editorial call for her dismissal. While these things are not related in the *Post*, one might conclude that in Colorado it is possible to survive athletic scandal, but standing up for academic freedom is risky business.

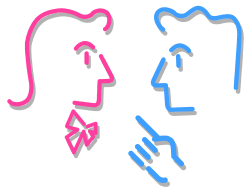
On the other hand, opportunities to reaffirm basic tenets of our Constitution and of the academy in our daily life are not to be minimized. Surely one of the critical aspects of academic freedom is the affirmation that active discussion of controversy is required in a free, intellectual society. We should be entering these discussions with gusto, enjoyment and pride.

One such discussion took place recently at my hair salon, where the consensus was finally summed up as follows: “I think he (Churchill) should be able to *say* anything he wants, but if he has *done* anything wrong, they should fire him, because he seems sleazy to me.” This particular crowd was completely on board with freedom of speech and with protected political speech by academics, but not easily convinced about the importance of academic freedom and tenure. The debate was serious; opinions were hot; and the group

cared about how to reconcile freedom and responsibility. They were not buying all of my arguments, but I was heartened by the discourse.

If you have not yet done so, I urge you to take a few minutes and surf the web on the topic of “academic freedom.” The American Association of University Professors, an organization to which many of us belong, provides a number of interesting policy documents and articles. Human Rights Watch puts our American issues in the infinitely more dangerous international context. One can always count on *The Nation* for one point of view, and the Campus Watch and Students for Academic Freedom sites are a must-see.

If we are to defend freedom of speech in general and academic freedom in specific, we must be present in the conversations of our time: in public and private arenas, focusing on influencing hearts and minds as well as public policy, and enjoying every minute of it. To that end, it is a pleasure to present the following essays from faculty here at the University of Denver. May they provoke discussion!



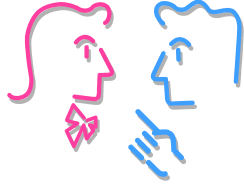
From Jere O’Neill Surber Philosophy

As the dust has begun to settle, it seems that recent events at the University of Colorado have come to pit Prof. Churchill and his Center for Ethnic Studies against the forces unleashed by Mr. Horowitz, Gov. Owens, and their movement to bring “political balance” to our state’s institutions of higher learning. It is tempting, I realize, to hang the banner of “academic freedom” as the backdrop against which this drama is playing itself out, but it is important to realize that both sides might well agree to this bit of stagecraft. Both have, in fact, invoked this principle in asserting, on the one hand, that Prof. Churchill’s writings are exactly the sorts of things that “academic freedom” and tenure are designed to protect, and, on the other, that certain voices representing alternative viewpoints are systematically excluded from free

expression and a fair hearing on our state’s campuses. If argued solely on this abstract plane of civil and legal rights, then it is difficult not to conclude that both may have some share of right on their respective sides. This is, of course, the way the concept of “abstract rights” generally works, since every assertion of right tends to provoke a corresponding counter-assertion (otherwise there would be no point in invoking a right in the first place).

But buried beneath the debris of this more abstract discussion, and the personalities that inevitably come to represent the respective positions, are some more fundamental issues. Many of us, otherwise sympathetic with the issues that much of Prof. Churchill’s writings have raised, must feel a sense of unease or even distaste with the hurtful rhetoric in which he has, at times, chosen to express them. And few of us can find the tactics of personal smear and innuendo directed against the person and reputation of Prof. Churchill acceptable in the public, much less academic, forum, however hopelessly “liberal” we may regard our institutions. My own view is that both “protagonists” have become overtaken by a lethal combination of ego, anger, and political profit-taking that has almost completely detached itself from the genuine issues involved.

As academicians and human beings, we should certainly be asking ourselves and challenging one another as to whether American policy, either internally with regard to minority groups such as Native Americans, or externally with respect to our dealings with other countries and groups that do not subscribe to our own ideology, can be regarded as just or even practically effective. But when such discussions, of themselves, cause further human pain and strife, they become part of the problem, not a path to resolution. I would urge our academic community to continue, as vigorously and unflinchingly as possible, to raise, confront, and debate such issues, but also to remain mindful, especially in the choice of our rhetoric and tactics, that we can all too easily become unwitting agents of obscuring the real issues and inflicting “collateral damage” even on those who may not be immediate parties to our discussions. (One group I have in mind here is our students.) Put in other terms, we should not allow an obsession with the legalities of “academic freedom” or “free speech” to blind us to that which underlies any freedom or discourse at all: a reciprocal respect for other human beings. This includes our opponents, of course, but more especially others most likely to suffer as a result of our own discourse and behavior.



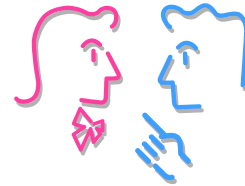
From Dean Saitta Anthropology

My main concern about the Churchill affair is what it portends for the future of informed, provocative speech in classrooms that are already being monitored by conservative thought police. Before the Churchill story broke, faculty members at CU and elsewhere confessed to being careful about what they said lest they come off as too “liberal.” After Churchill the scrutiny has extended beyond individual faculty to entire programs accused of having Blame America First agendas (e.g., Ethnic Studies). The current assault on academic free speech comes not only from the Right but also from the Left. Harvard president Larry Summers’s comments about evolved bio-psychological differences between women and men has sparked an anti-intellectual backlash from liberals (including, no doubt, many in Women’s Studies programs) at least as offensive as the one aimed at Churchill. Both reactions stand to chill discussion of the complex relationships and causal powers that shape human life. And the political center’s response isn’t much better if an op-ed piece in the February 26 *Rocky Mountain News* is any indication. There, we have a call for *all* professors to renew commitments to objectivity and impartiality in the classroom. Such ideals are not only philosophically debatable and ethically questionable, but also potentially inimical to teaching for good citizenship.

