

## UVA and the New “McCarthyism” —An Insider’s Perspective

By Joel Gardner

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One of my earliest memories is sitting with my mother as a pre-kindergartener watching the McCarthy hearings in the spring of 1954. Television was a new medium for most American households and the bombastic anti-communist antics of the junior senator from Wisconsin held the population enthralled for months. But, while television gave Joe McCarthy the exposure and notoriety he craved, it also spelled his doom, as more and more citizens came to realize that his agenda of intolerance and intimidation did not represent the American way. In fact, so many Americans were disenchanted and disgusted with the senator’s methodology that the term “McCarthyism” became a widespread derogatory term—which would become synonymous with authoritarian behavior characterized by thought indoctrination, loyalty oaths and intolerance and punishment for dissenting views.

For over five decades, most American institutions eschewed tactics and agendas

that reeked of McCarthyism. Which is why it is so disheartening and frightening to witness so many current institutions embracing the attributes of McCarthyism—especially the one institution where it should be absolute anathema, but where it is most pronounced—our college campuses. Unfortunately, this includes my alma mater, the University of Virginia, whose founders, Thomas Jefferson and James Madison, were the individuals most responsible for our Declaration of Independence and Bill of Rights, the two pillars of American individual rights and freedoms. And just as the illuminating screen of television revealed the evils of McCarthyism, for those concerned with a free exchange of ideas and a level playing field of learning in higher education, it is important to shine the light of truth on the inappropriate and dangerous indoctrination flourishing at UVA.

As a thoroughly involved UVA alumnus, who has served on multiple UVA boards and

chaired numerous fundraising efforts, I had witnessed with growing concern for more than a decade the increasing politicization of the University, as thought diversity became minimized and intellectual intolerance and intimidation were maximized. I detailed the dangers of that politicization in an [article](#) I wrote for the Martin Center in November of 2020 and specifically called for the adoption of a set of free speech principles à la the famed Chicago Principles.

As a growing number of concerned alumni let their voices be heard, many students and faculty, who had previously been too intimidated to speak out, suddenly were willing to discuss the specifics of the thought intolerance and indoctrination they experienced.

### **Creating a Free Expression Committee**

Finally, in response to this chorus of dissonant voices, the administration decided in February, 2021 to create a committee to devise a set of free expression principles particularly reflecting the UVA experience—and I was deeply honored to be selected to serve on this committee of twelve, who were otherwise members of the current UVA infrastructure.

Prior to the creation of the committee, I had numerous discussions with senior administrators concerning the need to adopt such a statement. A number of these individuals had noted that for many schools

adopting this type of statement, it was nothing more than “virtue signaling,” in that once such principles were adopted, they were never implemented in a meaningful fashion. I heartily agreed, noting that words themselves, no matter how well-crafted and elegant, were meaningless unless those words were continuously and rigorously administered. Thus, at our committee’s first zoom meeting, I asked whether the committee would be involved with the implementation of any principles adopted. The response from the administration was unequivocal: “no way.” The committee would be disbanded as soon as any principles were adopted—leaving it unclear who, if anybody, would be delegated the job to ensure that our UVA principles were not merely “virtue signaling” as well.

Once our committee was operating, we not only discussed and debated the actual language of the proposed principles, which were drafted superbly by the two law professors on the committee, but we encouraged and sought input from members of the University community as to the status of free speech and expression on the Grounds (for those unfamiliar with UVA jargon, our campus, designed by Thomas Jefferson and the only academic UNESCO world heritage site in North America, is referred to as “the Grounds”). It was during this period that I realized that the free expression problems and issues we had uncovered previously were just the tip of the proverbial iceberg.

