

September 14, 2009

John R. Lawson, II, Rector
Board of Visitors
Virginia Polytechnic Institute and State University
c/o W.M. Jordan Company, Inc.
11010 Jefferson Avenue
P.O. Box 1337
Newport News, VA 23601

Sent by U.S. Mail and Facsimile (757-596-7425)

Dear Mr. Lawson:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, as in this case, freedom of speech and conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

Executive Summary

FIRE is deeply concerned about the threats to freedom of conscience and academic freedom posed by Virginia Polytechnic Institute and State University (Virginia Tech) against its faculty members via persistent, growing pressure over the past few years to alter their research, teaching, and personal development activities in order to conform to the university's stated political agenda. FIRE does not oppose this agenda but does strongly oppose the coercive means being used to accomplish it.

Policy statements, tenure and promotion guidelines, and recent public statements make clear that Virginia Tech's president and provost are demanding "diversity accomplishments" far in excess of the diversity-oriented institutional mission that the Board of Visitors approved in 2005. The enclosed documents, excerpted and discussed below, make clear that the president and provost have no intention of easing these unconstitutional, unconscionable demands. FIRE asks the Board of Visitors to exercise its fiduciary responsibility to preserve academic freedom and freedom of conscience at Virginia Tech.

Introduction

The information in this letter illustrates that Virginia Tech maintains an unacceptable *university-wide* requirement that faculty members produce materials that demonstrate their “diversity accomplishments” and their personal commitment to the university’s politicized social agenda when being considered for promotion or tenure. It is clear that Virginia Tech demands that faculty members demonstrate fealty to fundamental viewpoints with which they might not agree.

For example, FIRE wrote President Charles Steger on March 25, 2009, regarding the College of Liberal Arts and Human Sciences’ (CLAHS’s) proposed policy of requiring that promotion and tenure assessments of faculty members include “involvement in diversity initiatives.” CLAHS demanded “all dossiers to demonstrate the candidate’s active involvement in diversity.”

We affirm the right of each person to express thoughts and opinions freely. We encourage open expression within a climate of civility, sensitivity, and mutual respect.

We affirm the value of human diversity because it enriches our lives and the University. We acknowledge and respect our differences while affirming our common humanity.

We reject all forms of prejudice and discrimination, including those based on age, color, disability, gender, national origin, political affiliation, race, religion, sexual orientation, and veteran status. We take individual and collective responsibility for helping to eliminate bias and discrimination and for increasing our own understanding of these issues through education, training, and interaction with others.

We pledge our collective commitment to these principles in the spirit of the Virginia Tech motto of *Ut Prosim* (That I May Serve).

The “Principles of Community” Are, and Should Be Seen As, Non-Binding and Aspirational

It is important to understand that such aspirational statements as the “Virginia Tech Principles of Community” are not binding and, indeed, should not be.¹ Neither the Board of Visitors nor the Faculty Senate should decide what individual faculty members’ beliefs or moral commitments must be.

In 1998, for instance, Virginia Tech surveyed 2,648 full-time and part-time faculty members about the “campus climate.” (The data for white, heterosexual males were analyzed and reported separately, as were data for certain other groups.) The survey revealed these facts:

- 40 percent of the faculty members agreed that “Virginia Tech is placing too much emphasis on diversity”;
- 56 percent agreed that “diversity may lead to admission of underprepared students”;

¹ According to a March 14, 2005, press release:

The Virginia Tech Principles of Community draws upon several documents and university-wide initiatives developed over recent years, including the university’s statement of mission and core values; the university’s strategic plan and complementary “Diversity Strategic Plan” published in 2001; the work of the Commission on Equal Opportunity and Diversity [CEOD] created in 2003; the “Standards for Inclusive Policies, Programs and Practices” adopted by the CEOD in 2004; and the “Working Document on Diversity” developed at the request of the board of visitors in 2004. The statement was also reviewed and discussed at the university’s recent Diversity Summit held in January.

