

Report of the UC Law SF Ad Hoc Committee on Academic Freedom
April 19, 2023

Background for the Committee's Charge

The University of California has long been at the forefront of thinking about issues of academic freedom, from its initial formulation of Academic Personnel Manual (APM) 010 on Academic Freedom in 1934 to its reformulation of that policy in 2003 and its creation of the National Center for Free Speech and Civic Engagement in 2017. The 2003 policy begins as follows:

The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large.

UC Law SF is a free-standing law school in the University of California system. Like the APM, the UC Law SF Code of Faculty Rules and Procedures (Faculty Code) has long incorporated robust provisions on academic freedom and freedom of expression. In addition, in 2011, the Faculty Executive Committee (FEC) adopted an Academic Freedom Policy. The FEC's rapid adoption of this policy, without the opportunity for a full faculty vote, was prompted by controversy surrounding an on-campus conference on "Litigating Palestine."

In light of developments at peer schools, and with the benefit of a decade of experience, the Provost and Academic Dean constituted an Ad Hoc Committee on Academic Freedom (the Committee) in Fall 2022 and charged it with updating the 2011 policy. The Committee has undertaken a more extensive process of consultation, drafting, and revision than was possible in 2011. To carry out its charge, the Committee has met regularly throughout the academic year; researched literature on academic freedom; consulted policies and statements on academic freedom from across the UC system and peer institutions nationally, from which we have incorporated language and adapted ideas¹; engaged faculty through an anonymous online portal, in one-on-one meetings,

¹ The Committee has drawn on policies and statements including: University of California, Regents' Policy on Academic Freedom (1970); University of California, General University Policy Regarding Academic Appointees, Academic Freedom (APM-010); APM-010, Appendix B, Preamble to Statement of Principles: Student Freedom of Scholarly Inquiry; UC Berkeley Free Speech--FAQs, <https://freespeech.berkeley.edu/frequently-asked-questions/>; Report of the Committee on Freedom of Expression at the University of Chicago (2015); UC Academic Council Statement on Academic Freedom and Civility (April 1, 2015); MIT Statement on Freedom of Expression and Academic Freedom (2022); Proposed UC Presidential Policy on Anti-Discrimination (Jan. 31, 2023).

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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.

In the Committee's view, UC Law SF can and must strive to equip all members of the academic community with tools and strategies to approach and have difficult conversations, engage substantively with opposing viewpoints, and express dissent without infringing on other community members' right to hear and to receive information. Doing so effectively requires starting from an initial presumption of mutual good faith. Any other presumption makes a vibrant intellectual environment impossible to maintain, and risks turning higher education campuses into echo chambers.

The Committee understands that the core rights, responsibilities, and protections related to faculty members' academic freedom are set out in the Faculty Code and texts incorporated into the Code by reference. The Faculty Code and UC Law SF policy also set out the applicable rules for faculty conduct, but uncertainty persists about what and when expression, particularly in the classroom, could amount to actionable discrimination or harassment. This can create a chilling effect on speech and can deprive students of exposure to a full spectrum of ideas and viewpoints. Institutions of higher education can ameliorate this effect by providing faculty with clear and objective standards, particularly where there might be room for subjective interpretation, to ensure that important efforts to prevent discrimination and harassment do not chill protected speech and academic inquiry.

The Committee acknowledges the multiple dimensions of the faculty's academic freedom, defined here, and elsewhere, as encompassing (1) freedom of research and publication, (2) freedom of teaching, (3) freedom of intramural expression, and (4) freedom of extramural expression. Our discussions with faculty highlighted the range of principles, considerations, and interests that shape these different dimensions. The Committee has also reflected on the degree to which issues of academic freedom and freedom of expression intersect. While our charge was to update the Academic Freedom Policy, this policy is intricately intertwined with UC Law SF's broader obligation to protect and respect freedom of expression. The Committee notes that revision of the Academic Freedom Policy is only a first step and recommends that UC Law SF undertake further efforts to develop and publicize guiding principles to protect open inquiry and expression in the campus community, consistent with our educational mission.

