

# **WILL THE ACADEMY SURVIVE? FREEDOM OF EXPRESSION, ACADEMIC FREEDOM, AND THE FUTURE OF HIGHER EDUCATION**

Oklahoma State Regents for Higher Education  
Legal Issues in Higher Education Conference  
September 19, 2018

By Andy Lester  
9400 North Broadway Extension  
Suite 600  
Oklahoma City, Oklahoma 73114  
Tel. 405.844.9900  
Email [alester@spencerfane.com](mailto:alester@spencerfane.com)

## **Introduction**

It is great to be with you today to kick off the Legal Issues in Higher Education Conference. It is also nice to be on the University of Oklahoma campus. I actually gave my first speech as a lawyer at OU, over 35 years ago. It was not an auspicious start. In fact, I was not even scheduled to speak that day.

I had prepared a continuing legal education paper – the topic was defending actions under the Civil Rights Act of 1871

– but someone else was supposed to deliver the address. I was a young lawyer – today, it may be hard to believe I was ever a young lawyer – and had all of six months experience handling civil rights cases. An hour or two earlier, I learned the speaker was skipping out. While I knew the topic reasonably well, I simply had not prepared to speak. It may not have been my best speaking performance, but for me it was most memorable.

I am now in my twelfth year as a regent. Gov. Brad Henry twice appointed me to the Board of Regents for the Oklahoma Agricultural & Mechanical Colleges, which governs Connors State College, Langston University, Northeastern Oklahoma A&M College, Oklahoma Panhandle State University, and Oklahoma State University. And, not quite three years ago, Gov. Mary Fallin named me to serve on the Oklahoma State Regents for Higher Education.

I mention my regent nominations to show that, in

Oklahoma, service as a regent is a non-partisan affair. It does not have to be that way, but at least the last several governors have made numerous bipartisan appointments. And this is as it should be, for supporting higher education cuts across traditional partisan divides.

As a member of the Oklahoma State Regents for Higher Education, I want to express my gratitude for all the work you do in support of higher education in Oklahoma. Each of you does so much to make Oklahoma's institutions of higher education work. In doing so, you provide an invaluable service for the various institutions you serve, for the communities they affect, and for the state as a whole. Thank you for your service to Oklahoma and especially to the future generations of Oklahoma leaders.

In my judgment, nothing we do as a society is more important to our future than higher education. Unfortunately, not

everyone agrees. And tragically, some of the naysayers populate positions of power in this state.

Those of us who value higher education are living through tough times. The difficult status shows itself in many ways, the most obvious manifestation being the huge cuts in the legislative appropriation for higher education over the past several years. In actual dollars, the Legislature today is spending on higher education roughly what it did in 1999. That is before many of our current college students were even born. And it does not even account for the greater than 50% inflation we have experienced since then.

That is incredibly shortsighted. Yet, it reflects not merely the determination of legislative foes of higher education. It also reflects judgments by many of our fellow citizens regarding the value of higher education.

To put it bluntly, in the public arena, higher education is

under attack. Like it or not – I, for one, do not – many today question the value of a higher education. Make no mistake about it. There are people – some in positions of power – who want to completely alter public higher education, in America in general and in Oklahoma in particular.

Back in 2011 when I first started including comments like this in my higher education speeches, I used to warn that “some even aim to drastically cut public higher education funding.” Well, today, that is ancient history. That train left the station a long time ago. It has already happened. Yet, our opponents are not satisfied. Some still aim to completely defund public higher education, and they seem not even to consider the consequences.

We cannot allow that to happen. Higher education is too important, to ourselves and our posterity, to allow a few miserably myopic naysayers to drive the debate. We should be proud of what we do. And we must tell people about it. We have

a great story to tell. Let us tell it, and do so unabashedly.

I am not here, though, to discuss public funding of higher education. Instead, I want to discuss another threat to the academy. It is stated in the title of this speech: “Will the Academy Survive? Freedom of Expression, Academic Freedom, and the Future of Higher Education.”

### **Disclaimer**

The role of academic freedom and freedom of speech in higher education in general is a timely issue. Virtually every issue of *The Chronicle of Higher Education* or *Inside Higher Ed* contains a story regarding this topic.

