

*Statement of*

THE ACADEMIC FREEDOM COMMITTEE

*of the*

AMERICAN CIVIL LIBERTIES UNION

*on*

THE 1953 STATEMENT

*of the*

ASSOCIATION OF AMERICAN UNIVERSITIES,  
"THE RIGHTS AND RESPONSIBILITIES OF  
UNIVERSITIES AND THEIR FACULTIES"

*and on*

The Related Dismissals at the  
University of Michigan

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American Civil Liberties Union  
170 Fifth Avenue, New York 10, N.Y.

*March, 1958*

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**I. Background**

On March 24, 1953 the Association of American Universities adopted a statement on "The Rights and Responsibilities of Universities and Their Faculties." It was signed by the chief administrative officers of the thirty-seven member institutions.<sup>1</sup> The statement was intended by its authors to be a corrective to the ominous witch-hunting of teachers which, with related general slander of the profession, then seriously endangered American education. Although the precise effect of the pronouncement cannot be determined, it probably served—along with other principled affirmations of the same time—to curb the forces of hysteria and malice, and in some degree to return the general public to a more reasonable state of mind.

Unfortunately, despite its good intent and many sound observations on intellectual freedom, the 1953 statement was seriously defective. Substantively, it upheld standards and modes of judgment on teachers which many members of the profession had long before rejected. (One formal expression of the position taken by teachers who reject vital parts of the AAU statement is to be found in the policy statements which the

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1. See Appendix for the names of the signers and the member institutions.

American Civil Liberties Union has developed over a period of more than twenty years.)

The 1953 statement was also defective in that it implied an authorization it did not in fact possess. Undoubtedly the thirty-seven signers had every right to speak as a group of persons all of whom had large experience and bore high responsibility. But they spoke officially as an association of which their institutions were the members—not they. Neither their trustees nor their faculties appear ever to have delegated to the presidents the right to speak for whole communities of scholarship on the matter of rights and responsibilities—an area in which there are many differing opinions in the constituent parts of our colleges and universities.

When, in 1953, "The Rights and Responsibilities of Universities and Their Faculties" was released, the Academic Freedom Committee of the American Civil Liberties Union discovered significant points of disagreement. The Committee did not, however, publish its objections because there was no indication that any educational institution had by adoption given official force to the AAU pronouncement, and because—lacking such force—it seemed unlikely that the principles therein set forth would be applied in judgment on a particular teacher. The ACLU hoped that the statement would remain a general formulation of an opinion of its time without legislative force.

One year later, in 1954, the University of Michigan dismissed from their teaching posts Associate Professor Mark Nickerson and Dr. H. Chandler Davis. In 1955 and 1956 the Academic Freedom Committee of the ACLU studied these cases, expecting to make public in late 1956 its comment on those specifically University of Michigan policies which had governed the dismissal action; the Committee did not then contemplate that such comment would have particular reference to the AAU statement.

However, in October 1956, a letter from a University official to the ACLU stated that ". . . the University of Michigan has adopted the principles enunciated by the Association of American Universities and conducted its proceedings in the Nickerson and Davis cases in accord with these principles. . . ." <sup>2</sup> Thus it appears that the 1953 AAU statement has in fact been given official force <sup>3</sup> in at least one institution and has resulted in actual dismissals. The Union's grounds for abstention

2. For the text of this letter see below pp. 16-17.

3. On May 8, 1957 the University wrote to the ACLU explaining and in some degree qualifying its earlier assertion that the AAU statement had been "adopted." However, there was no qualification of the assertion that the principles of that statement had been applied to the Nickerson and Davis dismissals. See below p. 18.

from comment, in 1953, have therefore been converted, in 1957, to a pressing obligation. Consequently, the Academic Freedom Committee is making public its opinion on the 1953 AAU statement, and on the application of the principles of that statement to the University of Michigan dismissals.

## II. The Association of American Universities and Its 1953 Statement

### A. The Association of American Universities

The constitution of the Association, adopted in 1900, states that the organization "is founded for the purpose of considering matters of common interest relating to graduate study and research." Educational circles understand that the Association has mainly worked within the scope of the announced purpose; in the 30's the group made a valuable comparative analysis of the quality of graduate instruction and research in a number of universities; it is generally known that the Association is the jealous guardian of standards for the doctoral degree.

Membership "is composed of institutions of the North American continent engaged in giving advanced or graduate instruction." Each university has a single vote. The personnel of representation is not prescribed; both presidents and deans of graduate schools have served.