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 the selection of clinical projects and clients), scholarly research, and public engagement without fear of institutional sanction or retribution for expressing or eliciting viewpoints that others disagree with;

Noting the particular vulnerability of pre-tenure, contract, and adjunct faculty and the need to ensure that these vital contributors to the mission of UC Law SF can speak, teach, and research freely;

Affirming that the Code of Faculty Rights and Responsibilities (Faculty Code), as enacted by the Faculty on May 4, 1992, and amended most recently by the Faculty on April 13, 2018 (Document VI of the Faculty Rules and Procedures), sets out 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;

Affirming also that the Faculty Code also sets out faculty responsibilities and standards for assessing and addressing unacceptable or incompetent conduct;

Underscoring that the Faculty Code not only directs UC Law SF to refrain from interfering in the core professional rights of faculty, but also places an affirmative duty on UC Law SF, in support of its central function as an institution of higher learning, to proactively protect and encourage the faculty in their teaching (including the selection of clinical projects and clients), scholarly research, and public engagement by preserving such professional rights;

Emphasizing that this affirmative duty requires UC Law SF to ensure that rights enumerated in the Code are protected in practice, so that faculty may provide a forum for, and express, a full spectrum of ideas and viewpoints in the classroom and in their research;

The UC Law SF Faculty affirms the following guiding principles for the promotion and protection of academic freedom:

Purpose

1.1 The faculty of UC Law SF is committed to the principle that the pursuit of knowledge and the free expression of a full spectrum of ideas and viewpoints is at the heart of the academic mission, whether in the context of research and scholarship, in the classroom (including the selection of clinical projects and clients), and in faculty contributions to public discourse.

1.2 The principles of academic freedom protect the faculty's freedom of inquiry and research, freedom of teaching (which, at a law school, includes the selection of clinical projects and clients), and freedom of expression and publication. These freedoms enable the faculty to advance knowledge and to transmit it effectively to students and to the public.

1.3 The faculty also seeks to foster in our students a mature independence of mind, and the ability to understand, analyze, and debate positions that may differ from their own. This purpose cannot be achieved unless faculty are free to express and to elicit a full spectrum of ideas and viewpoints, consistent with their rights, standards of scholarly inquiry, and professional ethics. The law school has a special responsibility to equip the next generation of legal professionals with analytical, advocacy, and communication skills crucial to their professional success. When members of the academic community are fearful of expressing or engaging with ideas, the law school cannot advance this mission.

1.4 Learning to engage in dialogue concerning a full spectrum of ideas and viewpoints is a developmental skill that faculty should be committed to teaching and improving. Faculty should strive both to cultivate and to model these skills.

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 qualifications and professional conduct and in accordance with fair procedures.

2.5 With the rights and privileges of academic freedom come corresponding responsibilities, as defined in the Faculty Code. Members of the faculty must also comply with legal obligations to refrain from discrimination and harassment.

Freedom from Interference

3.1 The law school may not use assessments of or discipline for incompetence or other unacceptable conduct as a pretext for interfering with, limiting, or sanctioning a faculty member's exercise of academic freedom or freedom of expression. No provision of the Faculty Code or other law school policy should be interpreted or applied in order to interfere with, limit, or sanction an individual faculty member or academic appointee's freedom of expression if that expression is legitimately related to that faculty member's course content, teaching, scholarship, or contributions to public discourse.

3.2 No person or organization outside the academic community shall be permitted to dictate which ideas or projects may be taught, explored, expressed, supported, or

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.

Non-Endorsement and Institutional Expression

4.1 The comments or opinions expressed by speakers at events held on the UC Law SF campus are the speakers' own and should not be taken as a statement, opinion, position, or endorsement by UC Law SF.

4.2 The comments or opinions expressed by UC Law SF faculty or other employees engaged in teaching, research, or scholarship, whether in publications, courses, or public fora, are their own and should not be taken as a statement, opinion, position, or endorsement by UC Law SF.

4.3 Administrators, and faculty in administrative positions, occasionally speak on behalf of the law school and to the law school community. The faculty encourages administrators to remain mindful that the endorsement of particular viewpoints on matters not directly related to the business of the law school may convey that there is only one acceptable viewpoint on such matters. This can have a chilling effect on academic freedom and on the expression of a full spectrum of ideas and viewpoints within the academic community.

APPENDIX A: PROPOSED RESOLUTION