Our committee heard from numerous faculty members and students both in written statements and at a community call-in session. Many professors recited a “parade of horrors” that truly challenged the foundations of what an institution of higher learning should be. There were descriptions of the growth of mandatory training which was becoming increasingly “political” and “doctrinal” and in some cases constituted “compelled speech” and “indoctrination”; how teaching and research are becoming more “homogenized”; how the University’s institutional “substantive commitments” are becoming more “specific” and “contestable,” especially its notions of “social justice” which are becoming more “normative” and “hegemonic”; and even how administrators are promulgating more and more advice about “the character and conduct of classes,” including instructing faculty to use more “inclusive” language. For example, instead of using the terms “husband and wife” or “boyfriend and girlfriend,” faculty are instructed to use the term “significant other” instead. Another tenured professor, who insisted on remaining anonymous for fear of retribution, described how more than a dozen students had indicated to that professor that “they were silenced and shamed in class because of how they were born, as they were told by both professors and/or students that they had ‘male privilege’ or ‘white privilege.’”

I knew things were bad—but not this bad. Mandatory doctrinal training, compelled speech, homogenized teaching and

research, silenced and shamed students—*is this what a University is supposed to be about?* Thus, it was not surprising that one of the most revered professors in UVA’s two-hundred-year history, who has taught more students than any other professor since 1819, described the current state of affairs at UVA as a “tragedy.”

### **UVA’s Free Speech Double Standard**

As if the above was not troubling enough, there were other revelations that convinced me that in today’s world of rampaging collegiate politicization, something more than just the standard Chicago Principles was needed. The first was the [case](#) of a medical student, named Kieran Bhattacharya, who had been secretly sanctioned by a faculty member for comments he made in a question and answer period following a seminar on “microaggressions” (a fraught subject to be sure). Bhattacharya challenged the substance of the lecture, and after being sanctioned, was ordered to complete mandatory psychological counseling. He then was subjected to a truly Kafkaesque tribunal where it was never explained to him exactly why he was there. Ultimately, Bhattacharya was dismissed from the University. He later sued the University, claiming that his First Amendment rights were violated.

Incredibly, in its legal brief, UVA argued that it was improper for the student to “dispute

the validity of the subject matter, argue with faculty or disparage a professor's substantial research in the field." *How could any institution of higher learning that believes in freedom of expression take that position?* Not surprisingly, the District Court, in an opinion that was issued while our committee was in session, rejected the University's position out of hand, appropriately finding that at worst, the student's comments were "aggressive critiques" and upholding his First Amendment claim on a motion to dismiss. Anyone with any doubts about the appropriateness of the student's questions can listen for themselves to [audio](#) of the session.

The University's indefensible position on the medical student's protected speech was further exacerbated by the stunningly hypocritical position this reflected when viewed in juxtaposition to its stance on the "F\*CK UVA" controversy of a few months earlier. In that situation, a student had posted a large sign on her Lawn room door with that invective fully spelled out. At UVA it is a great honor to live in a Lawn room, which is part of the original Academical Village designed by Thomas Jefferson. Despite a vocal public outcry condemning that incredibly rude and offensive sign, the University found such a statement to be protected First Amendment speech. Yet virtually at the same time, the University was claiming in its legal brief about the medical student that "offensive" and "indecent" speech may be disciplined and that his questions during a Q & A session were both.

So let's put this in perspective. UVA believes that the First Amendment protects a student placing a "F\*CK UVA" sign on a door on the Lawn—the only academic UNESCO World Heritage site in North America—because that is not "offensive" or "indecent." But a student who assiduously challenges a professor's controversial "microaggression" theories is indecent and offensive and deserves to be sanctioned.

To this day, I still find the implicit hypocrisy of the above staggering, and completely unworthy of a great educational institution like UVA. Such an outrageous free speech double standard could only exist in an academic environment where a university institutionally favors one group of students over others and/or certain political and social positions over others.

### **Political Litmus Tests in Faculty Hiring**

The discovery of the facts of the medical student case was only one of two startling revelations that occurred during our committee deliberations. The other was the disclosure that a number of schools at UVA were requiring in solicitations for new faculty positions that applicants pledge their fealty to a certain political and social agenda. For me, this was the proverbial last straw. I had realized for some time that the Diversity, Equity, and Inclusion (DEI) trinity had achieved a quasi-religious status at UVA as well as at most educational institutions across America.

