PRESSURES TODAY ON FACULTY
ACADEMIC FREEDOM IN
AMERICAN HIGHER EDUCATION

Presenters:

ANN H. FRANKE
Director of Employment Liability Services
United Educators Insurance
Chevy Chase, Maryland

and

MARTIN MICHAELSON
Attorney at Law
Hogan & Hartson L.L.P.
Washington, D.C.

Stetson University College of Law:

20th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 11-13, 1999
Pressures Today on Faculty Academic Freedom
in American Higher Education


By Ann H. Franke, Esquire 1/
Director of Employment Liability Services
United Educators Insurance

Martin Michaelson 2/
Hogan & Hartson L.L.P.

Throughout history, exploration of new ideas has generated impassioned controversy. Novel propositions can and do cause discomfort, anxiety, and alarm. Adherents of the established order have often deemed intellectual breakthroughs subversive and dangerous. Thinkers who rock basic social assumptions have suffered severe and unwarranted consequences. In 1633, the Inquisition punished Galileo for endorsing the Copernican view that the earth revolves around the sun. In the 18th century, Yale President Timothy Dwight dismissed a leading member of his medical faculty, Dr. Nathan Smith, for refusing to recant doubts of divine revelation. In 1900, Stanford University forced Professor Edward Ross to resign for challenging economic policies favored by industrialists such as the University’s patrons. In the 1950’s educational institutions dismissed many faculty for ties -- real or imagined -- to the communist party.

1/ The views in this paper should not be attributed to United Educators Insurance.
2/ Ditto Hogan & Hartson. Martin Michaelson insists on acknowledging that his colleague Ann Franke is primary author of this paper.
Perhaps such events are, as many today would like to believe, pernicious anachronisms. Yet stresses and strains persist. This paper identifies ten contemporary factors that may inhibit or distort the exercise of faculty academic freedom in contemporary American higher education. These factors may, in different ways, serve to limit or chill the freedom of teachers and researchers as they explore and disseminate new ideas. Most of the factors have historical antecedents. Some readers may dispute that these factors exert any influence on academic freedom at all. Other readers may view one or more of these factors as positive developments; in moderation, some of them indeed may be. Our analysis does not purport to pass judgment on these influences, but rather merely to identify them as worthy of further consideration for their impact on the exercise of faculty academic freedom.

1. **Discussion of human sexuality generates controversy.** Academic discussion of sexuality has grown increasingly touchy, as various groups and individuals have voiced strong objection to pursuit of the topic in the academy. The issue arises in a range of contexts, including pedagogical interactions in the classroom, or elsewhere, between faculty and students; conversation on campus generally; and discourse among experts at conferences or in scholarly publications. Subjects pertaining to homosexuality as well as to heterosexuality have generated controversy. (It is important to set aside, in a discussion of academic freedom, conduct entailing either physical contact or sexually harassing speech that is irrelevant to the academic subject and targeted to an individual in an unwelcome and demeaning way.) Appendix A catalogs more than a dozen instances in which campus discourse on sexuality has generated public opposition, litigation or
other forms of dispute. The media has an apparently insatiable appetite for reporting on such matters, and additional examples are readily available.

What do we make of this litany of sexuality disputes? While faculty these days are unlikely to attract broad public opposition for advancing heliocentric views of the universe, anti-industrialist economic theories, or communist tendencies, academic discussion of sexuality arguably is the main battleground of academic freedom at the end of the 20th century. Popular culture is steeped in and sometimes suffocated by sexual imagery and, as of this writing, the United States Congress is similarly obsessed. Yet the sexual content that might casually surface in a Calvin Klein ad, on a daytime soap opera, or in a report from the presidential special prosecutor might, when dissected in an academic context, spark inflamed and rigid reactions. The academy needs to think more systematically and less reactively about intellectual discourse on the subject of sexuality. We must assure that legitimate academic dialogue can proceed unimpeded.