All of these statements seem aspirational and non-binding, particularly when applied to individual faculty members. Please correct us if this inference is incorrect. For instance, the 2004 “Standards” document notes:

The Standards are intended to be broad in concept but flexible in application, providing a framework of expectation but leaving the details to those with the expertise and responsibility for program development and oversight. The Commission on Equal Opportunity and Diversity endorses and adopts these Standards as a guide to the university community for developing or

- 44 percent agreed that “affirmative action leads to hiring less qualified faculty and staff”;
- “White males hold these opinions in significantly higher proportions than women or faculty of color”; and
- “Only 31 percent of white men expressed interest in attending workshops or programs on learning to work with or teach women, minorities, non-heterosexuals, or those with disabilities.”

In addition, 94 percent agreed that “diversity was good for Virginia Tech and should be actively promoted,” leaving a significant minority of 6 percent (about 160 faculty members surveyed) who either disagreed or did not answer.

Thus, a significant proportion (and on one topic, a majority) of faculty members took a skeptical

WHEREAS, the Principles of Community are the most recent demonstration of the university's collective commitment to a respectful and inclusive community; and

WHEREAS, diversity is one of the three universal performance dimensions on which all classified staff are evaluated; and

WHEREAS, the university promotion and tenure dossier calls for a reporting of diversity-related activities, and

WHEREAS, only a few colleges specifically request that faculty members report on diversity-related activities as part of the annual faculty activity report; and

WHEREAS, reporting such activities on an annual basis is the first step in raising awareness of each faculty member's responsibility and potential for contribution to addressing this important university priority;

THEREFORE be it resolved, that diversity-related accomplishments be reported as part of the annual faculty activity reports (FAR) beginning with the next annual evaluation cycle which ends spring 2007; and

That during fall 2006, colleges and vice presidential areas develop formats for the FAR that embed diversity accomplishments and goals as appropriate for the university's mission; and

That personnel committees and department heads give consistent attention to these activities in the evaluation process and provide appropriate feedback to faculty members concerning their diversity contributions and goals; and

That the Center for Excellence in Undergraduate Teaching, members of the Commission on Equal Opportunity and Diversity [CEOD], the Offices of Multicultural Affairs and Equal Opportunity, and representatives of appropriate faculty groups take leadership to develop resources for faculty members seeking ideas on how to engage in and report on diversity accomplishments. [Underlining added.]

The underlined material above makes clear that Virginia Tech intended to require reporting of "diversity accomplishments and goals" for faculty assessment, and that showing such "accomplishments" is a "responsibility" of all Virginia Tech faculty. This framework of demands was filled out in the following document.

2. "Reporting Diversity Accomplishments in the Faculty Activities Report," December 16, -.0005 TwmT3 (

learn more about groups other than your own (Diversity Summit, identity group celebrations, Campus Climate Checkup, MLK events, special speakers, annual AdvanceVT and Scholarship of Diversity conferences, events hosted by Cranwell Center or Disability Services, special programs in your discipline or association, etc.); participating in an Undoing Racism workshop; learning another language (including American sign language) so that you might speak to current or prospective students, parents, or community members.

Similarly, under the heading of “Incorporating diversity-related scholarship in courses, readings, programs, service learning activities, and your own research/scholarship,” possible activities to report include:

Revising a course reading list to incorporate concepts, readings, and scholarship on issues of gender, race, and other perspectives relevant to the course material; **rethinking or adapting workshops, lectures, or publications to incorporate multicultural or gender perspectives**; creating classroom discussions about the Principles of Community; creating an extension program to address needs in the Hispanic community; developing a service learning experience to introduce students to issues of concern to residents of the Appalachian region; using/doing diversity research to help inform university programs and problem solving; inviting and hosting a diversity-related speaker for the department; facilitating educational programs in the residential halls; assisting students in planning cultural events related to courses; **securing research grants or industry funds to support diversity initiatives or research; facilitating a staff training activity on diversity, bias reduction, or celebration of diversity.** [Emphasis added.]