Now normally, this is where I give my usual disclaimer, along the lines of, “The comments I make here today are mine and mine alone. They are not legal advice, and should not be considered as such. Moreover, they do not necessarily reflect the views of any group with which I am affiliated, including my law

firm, Spencer Fane, the Oklahoma State Regents for Higher Education, the Chancellor, my fellow Regents, our staff, or the Oklahoma State Regents for Higher Education as a board.” And the words of the disclaimer are accurate, and, despite my caveat of a moment ago, I guess I have now included them here.

Nevertheless, let me be clear. The words of the disclaimer notwithstanding, the Oklahoma State Regents for Higher Education are committed to preserving, promoting, and protecting, on all of our college campuses, the rights of free speech, free expression, and the free exchange of ideas.

### **The Purpose of Higher Education**

Before I get into the meat of my topic, I think it important to determine the purpose of a higher education. Is a higher education a means to obtain a credential? Is it a way to learn a skill? Is it intended to teach students how to work well with others? Certainly a higher education does all of these things. But

it also does much, much more.

A higher education hones critical thinking skills. A higher education teaches research, analysis, and writing. A higher education confronts students with ethical problems and teaches them how to resolve them properly.

Higher education transforms lives. Through higher education, students become better citizens. With a higher education, students become community leaders. Because of a higher education, students have an ability to obtain better jobs, in more fulfilling fields, at higher rates of pay.

### **The “Infrastructure” of Higher Education**

All of these things, and more, are true about higher education. And, to make it work, we need several things, which constitute what I call the “infrastructure” of higher education.

First and foremost, we need excellent professors. Professors are people who have reached the pinnacle of learning.

They have proved their ability in their respective fields. They have demonstrated their skills and knowledge at the highest level of learning. As teachers and researchers, they are the cream of the crop. They know how to impart knowledge and how to develop minds in ways that challenge their students to strive for excellence.

For professors to do the things we want them to do, we also need excellent support staff. These are the people who do the many things necessary to run the institution – from sweeping the floors and maintaining the grounds to paying the bills and operating the institution – so that the professors can concentrate on what they do best.

Some have claimed that Oklahoma's colleges and universities have almost twice as many so-called "non-instructional" employees than do other schools around the country. That's false, as anyone at all familiar with our

campuses knows. To the contrary, on a per full time equivalent basis, we are average, though I am not satisfied with being average. Indeed, I believe we need more, not fewer, advisors, more, not fewer counselors.

We also need excellent facilities. And by facilities I mean not just buildings, but also stuff – equipment, computers, books, paper, and the like. Imagine running a college where the buildings are unreliable or even non-existent. Or think about how difficult it would be, even in today’s high tech world, if a university had a severe paper shortage. I have seen that. It can be done. But it does not work well.

### **Beyond the Basics: The Search for Truth**

All of these things, and more, are true about higher education. With excellent professors, administrators, staff, and facilities, we have the basics to operate an institution of higher education. But for it all to work in the manner to which we have

become accustomed, more is needed. What is it? What is the key? What makes the difference? What has made our system of higher education the envy of the world? What distinguishes an institution of higher education from any other means of imparting knowledge? What makes it all cohere?

I think I know the answer. And it is the topic of my remarks today. What makes our system of higher education work is a commitment to the free exchange of ideas, to discerning truth from falsehood, to providing the opportunity to confront challenging ideas and thereby to learn what is the better way.

**Without a Commitment to Free and Open Inquiry, a College  
Ceases to Function as such**

Let me state it clearly—without a vibrant commitment to free and open inquiry, an institution of higher education ceases to function as such. No college or university is doing its job if it is not committed to allowing and encouraging the exchange of

differing ideas. To be sure, without being so committed, an institution can transmit information or confer a credential. But a simple, freestanding website can do that. Without fostering the free exchange of ideas, an institution of higher education is not fulfilling its mission of expanding the minds of its students or teaching them how to examine new, challenging information and to test it for truth or falsity.

