

EDUCATIONAL GAG ORDERS, STATE CENSORSHIP, AND THE FIGHT FOR HIGHER EDUCATION

a lecture by **JONATHAN FRIEDMAN**

Director of Free Expression and Education Programs, PEN America
Thursday, November 9, 2023, 4-5:30pm

M | **FACULTY SENATE**
UNIVERSITY OF MICHIGAN

The 33rd Annual Davis, Markert, Nickerson
Lecture on Academic and Intellectual Freedom

Statement on Freedom of Speech and Artistic Expression

Thank you for attending this program. The University of Michigan strives to create a truly open forum, one in which diverse opinions can be expressed and heard.

It is the right of the members of the University community, speakers, artists, and other invited guests to express their views and opinions at the University. We will protect the right of individuals to speak or perform, and the rights of those members of the University community who wish to hear and communicate with an invited speaker or artist.

Protesters also have a right to express their opposition to a speaker in appropriate ways, both within the confines of this building and outside the facility. However, protesters must not interfere unduly with communication between a speaker or artist and members of the audience.

If the hosts of this event or University representatives believe that protesters are interfering unduly with a speaker or performer's freedom of expression, those protesters will be warned. If the warnings are not heeded and the interference continues, then the individuals responsible may be removed from the building.

We reaffirm these policies in order to most fully protect the rights of free expression for speakers, and protesters alike, in accordance with the Standard Practice Guide 601.01 Freedom of Speech and Artistic Expression.

Statement on Academic Freedom

Academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession. Academic freedom is not a term or a condition of employment; rather, it is based in the institutional structure of this and other universities and is fundamental to their common mission of promoting inquiry and advancing the sum of human knowledge and understanding. Although some aspects of academic freedom are also protected by the First Amendment to the United States Constitution, academic freedom exists, independent of any external protection, as a basic prerequisite for universities to fulfill their mission to our society.

Academic freedom is most commonly vindicated by individual faculty members, but remains first and foremost a professional prerequisite of faculty members as a group.

Adopted by the Senate Assembly on Behalf of the Faculty Senate, January 25, 2010.
Read the full statement at https://facultysenate.umich.edu/wp-content/uploads/2021/06/01-25-10_Academic-Freedom.pdf.

Introductory Remarks

Tom Braun

Chair, Faculty Senate

Professor of Biostatistics, School of Public Health

Melanie Schulze Tanielian

Associate Professor of History, College of Literature, Science, and the Arts

Director Academic Program, Program in International and Comparative Studies

Co-Chair, Davis, Markert, and Nickerson Academic Freedom Lecture Committee

Elizabeth Moje

Dean, Marsal Family School of Education

George Herbert Mead Collegiate Professor of Education

Arthur F Thurnau Professor, Professor of Education

Lecture

Jonathan Friedman

Director, Free Expression and Education Programs
PEN America

Academic Freedom 2024: Educational Gag Orders, State Censorship, and the Fight for Higher Education

Across the country, state legislators are increasingly making clear their intentions to pass laws to tighten control over—or outright censor—public education in schools, colleges and universities. On campuses, this movement threatens to upend commitments to the free exchange of ideas and institutional autonomy in curricular, research, and hiring decisions, putting academic freedom in peril. Professors are already attesting to a chilled climate, in which they have become concerned with running afoul of new laws delimiting teaching about race, gender, American history, and LGBTQ+ identities. This talk will summarize the current state of play concerning this rising menace, why it must be confronted, and how the higher education community has a unique role to play in communicating this anti-democratic threat to the public. It will offer a clarion call and suggestions for how to create campuses that serve academic freedom for all in the lead up to the 2024 election and beyond.

Jonathan Friedman

Jonathan Friedman, Ph.D., is the director of free expression and education programs at PEN America. He oversees research, advocacy, and education related to academic freedom, educational gag orders, book bans, and general free expression in schools, colleges, and universities.



An interdisciplinary scholar by training, Friedman has served as lead author on PEN America's reports, *Banned in the USA: The Growing Movement to Censor Books in Schools* (2022), *Banned in the USA: Rising School Book Bans Threaten Free Expression and Students' First Amendment Rights* (2022), *Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach* (2021), and *Chasm in the Classroom: Campus Free Speech in a Divided America* (2020). He also steered the production of PEN America's *Campus Free Speech Guide* (2020). He regularly provides commentary for news media about educational censorship, and has published op-eds for CNN, *The Washington Post*, *The Hill*, *The Daily Beast*, *New York Daily News*, and *Inside Higher Ed*.