2. Some students oppose discussion of ideas with which they are uncomfortable. Some administrators -- and rather fewer faculty -- now view students as consumers. This orientation toward students is often coupled with an emphasis on fully satisfying their needs and desires. That goal can be difficult to achieve, in part because learning is sometimes uncomfortable for both students and faculty. College-level work can be hard, and the topics addressed can be unsettling or even disturbing. As Professor Neil Hamilton has explained in his book Zealotry and Academic Freedom:

Knowledge claims must always be seen as tentative and subject to constant checking. This checking process is painful, offensive, and not nice to those whose
truth is being questioned. This will be true for religious, political, social, or 
oppressed groups holding strong ideologies. Their natural instinct will often be to 
prohibit the checking process and to suppress heretics. They will claim that their 
pain is more important than the productive advancement of knowledge. At p. 238 
(Transaction Publishers, 1995).

Are students today, in the noble intellectual tradition grounded in the Socratic 
dialogues, willing to endure disturbance and discomfort in the pursuit of knowledge? 
Fascinating empirical work on students’ attitudes comes from Carol Trosset, an 
anthropologist at Grinnell College. Trosset recently published results of ethnographic 
research in which Grinnell students were surveyed over several semesters on their 
attitudes toward discussion and controversy. Approximately 200 students were asked 
specifically about their views on discussing diversity-related issues. Sample issues 
included “whether race is an important difference between people.” Eighty-four percent 
of the first-year class preferred the statement “It is important for the college community 
to make sure all its members feel comfortable” to the statement “People have to learn to 
deal with being uncomfortable.” Fifteen percent of those surveyed indicated that they 
had the right to think or say what they wanted without having their views challenged. A 
majority of the respondents felt that balanced discussion of diversity issues was 
impossible, that a single viewpoint would predominate, and that critics of that viewpoint 
might expect reprisal. In light of these and other findings, the author suggests that 
teachers carefully distinguish between the idea and the person, and that they focus on 
shared interests and mutual problem-solving. “Obstacles to Open Discussion and Critical 
Thinking: The Grinnell College Study” by Carol Trosset, Change September/October 
3. **Intellectual activity is often devalued by the general public.** Pursuit of personal comfort and wealth often seems more highly valued today by Americans than does pursuit of knowledge. The broad swath of contemporary anti-intellectualism in the United States is illustrated by the vast popularity of how-to books on assorted topics “For Dummies.” Certainly, there are noteworthy exceptions. The public seems to value highly, for example, medical research that may lead to alleviation of pain, and the public, perhaps to a lesser degree, credits “experts” whose opinions spice up news accounts. Notwithstanding the very high priority that Americans assign to education, reflected in many polls, teachers and researchers generally do not enjoy a corresponding level of public support and confidence. Teachers are not highly paid. A society in which teaching was held in higher regard would probably better protect academic freedom.

4. **The proportion of faculty positions with tenure or on the tenure-track is declining.** There has been a dramatic shift away from tenured, and tenurable, positions. In 1995, 51% of newly hired full-time faculty were not in tenure-track positions. Part-timers now constitute 41% of faculty, compared to 22% in 1970. National Center for Education Statistics, *Fall Staff in Postsecondary Institutions, 1995.*

While some observers wonder whether tenure will some day be abolished with a grand stroke, others see this substantial erosion as evidence of its effective demise. Tenure is designed to protect free academic discourse and the unhindered pursuit of scholarship throughout the academic institution. Tenured faculty members thus bear a responsibility to protect the academic freedom of their untenured colleagues. Whether all
tenured faculty adequately discharge this responsibility is certainly open to debate.