The frequency with which the Association usually meets is not known; in certain periods it has met only once in a year.

Article VIII of the Constitution states that "no act of the Association shall be held to control the policy or line of action of any institution belonging to it." This, of course, does not constitute a barrier to voluntary adoption of Association policy by a member institution.

The Association does not publish minutes, transactions or a bulletin; its business is therefore not open to public evaluation. The March 24, 1953 statement appears to be the only policy document outside the area of instructional standards issued by the organization in its fifty-seven year history.

The foregoing information presents the picture of a group of top-level administrators meeting together perhaps once a year normally for the purpose of maintaining standards in graduate education. The standards agreed upon are presumably taken back to individual campuses for implementation by official action of trustees, administrations and faculties. Other than in terms of the most general responsibility, there is nothing to suggest that the Association has been charged with, or considered itself

charged with, the formulating of policy in the complex area of professional rights and responsibilities. Nor is there any record of developing group experience in such matters; the representatives at meetings appear *ex officio* for their institutions. There is no professional secretariat. Trustees and faculties, essential elements of the academic community, do not attend.

Action by the Association, including the unique adoption of the 1953 statement, should therefore be understood to be: 1—action by a body of administrative heads who ordinarily limit themselves to questions of degree standards; 2—action which does not bind; and 3—action which is not subject to regular consideration, amendment, approval or rejection by governing boards or faculties. The Association, of course, has made no claim to authority beyond that which actually exists. But the public is probably not aware of the limits upon that authority, and may possibly consider the Association to have a representative character and a fully operating function something like that of other national educational and professional associations.

This is not to say that a statement by the Association is without weight. Quite the contrary. The 1953 statement, for example, represents a concurrence at that time of the presidents of thirty-seven of the most distinguished American universities. The signers were individuals of experience, judgment and proved leadership, and they spoke with the personal authority of men who bear an important charge. But it must be emphasized that they spoke as a group of chief administrators, without an officially sanctioned "right" to commit their trustees<sup>4</sup> or their faculties, and without "responsibility" for submitting their statement to those trustees or faculties.

#### B. The Association's 1953 Statement: "The Rights and Responsibilities of Universities and Their Faculties."

"The Rights and Responsibilities of Universities and Their Faculties" offers many excellent observations on intellectual freedom and the freedom of the teacher. For example:

*Free enterprise is as essential to intellectual as to economic progress. A university must therefore be hospitable to an infinite variety of skills and viewpoints, relying upon open competition among them as the surest safeguard of truth. Its whole spirit*

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4. The Academic Freedom Committee may be uninformed on this point but doubts whether the governing board of any of the institutions has indicated in advance that it will be bound by whatever policy its representative may subscribe to. (See also Article VIII of the AAU constitution referred to above.)

*requires investigation, criticism, and presentation of ideas in an atmosphere of freedom and mutual confidence. This is the real meaning of "academic" freedom.*

*To fulfill their function the members of university faculties must continue to analyze, test, criticize, and reassess existing institutions and beliefs, approving when the evidence supports them and disapproving when the weight of evidence is on the other side.*

*What applies to research applies equally to teaching. So long as an instructor's observations are scholarly and germane to his subject, his freedom of expression in his classroom should not be curbed. The university student should be exposed to competing opinions and beliefs in every field, so that he may learn to weigh them and gain maturity of judgment.*

However, these remarks are accompanied by other observations, often of a contradictory nature, which deny fundamental principles of academic freedom and civil liberty. The most disturbing are these:

*1. By ill-advised, though not illegal, public acts or utterances [the scholar] . . . may do serious harm to his profession, his university, to education, and to the general welfare.*

COMMENT. This is of course true. But the implication of necessary self-regulation discloses a basic weakness in the 1953 statement—the failure to recognize that the teacher has ordinary rights as an ordinary citizen, and that he does not surrender those rights because he holds an academic position. He has the right to be irritating, foolish, socially unpalatable, or politically extreme. His educational institution has no jurisdiction over his life as a citizen; on the contrary, it has an obligation to make clear that unfavorable social judgments outside the university will not be allowed to affect his institutional status. The principle was clearly enunciated by Judge Charles E. Wyzanski in 1954 when he was President of the Board of Overseers of Harvard University (“Sentinels and Stewards,” *Harvard Alumni Bulletin*, January 23, 1956, p. 316.):

A University is the historical consequence of the mediaeval *studium generale*—a self-generated guild of students or of masters accepting as grounds for entrance and dismissal only criteria relevant to the performance of scholarly duties. The men who become full members of the faculty are not in substance our employees. They are not our agents. They are not our representa-

tives. They are a fellowship of independent scholars answerable to us only for academic integrity.

