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77 North Washington Street
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Via email: letters@theatlantic.com

Dear Editor:

I was surprised to see that the authors of the recently published article “The Kept University” neglected to seize the opportunity to accurately inform the readership of the *Atlantic Monthly*. In their attempt to manufacture controversy, they falsely drew a parallel between the Berkeley/Novartis research agreement and the free speech movement of the 1960s.

What is surprising about this article is that its future prescriptions are largely satisfied by the Berkeley/Novartis research agreement. In particular:

- New guidelines must be designed to preserve academic freedom in all interactions with industry. One of the fundamental principles underlying the structure of the Berkeley/Novartis agreement is the enhancement of faculty freedom. The funds are unrestricted. The actual resources from Novartis are committed and available for distribution to individual faculty members. The faculty members select, at their discretion, those research topics they wish to pursue, and each faculty member decides whether he or she wishes to participate or not, each and every year.

Contrary to the article’s assertion that Novartis employees serve on University committees, a group composed of three University members is elected by the faculty along with two Novartis officials solely to make merit-based allocations of the available research funds among the participating scientists. This committee has no role with regard to research funds available from other sources, nor any other University function. During these first two years of grant operation, the three selected faculty members have communicated their proposed research allocation decisions to the two Novartis officials. In no

instance were any of the proposed grant allocation decisions revised as a result of this communication.

- Professors should be forbidden from having direct financial ties to the company sponsoring their research. The University of California has a long standing policy under which faculty financial interest in companies sponsoring their research must be disclosed reviewed, and managed by objective third parties. In fact, none of those faculty members who freely chose to enter into and sign the agreement has any direct or, to my knowledge, indirect financial ties to Novartis.
- Universities should be banned from investing in these companies. UC Berkeley makes no discretionary decisions with regard to investing its own operating resources in private corporations, including Novartis.
- Prohibit publication delays of more than 30-60 days and any other editorial constraints. The Berkeley/Novartis agreement, again contrary to the facts asserted in the article, allows for a 30-day review period without any editorial constraints. The 30-day review is to allow Novartis an opportunity to determine whether it wishes the University to prepare an invention disclosure. Once the University prepares the invention disclosure, Novartis has up to 90 days to inform the University that it should file for patent protection. The University maintains control during this 90-day review period and can terminate any publication delay at its will by simply filing for a patent. Regardless, publication delays in the agreement do not delegate content control to Novartis but instead are designed to allow the University to protect its intellectual property rights and, if needed, delete any proprietary information provided in confidence to the University.
- Minimize proprietary restrictions on basic research tools. The agreement specifically provides for participating faculty to access Novartis' proprietary data base and research tools. This access is however, governed by confidentiality agreements which the faculty can elect to accept or reject.

The authors argue that universities “could do more to make the case for preserving public support for higher education while refusing to tailor either the research agenda or the curriculum to the needs of industry.” In this respect, the Berkeley/Novartis agreement provides a unique model for maximizing the benefits to research universities and therefore to the public. Typically, the University and its faculty wait passively until they receive a request for proposals (RFPs) from governmental agencies or private companies and then generate a response to the other parties' terms. As a result, they must live with and never dictate the critical terms of the relationship. By contrast, the Berkeley/Novartis agreement resulted from the University staking out its strategic advantage; taking the central position in the bargaining process and inverting the typical protocol. It was the relevant faculty, who generated the RFP allowing private companies with R&D interest in plant biotechnology guided by the University's principles and its specific terms to

respond, guided by the University's principles and its specific terms. Contrary to prior practice the research agreement was structured by Berkeley, and the corporate candidates were asked to compete among each other to meet its conditions.

The principles established in this model agreement included finding optimal fit between the research objectives of our faculty and the private research goals and established intellectual capital of our corporate partner; maintaining absolute faculty freedom and autonomy; gaining access to otherwise cost-prohibitive technological resources for our faculty and maximizing discretionary resources for our infrastructure and graduate programs. In marked contrast to individual faculty-private corporation research agreements, those faculty who choose voluntarily to participate in the Berkeley/Novartis agreement receive one year grants to indulge their curiosity and none of the funding is targeted for specific projects. The possible renewal of the grants is based on progress reports and demonstrated achievements. In the final analysis, our purpose was to capture the intersection of academic and commercial values.