Assuming, however, that most do, the declining proportion of tenured faculty is likely to render the task more difficult. Whether academic freedom can be adequately secured in the absence of tenure is a lively current topic. See, e.g., J. Peter Byrne, “Academic Freedom Without Tenure?,” American Association for Higher Education New Pathways Inquiry #5 (1997); Ann H. Franke, “Can Academic Freedom be Protected Without Tenure?,” *Academe* May/June 1997, p. 92. The general public is on the whole unsupportive of tenure, complicating the task of its defenders. See Matthew W. Finkin, ed., *The Case for Tenure* (ILR Press 1996); Louis Menand, ed., *The Future of Academic Freedom* (University of Chicago Press 1996).

5. **Some courts have construed narrowly the areas of “public concern” protected by the First Amendment.** For faculty in public colleges and universities, the First Amendment offers a modicum of protection for academic freedom. Although some private institutions voluntarily adopt First Amendment standards in their self-governance, private institutions are not subject to the requirements of the First Amendment, which applies only to “state action.” The United States Supreme Court has, however, limited the constitutional protection for public employees’ speech in a series of cases, notably including *Connick v. Myers*, 461 U.S. 138 (1983). In *Connick*, the Court closely

3/ The courts have offered only snippets of discussion of academic freedom as a contract right. E.g., *Naftchi v. New York University*, 14 F.Supp.2d 473, 493, n. 155 (S.D.N.Y. 1998)(“Were this [academic freedom contractual] claim not dismissed on jurisdictional grounds, it nonetheless would be dismissed on the ground that the Faculty Handbook’s reference to academic freedom could not possibly support the construction which Dr. Naftchi seeks to place upon it.”). See also *Gertler v. Goodgold*, 107 A.D.2d 481, 487 N.Y.S.2d 565 (1st Dept.), aff’d, 66 N.Y.2d 946, 498 N.Y.S.2d 779, 489 N.E.2d 748 (1985).
examined the topics of the speech that precipitated discipline against Sheila Myers, an assistant district attorney in New Orleans. Myers was terminated from her position, an action she claimed was taken in retaliation for her complaints about the operation of the district attorney’s office. The Supreme Court ruled in her case that constitutional protection for public employees’ speech hinges on the topics they address. The Court decided that Ms. Myers’ comments did not address “matters of public concern,” but rather mere matters of personal grievance. Thus her termination was held not to violate the First Amendment.

How does the “public concern” test apply to teaching and research by faculty in public higher education? The concepts often fit together poorly. Consider, for example, the topic of pedagogy in mechanical engineering. Is it a matter of public concern? One does not encounter news coverage about it, nor is it a subject of general social discussion. Could a professor be dismissed for proposing a new method of teaching engineering? The law on point is unsettled and hence of limited predictive value. Lower courts have struggled over which campus topics rise to the level of “public concern.” For example in Williams v. Alabama State University, 979 F.Supp. 1406, 1411 (M.D.Ala. 1997), an untenured faculty member sued when her contract was not renewed after she raised complaints about a textbook written by a colleague and sold to students. Is this a matter of “public concern” that triggers First Amendment protection? The court decided that the conduct was constitutionally unprotected:

This court finds that Williams’ speech regarding the textbook does not, as a matter of its content, raise issues of public concern. Rather, the speech may reflect issues of either personal grievance, i.e. Dr. Williams’ dissatisfaction with
teaching from this book, or, perhaps, an intra-university dispute over the best choice for a textbook for ASU students.

The court supported its conclusion by observing that, among other factors, Professor Williams took no steps to advise students about her misgivings. Yet had she spoken to the students, the institution might well have deemed that behavior professionally inappropriate. The Supreme Court may eventually clarify the relationship between academic freedom and the "public concern" test. Until then, "public concern" will remain a rather murky but necessary predicate for First Amendment protection of academic speech at public institutions. See generally, Richard H. Hiers, "New Restrictions on Academic Free Speech: Jeffries v. Harleston II, 22 Journal of College and University Law 217, 266 (Fall 1995). Matthew W. Finkin, "Intramural Speech, Academic Freedom, and the First Amendment." 66 Texas Law Review 1323 (June 1988).

