

References in the board packet

- A Primer on Academic Freedom from the AGB website <http://agb.org/sites/agb.org/files/u3/AcademicFreedomPrimer.pdf>
- Academic Freedom: Truth in the Ivory Tower by LJ Evans, UAF's Aurora magazine (2011)
- UA Board of Regents policies addressing academic freedom
- Northwest Commission on Colleges and Universities' standards on academic freedom
- UNAC Collective Bargaining Agreement Excerpt

Why is there a need for academic freedom?

- *Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.*
- Universities face internal and external pressures to conform and to avoid controversy. Conformity is not consistent with academic rigor nor is it conducive to advancement of knowledge and understanding. New developments and understandings are often controversial.

Isn't freedom of speech enough?

- Workplace speech is not as protected as private speech.
- Garcetti v. Ceballos, 126 S.Ct. 1951 (2006) “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” This is the case regardless of whether the speech implicates matters of public concern.
 - *Garcetti* did not involve an education context, and reserved the question of academic speech.

The Basic Tenets of Academic Freedom

- *Full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties.*
- *Freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.*
- *When college and university teachers speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.*

Issues Not Protected by Academic Freedom

- The AAUP Statement on Professional Ethics suggests the following examples:
 - Speaking or acting as a private person and creating the impression of speaking or acting for their college or university.
 - Incompetence in their field of expertise.
 - Evaluations of students that do not reflect students' true merit.
 - Failure to respect the confidential nature of the relationship between professor and student.
 - Exploitation, harassment, or discriminatory treatment of students or colleagues.
 - Failure to acknowledge significant academic or scholarly assistance from colleagues or students.
 - Refusal to accept their share of faculty responsibilities for the governance of their institution.
- Controversial Student Articles in the School Newspaper

Academic Freedom Does Not Shield Disruptive or Inappropriate Behavior

- Academic freedom claims sometimes arise in the context of employer efforts to appropriately manage or discipline employees.
 - As with all claims of retaliation for protected activity, the evaluation of such claims is fact-intensive.
 - While such claims garner media attention, Universities must manage to ensure an appropriate and effective environment for scholarship and student learning.
 - Speech related to employment, but not on “matters of public concern” may give way to employer concerns for providing effective public service.

Why are academic freedom and tenure linked?

- *Tenure is a means to certain ends; specifically: freedom of teaching and research and of extramural activities, and a sufficient degree of economic security to make the profession attractive to men and women of ability.*
- *Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.*
- Tenure allows faculty the freedom to explore/pursue ideas that may not be popular or profitable.

Academic Freedom Continues to Evolve

- AAUP found it necessary to issue a post-September 11 statement, confirming the importance of free expression on college campuses.
- *Garcetti* left the scholarship and teaching context *unresolved*: Justice Kennedy's majority opinion observed that “*there is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.*” He therefore concluded that “*we need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.*”
 - There is a split in the circuits, with the 9th circuit holding that *Garcetti* “*does not apply to teaching and writing on academic matters by teachers employed by the state.*”