Such evaluative criteria unacceptably interfere with faculty members’ moral and intellectual agency. The American Association of University Professors’ (AAUP’s) academic freedom declaration of 1915 is instructive on this issue. It states:

To the degree that professional scholars, **in the formation or promulgation of their opinions**, are, or by the character of their tenure appear to be, **subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts**, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars in an unadulterated form the peculiar and necessary service which it is the office of the professional scholar to furnish. [Emphasis added.]

Although requiring candidates to demonstrate “involvement in diversity initiatives” may seem admirable and innocuous, in practice this requirement amounts to an ideological loyalty oath to an entirely abstract concept—“diversity”—that can represent vastly different things to different people. This flexibility might seem to be a virtue until professors realize that they are to be judged on the quality of their commitment to such an abstract concept, and that their peers and

the public might discount the quality of their work, knowing that their work may have been distorted by the official agenda of Virginia Tech.

“Diversity,” in current academic life and as described above to some degree in Virginia Tech’s own documents, reflects a worldview that very commonly involves a particular set of opinions on topics such as race and gender—topics on which reasonable scholars strongly disagree. Does anyone believe that scholarship that reaches conclusions *against* affirmative action for women and minority groups will be counted as “diversity-related scholarship”? Does anyone believe that “bias reduction” efforts to reduce anti-Catholic bias because of the Catholic position against homosexual activity will be seen to have the same merit as “bias reduction” efforts to reduce anti-gay bias among Catholics?

Moreover, as is shown below in item 5, CLAHS’s Diversity Committee has invested the term with a specific, ideological meaning which makes clear which kinds of views are approved or disapproved. If Virginia Tech truly believes in tolerance, freedom of conscience, and academic freedom, it simply cannot require professors to incorporate a political orthodoxy into their courses, research, or personal development activities, no matter how much the university may believe in the tenets of that orthodoxy and wish others to embrace those tenets.

3. “Virginia Tech Guidelines for Promotion and Tenure Dossiers,” 2007–2008, 2008–2009, and 2009–2010

On April 13, 2007, Virginia Tech revised its promotion and tenure guidelines to accord with the documents described above. The guidelines remained unchanged in 2008–2009 and remained substantially the same in 2009–2010. In short, the guidelines require “[d]iversity initiatives or contributions.”

For example, for the “Candidate’s Statement” (section III of dossiers), the 2007–2008 and 2008–2009 guidelines required, “The statement should also address the candidate’s engagement in diversity-related initiatives.”³ In the 2009–2010 guidelines, this requirement has been watered down to read, “The statement also provides candidates an opportunity to address their active involvement in diversity and international activities.” This is a step in the right direction, but the requirement to show “diversity accomplishments” has *not* been lifted.

Section VII of the guidelines, “University Service,” also has maintained a “diversity” requirement. In both the prior guidelines and the current guidelines for this section, faculty members are to be assessed in part on their so-called diversity accomplishments. Such accomplishments are described not merely as actions in service of the university’s stated mission of diversity but also in terms of *changes to faculty members’ research, teaching, and personal development activities*, in violation of faculty members’ academic freedom and freedom of conscience. The 2007–2008 guidelines quote directly from the “Reporting Diversity Accomplishments in the Faculty Activities Report” document described above (item 2 above).

³ The word “should” in this document refers to requirements, for instance, “The candidate’s statement should be no more than three pages in length.”

The 2009–2010 guidelines maintain the same requirement in section VII. Instead of quoting the language of the “Reporting Diversity Accomplishments in the Faculty Activities Report” document, however, the guidelines merely refer professors to that document online:

Broad categories and examples of diversity contributions developed by the Commission on Equal Opportunity and Diversity are available at the following website: www.provost.vt.edu/documents/reporting_diversity.php.

This change is another step in the right direction in that it de-emphasizes the existence of the requirement, but it is important to note that here, too, the requirement has *not* been lifted. Furthermore, the reference to an external document gives CEOD what seems to be an unprecedented level of discretion to change its document and thereby change the “diversity contributions” required of candidates in the middle of an academic year.