6. Elimination of mandatory retirement for tenured faculty has focused new attention on faculty review systems. Congress eliminated mandatory age-related retirement of tenured faculty members, effective January 1, 1994. Now faculty careers no longer come to a "natural" close upon attainment of a particular age. Ordinarily, senior faculty are now free to determine when they will retire. Elimination of mandatory retirement has brought new interest in post-tenure evaluation. Does regular scrutiny of the work of tenured faculty jeopardize their academic freedom? In some respects, faculty performance is already examined -- for example, by reviewers for scholarly journals, academic department chairs who make annual salary decisions, and peer committees that
grant sabbaticals and award research support. Such review itself is not, in the abstract, a threat. But performance reviews can have a range of characteristics and consequences, some of them potentially in collision with academic freedom. AAUP recently reaffirmed its position that “periodic formal institutional evaluation” of tenured faculty threatens academic freedom. AAUP is concerned with review systems that impose managerial accountability to ensure faculty productivity, redirect faculty priorities, and facilitate dismissal of faculty members whose performance is judged unsatisfactory. In AAUP’s view,

[T]he most objectionable feature of many systems of post-tenure review is that they ease the prevailing standards for dismissal and diminish the efficacy of those procedures that ensure that sanctions are not imposed for reasons violative of academic freedom. Some proponents of post-tenure review, motivated by a desire to facilitate the dismissal of tenured faculty, seek to substitute less protective procedures and criteria at the time of post-tenure review. But demanding procedures and standards are precisely what prevent dismissal for reasons violative of academic freedom. “Post Tenure Review: An AAUP Response,” *Academe* September/October 1998, pp. 61, 64.

For a different view, see Christine Licata and Joseph Morreale, “Post-Tenure Review: Policies, Practices, Precautions,” American Association for Higher Education New Pathways Inquiry #12 (March 1997). Two factors are critical as this debate continues. First, clearer definitions of different types of post-tenure review processes are needed. The term “post-tenure review” today is used as a catch-all term for varied systems and methodologies. We need a richer vocabulary that captures more nuance in order to advance the debate. Second, institutions that develop new faculty performance review policies should take care to coordinate the new policies with existing disciplinary
procedures. Needless litigation is likely to plague institutions that have conflicting or ambiguous procedures and criteria for the discipline of tenured faculty.

7. **E-mail increases opportunities both for inappropriate speech and for censorship.** Communications in cyberspace, notably through e-mail, greatly expand opportunities for inappropriate speech on campus. Faculty and students can reach massive audiences with irresponsible untruths, defamatory material, and harassing speech. Anonymous hate messages can injure members of minority groups and others. Multiple messages that can easily flood an e-mail system are the technological equivalent of the “heckler’s veto,” drowning out legitimate communication.

Although e-mail communications can be indiscriminately disseminated, administration of e-mail is typically centralized. A single filtering device can block massive amounts of information. Consider the real case of the well-meaning librarian at a small religiously-affiliated college who decided to bar the word “skin” from the college’s Web browser. Certainly many pornographic sites became unavailable to the curious, but so did much scientific information of interest to a biology professor, who eventually prevailed on the librarian to reconsider use of the filter. Litigation includes *Loving v. Boren*, 133 F.3d 771 (10th Cir. 1998) (professor lacked standing to challenge blockage of certain news groups from University of Oklahoma computer systems);

freedom protections and obstacles may be tucked away inconspicuously in campus computer-use policies. The group Educause serves as a repository for sample policies. See http://www.educause.edu/ir/ir-library.html.