### **Academic Freedom – The AAUP Standard**

For me, it is impossible to conceive of a college or university that is not committed to freedom of thought, speech, and inquiry. Academic freedom is vital for the well-being of any university, any college. As you know, the American Association of University Professors (AAUP) has spoken definitively on academic freedom. In its 1940 Statement of Principles on Academic Freedom and Tenure, the AAUP states that “Teachers are entitled to full freedom in research and in the publication of

the results[.]” The policy statement continues: “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.” And finally, the Statement of Principles provides that “When [college and university teachers] speak or write as citizens, they should be free from institutional censorship or discipline[.]”

The AAUP standards are voluntary. Yet, they apply essentially to all institutions of higher education. And, while academic freedom is important at private schools, it is even more important at public colleges and universities. For public institutions differ significantly from private ones in at least one important respect, in that public schools are the government, and as such have additional obligations. I will get to those momentarily.

## **A Rush to an Abyss?**

The issue on which I will spend the rest of my time with you today involves what to some looks like a troubling trend on college campuses around the country to stifle academic freedom. To put it bluntly, I am concerned higher education is rushing headlong toward an anti-intellectual abyss. Many on college campuses appear to be turning their backs on freedom of speech, freedom of thought, freedom of expression.

Across America and here in Oklahoma, institutions of higher education face a serious, immediate, and, I believe, existential threat. The peril is insidious. It affects all institutions of higher education. None is immune. It has shown up at public and private institutions. It is present on the east coast, on the west coast, and everywhere in between. It exists in blue states, purple states, and red states. It has appeared in Ivy League schools, the ACC, the SEC, the PAC 12, the Big Ten, and the

Big 12. It has found its way into large research institutions, small liberal arts schools, regional universities, and community colleges.

The threat is subtle, treacherous, and perfidious. It is anti-freedom, anti-education, and anti-intellectual.

Institutions of higher education, traditional bastions of free thought, free speech, and free expression, are being targeted for allowing people, who might believe differently from some accepted norm, to have a forum to air their thoughts. It is happening everywhere. Yale, Columbia, Georgetown, Duke, North Carolina, Michigan, UCLA, and Berkeley all have had recent controversies challenging traditional notions of academic freedom. So too, closer to home, have Texas, Missouri, Kansas, Nebraska, and even, to some extent, institutions right here in Oklahoma. I could name many more.

What I find exceptionally worrisome is that this anti-free-

thought threat is coming not from without, but from within. Sometimes faculty members are leading the anti-free speech movement. Even more shocking is the fact that students are often leading the charge to exclude ideas from their campuses.

### **A Few Examples**

In the spring of 2017, for example, students at Claremont McKenna College prevented most of the audience from attending a lecture by Heather MacDonald, and school officials, afraid it would be dangerous to remove the protestors, instead had the talk go on in an essentially empty room while live-streaming it elsewhere.

Ms. MacDonald's crime? She had previously published a book called *War on Cops*, which criticized the recent heavy scrutiny surrounding police shootings.

A month before that, at Middlebury College, students and others prevented Charles Murray from speaking on campus.

Middlebury tried the live-streaming alternative, too, with Professor Allison Stanger interviewing Murray. Afterwards, protestors physically assaulted the group, resulting in the hospitalization of Professor Stanger with a serious neck injury and a concussion.

It happened again almost exactly a year ago today. A handful of individuals at William & Mary successfully shut down a speech by Claire Guthrie Gastañaga, executive director of the ACLU of Virginia chapter. Her topic, ironically enough, was college students' First Amendment rights.

It took only a handful of individuals to effectively cancel Ms. Gastañaga's speech. You can watch the entire incident on YouTube (<http://bit.ly/Gastanaga>). Based on what I saw, it appears approximately a dozen individuals kept the rest of the William & Mary community from hearing what might have been an interesting and valuable speech. This "dirty dozen"

marched to the front of the auditorium and started chanting, in rather loud voices, “A-C-L-U, you protect Hitler, too.”

Ms. Gastañaga initially welcomed the protestors, as being a good example of how people can exercise their First Amendment rights. How mistaken she was, however, quickly became apparent. The protestors were not going to stop, were not going to let anyone else speak. Worse, the institution was ill-prepared to do anything to protect the right of Ms. Gastañaga to speak or the right of the members of the audience to listen. The chants went on, and the speech was aborted.

I could name many, many more. And it does not have to be something overtly political. It may involve a student complaining about something someone said in a classroom. It could concern someone upset about a large gift from a major donor who somehow is controversial. Perhaps it surrounds the placement of a statue on campus grounds.

