

AMERICAN ARBITRATION ASSOCIATION

University of Delaware,)
Chapter of the American)
Association of University) Case No. 14 390 1935 90 A
Professors and the University)
of Delaware: Pioneer Fund)
Grievance)

MEMORANDUM OF PROFESSORS LINDA S. GOTTFREDSON
AND JAN H. BLITS IN SUPPORT OF THEIR GRIEVANCE
AGAINST THE UNIVERSITY OF DELAWARE

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STATEMENT OF FACTS

I. The Parties

The complainants, Professors Linda Gottfredson and Jan Blits, are members of the faculty of the Department of Educational Studies of the College of Education of the University of Delaware. Professor Gottfredson is a sociologist who is a nationally known expert in the fields of vocational testing and development. She was previously employed at the Johns Hopkins University in Baltimore, Maryland, where she received a Ph.D. At Delaware, the primary focus of her research has been the societal consequences of differences of ability between groups and individuals.

Professor Blits is a political scientist, with a Ph.D from the New School for Social Research in New York, who has written on a wide variety of topics, including theories of equal opportunity. Recently, his research has concentrated on the politicization of American science and, more generally, American universities.

The University of Delaware (the "University") is a state-chartered and state-assisted university that is the principal institution for higher education in Delaware. The members of its faculty are organized by the American Association of University Professors (the "AAUP") which has entered a collective bargaining agreement with the University.

II. Professor Gottfredson's Background.

Professor Gottfredson testified extensively at the hearing about her background and work. An understanding of that background is necessary to understand the full implications of the University's position in this matter. Originally, Professor Gottfredson conducted research into relatively non-controversial areas, such as vocational counseling. Over time, however, her research increasingly focused upon subjects that are far more controversial -- at least within the academic establishment -- such as the link between intelligence and job performance. That work led her into associated areas, such as the accuracy of various intelligence tests in predicting job performance.

A. The Original Difficulty in Obtaining Funding.

As Professor Gottfredson testified, those subjects provoke intensive controversy because of their possible social and political implications. As she pursued her work into the area of intelligence -- and kept finding that intelligence played a significant role in success in a wide variety of jobs -- she discovered that her potential funding sources began rapidly to disappear. As she testified, in the years before coming to Delaware, she repeatedly approached funding agencies, some previously hospitable to her work, and met objections based upon its content.

There was one exception. The Pioneer Fund, a small New York-based foundation, was willing to provide funds for her research. For the past three decades, the Pioneer Fund has been headed by Harry F. Weyher, Esquire, senior partner of the firm of Olwine, Connelly, Chase, O'Donnell & Weyher in New York City. Other prominent Pioneer Fund Trustees have included John Marshall Harlan, then a prominent New York lawyer and later a Judge of the United States Court of Appeals for the Second Circuit and a Justice of the United States Supreme Court. Moreover, Professor Gottfredson testified, the Pioneer Fund offered long-term support -- rare in a field in which one-year one-time grants are the norm. Thus, Professor Gottfredson and her fellow researcher at Johns Hopkins, Professor Robert Gordon, began seeking grants from the Pioneer Fund.

B. Professor Gottfredson is Invited to Delaware.

What made Professor Gottfredson's work increasingly controversial -- and, in some quarters, highly unpopular -- was that her conclusions affected various policy issues, including education policy. Indeed, Professor Gottfredson began to address some of those issues directly. Despite the controversial nature of that work, however, the University of Delaware hired her in 1986 to teach and conduct research in educational-policy.

Once at Delaware, Professor Gottfredson sought, and received, permission to establish a joint Delaware-Johns Hopkins

Project for the Study of Intelligence and Society. She and Professor Gordon were co-directors of the Project. All of the Project's activities were supported by Pioneer Fund money as were virtually all of Professor Gottfredson's research publications at Delaware. (AX-4 lists the amounts received by Professor Gottfredson from the Pioneer Fund and the amount spent on her various research and other activities).

Initially, Professor Gottfredson won high praise for her work from her colleagues. In 1988 she was recommended for tenure and promotion to full professor by her Department's Promotion and Tenure Committee and Department Chair, whose reports emphasized that she was nationally known for her research. Nevertheless, even then there was some political opposition within the University to her research. As she testified -- and as the transcript of Dean Murray's testimony before the Faculty Research Committee (JX-19) confirms -- some of her colleagues at Delaware opposed her willingness to discuss apparent racial differences in intelligence.*

* As Professor Gottfredson noted, intelligence tests uniformly show that the average white test-taker scores better than the average black test-taker (of course, such results say nothing about how any individual of any race will perform on a test). Given the heated political climate on issues of race, the mere discussion of the unambiguous data on this point by Professor Gottfredson drew (and continues to draw) attacks on her. Her critics do not seem to mention the other racially linked intelligence data discussed by Professor Gottfredson -- that Asians score higher than whites.

III. The Attack on Professor Gottfredson's Work

A. The Promotion and Sociology Department Actions

In the fall of 1989, Professor Gottfredson had been at the University of Delaware for three years. During that time, her work, although subject to political challenge, had enjoyed high praise for its scholarly merit. That climate changed abruptly as she soon faced challenges on three separate fronts. First, her renewed application for promotion to full professor (she had been granted tenure the previous year but not promotion) was rejected by her Department's Promotion and Tenure Committee and later by her Department Chair. Although both had found her research to be outstanding one year earlier, both found it to be completely unsatisfactory in 1989. As Professor Gottfredson testified at the hearing, their criticism focused on two articles she co-authored with Professor Blits challenging the scientific basis for "race-norming."* Although she was eventually promoted,

* "Race-norming" is the practice of adjusting test scores to take into account an applicant's race. The practice, although widespread, had not been widely known or discussed until the publication of the two Blits-Gottfredson articles. When a test is "race-normed," points are added to the raw test scores of members of normed group in order to equalize test results by race. Without race norming, such tests will show significant ability differences between members of some racial and other groups.

both the committee and the department chair pressured her to return to non-controversial research.*

Soon afterwards, the Sociology Department started an investigation of a course taught by Professor Gottfredson ("Sociological Foundations of Education"), for which it previously had granted credit. Again, the objections to Professor Gottfredson's work were nakedly political; again the result was an anti-Gottfredson decision; and again Professor Gottfredson challenged the action before the Faculty Senate Welfare and Privileges Committee. A decision on that challenge is pending.