8. **Combatants in academic ideological warfare may have a self-interest in not defending their opponents' right to speak, while the meek may practice self-censorship.** Some have characterized the 1990's as a period of zealousy on issues of race, gender, and sexual orientation. Debate on these issues is robust, highly politicized, combative, and sometimes maddeningly preoccupying. There are consequences for academic freedom. On the one hand, the most ardent ideologues may, in the interest of gaining political advantage, neglect to defend their opponents' right to speak or even to hold positions in the academy. The result can be a diminution of academic freedom. See Judith Jarvis Thomson, “Ideology and Faculty Selection,” 53 Journal of Law and Contemporary Problems 155 (1990). On the other hand, the meek have been charged with practicing self-censorship. It is, for example, a common pattern that gay, lesbian, or bisexual faculty who are “in the closet” do not examine sexual themes in their research until after they receive tenure. Professor Nathan Glazer of Harvard University has suggested, in contrast, that proponents of traditional rather than unorthodox views are most prone to self-censorship. He sees the trend as troubling:

[Self-censorship] restricts what is said and written and taught, not because of the direct sanctions that might be imposed, but because the climate of opinion means one must be engaged in controversy, with its costs in time, in social relationships, and in career opportunities. But it is not easy to know how to deal with this problem. However we buttress the protection of academic freedom, when people feel passionately about certain matters there will be costs to taking an opposite position. At the least we should insist that these costs not be imposed by
administrative or other formal action. And when we take the unpopular position, we should be ready to risk and endure the discomfort that may come as a consequence.


9. Machinery for the discipline and dismissal of faculty is rusty. While institutions regularly make decisions on faculty appointments, renewals, and tenure, instances of faculty discipline and dismissal are far less common. The administrative machinery for bringing people into the academy is better oiled than is the machinery for their sanction or removal. Ineffective responses to incompetence, neglect of duty, or misconduct by tenured faculty serve to undermine institutions and the system of tenure itself. Faculty members may blame administrators for being reluctant to initiate discipline against errant faculty, while administrators may point the finger of blame at faculty for not policing their own ranks. Trustees may experience frustration. Disciplinary actions are unpleasant and costly but, when judiciously employed, can serve to strengthen academic freedom and tenure.

10. Some faculty members overstate the scope of academic freedom. Most administrators are aware of the phenomenon of a faculty member grasping at an academic freedom rationale to resist the slightest alteration in his or her perquisites. Matters as trivial as parking spaces or library fines may on occasion become battlegrounds for struggles over supposed academic freedom interests. Reduction of office or laboratory
size is a well-known precipitant of claims that academic freedom was infringed. Faculty
must take special care to define conscientiously the extent of academic freedom interests,
lest the concept become marginalized and not taken seriously.

Professor Walter Metzger, in his seminal book, Academic Freedom in the
Age of the University (1955), described the transformation of American higher education
from the 19th to the 20th century as a shift from "morality and character" as basic
collegiate values... to 'civic and social responsibility' [as] a kind of secular substitute
for piety." Id. at 105. With the millennium just around the corner, is American higher
education now at risk of adopting again a self-righteous and pious cast fraught with lethal
hazard for academic freedom? The evidence, we believe, is worrisome.
Appendix A

Disputes Over the Academic Treatment of Sexuality

Below is a collection of illustrations useful as a source of guidance to faculty and administrators who might, for the first time, find themselves in a controversy over campus discussion of sexuality. These examples, which are by no means exhaustive, are grouped into three categories: (1) teaching activities in which sexuality is central to the topic of the course; (2) teaching activities in which sexuality is less central to the course topic, and (3) other campus activities such as conferences and research. The centrality of sexual content to a course is certainly a matter of judgment. The illustrations are grouped here only for convenience.

I. Teaching activities in which sexuality is central to the topic of the course.

A. Pornographic Film Course. For five years Professor Constance Penley has taught a course titled Pornographic Film at the University of California at Santa Barbara, where she chairs the department of film studies and also teaches women’s studies. The student newspaper sent a reporter to attend the class, and the resulting article appeared on hundreds of other campuses. The article attracted attention from a local Mormon leader who complained to public officials. Evangelist Pat Robertson weighed in on the controversy, and the vice squad of the Los Angeles police attended a conference that Professor Penley organized. Professor Penley told a reporter that her critics are relentless. “The most recent threat was a campaign to stop donations to the university
until my course is canceled.” She also receives hate mail. One letter read, “You’re worse then Charles Manson and something should be done about you.” But Penley is undaunted and continues to teach the course. “Pornography is one of the most enduring and prolific of all genres,” she says. Andrey Slivka, “Dangerous Minds,” *Rolling Stone*, October 15, 1998, pp. 75-77.