The authors report that more than 50% of the faculty thought the Novartis agreement would have a "negative or strongly negative effect on academic freedom." Did they review the survey instrument and formally evaluate its objectivity? Did they recognize that the only faculty they quoted in their article were ecologists or biocontrol faculty, many of whom are ideologically opposed not only to the history of Novartis but to fundamental research in biotechnology and plant genomics? Instead of providing a balanced view of the open access and transparent process that led to the Berkeley/Novartis agreement, the authors instead chose to focus on the claims emerging from the Students for Responsible Research (SRR). These students are largely those who oppose genetic engineering or biotechnology research and embrace natural biological control technologies.

The faculty survey was designed by biological control faculty and included a number of assertions that were simply not part of the agreement. For example, the survey implied that Novartis employees would serve on University committees; that Novartis company scientists would be given lab space on the Berkeley campus as adjunct faculty, and that the relationship between Novartis and Berkeley was exclusive. Not a single one of these assertions is part of the Berkeley/Novartis agreement. Hence, it should be of little surprise that when faculty were asked to speculate about what the future might imply given these representations, they were legitimately concerned.

Even so, to the credit of the collective CNR faculty, there was overwhelming support for using the Berkeley/Novartis agreement as a "five-year experiment to evaluate potential for future alliances." In addition, 60-70% of those expressing an opinion also expect that the agreement would improve or not impact access to other research funding; will improve or be neutral for both graduate and undergraduate education at CNR; will have a positive or no impact on academic freedom at UC; and will either generate technology, data bases and personnel for their own research programs or not affect them. Although the SRR categorically opposed biotechnology, the faculty overwhelmingly supported this area of research inquiry.

If the implications about the lack of openness and transparency in this article are correct, why did the College allow an undergraduate student in biological control, who actively collaborated with the faculty member responsible for the biased survey, to be the speaker at Commencement 1999? The reason is simple. Berkeley is first and foremost a public institution that welcomes open access and active debate. Any messages sent to faculty to refrain from speaking to the press was nothing more than an accommodation for those faculty who might be adverse to being misquoted or to be used as an instrument for journalists to manufacture controversy. This had nothing whatsoever to do with a “hush order.”

Long before the agreement was signed for the first time in the history of any campus within the UC system, not only were students, faculty and interested members of the general public allowed to review earlier portions of the agreement, there were also open forums where active debate took place. It is true that for earlier versions of the agreement, anyone wishing to examine its contents was informed that he or she could not have a copy (or record word for word) such incomplete agreements.

Catchy titles such as “Kept University” makes entertaining reading, but often obscures the truth. Following the passage of the Bayh-Dole act, universities have continued to struggle with appropriate mechanisms for sustaining and nurturing their values and culture while ensuring that discoveries are commercialized for the public good. Mistakes have been made along the way, and what we have learned has been embedded in the recent research agreement between UC Berkeley and Novartis. The title “Kept University” and the numerous references to the Berkeley/Novartis agreement imply that Berkeley has ceded control to private interests merely because it has accepted significant research funding from a corporate entity. To suggest, imply or argue that this is the case for the Berkeley/Novartis research agreement is simply false.

What the Berkeley campus has achieved in this agreement is an effective vehicle for engaging the outside world to enhance our intellectual capital and contributions to public good research. The principles that guided the University in the establishment, structure and execution of the Berkeley/Novartis agreement faculty freedom, incentive and cultural alignments, oversight and monitoring, open access and transparency, and expanded public resources has been achieved through the first two years of this agreement’s implementation. The participating faculty and their associated graduate students, undergraduate students and postdoc students now have greater freedom to explore ideas than they did prior to the establishment of the Berkeley/Novartis relationship.

Sincerely,

Gordon Rausser