B. The Attack on the Pioneer Fund

The first two attacks on Professor Gottfredson were significant but came from relatively low levels within the University. The third -- a challenge to her right to receive Pioneer Fund monies through the University -- was potentially far more serious since it came from the top and threatened to destroy her research program. That challenge was launched in October,

* As Professor Gottfredson testified, she challenged both the Promotion and Tenure Committee's and the Chair's recommendations before the Faculty Senate's Welfare and Privilege's Committee. That committee's decision, which was issued after the hearing in this matter, finds among other things that the Promotion and Tenure Committee's report attacking Professor Gottfredson's research is distorted, that "[t]his distortion goes beyond any reasonable range for academic judgment," and that, for both the Committee and the Chair, the "facts establish a strong prima facie case that the respondents have violated Gottfredson's academic freedom, as defined in the Faculty Handbook."

1989 by linguistics Professor William Frawley, who wrote to Delaware's then-President, E.A. Trabant, claiming that the Pioneer Fund was a racist, anti-Semitic,* discriminatory organization from which the University should not accept funds. After several weeks of intense media attention, President Trabant turned the matter over to the Faculty Senate Committee on Research, chaired by art history Professor Lawrence Nees (the "Nees Committee"). (JX-5).

Although the Nees Committee, shrouding its investigation in secrecy, would not give Professor Gottfredson a clear statement of what precisely it was investigating, it soon became clear to her that she was a principal target. The stage was set by the "University of Delaware African American Coalition" ("UDAAC"), an organization of African-American professors and administrators, which was heavily pressuring the Committee. In a January 3, 1990 letter to the Philadelphia Inquirer, which was read at the hearing, UDAAC claimed that it was:

"digging through the mountain of so-called research by Gottfredson and her cronies and has sounded the alarm, ..."

and then went on to conclude that

"[i]t is our hope that the University of Delaware quickly comes to the conclusion that

* The claim that the Pioneer Fund is anti-Semitic was silently dropped early in the proceedings when it became clear that many of the Fund's grantees, including a special target of the Nees Committee, Professor Robert Gordon, are Jewish.

it is dangerous to be associated with people who preach hatred, call it research and then claim academic freedom."

Their hope was soon to be answered.

1. The Warning From Professor Settles

In early January 1990, Professor Gottfredson had an unnerving telephone conversation with Professor Barbara Settles, a Nees Committee member. According to notes Professor Gottfredson took at the time and read at the hearing, Professor Settles told her that the University did not have "a positive record" with regard to minorities and "was viewed with high suspicion in the [minority] community" and that, accordingly, there was a "long reservoir of resentment" for which Professor Gottfredson was "the lightning rod."

When Professor Gottfredson inquired about her right to academic freedom, Professor Settles told her that it was "difficult to turn people to academic freedom," because they were "very interested in symbolic vocabulary." Then, in an even more chilling statement, she warned Professor Gottfredson that she was "in the right place and time to be run over by a freight train" and to "get out of the way as a lightning rod for the University." Professor Settles concluded by telling Professor Gottfredson that she should "go get a lawyer" and advised her to take notes on her desk calendar about all pertinent conversations. The University did not produce Professor Settles at the hearing to deny these statements.

2. The Investigation of Professor Gottfredson

In its report (JX-4 at 2, the "Report"), the Nees Committee proclaims that "[i]n considering the questions raised in relation to the Pioneer Fund, the Committee has never directed its attention to the content or method of any faculty member's research or teaching, and would oppose any attempt to restrict a colleague's rights in these protested areas." However, in February, soon after receiving a long letter from UDAAC severely attacking Professor Gottfredson's research, Professor Nees requested copies of Professors Gottfredson's and Blits' Pioneer-supported publications, as well as her Pioneer grant proposals.

Professor Nees' stated reason for the request was that the committee wanted to have "the fullest possible record" and this included not only "the relationship between the Pioneer Fund and the University of Delaware" but also "the [faculty] activities carried out as a result of that relationship." Although both Professors Gottfredson and Blits complied with the requests, they wrote to Nees to express their concern that the focus of the Committee's investigation had improperly shifted to their work.

Dean Murray's testimony before the Committee, a month later, confirms that the Committee did, in fact, investigate the substance of Professor Gottfredson's work (g theory):

PROFESSOR

- SYLVES: "Can I just -- since he mentioned it in passing -- just for clarification -- are you telling us that the Gottfredson proposal in your opinion when you passed judgment on it and signed it was consistent with the mission of the University in your opinion?"
- MURRAY: Oh sure. You mean was she proposing to do something that we as a university ought not to do?
- SYLVES: Yeah. Or that is inimical to the missions of the college that you're dean of.
- MURRAY: What would you think it was?
- SYLVES: I'm asking --
- MURRAY: Oh, no, no ...
- SYLVES: Did you think it was contrary to the mission -- the subject matter of what she was proposing to do?
- MURRAY: No. Not the subject matter, no --
- NEES: I have a couple of other -- oh, I'm sorry, go ahead ...
- MURRAY: I mean we're talking about a funny subject matter -- The subject matter is the implications of IQ test results, right?
- NEES: Basically, or vocational placement.
- MURRAY: Yeah.
- SYLVES: And the use of g theory. Do you know what g theory's about?
- MURRAY: Oh, yeah, actually I know quite a bit about it. [laughter from group]
- ?MALE: And you're saying all that is consistent with the mission of the College?
- MURRAY: I mean, you're asking as though you think it possibly could be inconsistent.

?FEMALE: We have had people suggest that to us.

SYLVES: Yes, UDAAC for example.

MURRAY: Who?

SYLVES: University of Delaware African American Coalition.

MURRAY: Oh, I see. That that would be inconsistent with the University?

SYLVES: Most particularly the mission of the College of Education because of its sensitivity to teacher training and of the need to provide multi-cultural diversity ..."

(JX-19 at 6-8).

IV. The Committee's Report

On April 19, 1990, the Nees Committee issued a report to the President which became the explicit basis for the University's ban. (JX-6). The Report recommended against continuing to accept Pioneer Fund money because, "[a]ccording to [the] views ... supported by the Fund ... affirmative action plans are unjust and doomed to failure and should be abandoned." (JX-19 at 11). This view, the Report concluded, conflicts with the University's commitment to racial and cultural diversity.

While the Report stoutly professes its concern for academic freedom and presents itself as a careful examination of the facts concerning the Pioneer Fund, an analysis of it shows just the opposite. The Report fails to give serious consideration to the issue of academic freedom, and it deliberately suppresses or distorts the most important facts.

While Professor Nees admitted that the Report lacks "scholarly" rigor, it is fair to say that its faults are far more serious. It is a fundamentally dishonest document that disregards and twists the truth in order to achieve an ideological end.