And, while “diversity” as an academic value meaning diversity of beliefs and values is indisputable, the manner in which it is applied on college campuses today encompasses only diversity of race, ethnicity and gender. As former Dean of the Yale Law School Anthony Kronman states in his [brilliant article](#) “The Downside of Diversity”: “Diversity in this sense is not an academic value. Its origin and aspiration are political. The demand for ever-greater diversity in higher education is a political campaign masquerading as an educational ideal.”

This DEI agenda now plays a crucial role in hiring at UVA. UVA’s [Batten School of Leadership](#) states that the “*The successful candidate will be committed to promoting diversity, equity and inclusion at Batten.*” UVA’s new Data Science school requires a “diversity statement” where candidates are expected to “*provide examples of experience and/or plans to make meaningful contributions*” to diversity, as understood in its current politicized sense. And the Darden School of Business also [mandates](#) a “diversity statement” detailing “*contributions to excellence through diversity, equity, and inclusion*” (emphasis added above).

With these requirements, UVA has effectively created a political “litmus test” to be hired. How is this any different than requiring a successful faculty applicant to be committed to anti-communism or the sanctity of the life of the unborn? Demanding a social or political “loyalty oath” is antithetical to everything a university should be about. As

the famous civil libertarian Supreme Court Justice Hugo Black [stated](#) in a concurring opinion in the landmark *Wieman v. Updegraff* case, “Test oaths are notorious tools of tyranny. When used to shackle the mind they are, or at least they should be, unspeakably odious to a free people.”

### **The Need for Institutional Neutrality**

I was greatly troubled to learn of these institutional litmus tests and quickly understood their implications. Such political institutional mandates would preclude UVA from hiring faculty who did not buy into the “diversity” and “social justice” agendas, thus eliminating such legal scholars as Dean Kronman or Judge Cabranes of the Second Circuit Court of Appeals, or such brilliant conservative academicians as Victor Davis Hanson of the Hoover Institution or Heather Mac Donald of the Manhattan Institute. I realized then and there that any free expression principles our committee came up with would be realistically meaningless unless our statement addressed the issues raised by a university’s institutional support of political and/or social issues.

The irrefutable nexus between the role a university plays in political and social action and freedom of speech was brilliantly addressed by the [Kalven Committee Report](#) promulgated by a faculty committee of the University of Chicago in 1967, well before the “Chicago Principles” were adopted. The

following statement sums up the thinking behind the report:

[T]he university...is a community which cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness. There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives. It cannot insist that all its members favor a given view of social policy; if it takes collective action, therefore, it does so at the price of censoring any minority who do not agree with the view adopted.

Recognizing the utmost importance of confronting the issue of institutional advocacy in our principles, I proposed the following provision be added to our draft principles, in essence paraphrasing the substance of the Kalven Committee report:

The mission of the University is the discovery and dissemination of knowledge. It should not be used as an ideological base or political instrument. It is a community that cannot take collective action on issues of the day without endangering the free and unfettered exchange of a full range of ideas. It cannot insist that all its members support a given political or social agenda.

Unfortunately, the position of the UVA administration was that this issue was not within our committee's mandate and thus my proposal would not be considered. I was astounded. I had learned that UVA was demanding loyalty pledges to a certain agenda, prescribing an Orwellian vision of what words should be used in a classroom, and mandating training courses where certain ideological answers are required. How can one seriously argue that these issues do not go to the heart of free speech and expression? If nothing else, it is plain common sense that when a university takes an institutional political position it chills freedom of expression. As famed UVA economics professor William Breit stated during the Vietnam war demonstrations, when a university does this, it becomes "an instrument of oppression against the individual professor or student who disagrees with this view on the issues."

Notwithstanding the clear nexus between institutional political advocacy and true freedom of expression on a campus, discussion on my proposal was nipped in the bud and relegated to the committee "circular file".