We undertake the responsibility for handling infractions of university codes occurring within the times and places where our certificate operates. On these matters we possess the best available evidence, we have familiar canons to apply, and we have established processes of judgment and punishment.

What faculty members do outside their posts, we should leave to outside authority . . .

[A university] is not and must not become an aggregation of like-minded people all behaving according to approved convention. It is the temple of the open-minded. And so long as in his instruction, his scholarship, his relations with his associates and juniors a teacher maintains candor, and truth as *he* sees it, he may not be required to pass any other test.

Any violation of this principle requires a university to proceed from an alien point of view and to enforce standards which are not its business.

2. [*Scholars*] . . . *are united in loyalty to the ideal of learning, to the moral code, to the country, and to its form of government . . . [they must be] diligent and loyal in citizenship.*

COMMENT. Loyalty to the ideal of learning is most certainly a scholar's obligation and a university's concern. Other loyalties may be less simple and may not be within the jurisdiction of an educational institution. For example: Is a teacher disloyal to that part of the "moral code" which concerns his institution if he lies about his residence (as do thousands of Americans every year) in order to obtain a divorce? For example: Is he disloyal to his "country" if he attacks the policy of the President and the Secretary of State (under a Democratic or a Republican regime) as misguided, materialistic, or unethical? For example: Is a teacher of political science disloyal to the American "form of government" if he states a preference for the parliamentary system as against the United States system of separation of executive and legislative power?

The difficulty lies in the word "loyalty" which in recent years has been used with every kind of meaning, and too often as a criterion by those in power against their critics. Frequently it has weakened the voice of "a loyal opposition" or silenced the individual critic in a democracy. Universities and their administrators should not involve themselves in this area. Loyalty to the ideal of learning—more exactly, observance of scholarly standards and practices—is the only concern of the educational institution.



3. [*The Association condemns as particularly abhorrent Russian Communism's*] *thought control—the dictation of doctrines which must be accepted and taught by all parties.*

COMMENT. The United States, happily, has no Party Line. But the Association's criterion of "diligent and loyal citizenship" has in the hands of certain national and local government officials been used to require at least a preliminary orthodoxy. For example: The test-oath nature of some loyalty oaths required from public employees, including teachers.

Furthermore, the Association states that the line between freedom as privilege and duty as obligation, drawn by our courts and legislatures, is based both upon consideration of "clear and present danger" and upon "prevailing anxieties." Although a Party Line by fiat is totally objectionable, one may question whether a line derived from "prevailing anxieties" is not at least close kin. At any rate, the presidents of our universities are on dubious ground in endorsing an orthodoxy of fear.

4. *When the powers of legislative inquiry are abused, the remedy does not lie in non-cooperation or defiance; it is to be sought through the normal channels of informed public opinion.*

COMMENT. The Association is in error in denying the remedy of non-cooperation to those who would challenge abuse of the powers of legislative inquiry. Refusal to answer may in fact be the quickest, surest road to correction of abuse—and perhaps the only way. There is ample record in support; in many important cases, individuals have refused to cooperate, been charged with contempt, and ultimately acquitted. In such situations the final determination has held the non-cooperator right and the investigating committee and the U.S. Congress wrong; an individual who has the judgment to anticipate and courage to force that outcome should be congratulated rather than corrected.

Thus there is a real choice open to the individual who seeks to correct abuse of the powers of legislative inquiry. He may endeavor to educate the public and its lawmakers; or he may refuse to cooperate and run the considered risk of prosecution. This choice is for the individual and his counsel, and no one else.

5. *The scholar's mission requires the study and examination of unpopular ideas, of ideas considered abhorrent and even dangerous. For, just as in the case of deadly disease or the military potential of an enemy, it is only by intense study and*

*research that the nature and extent of the danger can be understood and defenses against it perfected.*

COMMENT. The statement of the scholar's mission is unexceptionable. But the easy transition, by implication, to a view that ideas *considered* abhorrent and even dangerous, *are in fact* like disease or enemy power is evidence of an inclination to prejudice. There are enough proved facts about Communism to demonstrate its incompatibility with democracy without recourse to emotion-laden terms. Scholars, particularly, do not need the help of shibboleths.