A. Academic Freedom

In contrast to the University's position in this proceeding that academic freedom is not protected by the faculty contract, the Nees Report at least pays lip service to academic freedom and refers to research and service as "protected areas." (JX-4 at 2). The Report, however, excludes from that protection the receipt of funds to support such research, except to say that "[i]t is essential that such restrictions be applied in a fair, reasoned, and consistent manner." (JX-4 at 3).

At the hearing, Professor Nees proved unable to say why it is necessary that such restrictions be applied in a "fair, reasoned and consistent manner" if a professor had no right to such money. He also proved unable to state whether there were any other limitations on the University's right to deny funding, or to articulate a principled basis on which the University could deny the funding. In fact, in his testimony, Professor Nees admitted that the Committee had deliberately avoided looking at generalized principles for such a ban, but, had instead focused solely on whether the Pioneer Fund should be barred.

Indeed, the Report acknowledges that its recommendation was entirely ad hoc. As it states: "[i]f the University decides

that it does not wish to seek or accept financial support from organizations opposed to its policy on and commitment to racial and cultural diversity, no general precedent applicable to other potentially controversial issues is established." (JX-4 at 4). Thus, the Nees Committee purposely avoided dealing with the principle of academic freedom. Rather, at least on its face, the Committee's Report concentrated solely on the Pioneer Fund. In fact, as events were to prove, it focused upon Professor Gottfredson as well.

David Roselle might have been expected to do better. He is the President of the University and was previously the President of the University of Kentucky. Yet, he, too, avoided general principles. He, too, was unable -- or unwilling -- to state whether the University could bar the receipt of funds solely on political grounds. He could not -- or would not -- answer whether the University had the right to ban faculty-solicited money from a Republican or Democratic source because it objected to the Republican or Democrat party platform, although he did say that the University could ban the receipt of funds if the community took umbrage at the source of those funds for any reason.

B. The Pioneer Fund's Charter

After briefly discussing (but never really defining) the University's commitment to "racial and cultural diversity," the Report goes on to explain why the Pioneer Fund's support of

Professors Blits and Gottfredson is inconsistent with the University's pursuit of these goals. In so doing, the Report first examines the Pioneer Fund's original charter, and the 1985 change to it. (JX-4 at 5). It then examines its pattern of funding.

According to the Report, "[t]he 1937 Pioneer Fund charter was explicitly a 'for whites only' document." (JX-4 at 5). In fact, however, that statement is simply incorrect, as even a cursory reading of the charter would reveal. The charter sets forth two purposes. The first permits the trustees to give scholarships to children

who are citizens of the United States, and unless the directors deem it inadvisable, consideration shall be especially given to children who are deemed to be descended predominantly from white persons who settled in the original thirteen states prior to the adoption of the Constitution...

(JX-4 at 5, emphasis added). The Committee drew its "whites only" conclusion from this language. But, as can be seen, the passage states only a preference, not a restriction, (according to President Roselle, such a preference would be perfectly acceptable if the word "black" were substituted for "white"), and the preference exists only to the extent that "the directors deem it advisable." In short, while the original charter's provision expresses a preference for white children descended from the original European settlers of America (i.e. the "pioneers"), even the 1937 version of the charter left the directors free to give

scholarships to children of other races and ethnic backgrounds. It was not a "for whites only" document.

Moreover, although the Report ignores the fact, Professor Nees was forced to admit under oath that the Committee knew that this provision had been put into effect only once -- when the Pioneer Fund gave scholarships, without racial or regional restrictions, to Army Air Corps children during World War II -- and that the Pioneer Fund has no current plans to act on the provision. In addition, the Pioneer Fund deleted the word "white" from the section in 1985.

President Roselle testified that that deletion was not sufficient, however, because there were no blacks in America at the time of the Constitution and thus blacks would still be excluded. When he was reminded that there was a large black population at the time, he was hard pressed to explain why this deletion did not take care of the University's problem, but, instead, pointed to other alleged problems with the Fund.* The Report, for its part, acknowledges the change, but objects that it was not made soon enough. (See JX-4 at 5-6).

The Report goes on to argue that, despite the deletion, the Pioneer Fund's "intent" remains the same. To support its argument, it selectively and misleadingly quotes from the testimony of Pioneer Fund President, Harry Weyher. Where Mr.

* Indeed, every time President Roselle was unable to justify a statement in the Report, he attempted to change the subject to another part of the Report.

Weyher is explaining why he did not delete the entire non-operable clause or change its wording considerably to answer critics (AX-2 at 33-34), the Report wrenches his words completely out of context and concludes from them that "the Fund still respects the objectives and intentions of the original 1937 charter." (JX-4 at 6).

The Charter's second statement of purpose is the one currently employed by the Trustees. It calls on them "[t]o conduct or aid in conducting study and research into the problems of heredity and eugenics in the human race generally..." (JX-4 at 5). In his testimony, Professor Nees was unable to point to anything improper with this purpose, and he acknowledged that his committee was fully aware that this was the exclusive purpose clause the Pioneer Fund was following and had followed (with the exception of the non-discriminatory World War II scholarships) for more than 50 years. Despite knowing that, however, the Committee made no mention of it in its Report and asserted, instead,³ that the entire Charter was a "whites only" document.

That statement was not only false; it was knowingly false. It was intentionally misleading.

C. The Pattern of Funding.

Even more objectionable than the Committee's distortion concerning the Pioneer Fund's charter, however, are its comments about the Pioneer Fund's "pattern of funding." At page 6 of the Report, the Committee states, in underscored type, that "a

substantial, even a preponderant portion of the activities supported by the Pioneer Fund either seek to demonstrate or start from the assumption that there are fundamental heredity differences among people of different racial and cultural backgrounds." (JX-4 at 6).

As will be seen hereafter, this statement was seized upon by the University as a basis for banning the Fund. (JX-7). But, as demonstrated during Professor Nees' testimony at the hearing, there is no factual basis for this charge.

The Nees Committee attempted to provide a basis at pages 7-8 of its Report. There it lists 8 organizations that received Pioneer Fund support, asserting that "[m]ost of these activities supported by the Pioneer Fund have to do with racial and ethnic differences as a function of heredity and eugenics, and had the purpose of shaping public policy." (JX-4 at 7).