In this role, Friedman also drives forward PEN America's efforts to catalyze a more informed, civic culture among the rising generation, on college campuses, and among the general public. He oversees PEN America's Free Expression Advocacy Institutes for youth, as well as its centenary event series, *Flashpoints: Free Speech in American History, Culture & Society*. He has facilitated workshops and conducted advisory meetings with senior leaders, faculty, and administrators at dozens of colleges and universities across the country, and for numerous higher education organizations and professional academic associations.

SENATE ASSEMBLY RESOLUTION: ADOPTED NOVEMBER 19, 1990

The faculty of the University of Michigan affirms that academic and intellectual freedom are fundamental values for a university in a free society. They form the foundation of the rights of free inquiry, free expression and free dissent that are necessary for the life of the university. The faculty recognizes that such rights are human creations, the product of both the reasoned actions and the deep-seated commitments of women and men. When such actions and commitments are set in human institutions, people may secure for themselves and for others, in the present and the future, the enjoyment of those rights.

We also recognize that these values and the rights they imply are vulnerable to the fads, fashions, social movements and mass fears that threaten to still dissent and to censure carriers of unpopular ideas. Such was the case in 1954 when the University of Michigan suspended three faculty members and subsequently dismissed two of them. We deeply regret the failure of the University community to protect the fundamental values of intellectual freedom at that time. It is to guard against a repetition of those events and to protect the fundamental freedoms of those who come after us that we make this resolution today.

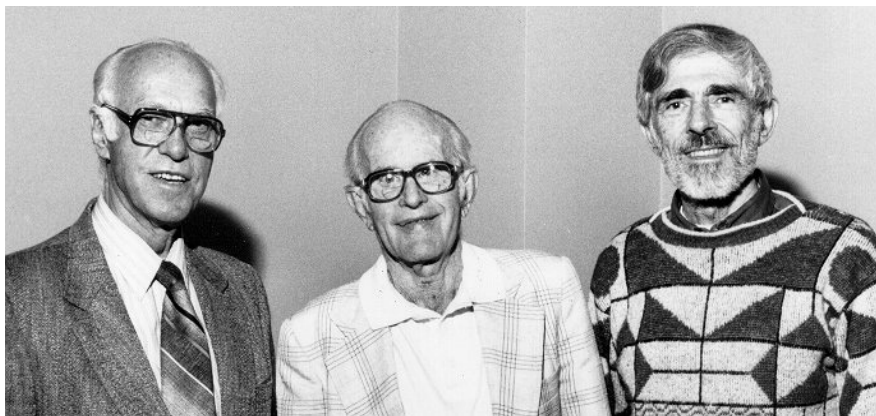
The protection of academic and intellectual freedoms requires a constant reminder of their value and vulnerability. To provide for that reminder, the faculty of the University of Michigan hereby resolves to establish an Annual Senate Lecture on Academic and on Intellectual Freedom, to be named: The University of Michigan Senate's Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom.

In Honor of Chandler Davis, Clement Markert, and Mark Nickerson

In 1954 the University of Michigan suspended three faculty members for their refusal to give testimony to the U.S. House Committee on Un-American Activities. Professors H. Chandler Davis (mathematics) and Mark Nickerson (pharmacology) were fired. The third faculty member, Clement Markert (biology), was retained but censured, and left the university soon afterwards. National AAUP censured the University for these terminations in 1957; censure was removed in 1958 after a new Regents' Bylaw 5.09 on the "Procedures in cases of Dismissal, Demotion, or Terminal Appointment" was adopted.

The University of Michigan Chapter of the AAUP contacted various University officials to encourage the Regents to take appropriate action to clear the faculty members' names. A proposal was sent to the Senate Advisory Committee on University Affairs in October 1989, and endorsed in February 1990.