*6. Since present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position.*

COMMENT. The principle here set forth is discussed at length below in Section III, which deals with the Nickerson and Davis dismissals. But, as an indication that others besides the ACLU reject this principle, one may note the position of Professor Journet Kahn in his article, "The Threat to Academic Freedom" (1957 *Proceedings of the American Catholic Philosophical Association*):

Consistency has never been the outstanding characteristic of human nature, and to argue . . . from the universal—the clearly stated academic aims of international Communism—to either the guilt or unreliability of every American party member in academic life, is to conceive of ethical science as involving no more than the subalternation of particulars to universal. Such a device saves a good deal of time and effort, but when justice is at stake, it is well to be equipped with something more than formal logic.

*7. Above all, [the professor] . . . owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or conspiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor.*

COMMENT. The opinion of the Association that no clear distinction is to be made between the professor's function as a teacher and his status as an individual citizen attains its most extreme form in the passage quoted.

A teacher undoubtedly owes candor and integrity to his colleagues on

all matters which clearly relate to his academic function. If there is substantial evidence that his teaching has declined in effectiveness, he may be asked about an alleged excessive preoccupation with stamp-collecting. If there is evidence that he, John Doe and Richard Roe always vote as a bloc in staff meetings, he may be asked whether he and those men—as alleged—are members of the Communist Party. If there is substantial evidence that his lectures and reading lists slantedly favor a religious, political or economic doctrine, he may even be asked to discuss the beliefs he holds in the relevant area. But in all such investigations the institution has the right to initiate and carry on inquiry only where there is substantial evidence that the functions which it has the duty to supervise are not being properly carried out.

There are countless activities, associations and beliefs about which a teacher owes no candor—or any information at all—to his colleagues. They are those which do not affect his professional integrity. Surely the administrators who signed the Association statement do not mean what they say. These presidents every day accept lack of candor on the part of their staffs. The sociology professor who offers a course on the family is not pressed about his pending personal divorce—*unless* that private situation appears to be affecting his teaching. The teacher of the course in ethics is not asked to explain his part, as a church elder, in a clandestine conspiracy to dispossess an unsuitable minister—*unless* that conspiracy is associated with a charge of misrepresentation to his classes of the ethical problems involved in conspiracy.

The AAU also states that a professor owes “equal candor” to the public if called upon to “answer for his convictions,” all the more so because he is a professor. In the opinion of the Academic Freedom Committee this dangerously over-simplified doctrine goes beyond a first, limited applicability, to a derogatory implication; and in fact opens the door to a grave infringement of academic freedom and civil liberty.

The professor may properly be required to disclose to the public his scholarly knowledge and scholarly opinion in his area of expert competence. He is merely being asked to extend his professional function outside the classroom.

The professor cannot properly be asked to discuss his personal convictions even with regard to his area of expert competence. Such a request implies that he may be unprofessionally allowing his personal convictions to affect his teaching. It is an indirect charge against his integrity.

The professor certainly may not be required to answer for his convictions on matters outside his professional area (except under such authority as governs all citizens). Such a requirement would mean that an individual who elects the teaching profession as a career surrenders

the privacy which all other persons enjoy. He may be asked to state his political, economic, social, moral and religious convictions. If any of those disclosed convictions are sufficiently irritating to his community he may lose his job and face the end of his professional life. Under the AAU doctrine, teaching would become an activity of infinite hazard, totally lacking in that freedom which fosters knowledge. Teaching would also be categorically incompatible with civil liberty.

### III. The Nickerson and Davis Dismissals at the University of Michigan

The voluminous record relating to the dismissals of these two teachers embraces matters of fact, interpretation of attitude, and judgment of motive about which the contending parties disagree. The ACLU does not offer an opinion about these matters in dispute. The cases also raise complicated questions of academic governance (particularly the degree and weight of faculty opinion), which have been sharply debated on and off the Michigan campus. The American Association of University Professors, which has made a field investigation, will presumably deal with these matters in its contemplated further report; the prospect of that report makes it unnecessary for the ACLU to consider them at this time.