When asked, however, Professor Nees was forced to admit that he had no idea what research or activity was conducted under these grants. According to Professor Nees, the Committee simply accepted the allegations as true. In fact, they were false. As Professor Gottfredson testified:

-- The University of Minnesota grants were for the "Minnesota twins" study, which as both Professor Gottfredson and Dean Murray testified, concerns identical twins raised apart. This study is widely considered eminent research (featured in, among other places, The New York Times) and is designed to evaluate the effects of environment and heredity on human development. It does not deal with race or ethnic differences at all.

-- The Institute for the Study of Educational Differences is run by Dr. Arthur Jensen, who is controversial because of his work on racial differences in intelligence and his hypothesis that some of these differences might be hereditary. Although controversial, Jensen is a very highly respected scientist, as even Dean Murray acknowledged. The Pioneer Fund money was used to measure the correlation between intelligence and choice reaction times -- hardly a controversial topic. The grants in question had nothing at all to do with genetic differences by race.

-- The Foundation for American Immigration Reform apparently is a liberal group dealing with immigration questions. Its letterhead is populated with such liberal luminaries as Richard Lamm (former Democratic Governor of Colorado), Paul R. Ehrlich (an environmentalist), John V. Lindsay, and Eugene McCarthy. Neither Professor Nees nor President Roselle could explain what was politically objectionable about this group, or what the group had to do with "racial and ethnic differences as a function of heredity."

-- The Johns Hopkins University grants represent research conducted by Professor Gottfredson along with Professor Gordon. Although the committee was aware of this fact (AX-3 at 33), its Report makes no mention of it. While this joint work does look at intelligence differences among races (among many other things) it has nothing to do with either "heredity or eugenics."

According to Professor Gottfredson, it was her understanding that the other four grants were for (1) the publication and distribution of books and films on illegal immigration (Coalition for Freedom), (2) the study of immigration and other population questions (American Immigration Control Reform), (3) the distribution of scientific publications regarding intelligence and related topics (Foundation for Human Understanding), and (4) the publication and distribution of scientific works including Mankind Quarterly, an anthropology

journal upon whose editorial board the eminent scholar Joseph Campbell sat (Institute for the Study of Man). In short, the Report's contention that these grants "[had] to do with racial and ethnic differences as a function of heredity" is made up from whole cloth.

The Report then goes on to discuss three specific Pioneer Fund grantees by name (JX-4 at 7-8). It first refers to the Pioneer-funded publication and distribution of Arthur Jensen's research on the "g factor." The publication and distribution of the Jensen work in question was carried out, however, under one of Professor Gottfredson's own Pioneer-funded activities -- a journal issue that she edited (AX-1a) and which the Nees Committee itself had requested from her. Thus, Professor Gottfredson's work was cited a second time without naming her.

The Report next cites the work of J. Philippe Rushton of the University of Western Ontario. Quoting out of context a snippet from one of his articles, it suggests that Rushton is a racist. As Professor Nees was forced to admit, however, the Committee never read (or even saw) the full article, but relied instead on material submitted by UDAAC. In addition, the Committee also ignored that, as Professor Gottfredson testified, Professor Rushton has received support from the Guggenheim Foundation for exactly the same kind of work as was supported by the Pioneer Fund, and that his work has been published in leading

scholarly journals as well as by both Oxford and Cambridge University Presses. Thus, once again, as throughout the Report, the Committee suppressed whatever evidence might contradict its unfounded claims.

The Report finally lists the work of Professor Gordon. Here, again, the Report is dishonest. The words the Committee attributes to Professor Gordon were in fact co-authored by Professors Gottfredson and Gordon, as even a cursory glance at the materials, which the Committee possessed, makes clear.

The Nees Committee was able to maintain the fiction that it had not conducted an "ad hoc inquiry into a faculty member's work" only by omitting mention of Professor Gottfredson's name when citing her work -- not once, but three times. When confronted with this evidence at the hearing, Professor Nees reluctantly admitted that he had indeed read some of her publications, which he had requested, and that the Committee had indeed based its allegation concerning the Fund's "pattern of funding" partly on her work.

We must submit that the Nees Committee's use of Professor Gottfredson's research here -- without mentioning her name -- is so fundamentally dishonest as to compel only one conclusion: that the Nees Committee wanted to suppress her research or was seeking to appease those who did. Nor is that the only dishonesty here. According to the Report, Professor Gordon (and sub silentio Professor Gottfredson) "has extended the

analysis of hereditary racial differences in intelligence" into the area of crime. As the Nees Committee knew, this is flatly false. Neither Professor Gottfredson nor Professor Gordon does any work in the field of heredity, much less "hereditary racial differences."

* * *

In the end, Professor Nees was forced to admit that his Committee's objection to the Pioneer Fund's "pattern of funding" was based largely on Professor Gottfredson's own work. Indeed, he admitted that this was the only research cited that he knew anything about, and that the Committee had, in fact, concluded that her work was "incompatible" with the University's mission. Thus, the Committee's statements that they did not investigate Professor Gottfredson's work are patently untrue. After receiving complaints from UDAAC concerning content of her work, the Committee requested copies of it (and Blits' work); on the basis of that material, it questioned Dean Murray about the work's "compatibility" with the mission of the College of Education; then it cited her work, without naming her, as evidence of the Pioneer Fund's "incompatibility" with the University's mission -- and it hid what it had done.

Given such evidence, we respectfully submit that the only reasonable conclusion that can be drawn is that the Committee deliberately decided to shut down such "politically incorrect" research by pulling the financial plug on it.

D. The Pioneer Fund's Procedures

The Report finally criticizes the Pioneer Fund's procedures. (JX-4 at 8-11). These procedures, however, are perfectly typical of small granting agencies. The Pioneer Fund has no peer review requirement, but, as Professor Nees admitted, neither do many other small private foundations. The Fund does not pay "indirect costs", but, again, neither do most private foundations. (See JX-19 at 4). And, while President Roselle stressed these supposed problems, Professor Nees candidly admitted that they were not particularly important to the Committee and, by themselves, would not have provided a basis for barring the Pioneer Fund as indeed his Committee stated in its Report. (JX-4 at 8).

President Roselle also repeatedly claimed that Pioneer-funded research lacks scholarly "validation." This opinion, too, is unfounded. As Professor Gottfredson testified (and Dean Murray confirmed), the very work the University has most objected to -- including Jensen's, Rushton's, Gordon's, Gottfredson's and the Minnesota twins studies -- has been published by the leading scholarly journals and book publishers in the field.

V. Subsequent Administration Actions

A. The Funding Ban

Soon after it was released, President Trabant accepted the Report and based the University's ban upon it. (JX-6). Mr.