Despite the administration "deep sixing" what was arguably the most significant real world provision in our set of free expression principles, I decided to support the [final draft](#) of our committee's work product. It contains strong and beautifully crafted words in support of free expression and free inquiry, and my thinking was that my beloved UVA



was better off having these principles on the record than not having them at all. Now the issue was, what would the powers that be in Charlottesville do to make sure that the fruits of our labor were not merely “virtue signaling”?

### **UVA Mandates CRT Employee Training and DEI Requirements for Faculty Evaluations**

It is now more than six months since the UVA Board of Visitors unanimously adopted our committee’s proposed principles. And I am writing this report because sadly a number of events have subsequently occurred that demonstrate why the new “McCarthyism” is still alive and stronger than ever on the Grounds, and why my proposal to include a statement on institutional political neutrality was critical to having true freedom of expression at UVA.

The first event was disclosed at the end of September when an employee of The University of Virginia Library, Michelle Vermillion, quit her position and went public with her reasons for doing so. Her story was documented in an [article](#) published online by *Bacon’s Rebellion*, an electronic newsletter authored by a UVA graduate that focuses on news and opinions concerning events in the Commonwealth. The story carefully details how UVA library employees were subjected to the most blatant form of mandatory critical race theory (CRT) training. I realize that there has been a lively ongoing debate

as to whether CRT is being taught in schools. However, if what is described in the article is not full-blown CRT training, then the concept does not exist. Here are but a few examples of statements for which employees were instructed to “rate how often you effectively demonstrate these”:

I recognize how institutional racism permeates societal institutions, including the legal, policing, and justice system, housing, health care, education, employment, the military, politics, media, entertainment, etc.

I understand how white privilege, and white cultural values and norms, are infused into formal expectations and workplace culture as well as informal, unwritten rules for success.

I recognize the full breadth of unearned white privileges that white people receive in society and in organizations.

This is political indoctrination plain and simple, and totally antithetical to the principles of freedom of expression adopted by the University. Upon learning of this situation, I contacted a number of senior administrators at the University to discuss the implications of this program. Some of the responses I received were staggering. First, there was some major “buck passing”: “Hey, this was a decision of the Dean of the Libraries so don’t blame me.” That tactic lost a lot of credibility when those saying it were

in a position of power to do something about it. They just decided not to.

But it was another set of responses that truly astounded me. Two senior administrators responded in an eerily similar manner. In essence they said: “It’s always been like this. In the past certain groups were marginalized, now it is a different set of groups being marginalized.” I couldn’t believe my ears. Were some esteemed educators running one of the most prestigious universities in the world really telling me that it is appropriate to marginalize a group based on race or gender because in the past *other* groups had been marginalized for those reasons? Was it not Martin Luther King, Jr who said he dreamed he would live in a nation where people “will not be judged by the color of their skin but by the content of their character”? Did these administrators really believe that the perceived sins of fathers should be visited upon the heads of their children? That’s what it sure sounded like—and that is exactly what is happening.

However, as bad as the CRT fiasco at the Library was, the worst was yet to come. In November, the Dean of the College of Arts & Sciences [issued new guidelines](#) for “Departmental Peer Evaluation.” The College is by far the largest school at the University. Pursuant to the new guidance from the Dean’s office, contributions to DEI are to become part of the process of peer evaluation going forward. The 2021 faculty Annual Report asks “all faculty to share their contributions to DEI in the following

categories: teaching, advising, publications and presentation, research and grants, service, consulting, honors and awards.” Significantly, the guidance then goes on to state: “*This change was made to transition from documenting DEI contributions to evaluating them in the peer review process*” (emphasis added). Thus, beginning in 2022 all faculty in the College will be systemically evaluated based on their adherence to and proven activism in support of DEI.