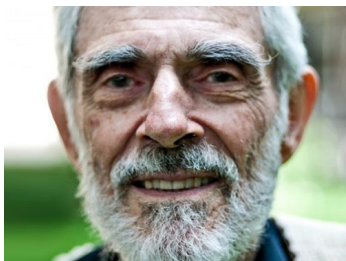
When it became clear that the Regents would not take action, the Senate Assembly in November, 1990, passed a resolution that deeply regretted "the failure of the University Community to protect the values of intellectual freedom" in 1954, and established the annual University of Michigan Senate Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom.



H. CHANDLER DAVIS

1926-2022

H. Chandler Davis was well known as a science-fiction author in his youth. At the same time he was a mathematics student at Harvard, earning a Ph.D. in 1950.



He was an instructor at the University of Michigan, 1950-1954. In 1962, he achieved tenure at the University of Toronto. He was Vice-President of the American Mathematical Society (1991-1994). He also served as an editor of *The Mathematical Intelligencer*.

Professor Davis's scientific pursuits took him on many travels to Poland during the martial law of 1982; to both the USA and the Democratic Republic of Vietnam while those countries were at war; to China during the Cultural Revolution; to both Israel and the occupied West Bank. Often along with the scientific work he was able to stand up for free speech of scientists (some of whose speech he does not at all endorse).

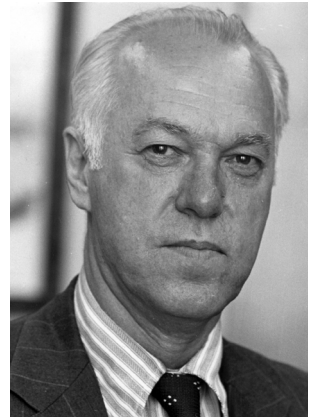
In 1954, while an instructor at the University of Michigan, Chandler Davis was called to testify before the House Committee on Un-American Activities. His fellows on the stand in Lansing were his colleagues Mark Nickerson and Clement L. Markert, and his student friends Edward Shaffer and Myron E. Sharpe. All were "unfriendly witnesses, refusing to confess" their political dissent. Davis, unlike the others, based his refusal to answer only on the First Amendment, waiving his protection under the Fifth Amendment. Thereby he deliberately invited a citation for Contempt of Congress, so as to give him standing to argue in court that the Committee's proceedings were unconstitutional. He got the citation, all right, but he did not prevail in court; his appeals were exhausted in 1959 and he served prison time in 1960. Meanwhile, he and Professor Nickerson had been dismissed from their positions at the University. This action of the University administration drew censure from the American Association of University Professors.

He wrote about those days in "The Purge" (*A Century of Mathematics in America*, American Mathematical Society, 1989). A selection of his prose writings, not including his mathematics but including some science-fiction is *It Walks in Beauty* (ed. J. Lukin, Aqueduct Press, 2010).

CLEMENT L. MARKERT

1917-1999

Clement L. Markert was Professor of Biology at Johns Hopkins University (1957-1965), the Henry Ford II Professor of Biology and Chair of the Department of Biology at Yale University (1965-1986) and Distinguished University Research Professor of Animal Science and Genetics at North Carolina State University (1986-1993).



His research interests were focused on developmental genetics, reproductive biology, and biotechnology. He was a member of the National Academy of Sciences and served as co-chair of the Developmental Biology Interdisciplinary Cluster for President Ford's Biomedical Research Panel in 1975. Professor Markert was elected to the Presidency of the American Institute of Biological Sciences, the American Society of Zoologists, the Society for Developmental Biology, and the American Genetics Association.

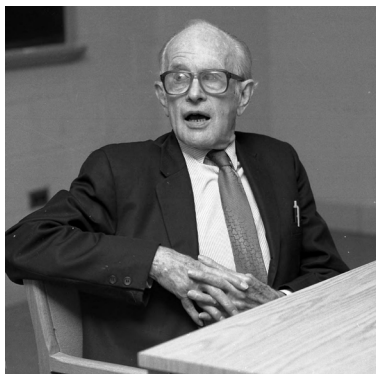
Markert began his academic career as an assistant professor of zoology at the University of Michigan in 1950 after earning his bachelor's degree from the University of Colorado, his M.A. from the University of California at Los Angeles and his doctorate from Johns Hopkins University. He died on October 1, 1999, in Colorado Springs, Colorado.