Weyher immediately wrote to the Board of Trustees to protest the many inaccuracies in the Report. The Trustees, however, were apparently unconcerned about the truth. In a letter dated July 2, 1990, the Chairman of the University's Board of Trustees stated that:

"An important finding of the Faculty Senate Committee's Report is that '[a] preponderant portion of the activities supported by the [Pioneer] Fund either seek to demonstrate or start from the assumption that there are fundamental hereditary differences among people of different racial and cultural backgrounds, . . . ' (e.g., pp. 1 & 6). No matter whether that is in fact the orientation of Pioneer Fund or not, that is perceived as the orientation of the Fund by at least a material number of our faculty, staff, and students."

(JX-7, emphasis added). Thus, a perception, which is false but affirmed by the University itself, was deemed sufficient to justify the University's banning Professor Gottfredson's receipt of Pioneer Fund money through the University "no matter whether that" perception was correct or not. Professor Settles' warning had proved prophetic. Professor Gottfredson indeed was standing in front of a train and symbols had become more important than reality.

B. Restrictions on "Outside Employment"

The Report suggests that Professor Gottfredson could work around its restrictions by establishing a private foundation to receive Pioneer Fund support. In doing so, it ignored the testimony of Professor Gordon, who, having once looked into the

possibility, warned of the great difficulties such a foundation would incur (from heavy tax-reporting requirements to the loss of access to campus facilities). "It's the kind of tax that has the power to destroy," he warned. (AX-2 at 41).

Concerned whether she would even be allowed to do such Pioneer Funded-research on campus, Professor Gottfredson contacted Associate Provost for Research, Robert Varrin, who is responsible for the interpretation and administration of the University's research policy and was a member of the Nees Committee. Dr. Varrin's advice to Professor Gottfredson is summarized in a confirming letter to him of June 6, 1990 (JX-17), which he acknowledged as accurate in a letter of June 15, 1990 (JX-18). According to Dr. Varrin, Professor Gottfredson could spend only 20% of her time on Pioneer-funded activity -- which would not count towards her University research requirement -- and which would be required to be demonstrably different from her University research. (JX-17). In addition, Professor Gottfredson could not use any University resources to assist in her Pioneer-funded research including her office, University mail (JX-17), or even the University photocopier and telephone since she would have to reimburse the University for their use and could not use Pioneer Fund money to do so. She could not even acknowledge her affiliation with the University.* (JX-18).

* It should be noted here that the University considers research conducted through one's own foundation as "research for pecuniary return" and such research does not enjoy the protection

At the hearing, President Roselle testified that Dr. Varrin's letter was "absurd" and that Professor Gottfredson should have been aware of its absurdity, since Dean Murray had (allegedly) told her that. Under cross-examination, however, President Roselle was forced to admit that he had seen Professor Gottfredson's and Dr. Varrin's letters shortly after they were sent out, but had failed either to tell Varrin they were incorrect or to inform Gottfredson of that fact. Rather, he waited until the second day of the hearing to announce this correction, after the University's expert (Dr. Ray Bowen) had admitted on the first day of the hearing that such restrictions would violate academic freedom. Dr. Roselle had no explanation for this long delay.

C. Claims Regarding Other Funds

Throughout the hearing, the University repeatedly maintained that Professor Gottfredson could get funding from other sources, or, alternatively, that she was not trying hard enough to receive such funding. In the Argument, we will address whether such arguments should be given any weight even if they

of academic freedom. The University's Statement on Academic Freedom states: "the teacher is entitled to full freedom in research and in the publication of results, but research for pecuniary return should be based upon an understanding with the authorities of the University." (JX-3 at III-B-1, emphasis added). The University can directly ban such research if it believes the research "conflict[s] with the interests of the University." (JX-3 at III-H-1).

are true. For the present we will address the University's factual contentions.

What is initially noteworthy about the University's claims in this regard is how they are ungrounded in reality. In her initial three Pioneer grants, Professor Gottfredson received over \$170,000, an average of \$85,000 a year. (AX-4). Dean Murray testified that he currently has several hundred thousand dollars of discretionary money available, but he also testified that this money must be spread out over the next several years and must be shared throughout the College of Education. Thus, the amount -- if any -- available to Professor Gottfredson from those funds would necessarily be limited (typically, these grants are for a few thousand dollars). And once the Dean's money is gone, there is no assurance that he would receive more, as the Dean admitted.*

Dean Murray also testified that Professor Gottfredson, whose work depends on having a research assistant, could get one through her department. That is untrue. Her department has only four research assistantships, and all four are attached on a permanent basis to specific professors -- the department chair and three endowed professors. The only way she could get a research assistant is through an externally funded grant.

* Dean Murray's offer to fund one of the several activities disrupted by the ban (UX-6) came only after the AAUP filed an application for arbitration (JX-2) and months after the conference in question was forced to be cancelled (JX-8, JX-20).

Similarly, various of the University's witnesses testified about University grant programs. All of these grants, however, are for relatively small amounts and are highly competitive. Moreover, Professor Gottfredson would have to apply for them to the Senate Research Committee -- the same politicized committee which, under Professor Nees, found her work "incompatible" with the University's mission. Given the committee's political hostility and the actions taken by her own department and the Sociology department, it is extremely unlikely that she would receive even a small amount of funding from these programs for her "politically incorrect" work.

Finally, as she testified, Professor Gottfredson has tried for other outside funds. But, the number of funding sources interested in the topics she pursues was always relatively few and her work is too controversial for most of them. Indeed, perhaps the most insidious effect of the Pioneer Fund ban is that it reduces her chances of obtaining outside funding. Any foundation that now supports her work might find itself in the same position as the Pioneer Fund, and no foundation wants to be accused of being racist, no matter how absurd the charge might be. As Professor Gottfredson testified, one foundation, originally interested in supporting her work, was scared away by the University's investigation of the Pioneer Fund.

D. Refusal to Process Subsequent Pioneer Proposals from Professors Gottfredson and Blits.

Nor was the University's ban a mere fiction. In June and July, 1990, Professors Gottfredson and Blits each applied for Pioneer money. (JX-8, JX-9). Mr. Weyher indicated that he would act favorably on their requests, but the University, citing the President's ban, refused to process them. (JX-10).

The University made no attempt to find other sources of money for either of them.

ARGUMENT

I. THE COLLECTIVE BARGAINING AGREEMENT
 GRANTS PROFESSORS GOTTFREDSON AND BLITS
 AN ENFORCEABLE RIGHT TO ACADEMIC FREEDOM.