However, the record of the cases also contains statements of policy and rules of action by the University of Michigan which in the opinion of the Academic Freedom Committee of the ACLU contradict established principles of academic freedom and civil liberty. The views of the Academic Freedom Committee were set forth in a letter of September 28, 1956:<sup>5</sup>

#### *Nickerson Case*

The decision of the University of Michigan to dismiss Professor Nickerson appears to have rested on three grounds: 1—membership in the Communist Party, standing alone, is sufficient ground for dismissal, 2—continued adherence to Communist Party principle is, for purposes of dismissal action, equivalent to Communist Party membership, and 3—failure to inform the University of past Communist Party membership at the time of first engagement raises a serious question of integrity.

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5. The main text is given here; introductory paragraphs stated the chronology and scope of the ACLU study. The letter was addressed to President Harlan H. Hatcher of the University of Michigan and signed by Louis Joughin, executive officer of the Academic Freedom Committee and ACLU assistant director.

The ACLU cannot accept these grounds, for the following reasons:

1. Communist Party membership, standing alone, does not justify dismissal.

a) The basic issue is the competence and integrity of the individual teacher.

“The central issue in considering a teacher’s fitness, is his own performance in his subject and his relationship with his students. The ACLU opposes as contrary to democratic liberties any ban or regulation which would prohibit the employment as a teacher of any person solely because of his views or associations, such as Communist or Fascist.

“The ACLU does not oppose the ouster of any teacher found lacking in professional integrity. It will not defend a teacher duly discharged after proof that he has misused his position to pervert the academic process.

“On the other hand, in the absence of substantial evidence of perversion of the academic process, the ACLU opposes the prohibition in educational employment of any person based even in part on his views or associations, such as Communist or Fascist. Even though a teacher may be linked with religious dogmatists or political authoritarians, the ACLU believes that he must nevertheless be appraised as an individual.” (*Academic Freedom and Academic Responsibility*, ACLU policy statement of 1955, p. 13.)

b) The fact of Communist Party membership, standing alone, has in some instances stood for conspiratorial activity, and in other instances stood for beliefs and lawful associations, such as lawful political activity. It is not inevitable that the fact of membership shall stand for all of these possibilities. That is why the ACLU believes the judgment should be on the individual, and when judgment is made by the educational institution, should be in terms of his academic competence and integrity.

(1) “To punish a man because he has committed a crime, or because he is believed, though unjustly, to have committed a crime, is not persecution. To punish a man, because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrine with him, that he will commit a crime, is persecution, and is, in every case, foolish and wicked . . . [We should not have] accused [Queen Elizabeth’s] government of persecution for passing any law, however

severe, against overt acts of sedition. But to argue that, because a man is a Catholic, he must think it right to murder a heretical sovereign, and that because he thinks it right he will attempt to do it, and then, to found on this conclusion a law for punishing him as if he had done it, is plain persecution. . . . If, indeed, all men reasoned in the same manner on the same data, and always did what they thought it their duty to do, this mode of dispensing justice might be extremely judicious. But as people who agree about premises often disagree about conclusions, and as no man in the world acts up to his own standard of right, there are two enormous gaps in the logic by which alone penalties for opinions can be defended. . . . Man, in short, is so inconsistent a creature that it is impossible to reason from his belief to his conduct, or from one part of his belief to another.” (Lord Macaulay, essay on Hallam’s *Constitutional History*, 1828.)

(2) “In considering the rights of members of the Communist Party, the American Civil Liberties Union recognizes that problems have arisen because of the dual nature of the Communist movement. It is both a political agitational movement and a part of the Soviet conspiracy. Insofar as it is the first, its members have all the rights of members of other parties; to the extent that it is the second, its members may in some particulars be restricted by law.” (ACLU policy statement, August 2, 1954.)

(3) “Removal [of a teacher] can be justified only on the ground, established by evidence, of unfitness to teach because of incompetence, lack of scholarly objectivity or integrity, serious misuse of the classroom or of academic prestige, gross personal misconduct, or conscious participation in conspiracy against the government.” (AAUP *Bulletin*, 42:58, Spring, 1956.)

2. Adherence to Communist Party principle is not equivalent to Communist Party membership. Although this point is subordinate to that which has just been considered, the ACLU is obliged to note its rejection of the University’s position. Professor Nickerson, on the record, indicated that he did not advocate the use of force or violence to accomplish political change. By announcing this belief he read himself out of the Communist Party, if it is a completely monolithic authority. If he did not succeed in reading himself out, then the Party is not monolithic and the teacher could properly be a member. The ACLU, again emphasizing the subordinate

nature of this point, recommends that the University re-examine its position.

