

National
Coalition
Against
Censorship

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Executive Director

**NCAC PARTICIPATING
ORGANIZATIONS**

Actors' Equity Association
American Association of
School Administrators
American Association of
University Professors
American Association of
University Women
American Booksellers Foundation
for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Jewish Committee
American Library Association
American Literary Translators
Association
American Orthopsychiatric Association
American Society of Journalists
& Authors
Americans United for Separation of
Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Dramatists Legal Defense Fund
Directors Guild of America
Dramatists Guild of America
Dramatist Legal Defense Fund
Educational Book & Media Association
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
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National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation
of America
Project Censored
SAG-AFTRA
Sexuality Information & Education
Council of the U.S.
Society of Children's Book Writers
& Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church
United Methodist Communications
Women's American ORT
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

January 2, 2014

Russell Moore
Provost and Executive Vice Chancellor for Academic Affairs
University of Colorado Boulder
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Dear Provost Moore,

Attached please find a joint statement from the National Coalition Against Censorship, American Civil Liberties Union of Colorado, Foundation for Individual Rights in Education, and Student Press Law Center regarding the University's recent actions regarding Professor Patricia Adler.

Please do not hesitate to contact us if we can be of any assistance in resolving this matter.

Sincerely,



Joan Bertin
Executive Director
National Coalition Against Censorship

CC:

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Dean
College of Arts & Sciences

Ann M. Carlos
Associate Dean-Faculty
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Boulder Chair of the Faculty Assembly

Bronson Hilliard
Assistant Vice Chancellor for Strategic Media Relations

Statement about the University of Colorado's Actions Relating to Professor Patricia Adler
From
**The National Coalition Against Censorship, American Civil Liberties Union of Colorado,
Foundation for Individual Rights in Education, and Student Press Law Center**
January 2, 2014

As groups concerned about academic freedom and free speech, we join the American Association of University Professors in expressing alarm over the University's actions regarding Professor Patricia Adler and her course "Deviance in U.S. Society."

According to published reports, the current situation involves concerns about a class exercise, in which teaching assistants participate in a skit playing the role of prostitutes. Professor Adler has been teaching this course, including this role-play exercise, for many years without incident, and it routinely attracts upwards of 500 students. Recently, Professor Adler reported that she had been advised that the course was being cancelled, and that she was given the choice to return, but not teach the course, or to take early retirement. Subsequently, the University claimed that if she returned, she *might* be allowed to teach the course if she requested a departmental review of its contents. If she chose to return, she claims she was told that any complaint against her could be grounds for her immediate termination.

We are particularly disturbed by the suggestion, in a statement issued by Provost Russell Moore, that Professor Adler's instructional methods might constitute sexual harassment. According to the statement, "academic freedom does not allow faculty members to violate the University's sexual harassment policy by creating a hostile environment," and a member of the faculty who is "responsible for violating the University's sexual harassment policy, is subject to discipline up to and including termination." It concludes by citing "the manner in which the material was presented in one particular classroom exercise and the impact of that manner of presentation on teaching assistants and students" as the basis for the University's response.

Sexuality and sexual deviance are important subjects of academic inquiry in many fields, ranging from art and literature to biology and psychology. As the discussion of these subjects in society at large has long been strictly regulated and circumscribed by a range of taboos, there may be a level of discomfort in discussing them. However, that discomfort has nothing to do with sexual harassment. It is incumbent on academic institutions to draw a clear and firm distinction between academic inquiry, which is protected by principles of academic freedom and the First Amendment, and true sexual harassment, which is not.