Article II of the Collective Bargaining Agreement between the University of Delaware and the American Association of University Professors, University of Delaware Chapter (JX-1) provides in pertinent part that:

"The purpose of this Agreement is to promote harmonious relationships between the faculty and the administration of the University and to improve the quality of education and to maintain the high standards of excellence at the University of Delaware ... In furtherance of the purpose of this Agreement, the parties agree to adhere to the Statement of Academic Freedom as approved by the Board of Trustees of the University, May 31, 1979

* * *

Should any conflict exist between the provisions specifically set forth in this Agreement and policies and procedure of the University, the provisions of this Agreement shall be controlling."

(Id., emphasis added).

The Statement on Academic Freedom to which the contract refers is contained at page III-B-1 of the Faculty Handbook. (JX-3). The first paragraph of that statement, which is the portion applicable to this matter, provides that: "The teacher is entitled to full freedom in research and in the publication of

results, but research for pecuniary return should be based upon an understanding with the authorities of the University."

At the hearing in this matter, the University, apparently relying on several New Jersey decisions, took the position that a faculty member does not have an enforceable right to academic freedom and that the agreement to adhere to the Statement on Academic Freedom was precatory, not mandatory, because it was set forth in the "purpose" article of the contract rather than in a separate article of its own.

We respectfully submit that such an interpretation cannot be supported under Delaware law. In construing contracts, Delaware follows the general principle that when the language of a contract is unambiguous, words and phrases must be given their commonly accepted meaning unless context or legal terms of art require otherwise. Hibbert v. Hollywood Park, Inc., 457 A.2d 339, 343 (Del. 1983); Standard Power & Light Corp. v. Investment Assoc., Inc., 51 A.2d 572, 576 (Del. 1947). Here, Article II of the contract provides categorically that "the parties agree to adhere to the Statement on Academic Freedom." While it states that the reason for the agreement is to further the purpose of the contract, there are no qualifications or conditions contained in Article II that would support the University's contention that the provision is not binding on it. Nor does Article VIII, which deals with grievance procedures, carve out an

exception for disagreements under Article II. It does not differentiate between that Article and any others.

Moreover, even if there were some doubt about the plain language of the contract, the parties' interpretations of that language would be dispositive of their intent. See Klair v. Reese, 531 A.2d 219, 223 (Del. 1987). And here those interpretations coincide. Not only did Professor George Cicala of the AAUP testify that the AAUP had always understood that the contract provided for a binding right to academic freedom, but he also testified that Dr. Maxine Colm, the University's Vice President for Employee Relations, had told him that it was her belief that there was such a right, and that the University's argument to the contrary was meritless. That testimony was admissible as an admission against interest and as an admission of a party opponent. The University could have rebutted it -- Dr. Colm attended the entire hearing -- but chose not to. Thus, it appears clear that, litigation positions notwithstanding, both parties understood the contract to provide for an enforceable right to academic freedom.

In sum, both the language of the contract and the understanding of the parties demonstrate that academic freedom is an enforceable contract right. The University's position to the contrary is simply a last-minute invention. It should be rejected.

II. THE UNIVERSITY VIOLATED PROFESSORS
GOTTFREDSON'S AND BLITS' RIGHT TO
ACADEMIC FREEDOM.

Not only does a contractual right to academic freedom exist, but it was violated here. First, the circumstantial evidence and the statement of Professor Settles and testimony of Professor Nees demonstrate that the Nees Committee in fact intended to interfere with Professor Gottfredson's research by the expedient of banning the receipt of Pioneer Fund monies. Second, even if the Nees Committee did not deliberately attempt to suppress Professor Gottfredson's research, the University nevertheless violated Professors Gottfredson's and Blits' academic freedom by banning their source of research money and burdening their research solely on ideological grounds.

A. The Ban on Pioneer Fund Money Was A
Pretext to Ban Professor Gottfredson's
Research.

The University apparently concedes that if a faculty member has an enforceable right to academic freedom, that right would cover research and the University could not legitimately attempt to suppress research on political or ideological grounds. Certainly, the Statement on Academic Freedom provides for "full freedom in research," (JX-3) and even the Nees Report, which was endorsed by the University, states that Professor Gottfredson's "work enjoys the full protection of academic freedom extended to all faculty members of this University." (JX-4 at 2). Thus, if

the Committee deliberately decided to suppress Professor Gottfredson's work, by the Nees Committee's own terms it would have violated her academic freedom.

The question thus becomes whether this is what the Nees Committee did. There is, of course, no direct evidence that the Nees Committee deliberately set out to interfere with Linda Gottfredson's work; in matters such as this there seldom is unless one of the people directly involved confesses. But we must submit that the circumstantial evidence presents an overwhelming case that this is precisely what the Nees Committee did.

1. The Nees Committee Reached the Conclusion That Professor Gottfredson's Work Was Incompatible with the University's Mission.

As Professor Nees was forced to admit under oath, the Nees Committee concluded that the research Professor Gottfredson conducted with Professor Gordon was "incompatible with the University's mission."* Professor Settles' warning to Professor Gottfredson confirms Professor Nees' reluctant admission. Months before the Nees Committee released its Report, Professor Settles warned that people were interested in "symbolic vocabulary," not

* Professor Nees made that admission -- the words are a direct quote from his testimony -- only after being faced with evidence that the Committee had found that Professor Gordon's work was "incompatible" and that it was aware that Professor Gordon's work was performed jointly with Professor Gottfredson. Indeed, given these admissions, no other testimony would have been credible.

academic freedom, and that Professor Gottfredson was "in the right place and time to be run over by a freight train ...". Moreover, there is no doubt that the Nees Committee's decision was explicitly ideological -- it found the Gordon/Gottfredson research to offend its ideological notions of affirmative action and "diversity."

2. The Report Denied That The Committee Rendered Such a Conclusion.

Professor Nees' admission proves only that the Committee was hostile to Professor Gottfredson's research, not that it wanted to squelch it. The proof of that comes in two other points. First, the Committee expressly and repeatedly denied that it had focused at all on Professor Gottfredson's research -- to have done so, it said, would have been a violation of her academic freedom -- and then it deliberately covered-up its examination and use of her work.

For example, at page 2 of the Report, the Committee makes the following statements:

- "As a preamble, the Committee wishes to make clear that Professor Linda Gottfredson, the principal investigator and recipient of Pioneer Fund support through the University, has not been the focus of this investigation."
- "This Committee would reject any charge to conduct an ad hoc inquiry into a faculty member's work."
- "The work performed under the grant, whether research or service activities, is not at issue."
- "In considering the questions raised in relation to the Pioneer Fund the Committee has never

directed its attention to the content or method of any faculty member's research or teaching, and would oppose any attempt to restrict a colleague's rights in these protected areas."