Should a supporter of Israel be barred from speaking on campus? Should pro-Donald Trump speech be limited? How about anti-Donald Trump speech? Or should a university instead heed the cacophonous clamor of a few loud-mouthed individuals and constructively disinvite a former United States Secretary of State, herself a longtime university professor, who had the temerity to serve in a Republican administration? The answers should be obvious, but in some circles no longer are. Of course, pro-Israel, pro-Trump, and anti-Trump speech should be allowed. And, no, a school should not disinvite the former provost of Stanford University simply because some members of its community might strongly disagree with her public positions or otherwise feel uncomfortable in her presence.

And, lest you get the impression that freedom of speech is an issue for only one side of the political spectrum, note that the same institution that disinvited Condoleezza Rice just recently

took steps to sanction a tenured professor for perceived left wing rants on his private Facebook page. The university's investigation said that his statements were "clearly insulting and degrading to Caucasians," and found that "he exercised astonishingly poor judgment in his choice of words."

### **Boorish Behavior Permeates a Cantankerous Culture**

Now let me stop here for a moment to note that boorish behavior is not limited to college campuses. Nor are attempts to shut down discussion and debate. This kind of conduct permeates our contemporary culture. It is happening in the political world, in Congress, and in the White House. It is happening on television, on radio, and in social media. It is happening in religious circles, in workplaces, and even in neighborhoods and among families.

But I am not here to talk about misbehavior by politicians, commentators, or even the faithful. I am here to discuss what

happens on college campuses, and what we, as college and university leaders should do about it. For these kinds of actions hit at the very core of what college is all about. After all, without a strong, vital commitment to academic freedom and to free and open inquiry, an institution of higher education is no longer doing what it is supposed to do.

### **Academic Freedom and the First Amendment**

Freedom of speech, crucial at all colleges, is especially central to the mission of public higher education. That is so, because public colleges and universities are run by the government, and special rules apply at government institutions.

For over 200 years, the First Amendment to the Constitution of the United States has secured the rights of Americans against government abridgements of the right of freedom of speech. “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.” So says the First Amendment. It is short, simple, and clear. Congress, and by extension the states, may not curtail the freedom of speech.

### **Interlude: It might have been the Third Amendment**

I want to take a brief pause here – we are a bit past halfway through this, so call it an intermission – to tell you a piece of interesting trivia. If you are ever at a party and need a good piece of seemingly useless fact that no one else knows, try this: Did you know that the First Amendment actually was supposed to be the Third Amendment? It is true.

The Bill of Rights, as originally sent to the states for ratification, contained twelve proposed amendments to the Constitution. By 1791, ten were ratified, and they became known as the Bill of Rights.

The first proposed amendment, regulating the size of the House of Representatives, was never ratified and thus never became a part of the Constitution. The second proposed amendment, stating when Congress may change its pay, was ratified, but not until another 200 years had passed. It is now known as the 27th Amendment. Indeed, although it was one of the earliest proposed Constitutional amendments, it is the last one to be ratified.

### **Oklahoma's "First Amendment"**

Oklahoma Constitution Article 2, Section 22, also protects free speech rights. According to its first sentence, "Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

## The Supreme Court and the First Amendment

The United States Supreme Court regularly decides cases involving the First Amendment. And when it does, it often speaks in broad, aspirational tones. The First Amendment, the Court says, enshrines “[o]ur profound national commitment to the free exchange of ideas[.]” *Spacecon Specialty Contrs., LLC v. Bensinger*, 713 F.3d 1028, 1042 (10<sup>th</sup> Cir. 2013), quoting *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 685 (1989). “At its core, ‘the First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’” *iMatter Utah v. Njord*, 774 F.3d 1258 (10<sup>th</sup> Cir. 2014), quoting *Boos v. Barry*, 485 U.S. 312, 318 (1988), citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

The Supreme Court has stated that “the First Amendment means that government has no power to restrict expression

because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002). Or, to put it another way, “[t]he government may not prohibit the dissemination of ideas that it disfavors, nor compel the endorsement of ideas that it approves.” *Planned Parenthood Association of Utah v. Herbert*, 828 F.3d 1245, 1259 (10<sup>th</sup> Cir. 2016), quoting *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298, 309 (2012).