4. Memorandum from Provost Mark McNamee, May 29, 2008

Provost McNamee sent an official memo to all department heads, to Chairs of 2008–2009 Departmental Promotion and Tenure Committees, and to Chairs of 2008–2009 Collegiate Promotion and Tenure Committees to reinforce Virginia Tech’s demand for “diversity accomplishments” among faculty members:

Diversity accomplishments: Diversity accomplishments are a meaningful part of the faculty review process. **Candidates must do a better job of participating in and**

differences **while at the same time acknowledging and respecting that socially constructed differences based on certain characteristics exist within systems of power that create and sustain inequality, hierarchy, and privilege.*** The College of Liberal Arts and Human Sciences is **determined to eliminate these forms of inequality, hierarchy, and privilege in our programs and practices.** In this sense, **diversity is to be actively advanced** because it fosters excellence in learning, discovery, and engagement.

* These characteristics include, but are not limited to ability, age, body size and condition, class, color, ethnicity, gender, gender expression, geographical and cultural background, health status, national origin, political affiliation, race, religion, sexual orientation, and veteran status. [Emphasis added.]

Taken together with the tenure and promotion guidelines, this document is a serious infringement upon the rights of faculty members who do not acknowledge that “socially constructed differences based on certain characteristics exist within systems of power that create and sustain inequality, hierarchy, and privilege” or who do not personally feel “determined to eliminate these forms of inequality, hierarchy, and privilege” in their work. As a college within a public university, CLAHS must be a true “marketplace of ideas” that does not demand its members’ loyalty to such specific, politicized pronouncements and commitments.

6. “College of Liberal Arts and Human Sciences Promotion and Tenure Guidelines,”

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The committee expects all dossiers to demonstrate the candidate's active involvement in diversity.

This CLAHS proposal was the subject of FIRE's letter to President Steger on March 25, enclosed. In that letter, FIRE pointed out the serious encroachments on liberty in the CLAHS proposal. FIRE cited Virginia Tech's own "Statement of Mission and Purpose," relevant case law, and official statements of the AAUP—all of which emphasize the importance of academic freedom for the free pursuit of knowledge through research and the free dissemination of that knowledge through teaching. FIRE wrote:

Presumably, faculty are employed by Virginia Tech for the purpose of "discovery and dissemination of new knowledge" (quoting Virginia Tech's "Statement of Mission and Purpose"), not to demonstrate fealty to an abstract and ill-defined participatory ideal. Their prospects for promotion and tenure should be evaluated accordingly.

As a public institution, Virginia Tech is legally and morally bound by the First Amendment and the decisions of the Supreme Court concerning academic freedom at public colleges and universities. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) the Supreme Court noted that "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned." This being the case, the Court further explained that the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [which] is peculiarly the 'marketplace of ideas.'" In the landmark case of *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) the Court made clear the importance of freedom of conscience in our liberal democracy: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." The Court concluded that "the purpose of the First Amendment to our Constitution" was precisely to protect "from all official control" the domain that was "the sphere of intellect and spirit."

In response, Virginia Tech withdrew the CLAHS proposal from consideration pending corrections. (FIRE does not know the current status of the CLAHS-specific promotion and tenure guidelines.) In addition, on April 14, 2009, Virginia Tech Associate Vice President Lawrence G. Hincker responded to FIRE's concern about the CLAHS proposal. In confirming that "the provost has asked the college to rework its proposed guidelines," Hincker wrote that "The fundamental problem was a **requirement** to produce materials in support of diversity." (Emphasis in original.)

