



May 18, 2010

The Rector and Visitors of the University of Virginia
John O. Wynne, Rector
University of Virginia
One Commercial Place, Suite 1420
Norfolk, VA 23510

Re: Attorney General's Civil Investigative Demand

Dear Mr. Wynne:

We applaud your May 14 statement affirming the importance of academic freedom and your announcement that the Board of Visitors has hired outside counsel to respond to the Attorney General's civil investigative demand (CID) in the Dr. Michael Mann matter. Our reason for writing is to urge you to contest that demand to the fullest extent possible.

As you have already observed in your recent statement, the Attorney General's subpoena is a significant threat to academic freedom. The possibility that a member of a university faculty could be investigated and prosecuted for his or her academic work will serve to chill free inquiry here at the University and in colleges and universities across the Commonwealth. The CID is an effective tool of intimidation because it appears not to require the Attorney General to make any factual showing of the need for its issuance. Indeed, to our knowledge the Attorney General has not made any such showing in this case. No lawsuit has been filed or prosecution initiated. There is thus no way for the University or individual faculty members to assess the potential charges against them nor any way of knowing if the request serves any proper purpose. In the absence of even a minimal showing that there may be a legitimate reason for this investigation, it is fair to question the Attorney General's intentions.

Prosecutors should tread very lightly in the realm of academic affairs, for forcing scholars to produce documents to government officials and answer interrogatories about the nature of their scholarly inquiries will surely lead to political control over the production of knowledge. As the United States Supreme Court wrote in *Sweezy v. New Hampshire*, a case involving the investigation of an academic by New Hampshire's State Attorney General:

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to

inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

More recently, in *Keyishian v. Board of Regents*, the Supreme Court stated: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment." As the Court in *Sweezy* declared: "Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the Bill of Rights and the Fourteenth Amendment."

There appears to be a serious legal basis for challenging the constitutionality of the Attorney General's CID. At a minimum, there is ample reason for asking a court to determine its legality. And there is certainly an ethical reason to do so. Without the unflinching support of the University and its leadership, individual scholars can feel no confidence that they will be shielded from political interference. Scholarly initiative and inquiry will decline; applications for grants to do research will not be produced; professors will depart for more congenial places. We urge you and the other members of the Board of Visitors to take these consequences into consideration and to assert in the strongest terms possible your objection to the Attorney General's intervention.

We appreciate your resolve in this matter, and offer whatever assistance we can provide.

Sincerely,

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(correspondent)

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