(emphasis added).

There can be no doubt that these statements are deliberate deceptions. Although Professor Nees continued to insist during his testimony that the Committee never examined the content of Professor Gottfredson's research, the transcript of Dean Murray's testimony shows that the Committee did, in fact, do so. And, of course, the Committee could not have found her research "incompatible" with the University's mission unless it had "directed its attention" to its content.

But why should the Nees Committee hide the truth? Why should it deny that it examined Professor Gottfredson's research? Why should it omit any mention of the fact that some of the work it singled out as objectionable was her work? We respectfully submit that the only answer to these questions is that the Nees Committee deliberately hid what it was doing because it knew that its investigation of Professor Gottfredson's work was a violation of her academic freedom. To prevent this discovery, it denied that it had even so much as "directed its attention" to her work.

3. The Committee's False Indictment of the Pioneer Fund Was A Deliberate Smokescreen.

But there is more. Not only did the Nees Committee falsely disclaim, and then cover up, its intent to investigate

Professor Gottfredson's research; it also wrote a knowingly false report in which it fabricated a case against the Pioneer Fund. As has been seen, the Report falsely claims that the Pioneer Fund charter was a "whites only" document. Even a simple review of the passages the Report cites would show that this claim is untrue. While the original charter expressed a preference for whites (more accurately, for whites with ancestry from Great Britain; the limitation applies as surely to Italians or Poles as to blacks), that was merely a preference, not a hard and fast restriction, and was limited to a scholarship provision that was used only once, fifty years ago, and then without any racial or regional restriction.

The Report's suggestion of a racist funding pattern is even more outrageous. Professor Nees could not point to a single Pioneer-funded activity listed in his Committee's Report that dealt with "racial and ethnic differences as a function of heredity and eugenics," as the Report claims. Indeed, as Professor Gottfredson demonstrated, the Report's charge in this regard is groundless.*

The Nees Committee might, of course, have unwittingly accepted someone else's baseless characterizations at face value. Certainly, Professor Nees did not seem to know whether the charges concerning the Pioneer Fund's "pattern of funding" were

* The charge is also political because the question of whether differences are a result of environmental as opposed to hereditary factors is a legitimate scientific issue.

accurate. But if the Committee did so, its ignorance is still damning, because it demonstrates the Committee's indifference to the truth, which it easily could have determined had it only tried. Thus, the Committee either deliberately falsified this part of the Report or it accepted someone else's false testimony without any verification.

Moreover, since the Pioneer Fund controversy was highly visible on campus at the time, an explanation of simple sloppiness on the Committee's part is extremely doubtful. The more probable explanation is that the members of the Committee were concerned with Professor Gottfredson's unpopular research and concluded that the only way to suppress it, or to appease others who wish to do so, was to withdraw its funding. The indictment of the Pioneer Fund was needed to camouflage the political attack on Professor Gottfredson.

4. The Standard of Review

The parties were asked at the conclusion of the hearing to express their views on the applicable standards of review. Two issues present themselves in that regard here. First, under what standard should our charge that the Report is materially false and misleading be reviewed? Second, what standard should govern the review of President Trabant's decision to accept and adopt the Report?

We believe that the determination on whether the Nees Committee's Report is materially false and misleading must be

based on a preponderance of the evidence. That is, have we shown that it is more likely than not that the Report was both false and likely to have misled a reader concerning the character of the Pioneer Fund and whether the Committee had investigated Professor Gottfredson's research?

For the administration's actions, however, the only question is whether the Report was material in causing the University to ban the Pioneer Fund, and the answer to that question is clearly yes. Even assuming President Trabant's complete good faith, an action taken based on a false and misleading report should not be entitled to stand. See Mills Acquisition Co. v. MacMillan, Inc., 559 A.2d 1261, 1284 (Del. 1988) (when a corporate board of directors makes a decision based upon a false and misleading report by a corporate officer that decision "cannot survive"). If that were not the case, then an action directly infringing a faculty member's right to academic freedom would be perpetuated simply because the perpetrators had misled the administration. We respectfully submit that such a result would violate the contract and allow a direct violation of Professors Gottfredson's and Blits' bargained-for right to academic freedom.

B. The Ban on the Pioneer Fund Violates Academic Freedom.

We believe that the evidence is clear that the Nees Committee intended to prevent Professor Gottfredson from

conducting her politically objectionable research. But even if the Committee's Report was unwittingly inaccurate, the University nevertheless violated Professors Gottfredson and Blits' academic freedom by barring their solicitation of Pioneer research funding through the University on explicitly ideological grounds.

1. Academic Freedom Covers Funding Sources.

The roots of academic freedom lie at the very core of the conception of a university. As the Faculty Handbook (JX-3) states, in italics:

A university in a free society must be devoted to the pursuit of truth and knowledge through reason and open communication. The rules it has should be conceived solely for the purpose of furthering and protecting the rights of all members of the university community in achieving these ends. In such a community, criticism and dissent play an essential role, and must be tolerated and encouraged.

(V-Y-1).

Thus, academic freedom has been traditionally understood to mean that a faculty member is entitled to the widest possible freedom in carrying out his research without political (or other improper) interference, subject only to scholarly and professional standards. The University's 1979 Statement on Academic Freedom, which Article II of the contract incorporates, speaks not merely of freedom, but of "full freedom in research." (JX-3 at III-B-1). Academic freedom is a scholar's right to be protected against political (and other

improper) interference in his work, no matter what the form or the source, and no matter how worthy the cause.

(a) The "Right/Privilege" Distinction

The University has tried to defend its ban by distinguishing sharply between "a faculty member's right to pursue research" and a "faculty member's privilege to seek funding for that research through the university." (JX-4 at 2) It claims that while the former is protected by academic freedom, the latter is not. In so arguing, the University loses sight of three key facts. First, most research costs money -- lots of money (it is, indeed, the lifeblood of research). Thus, if the University has an unfettered right to restrict a faculty member's "privilege to seek funding," as it claims, then the University could swiftly render a faculty member's right to pursue research meaningless in any discipline where research requires money. The University's claim, which it presents as non-controversial, constitutes a radical departure from the traditional understanding of academic freedom. It removes funded research from its protection, by giving the University veto power over the funding.