3. Although the position taken by the ACLU on grounds 1 and 2 technically makes it unnecessary to consider ground 3 [failure to disclose past Communist Party membership], the Union takes note of an important question of due process. When Nickerson was hired he took an oath (at the request of the University) to the effect that he was not a present member of the Communist Party. He was not asked about the past. He did what the University asked him to do; he did not do that which he was not asked to do. The University is not correct, in our opinion, in raising a question of integrity on this point.

#### *Chandler Davis Case*

The Davis case involves refusal to answer to anyone about Communist associations and political activities on the grounds that questions of this kind infringed upon the constitutional right to freedom of belief and association, and further that the questions violated academic freedom.

Much of the judgment of the Special Advisory Committee and the Sub-Committee relates to Davis's possible or probable motivation, and the inferences which might be drawn from his refusal. The ACLU cannot debate this point for the simple reason that we believe the questions were not permissible in the first instance.

"Where there is substantial evidence of perversion of the academic process, but only then, a committee of colleagues may in an academic hearing inquire into the beliefs and associations of a teacher, to the extent that they may be relevant to the asserted unprofessional conduct.

"The refusal of a teacher to answer questions put by a legislative committee does not in itself constitute substantial evidence of perversion of the academic process. The ACLU does not question the right—many would say the obligation—of teachers to investigate charges of incompetence or perversion of the academic process made against one of their colleagues, whenever and however these may come into issue. But the Union does not believe that any such issue may be said to arise by reason of the refusal of a teacher to answer questions put by a legislative committee, however advisable or inadvisable such refusal may be for legal or other reasons." (*Academic Freedom and Academic Responsibility*, ACLU policy statement of 1955, p. 14.)

The Union's position has been characterized as extreme and unrealistic. But in our opinion our position is the one that has

remained fixed at the center of the democratic tradition—relevant judgment of competence, and outside that kind of judgment the same freedom for teachers as for all other citizens. If some persons in our day have left this position they must bear responsibility for the divergence.

Nor does the Union believe its position to be unrealistic. There have been very few teachers revealed as Communist Party members. And there has been virtually no evidence of any indoctrination or other unprofessional conduct by these few. On the other hand, thousands of teachers have been subjected to shameful loyalty oaths not required of other persons. Furthermore, several institutions of higher education have undertaken to terminate the careers of staff members, acting on crudely categorical inferences derived from the mere fact of refusal to answer investigating committees. This is the true reality of the past five years—general insult to the profession, and, for some teachers, execution by community and administrative neurosis.

The University of Michigan is one of the very great educational institutions of this country. Its history is long and honorable, and its staff highly distinguished. We urge the administration to give serious further consideration to the impact which the Nickerson-Davis decision will have upon the reputation of the University. The large majority of the profession do not at this time agree with the principles which led to these decisions. And if the world returns to a state of lessened tension, in all probability the general public will also return to a saner view of such questions—as it has time and again after previous crises; in that event the community at large will disapprove these decisions.

The Union urges the administration of the University of Michigan to take the lead in restoring essential freedom to academic employment, and in these cases to take appropriate remedial action.

The University of Michigan replied in a letter dated October 17, 1956.<sup>6</sup>

The University of Michigan shares your concern with the protection of academic freedom and of the civil liberties of individual faculty members. The vigilance of your organization and its long history of assistance to those whose civil rights are in jeopardy are matters of record and of satisfaction to all who share these concerns. It is, therefore, with genuine regret that we find your view of the cases of Dr. Nickerson and Dr. Davis to be one to which we cannot subscribe.

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6. From Marvin L. Niehuss, Vice-President and Dean of Faculties.



The University of Michigan, through its president, was one of the original subscribers to the statement of March 24, 1953, "The Rights and Responsibilities of Universities and Their Faculties," which represented the combined thinking of the presidents of thirty-six [*sic*] of the leading private and public universities of the country. This document, as you know, expresses the view that current membership in the Communist Party "extinguishes the right to a University position." The stand taken by your own organization, as stated in paragraph number 1 in your letter, is diametrically opposed to the views of the Association of American Universities. Since the University of Michigan has adopted the principles enunciated by the Association of American Universities and conducted its proceedings in the Nickerson and Davis cases in accord with these principles, it is quite understandable that the results of the cases would not be entirely acceptable to your group.