All of this suggests that citizens across the political spectrum should pause and reflect on what we know about the nature of human knowledge and the university as a site of learning. I take what I suspect is a fairly common position: our obligation as faculty is to teach a breadth of ideas, critically examine their social causes and consequences, boldly experiment with new ones and, from time-to-time, actively champion particular ideas that can advance what we know and change how we live. If we make some of our stakeholders uncomfortable in the process, then we’re probably doing something right. The DU Faculty Senate’s “Position Statement on Academic Values, Rights, and Responsibilities” (online at <http://www.du.edu/facsen/>) establishes an inclusive, progressive view of knowledge and learning. It allows that what Gordon Gekko said about corporate greed in

Wall Street also goes for classroom partisanship: bias is good; bias works. Sometimes there’s no substitute for a strong, informed polemic as a conversation-furthering tactic...even one that risks being construed as reprehensible, repugnant, or morally depraved. The need for no-holds-barred critical inquiry and debate is greater now than ever before, seeing as how nationalism and fundamentalism—historically some pretty effective conversation-stoppers—are insinuating themselves into American life and thought in increasingly insidious ways.

Keeping the academic climate supportive of speech that provokes, challenges, and advances thought requires vigilance. We should reach a better understanding with our students about the purpose of a university education. We should teach that, in a world where traditional disciplinary boundaries are rapidly disintegrating, *any* bit of knowledge is potentially relevant to the classroom subject at hand. We should remind citizens that professors actually *are* constrained by standards of professional accountability and rules of civil society. And we should aggressively defend the proposition that, all things considered, tenure is still the best guarantor of freedom, innovation, and collective enlightenment.



From 29 Faculty of the College of Law

The University of Colorado Board of Regents is currently investigating Professor Ward Churchill because of statements that he published regarding victims of the terrorist attack of September 11, 2001. Colorado lawmakers, including Governor Bill Owens, have called for Churchill to be fired. Some are suggesting that this matter illustrates flaws in the institution of tenure, and are calling for broader university power to fire tenured professors.

As law professors who are familiar with both the constitutional rules governing free speech and the importance of academic freedom to educational institutions – and as teachers at the only other law school in Colorado besides CU – we cannot be silent in the face of these developments in our state. We make this public statement to affirm our commitment to

freedom of speech and to call for a halt to the challenges to academic freedom that have followed in the wake of protests about the Churchill publication. Our individual views on the tone and substance of Professor Churchill's statements vary widely. But the content of those views is irrelevant to the question of whether Professor Churchill has the right to make such statements, and we are united in believing that he does.

As law professors, we are uniquely aware of the importance of academic freedom at our colleges and universities. Such institutions are central to the production of knowledge and the dissemination of information in our society. By helping to ensure an informed populace, they facilitate the development of effective and just public policies. An informed public is the key to a truly free society, for demagogues and tyrants thrive on ignorance. Universities play the crucial role of providing a forum for informed criticism of our society and its policies. Such critique of the conventional wisdom, or the accepted way of doing (or seeing) things, is essential to fostering the public debate that is necessary to prevent tyranny. As our own history shows, once loyalty tests and "love it or leave it" reasoning are used to stifle dissent, both knowledge and liberty suffer. Regardless of whether state and university officials agree with Professor Churchill's views, it is their obligation to uphold his right to state them publicly. In addition, the attack on Professor Churchill's freedom of speech sends the wrong message to students, who need to understand the importance of free speech in the setting of higher education.

Most important, distaste or offense at Professor Churchill's expression of his views does not give anyone the authority to challenge his right to say them. As the U.S. Supreme Court noted in *Terminiello v. Chicago*, "... a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

Moreover, to contend, as some commentators and officials have, that a "right" to free speech might nevertheless have "consequences," including firing, is to fundamentally misapprehend the free speech guarantee. The central meaning behind the First Amendment protection of freedom of speech is that the Constitution *prohibits* government officials from firing or disciplining individuals for speech they find offensive or unpopular. Indeed, the most controversial views are the ones that *most* need to be protected, for they are the easiest to chill. Who knows what other

faculty members, whether their views be progressive or conservative, will be afraid to speak out after seeing the public reaction to Professor Churchill's controversial statements? The whole point of a system of free speech is that those who find speech offensive have an equal right to challenge and respond to it – with more speech. If University and state officials are offended by Professor Churchill's statements, they should respond by criticizing his ideas, not by punishing him for stating them.

In the interests of not only Professor Churchill, but also the entire academic community in Colorado – and the country at large – we urge the University of Colorado Board of Regents to take a principled stand respecting Professor Churchill's constitutionally protected right to publicly state his views.

Signed,
[All of the undersigned are full-time faculty, or faculty emeriti, at the University of Denver College of Law]

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