Second, academic freedom is defined by the contract not merely as "freedom to do research," but "full freedom in research." (Emphasis added). For "full freedom in research" to have meaning, it must include the normal requirements of the

research (such as funding) as well as the thinking and writing itself.

Third, for its argument to be correct, the University must also possess an unfettered right to bar funding on political grounds. In that case, a Republican administration could deny its Democratic faculty access to outside funding, or a pro-choice administration could deny its pro-life faculty access.

Nor does the matter end there. Most faculty benefits -- from tenure and promotion to merit increases in salary, to the use of inter-library loans and secretarial support -- are privileges, not rights. May these privileges, too, be withheld on political grounds? May the politically incorrect professor be deprived of these privileges while the members of the campus orthodoxy retain theirs?

(b) The University's Discomfort With Its Own Positions.

These questions were asked of both Professor Nees and President Roselle at the hearing. Neither seriously attempted to answer them. Professor Nees continually insisted that such questions were never considered by his Committee; President Roselle evidently found them little more than bothersome. But we would submit that such questions are essential to an understanding of what the University's position entails. Does the University or the Nees Committee accept the fundamental premise of their own position, namely, that a university can

withhold a normal -- and important -- faculty privilege on political or other ideological grounds?

Neither President Roselle nor Professor Nees was able to answer that question, and both were clearly in a quandary. On the one hand, neither was willing to accept the suggestion that the University has the right to ban funding of mainstream ideas, but, on the other hand, both were unwilling to extend "mainstream" protection to "politically incorrect" ideas.

2. The University's Interest in "Cultural Diversity" does Not Override the Right to Academic Freedom.

The University argues that its objective of increasing the presence of minority groups on campus outweighs Professors Gottfredson's and Blits' claim to receive Pioneer Fund support through the University. The University, however, has many objectives, from improving financial assistance to students, to building a new engineering laboratory, to enhancing the intellectual and cultural climate on campus. All of these may be worthy goals, but none is as important to a university as academic freedom. As even the Nees Report says, "free and open inquiry ... is the fundamental reason for the University's existence." (JX-4 at 12). Without it, there can be no university.

Moreover, the University often takes actions which hamper its objectives of increasing minority presence on campus, as Dean Murray testified before the Nees Committee, citing, among

other things, the selection of David Roselle rather than a certain black female finalist as President. (JX-19 at 15-16).

The University's claim that its affirmative action and "diversity" policies override Professors Gottfredson's and Blits' rights suffers from another, even more grievous defect, however. It directly violates the contract. As was quoted previously, the contract specifically provides in Article II that "[s]hould any conflict exist between the provisions specifically set forth in this Agreement and policies and procedures of the University, the provisions of this Agreement shall be controlling." (JX-1 at 1-2). Thus, no matter what overriding policies the University believes it has, they do not supercede the AAUP's bargained-for contractual right of academic freedom. The contract expressly provides that the contract controls the University's policies; the policies do not control the contract.

The University's claim that it has the right to ban receipt of Pioneer Fund monies because it does not want to be a "partner" with the fund suffers similar defects. First, not even the University seriously believes that it endorses everything that it does not ban. Second, never before -- and never since -- has the University shown any concern for the ideological positions of any granting agency. Its "partnership" claim was invented just for the Pioneer Fund. Third, even if processing a faculty member's grant application did constitute a "partnership" with the funding agency, the University's claim ignores the

contract, which, as just quoted, specifically provides that it, and not any policy invented by the University, is controlling. (JX-1 at 1-2).

3. Dean Murray's Criteria Provide a Principled Standard of Review for Determining Whether a Funding Source May Be Barred.

In his testimony before the Nees Committee, and again at the arbitration hearing, Dean Murray outlined his own beliefs on what the University could require of grantors of faculty-solicited funds. Unlike President Roselle and Professor Nees, Dean Murray attempted to arrive at a principled position rather than simply make an ad-hoc determination based neither in fact nor in principle. Moreover, as Dean Murray acknowledged, his criteria would not permit banning the Pioneer Fund here.

As set forth in his letter to the Nees Committee of February 1, 1990 (JX-21), those criteria are:

1. That the funds be legal.
2. That the work supported by the funds be subjected to all the standards of free and open inquiry.
3. That the provider of the funds exercise no influence on the outcome of the inquiry.
4. That the work supported by the funds be consistent with our mission and the standards of scholarship, research, instruction and service that we employ in the Department and College.

At the arbitration hearing, Dean Murray made clear that his mention of the College's "mission" in point four refers only

to that mission in the broadest sense -- as a college of education it would not take money to study nuclear physics or some other non-related subject -- and would prevent, rather than allow, ideologically based interference with a faculty member's work.

We submit that Dean Murray's criteria are the proper standard for determining whether the University may bar a faculty member's receipt of funds. We do not claim that academic freedom is an "absolute" right. It does not protect all research. To enjoy its protection, the research must be legal, its outcome must not be controlled by its funding source, and so on. But while academic freedom is not an absolute protection against all restriction, it is an absolute protection against political interference. The University may impose some restrictions on faculty-solicited funding (e.g. the funds must be legal), but it may not do so on political or ideological grounds. Its restrictions must be politically neutral. Indeed, a faculty member's contract right to academic freedom implies the University's contract obligations to prevent political interference.

* * *

The University may not restrict Professors Gottfredson's and Blits' rights to academic freedom by denying them funding for explicitly political reasons. The Pioneer Fund ban should be overturned.

C. The University's Requirement that Professors Gottfredson and Blits Demonstrate That No Other Funds Are Available Violates Academic Freedom.

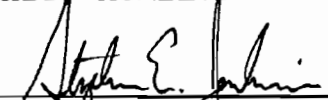
The University finally contends that Professor Gottfredson's academic freedom has not really been hurt by the Pioneer Fund ban since she could receive money from elsewhere but has not tried hard enough to obtain it. In the Statement of Facts, supra, we discuss why this contention is both factually unsupported and demonstrably incorrect. But that is not its only problem. For, in contending that Professors Gottfredson and Blits must prove a negative, and show that no other funds are available to them, the University seeks to require them to do what no other faculty member is required to do. Before they can claim a violation of academic freedom, they must spend the time and energy to go through the lengthy application processes of all other potential funding sources, and then show that no other agency is willing to fund them. Such a requirement, we submit, is unreasonable and, in itself, a violation of their academic freedom since they are forced to take such steps solely because of the University's ideological objections to their work and funding source. (See JX-19 at 21-22).

It should not be countenanced.

CONCLUSION

For the foregoing reasons, Professors Gottfredson and Blits respectfully request that their request for relief be granted.

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