We recognize the sincerity and the high purpose with which you have undertaken to review these Michigan cases. We hope that you recognize in the University a similar sincerity and purpose. That we should find ourselves so widely disagreed on results is, I believe, evidence of the great difficulty of being certain of the right course in cases of this kind.

You may be correct in your belief that future judgments will be critical of the course which the University of Michigan, along with other American universities, has taken. Our decisions, however, were made only after the most painstaking consideration of facts and principles involved, including those which you have set out in your letter to us. There was no lack of recognition or consideration of the controversial aspects of principle and philosophy which such cases involve. Full consideration was given to these aspects at the time decisions were made, and we cannot now see that any useful purpose would be served by reopening the cases at this late date.

Please accept our appreciation for your interest in these cases and the care and courtesy with which you have made your views known to us. Your letter will be brought to the attention of the faculty and administrative groups which are charged in this University with responsibility for policy and action in cases of this kind.

Further study led the Academic Freedom Committee to the opinion that the University's reply was not responsive on the following points (numbered as in the ACLU letter of September 28, 1956):

*Nickerson Case*

2. The ACLU objection that adherence to Communist Party

principles is not equivalent to Communist Party membership.

3. The ACLU objection to the questioning of a teacher's integrity because he did not *volunteer* information about past Communist Party membership.

#### *Chandler Davis Case*

The ACLU objection that inquiry into the beliefs and associations of a teacher may occur only where there is "substantial evidence of perversion of the academic process"—and that refusal to answer a legislative committee does not constitute such substantial evidence.

In answer to the ACLU objection against regarding current membership in the Communist Party as adequate ground for automatic dismissal (ACLU letter of September 28, 1956, *Nickerson*, 1), the University is responsive in that it bases its position on the 1953 statement by the Association of American Universities.

### IV. The Michigan Adoption of the 1953 Statement

In order to complete the record, the ACLU on May 3, 1957 asked the University for information about its adoption of the AAU statement. The following reply was received:

The statement in my letter of October 17, 1956, that the University of Michigan had "adopted" the principles of the AAU Statement of March 24, 1953, was based upon the fact that the University of Michigan, through its president, was one of the original subscribers to the Statement. I do not believe that the Regents or any other group at the University of Michigan have taken formal action "adopting" the statement.<sup>7</sup>

This is an extraordinary revelation. The area of policy involved—the rights and responsibilities of the University of Michigan and its professors and instructors—is of fundamental significance. And yet that policy has apparently been established by administrative fiat based only on the signing by the president, four years ago, of an *ad hoc* statement of so general a nature as to permit signature by the presidents of 37 different institutions. The faculty has had no part in this policy. The Regents have had no part in this policy. Absent are the consultative and legislative processes which precede policy adoption in a democratic order—and which justify and support the freedoms of a democratic society. The only conclusion possible is that University of Michigan policy has in this

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7. In a letter of May 8 from Vice-President Niehuss.

instance been established by its president and by 36 persons who are in no way responsible to the University.

## V. Conclusions

The revelation that the University of Michigan based its dismissal of two staff members, in 1954, on the principles enunciated in the AAU statement, and that—as late as 1956—the University invokes that same doubtful authority, requires a full re-examination of the AAU position by all universities throughout the country.

The ACLU remembers, of course, the climate in which the AAU statement was written in the Spring of 1953. The country was still involved in the Korean War; there was natural concern about loyalty and security; McCarthyism was riding high. Only too frequently it was generally held that persons invoking the First or Fifth Amendment—when queried about past and often youthful associations—were admitting to a record of disloyalty. There resulted errors in judgment on particular cases, and unwise statements of general principle were common. University officials were discovered to be as much in error and as illiberal as anyone else. The consequences were unhappy; one such was the adoption by the Association of American Universities of "The Rights and Responsibilities of Universities and Their Faculties." Grave harm has been done:

*First.* The University of Michigan dismissals, based on the AAU statement, substitute judgment by category for judgment on the facts of individual situations, and fail to distinguish between the faculty obligations of a staff member and his rights as a citizen. The ACLU recommends reconsideration in justice to the teachers and for the good of the University.

*Second.* Teachers who have been dropped because of the application of principles like those set forth in the AAU statement find themselves virtually denied significant institutional appointments. Public-relations considerations and institutional conservatism, if not an actual blacklist, separate such persons from any real future as scholars.