The intellectual indoctrination implicit in this mandate is stunning. It is “McCarthyism” in its boldest form. Just because UVA’s new loyalty mandates emanate from establishment Ivy League educated administrators, rather than the whiskey swilling, cigar chomping “Tailgunner Joe,” it doesn’t make these actions any less insidious. Actually they are more insidious, because the authors should know better. Think about it for a moment: each faculty member will be evaluated by colleagues based on his or her loyalty both in word and action to a social justice agenda. A faculty member’s professional future in terms of compensation and promotion will depend on genuflecting to a specific political ideology. In and of itself, these guidelines render our committee’s newly adopted principles meaningless in a material manner, but even more so, when combined with the aforementioned requirement that faculty applicants must swear fealty to DEI to be hired, they arguably result in unconstitutional viewpoint discrimination and compelled speech in violation of the First Amendment.



## **UVA's Need for Unbiased Free Expression Leadership**

So the issue becomes how to rectify the above noted inequities and return UVA to its classic role as an educator, not an indoctrinator. The critical importance of keeping our universities as fair arbiters of diverse ideas was brilliantly expressed in the aforementioned Kalven Committee Report:

The university is the home and sponsor of critics; it is not itself the critic. It is, to go back once again to the classic phrase, a community of scholars. To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community. It is a community but only for the limited, albeit great, purposes of teaching and research. It is not a club, it is not a trade association, it is not a lobby.

Unfortunately, the powers that be at UVA have shown themselves either unwilling or unable to sustain UVA as a community of teaching and research without also being an advocate and purveyor of political and social agendas. During our committee deliberations, when I raised this issue with a

senior administrator, I was told that it was appropriate for the University to take institutional positions on issues that affect students. I waited a moment, and then asked what issues of national import *don't* affect the lives of students? I did not receive an answer. I then asked whether it was appropriate for the University to take a position on abortion? Once again, I did not receive an answer.

Where is the free speech leadership and accountability? There is none, because the current administration believes that supporting a social justice agenda is part of being a "good" university. No one who is "good" could possibly oppose it. Do they not recognize the self-righteous moral certainty of it all? I guess not, since the DEI agenda has taken on the rubric of a religion that brooks no rational debate.

It is clear to me that both the future of true freedom of expression and intellectual integrity at UVA are in the hands of the University's Board of Visitors and the new administration in Richmond under Governor Glenn Youngkin. The classic moment that marked the turning point in Senator McCarthy's power was when counsel Joseph Walsh on national TV confronted him and said: "Senator...Have you no sense of decency?" Who in a position of authority will now similarly stand up and say: "No more of this"? This is a great public university bound by the First Amendment and ordained to educate in an unbiased manner not only the people of the Commonwealth, but as Mr.

Jefferson envisioned, our entire nation. It is not a “lobby” for certain political and/or social agendas.

When that courageous person or group of people does stand up, they should immediately call for two courses of action:

1. The adoption of a statement similar to the one I presented to our committee proscribing the institutional advocacy of political and/or social agendas. The reality is that there can be no real freedom of expression for students, faculty or administrators as long as the University institutionalizes a political agenda.
2. Since the past six months have demonstrated that words themselves have limited value, a mechanism needs to be put into place to ensure compliance. My suggestion would be the creation of an independent board of “ombudsmen” who would oversee the implementation of the policy. The board would be available to hear complaints by members of the University community in confidence, which would encourage reporting. Based on numerous conversations, I am aware that many students, faculty and administrators are loath to speak out for fear of retribution or being socially “cancelled.”

### **About the Author**

Joel Gardner graduated from the University of Virginia with an honors degree in history in 1970 and from its School of Law in 1974 where he was a member of the Law Review. He practiced law at a major Wall Street firm and subsequently entered the investment banking world, where he was an M&A banker for three decades.

Gardner has been actively involved with the University of Virginia in numerous capacities since his graduation, including serving on four University boards and spearheading numerous fundraising efforts. He is also the author of a highly acclaimed book about his undergraduate years at UVA—*From Rebel Yell to Revolution*. He recently served as a member of the UVA Committee on Free Expression and Free Inquiry.

### **About the Martin Center**

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