In 1954, Clement Markert was called to testify before the House Un-American Activities Committee. He invoked Constitutional rights according to the Fifth Amendment and refused to answer the Committee's questions concerning his political associations. Consequently, he was suspended from the University of Michigan. He was later reinstated with the support of the Faculty Senate, his department and his college, and he eventually achieved tenure.

MARK NICKERSON

1916-1998

Professor Nickerson made major contributions to the field of pharmacology, in part through his seminal research on the adrenergic blocking drugs that are used to treat high blood pressure and other major medical disorders.



He was awarded the John Jacob Abel Award in Pharmacology in 1949 and served as president both of the Pharmacological Society of Canada and of the American Society for Pharmacology and Experimental Therapeutics. He chaired the Canadian Federation of Biological Sciences and was the author of more than 250 scientific publications.

In 1954, Mark Nickerson was an associate professor of pharmacology at the University of Michigan, with tenure. He was called to testify before the House Un-American Activities Committee and chose to invoke the Fifth Amendment in response to the Committee's questions.

He was immediately suspended by the University as a result. Professor Nickerson's reinstatement was supported by the Faculty Senate but not by his departmental chairman or by the dean and the executive committee of the Medical School. He was subsequently dismissed from the University despite his tenured appointment.

Mark Nickerson was born on October 22, 1916, in Montevideo, Minnesota. He graduated summa cum laude from Linfield College, earned his Sc.M. from Brown University, his Ph.D. from Johns Hopkins University and an M.D. from the University of Utah. Nickerson married Elizabeth Ilene Smith (Betty). They had three children, Steven Paul, Michael Thomas and daughter, Marki.

PAST LECTURES

Davis, Markert, Nickerson

1991

Robert M. O'Neil

Professor of Law and Founding
Director

Thomas Jefferson Center for the
Protection of Free Expression
University of Virginia

"Inaugural Lecture"

1992

Lee C. Bollinger

Dean and Professor of Law
University of Michigan Law
School

"The Open-Minded Soldier
and the University"

1993

Catharine R. Stimpson

University Professor and Dean
of the Graduate School
Rutgers, The State University of
New Jersey

"Dirty Minds, Dirty Bodies,
Clean Speech"

1994

Walter P. Metzger

Emeritus Professor of History
Columbia University

"A Walk Along the New
Frontiers of Academic
Freedom"

1995

Linda Ray Pratt

Professor of English
University of Nebraska-Lincoln
and Past-President, AAUP

"Academic Freedom and the
Merits of Uncertainty"

1996

Avern Cohn

United States District Judge
Eastern District of Michigan

"Academic Freedom: A Trial
Judge's View"

1997

Roger Wood Wilkins

Clarence J. Robinson Professor
of History and American Culture
George Mason University

"Opportunity and Academic
Integrity"

1998

Eugene L. Roberts, Jr.

Professor of Journalism
University of Maryland-College
Park

"Free Speech, Free Press: Free
Society"

1999

David A. Hollinger

Chancellor's Professor of History
University of California at
Berkeley

"Universities and Cosmopolit-
anism"

2000

Anthony Lewis

Journalist, *The New York Times*
James Madison Visiting
Professor
Columbia University

"Freedom: The Seamless
Web"

2001

Vartan Gregorian

President
Carnegie Corporation of New
York

"Universities in the 21st
Century: Perils, Challenges,
and Prospects"

2002

Catharine A. MacKinnon

Elizabeth A. Long Professor
of Law
University of Michigan
Law School

"From Powerlessness to
Power: The Uses of Academic
Freedom"