### **Academic Freedom in the United States Supreme Court**

Perhaps the most important case involving free speech rights of public employees was the 2006 decision in *Garcetti v. Ceballos*, 547 U.S. 410 (2006). In that case, the Court distinguished between speech of a public employee acting like a citizen and speech made pursuant to official duties.

When I teach continuing education seminars or law school courses, I typically say *Garcetti* stands for the proposition that

statements public employees make pursuant to their official duties do not constitute protected speech. In perhaps the most important First Amendment public employment speech case of the past 50 years, the Court explored the full panoply of its holdings since its 1968 decision in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), and determined that an assistant district attorney had not spoken as a citizen on a matter of public concern when he voiced doubts about the veracity of an affidavit used to obtain a search warrant. That is a long way of saying his speech was not protected.

Generally, “public employees do not surrender all their First Amendment rights by reason of their employment.” 547 U.S. at 417. The Court in *Garcetti* repeatedly referred to protected public employee speech as words uttered by the employee *as a citizen*. The important inquiries are: 1. “whether the employee spoke *as a citizen* on a matter of public concern,”

547 U.S. at 418 (emphasis added); and 2. whether the government has “an adequate justification for treating the employee differently from *any other member of the general public.*” *Id.* (emphasis added). “The First Amendment limits the ability of a public employer ... to restrict ... the liberties employees enjoy in their capacities *as private citizens.*” 547 U.S. at 419 (emphasis added).

The Court explained the goal of “treating public employees like ‘any member *of the general public.*’” 547 U.S. at 420-21 (emphasis added), quoting *Pickering*, 391 U.S. at 573. The First Amendment protects the “liberties the [public] employee might have enjoyed *as a private citizen.*” 547 U.S. at 421-22 (emphasis added). “When an employee speaks *as a citizen* addressing a matter of public concern, the First Amendment requires a delicate balancing of the competing interests surrounding the speech and its consequences.” 547 U.S. at 423 (emphasis

added). Such employees “retain some possibility of First Amendment protection [when performing] the kind of activity engaged in *by citizens who do not work for the government.*” *Id.* (emphasis added).

By contrast, “[w]hen a public employee speaks pursuant to employment responsibilities, [] there is no relevant analogue to speech *by citizens* who are not government employees.” 547 U.S. at 424 (emphasis added). The fact that the speech occurs within the office, not publicly, does not strip it of its protected status. “Employees in some cases may receive First Amendment protection for expressions made at work.” 547 U.S. at 420.

In *Garcetti*, the speech at issue was made pursuant to the plaintiff’s official duties. “Restricting speech that owes its existence to a public employee’s professional responsibilities,” the Court said, “does not infringe any liberties the employee might have enjoyed *as a private citizen.* It simply reflects the

exercise of employer control over what the employer itself has commissioned or created.” 547 U.S. at 421-22 (emphasis added). In other words, “the First Amendment does not prohibit managerial discipline based on an employee’s expressions made pursuant to official responsibilities.” 547 U.S. at 424.

I mention *Garcetti*, however, not so much because of its specific holding, important as that may be, but rather because the majority opinion pauses to proclaim the importance of academic freedom. To be sure, *Garcetti* left open the question whether “expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.” Nonetheless, the concept of academic freedom, the Court said, may lead to a different analysis in “a case involving speech related to scholarship or teaching.” *See also Fisher v. Univ. of Texas*, 570

U.S. 297, 308 (2013), quoting *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 312 (1978) (the academic mission of a university is “a special concern of the First Amendment”).

As the Supreme Court said in another case – *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) – more than 50 years ago, “Our Nation is deeply committed to safeguarding *academic freedom*[.]” *Id.* (emphasis added). Moreover, academic freedom, the Court said “*is of transcendent value to all of us*, and not merely to the teachers concerned.” *Id.* (emphasis added).

Did you hear that? Academic freedom is not merely about academicians, though it certainly concerns them. But academic freedom, the Court says, involves all of us. “*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.” *Id.* (emphases added).