The university-wide documents described in this letter, however, still require faculty members to produce such materials. Indeed, the documents described below, which appeared *after* the CLAHS controversy became public, demonstrate Virginia Tech's unrelenting university-wide

7. Memo from CLAHS Dean Sue Ott Rowlands to CLAHS faculty, April 30, 2009

Despite the damning evidence that CLAHS and the university had imposed such requirements, CLAHS Dean Sue Ott Rowlands sent a memo to “CLAHS Colleagues” stating the opposite—and then reaffirming that an ideological obligation has been imposed on CLAHS faculty:

In the media recently, some have mischaracterized our college’s commitment to diversity as a rigid requirement for promotion and tenure. That has never been our intention and we will make sure that our P&T document makes that clear. At the same time, please know that our commitment to equity and inclusive excellence has never been stronger. One of our greatest strengths is in our commitment to embrace cultural differences, varied talents, and multiple ways of thinking and being. I particularly resonate with one of the paragraphs from the “core values” section of our soon-to-be-unveiled strategic plan. Here it is: “In the College of Liberal Arts and Human Sciences we strive to promote an environment in which learning, discovery, and engagement are created and sustained by a diverse body of students, faculty, and staff. The value we place upon equity **obliges us to challenge systems of oppression and privilege...**(Moreover) in CLAHS, **service is not just a path we choose but a perspective we consciously adopt** - one that enables us to discover and critique ourselves, our world, and others.” [Emphasis added.]

The CLAHS Diversity Committee publicly endorsed this restrictive statement on April 30.

8. “Open letter to the VT faculty, staff, a

of strategic importance to the university. There is no specific requirement that it has to be in any particular form in a particular area, but when we talk about diversity, international programs, and so on, we're encouraging and supporting and giving credit to faculty members who are in fact demonstrating real accomplishments in these areas, because **at the level of professor, you do have the time and the opportunity to make contributions to university goals, university strategic directions, in addition to your ow**

2. AFFIRMS its opposition to measures that single out individuals for government stricture based solely on their ethnicity, gender, religious beliefs, political beliefs, and/or country of origin; and

3. RECOGNIZES efforts of Virginia Tech law enforcement to preserve and support the Bill of Rights and the U.S. Constitution and thereby preserve individuals' constitutional freedoms; and

4. CALLS UPON all members of the community to demonstrate similar respect for civil rights and civil liberties; and

[...]

8. REQUESTS that the Virginia Tech administration and police department continue to ensure that all persons within the University community are guaranteed their fundamental constitutional rights, including: freedom of religion, speech, assembly, and privacy; protection from unreasonable searches and seizures; due process and equal protection to any person; equality before the law and the presumption of innocence; access to counsel in judicial proceedings; and the right to a fair, speedy, and public trial.

This statement was accepted by Virginia Tech's Commission on Equal Opportunity and Diversity on March 22, 2004. It is ironic that this ringing statement of civil liberties has not had a stronger effect on the violations of faculty members' civil liberties from within the campus itself.

2. University Strategic Plan


by the board of visitors in 2005, diversity enlivens the exchange of ideas, broadens scholarship, and contributes to just engagement in all the world's

ideologies have already once darkened the academy. Let us not revive them ourselves or tolerate their resurrection by others.

FIRE asks simply that Virginia Tech's existing and proposed evaluative criteria for promotion and tenure candidates be revised to accord with the First Amendment, academic freedom, and common sense. Memos and statements that violate faculty members' rights and freedoms must be publicly withdrawn or superseded by a clear statement that "diversity accomplishments" will always be optional, with any lack of such accomplishments never being held against any faculty member.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just conclusion. We request a response from you or from President Steger by October 5, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Board of Visitors, Virginia Tech
Charles W. Steger, President, Virginia Tech
Mark McNamee, Provost, Virginia Tech
Sue Ott Rowlands, Dean, College of Liberal Arts and Human Sciences, Virginia Tech
Department chairs, Virginia Tech
Tim Kaine, Governor, Commonwealth of Virginia
Robert Tata, Chair, Committee on Education, Virginia House of Delegates
Steven R. Landes, Vice-Chair, Committee on Education, Virginia House of Delegates
R. Edward Houck, Chair, Committee on Education and Health, Senate of Virginia
Bill Mims, Attorney General, Commonwealth of Virginia

13 enclosures