- 2003**
David D. Cole
 Professor of Law
 Georgetown University Law Center
 “Freedom and Terror: September 11th and the 21st Century Challenge”
- 2004**
Noam Chomsky
 Professor of Linguistics and Philosophy
 Massachusetts Institute of Technology
 “Illegal but Legitimate: A Dubious Doctrine for the Times”
- 2005**
Floyd Abrams
 Walter J. Brennan, Jr. Visiting Professor of First Amendment Law
 Columbia University
 Graduate School of Journalism
 Partner, Cahill Gordon & Reindel
 “Whose Academic Freedom?”
- 2006**
Bill Keller
 Executive Editor
 The New York Times
 “Editors in Chains: Secrets, Security and the Press”
- 2007**
Nadine Strossen
 Professor of Law
 New York Law School
 President of the American Civil Liberties Union
 “Defending Freedom: Even for the Thoughts We Hate!”
- 2008**
Cass R. Sunstein
 Felix Frankfurter Professor of Law
 Harvard Law School
 “My University.com, My Government.com: Is the Internet Really a Blessing for Democracy?”
- 2009**
Philip Hamburger
 Maurice & Hilda Friedman Professor of Law,
 Columbia University School of Law
 “Galileo’s Ghost: Seventeenth-Century Censorship in Twenty-First-Century America”
- 2010**
Michael A. Olivas
 William B. Bates Distinguished Chair in Law
 University of Houston Law Center
 “God, Grades, and Sex: The Developing Law of the College Classroom”
- 2011**
Ellen W. Schrecker
 Professor of History
 Yeshiva University
 “The Lost Soul of Higher Education”
- 2012**
Robert C. Post
 Dean and Sol & Lillian Goldman Professor of Law
 Yale Law School
 “The Constitutional Meaning of Academic Freedom”
- 2013**
Marjorie Heins
 Founding Director of the Free Expression Policy Project
 “Priests of Our Democracy: The Supreme Court, Academic Freedom and the Anti-Communist Purge”
- 2014**
Douglas Laycock
 Robert E. Scott Distinguished Professor of Law and Professor of Religious Studies
 University of Virginia School of Law
 “Religious Liberty and the Culture Wars”

- 2015**
Natalie Zemon
 Davis Henry & Charles Lea
 Professor of History Emerita
 Princeton University
 Adjunct Professor of History
 and Medieval Studies
 Senior Fellow in the Centre for
 Comparative Literature
 University of Toronto
- “Experiencing Exclusion:
 Scholarship in the Wake of
 Inquisition”
- Joan Wallach Scott**
 Professor Emerita
 School of Social Science
 Institute for Advanced Study
 Adjunct Professor of History
 Graduate Center
 City University of New York
- “Civility and Academic
 Freedom”
- 2016**
Marc Rotenberg
 President and CEO
 Electronic Privacy Information
 Center
 Professor of Law
 Georgetown Law
- “The Misunderstood Right to
 be Forgotten: The Future of
 Free Expression and Privacy in
 the Online World”
- 2017**
Michael Mann
 Distinguished Professor of
 Atmospheric Science
 Pennsylvania State University
- “The Madhouse Effect:
 Climate Change Denial in the
 Age of Trump”
- 2018**
Gene Nicol
 Boyd Tinsley Distinguished
 Professor
 University of North Carolina
- “Academic Freedom: New
 Politics, Old School Censorship
 and Meaningful Constitutional
 Review”
- 2019**
Hank F. Reichman
 Chair of AAUP Committee on
 Academic Freedom and Tenure
 Professor Emeritus of History,
 California State University—East
 Bay
- “Do Adjuncts Have Academic
 Freedom? Why Tenure
 Matters”
- 2020**
Nadje S. Al-Ali
 Robert Family Professor of
 International Studies
 Professor of Anthropology and
 Middle East Studies
 Brown University
- Susan Benesch**
 Faculty Associate
 Harvard University
 Adjunct Professor
 American University
 Director, Dangerous Speech
 Project
- Michael Bérubé**
 Edwin Erle Sparks Professor of
 Literature
 Pennsylvania State University
- Melanie Tanielian**
 Associate Professor
 History, University of Michigan
- Panel Discussion:
 “Challenges to Academic
 Freedom in a Changing
 Landscape, at Home and
 Abroad”
- 2021**
Dima Khalidi
 Director
 Palestine Legal
- “A New McCarthyism?
 Academic Freedom and
 Palestine”
- 2022**
Jamelle Bouie
 Columnist
 New York Times
 Political Analyst
 CBS News
- “Revisiting Du Bois and ‘The
 Propaganda of History’”

2023

Jonathan Friedman

Director, Free Expression and
Education Programs
PEN America

“Academic Freedom 2024:
Educational Gag Orders, State
Censorship, and the Fight for
Higher Education”

Davis, Markert, Nickerson Lecture on Academic Freedom Committee 2023-2024

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Melanie Tanielian, Co-Chair

Samer Ali

John Cheney-Lippold

Marcy Epstein

Holly Hughes

Victoria Langland

Nick Tobier

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