It is imperative that faculties in American higher education re-examine the assumptions which have led to the creation of a group of academic pariahs; a determination must be made whether these assumptions are consistent with intellectual freedom in a democratic society. The ACLU recommends, as an essential first step, a re-study of the AAU statement.

*Third.* It is evident that the tensions of a protracted period of

ideological conflict and potential war have led to arbitrary rule by some governing boards and some presidents. This kind of governance is totally incompatible with the status of the men and women who constitute our communities of scholars. These persons do not consider themselves primarily as employees, and certainly reject completely any policy which would make them generally answerable for their whole action and belief to either an administrative hierarchy or public curiosity. If they are constrained in anything like the fashion permitted by the AAU statement, this Committee believes that dissension and conflict of major proportion will continue to occur in many places. The ACLU recommends that, where necessary, the faculties of universities and colleges reassert and define their rights as scholars to academic freedom and their rights as citizens to civil liberty of the kind enjoyed by all persons in the United States.

THE ACADEMIC FREEDOM COMMITTEE OF THE  
AMERICAN CIVIL LIBERTIES UNION<sup>8</sup>

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8. This statement was first released on September 20, 1957. In the present printing some minor editorial changes have been made, and the background section has been expanded.

**APPENDIX**  
MEMBERS OF THE  
ASSOCIATION OF AMERICAN UNIVERSITIES  
[as of March 24, 1953]

- Brown University, Providence, R.I.  
Henry M. Wriston, President
- California Institute of Technology, Pasadena, Calif.  
Lee A. Dubridge, President
- Catholic University of America, Washington, D.C.  
Patrick J. McCormick, Rector
- Clark University, Worcester, Mass.  
Howard B. Jefferson, President
- Columbia University, New York, N.Y.  
Grayson Kirk, President
- Cornell University, Ithaca, N.Y.  
Deane W. Malott, President
- Duke University, Durham, N.C.  
A. Hollis Edens, President
- Harvard University, Cambridge, Mass.  
Paul H. Buck, Chairman, Administrative Committee
- Indiana University, Bloomington, Ind.  
Herman B. Wells, President
- Johns Hopkins University, Baltimore, Md.  
D. W. Bronk, President
- McGill University, Montreal, Que., Canada  
F. Cyril James, Principal
- Massachusetts Institute of Technology, Cambridge, Mass.  
J. R. Killian, Jr., President
- Northwestern University, Evanston, Ill.  
J. Roscoe Miller, President

- Ohio State University, Columbus, Ohio  
Howard L. Bevis, President
- Princeton University, Princeton, N.J.  
Harold W. Dodds, President
- Stanford University, Stanford, Calif.  
John E. W. Sterling, President
- State University of Iowa, Iowa City, Iowa  
Virgil M. Hancher, President
- University of California, Berkeley, Calif.  
Robert G. Sproul, President
- University of Chicago, Chicago, Illinois  
Lawrence A. Kimpton, Chancellor
- University of Illinois, Urbana, Illinois  
George D. Stoddard, President
- University of Kansas, Lawrence, Kansas  
Franklin D. Murphy, Chancellor
- University of Michigan, Ann Arbor, Michigan  
Harlan H. Hatcher, President
- University of Minnesota, Minneapolis, Minn.  
J. L. Morrill, President
- University of Missouri, Columbia, Missouri  
F. A. Middlebush, President
- University of Nebraska, Lincoln, Nebraska  
R. G. Gustavson, Chancellor
- New York University, New York, N.Y.  
Henry T. Heald, Chancellor
- University of North Carolina, Chapel Hill, N.C.  
Gordon Gray, President
- University of Pennsylvania, Philadelphia, Pa.  
William H. DuBarry, Acting President
- University of Rochester, Rochester, N.Y.  
C. W. de Kiewiet, President
- University of Texas, Austin, Texas  
James P. Hart, Chancellor

University of Toronto, Toronto, Ont., Canada  
Sidney E. Smith, President

Vanderbilt University, Nashville, Tenn.  
Bennett Harvie Branscomb, Chancellor

University of Virginia, Charlottesville, Va.  
Colgate W. Darden, Jr., President

University of Wisconsin, Madison, Wisconsin  
Edwin B. Fred, President

Washington University, St. Louis, Missouri  
Arthur H. Compton, Chancellor

University of Washington, Seattle, Washington  
Henry B. Schmitz, President

Yale University, New Haven, Conn.  
A. Whitney Griswold, President