B. *Warnings on Sexual Course Content.* Following a controversy over a film with sexual themes shown in a German course, the Iowa Board of Regents considered imposing a requirement on professors that they warn students in advance about sexual course content. The proposal was eventually replaced by a policy omitting any reference to particular topics but emphasizing instead the faculty obligations of candor and responsibility. Report of Committee A 1993-1994, *Academe* September/October 1994 pp. 58, 62.

C. *Psychology Class Content Warning.* A psychology professor at Oakland Community College in Michigan distributed at the first class session a written warning that the course was for mature adults and would include analysis of sexually explicit materials. The professor asked his students to sign and return the statement. One woman was offended, left the classroom, and filed a complaint under Title IX with the U.S. Department of Education Office for Civil Rights. She alleged that professor had committed sexual harassment. OCR disagreed, concluding merely that the professor’s actions were not sufficiently severe, persistent, or pervasive to constitute harassment. OCR Letter of Finding, Docket No. 05-98-2035.RES, April 10, 1998, discussed in
D. **Legislative Inquiry on Sexual Course Content.** Last year state legislators in Kansas requested that six state universities identify all their courses that relate to homosexuality or bisexuality. The board of regents received the request for a list of courses offered "during this academic year which contain content directly related to the subject of homosexuality or bisexuality." In a brief press account, the Provost of the University of Kansas termed the request unusual but offered the hope that it was well motivated. Two courses at the University of Kansas, one in journalism and one in medicine, cover these topics. "Kansas Colleges Queried About Homosexuality," *Chronicle of Higher Education* March 6, 1998, p. A35.

E. **Elementary and Secondary Sex Education.** In the elementary and secondary school context, teachers have been punished for classroom discussion on sexual topics deemed inappropriate for their students. For example, in *Collins v. Faith School District No. 46-2, 574 N.W.2d* 899 (S.D. 1998), the South Dakota Supreme Court overturned the dismissal of a fourth grade teacher for answering a student’s question about homosexuality following a sex education video. The teacher had preceded his explanation with the disclaimers that this type of conduct is frowned upon, most people do not believe in it, and the students (all of whom were boys), would find it gross. He then described oral and anal sexual intercourse. Some parents complained, and the school board subsequently dismissed him. The state supreme court concluded that,
although the teacher’s answer may have been ill-advised, he remained an effective
teacher and his dismissal was arbitrary.

II. Teaching activities in which sexuality is less central to the course
content.

A. Sociology Teaching Methods. At Colby College in Maine Professor Adam
Weisberger taught Sociology 215 on the classical works of social theory. His teaching
approach was to have the students use social theories to analyze their own families in
written assignments. According to an article in Lingua Franca magazine, some of the
students came to resent what they considered his intrusions into their private lives,
notably including sexual issues. In the resulting controversy, Weisberger was charged
with sexual harassment and was denied tenure. He challenged the termination of his
appointment in a discrimination charge, which was rejected by the Maine Human Rights
Commission. He also filed a lawsuit which was eventually settled out of court. Ruth

B. English. The discipline of English professors for their use of sexual
imagery in classes resulted in two now famous court cases. In Cohen v. San Bernardino
Valley College, 92 F.3d 968 (9th Cir. 1996), cert. denied 177 S.Ct. 1290 (1997), the
professor made occasional references to men’s magazines, masturbation, and similar
topics. He was found guilty of sexual harassment and ordered to provide students and the
department with a syllabus including information on his teaching style; attend a sexual
harassment seminar; undergo a formal evaluation; and “become sensitive to the particular
needs and backgrounds of his students....” The federal court of appeals ruled that the
college’s sexual harassment policy was too vague to give adequate notice that the
professor’s long-standing teaching methods might subject him to punishment.