## **Critical Thinking and the Free Exchange of Ideas**

Those who have devoted their lives to higher education know that the most important thing higher education does is to develop critical thinking. And critical thinking comes about not by avoiding challenges or disagreements, but instead by encouraging free inquiry, free debate, free thought. That is why the anti-free expression on college campuses trend is so corrosive.

The institutions of the Oklahoma State System of Higher Education must be committed to free and open inquiry in all matters. As stated in the University of Chicago Statement on Principles of Free Expression (<https://tinyurl.com/y98qor45>), from which I have borrowed extensively, Oklahoma's public colleges and universities must support the right of members of the institution's community to have the broadest possible latitude to speak, to write, to listen, to challenge, and to learn.

Except insofar as limitations on that freedom are necessary to the functioning of an institution of higher education, Oklahoma's colleges and universities must fully respect and support the freedom of all members of their respective communities to discuss any problem that presents itself.

Commitment to the principle of freedom of expression lies at the very core of our system of higher education. Of course, the ideas of different members of a college or university community will often and quite naturally conflict. But it is not the proper role of a college or university to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. To be sure, our colleges and universities should greatly value civility. After all, we are teaching the best and the brightest.

Indeed, today's college students are tomorrow's leaders, and I, for one, certainly want our future leaders to be respectful

of others. I also want them to be humble enough to hear differing ideas, to evaluate them, to distinguish good ideas from bad ones, to defend the good, and to reject the bad. But they will not be able to do so in the real world by simply babbling blathering banalities in the face of challenging thoughts.

Insofar as higher education is concerned, all members of a college or university community share in the responsibility for maintaining a climate of mutual respect. Nevertheless, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of the college or university community.

The freedom to debate and to discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever or whenever they wish. A college or university may properly restrict expression that

violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the institution. In addition, the college or university may reasonably regulate the time, place, and manner of expression, to ensure that it does not disrupt the ordinary activities of the institution.

To put it plainly, classes must go on. No one, for example, has the right to interrupt a class and seize the room to speak through a bullhorn. But exceptions to the general principle of freedom of expression are narrow, and it is vitally important that they never be used in a manner that is inconsistent with the institutional commitment to a completely free and open discussion of ideas.

The fundamental commitment of a college or university must be to the principle that debate or deliberation may not be

suppressed because the ideas put forth are thought by some or even most members of a college or university community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the college or university community, not for the institution, to make those judgments for themselves. And they may act on those judgments, not by seeking to suppress speech, but by openly and vigorously contesting ideas they oppose. Indeed, fostering the ability of members of the college or university community to engage in debate and deliberation in an effective and responsible manner is an essential part of an institution's educational mission.

As a corollary to the commitment to protect and to promote free expression, members of the college or university community must also act in conformity with the principle of free expression. Although members of the community are free to criticize and to contest views expressed on campus, and to

criticize and to contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, I believe each college or university has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

Colleges and universities should adopt such policies and procedures as they deem necessary and appropriate to implement these goals. Freedom of speech, freedom of expression, academic freedom—these freedoms are that important.

Of course, having good policies is only the first step. Once you have the policies, you must follow through. You must actually follow the policies. And you must continually review them. As I am sure the various lawyers in the room will tell you,

the best policies are worth little—they can even be counterproductive—if you fail to follow them.

### **The Public is Watching**

Make no mistake about it. Academic freedom is under attack, and an attack on academic freedom is a direct attack on the academy itself. This is a battle we cannot lose. For if we lose academic freedom, we lose the university.

College campuses should be welcoming places for the discussion of ideas. That is why this threat to academic freedom is serious, real, and even existential. It does not matter if you are liberal or conservative, rural or urban, Democrat or Republican, religious, irreligious, or even anti-religious. If you value higher education, join the fight for academic freedom. Now, in doing so, let us always be civil, respectful, and humble. But let us be firm in our resolve to uphold academic freedom. We should require it. Our fellow citizens should expect it. And those who

love higher education – our students, our faculty, our administrators, and our constituents – should demand it.

### **Embrace Academic Freedom**

The public is watching this issue closely. And I am convinced that our response to this challenge will dramatically affect the public's perception, and even the public's funding, of higher education.

We can – in my judgment, we must – make our campuses welcoming places for the civil, respectful discussion of ideas. Stand firm for free speech. Embrace academic freedom.

Thank you.