Overly broad application of harassment rationales that impinge on speech are particularly problematic in the educational setting, and can be fatal to a robust academic environment. Even raising the question about whether an academic exercise *might* fall under the prohibition against sexual harassment could have a profoundly chilling effect on academic freedom and free speech. Recognizing this, the Supreme Court imposes a high standard governing when an educational institution can be held liable for sexual harassment, specifically, the harassment must be targeted, discriminatory, and so "severe, pervasive, and objectively offensive" that it "effectively bars the victim's access to an educational opportunity or benefit." *Davis v. Monroe County Board of*

Education, 526 U.S. 629, 633 (1999). Indeed, in that case the Court explicitly required that harassment be judged by an objective standard that meets all three criteria (“severe, pervasive, and objectively offensive”). Similarly, in workplace harassment cases, “whether an environment is ‘hostile’ or ‘abusive’” depends on “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance....” *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993). See also *Clark County School District v. Breeden*, 532 U.S. 268, 271 (2001) (“simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to” harassment).

Even the definition in the University’s own sexual harassment policy would not apply to the present situation. That policy defines hostile environment sexual harassment as “unwelcome *sexual conduct* that is ... severe or pervasive.” (Emphasis added.) The examples in the policy refer to “sexual advances” and “sexually explicit messages” sent by one individual to another. Nowhere is there any suggestion that a classroom exercise or discussion about sexuality, especially when it is a topic of study in a particular class, could plausibly constitute sexual harassment.

If this were not the case, a great deal more would be at risk than a sociology class role-play exercise. Such an overbroad definition of sexual harassment could chill discussion in an English class of the sex scenes in *Tropic of Cancer*, *Fifty Shades of Grey*, or *The Story of O*, or a discussion about *Deep Throat* in a film studies class, or a discussion about sexual fetishes in a psychology class, or a discussion about incest or pederasty in an anthropology course, or a discussion about John Currin’s painting *The Women of Franklin Street* or Gustave Courbet’s *L’Origine du monde* in an art history class. The fact that such discussions may make some students uncomfortable is irrelevant: some level of discomfort can be expected when students’ cultural norms and pre-existing views and beliefs are challenged in the academic environment, but to challenge unquestioned assumptions is precisely the role of higher education.

The overly broad and irresponsible use of harassment and discrimination investigations threatens to limit academic inquiry to the bland, conventional, and uncontroversial, throwing a deadening pall of orthodoxy over higher education, especially with regard to controversial topics like sexuality. In fact, it is hard to imagine that the university would have responded similarly if a role-play exercise had been used, for instance, to teach about the experience of sweatshop workers. The university’s response to this situation, inappropriately raising the spectre of sexual harassment to attack and intimidate the professor, illustrates the need for vigilance in enforcing academic freedom, both to protect faculty and students’ right to inquire and discuss sensitive topics, and to prevent demeaning or distorting the serious problem of real harassment and abuse.

The apparent conditional re-instatement of the course pending faculty review hardly cures the problem, since this course was apparently singled out for extraordinary scrutiny based solely on the content, in violation of fundamental First Amendment principles. Subjecting one course to such review, highly irregular in itself, inevitably has a chilling effect, not only on Professor Adler, but on the faculty as whole and even on faculty at other universities. The message that potentially controversial classroom content would make a professor vulnerable to special scrutiny and review is a direct threat to academic freedom. At a time when academia is relying increasingly on non-tenured and adjunct faculty, such a threat is likely to have immediate and far-reaching consequences.

Nor does the recent report from the *ad hoc* committee, even if ultimately accepted by the Sociology Department Executive Committee, assuage our concerns. Notably absent is any statement about the proper scope and meaning of sexual harassment in the academic context. Instead, the report cites a “duty to protect students from exposure to a wide variety of inappropriate experiences.” The term “inappropriate”—undefined in the report—is particularly troubling. Indeed, the term requires a subjective judgment, and in this context could be used as a rationale to protect students from uncomfortable or disturbing experiences. That falls far short of any accepted definition of sexual harassment, including the university’s own policy, and would seem to belie the very role of higher education.

The longer the uncertainty about the status of Professor Adler and her course persist, the more egregious the problem becomes. We strongly urge you to re-instate Professor Adler’s class without further reviews or conditions.



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