In an earlier case, an English professor was found to have violated the sexual
harassment policy at the University of New Hampshire. He received a letter of
reprimand, was subjected to the creation of parallel “shadow” classes, and while still
paid, was removed from teaching for two semesters. After a hearing, he was suspended
from teaching without pay for a year, with his return dependent on several conditions
including participation in approved counseling. An internal appeal hearing followed
thereafter. Professor Silva secured a preliminary injunction in federal district court and
the case was subsequently settled before briefing in the court of appeals. Silva v.

C. Veterinary Pathology. In October a professor of veterinary technology
who was dismissed from Colorado Mountain College won a jury verdict of $557,100 for
alleged violation of his First Amendment rights. Some students had complained about
the professor’s use of sexual anecdotes, examples, and humor in his clinical pathology
class. The professor, who had 22 years of service, was dismissed. The jury found that
the college violated his free speech rights; the college is appealing the verdict. “Federal
Jury Rules for Professor Fired Over Classroom Comments,” Chronicle of Higher
Education, October 23, 1998, p. A9; Bill Scanlon, “Jury Awards $557,000 to Ousted
Professor,” Rocky Mountain News, October 8, 1998.
III. Other campus activities. Campus activities outside of the classroom context also give rise to controversies over sexuality. Again, the examples offered here but scratch the surface.

A. Art Displays. In Piarowski v. Illinois Community College, 759 F.2d 625 (7th Cir.), cert. denied 474 U.S. 1007 (1985), the chairman of the art department at Prairie State College submitted eight stained glass panels for display in an exhibit of faculty projects. Three of the panels had explicit sexual themes. The college ordered that they be moved to a less prominent location, away from a central campus thoroughfare. The court of appeals concluded that the order did not violate the First Amendment. See Close v. Lederle, 424 F.2d 988 (1st Cir. 1970)(removal of sexually explicit paintings by an art instructor from busy corridor at state university).

B. Research Grant. Professor Peter Boag, who teaches at Idaho State University, sought a research grant from the Idaho Board of Education to study the history of gay communities in the Pacific Northwest. The funding was denied, he believed due to his topic rather than the merits of his proposal. He filed suit on First Amendment grounds, and the board announced in April that it would pay $38,734 to settle the lawsuit. The state legislature discontinued its funding for the research program. “Idaho Legislators Kill Research Over Program Over Grant About Homosexuals,” Chronicle of Higher Education April 17, 1998, A35.

C. Conferences. Both student and faculty conferences have become embroiled in disputes. In Alabama, a state senator led an unsuccessful fight to stop the

The State University of New York at New Paltz witnessed a similar episode which did not, however, result in litigation. The women’s studies program on the New Paltz campus was hosting the 21st annual conference on issues of concern to women. The planning committee, which included faculty, students, staff, and also members of the local community, accepted a proposal for a session on sadomasochism, scheduled a workshop titled “Sex Toys for Women,” and decided to close the conference with a presentation by a performance artist. A trustee attended the workshop and, a few days later, she issued a statement highly critical of the campus president and the conference. The governor of New York also denounced the conference as a misuse of public funds. The SUNY board of trustees convened a committee to review the matter. The trustees ultimately decided neither to accept nor reject the report of the review committee. The loud and prolonged public controversy eventually abated, and AAUP awarded its prestigious Alexander Meiklejohn award to the New Paltz president for his defense of academic freedom. Karen Arenson, “Furor Over a Sex Conference Stirs Up a Quiet SUNY Campus,” *New York Times* November 8, 1997; “Nineteenth Alexander Meiklejohn Award,” *Academe* September/October 1998, pp. 57-60.