

Background to Proposed Revision to Chapter 3, Academic Freedom

In the 2006 case of *Garcetti v. Ceballos*, the U.S. Supreme Court ruled that when public employees speak pursuant to their “official duties,” the First Amendment does not protect them from employer discipline. As Oliver Wendell Holmes explained many years ago, a policeman (or other government employee) “may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.”

Although the Supreme Court in *Garcetti* left open whether its decision applied to public employees engaged in teaching and research, later lower court rulings have permitted universities to discipline faculty for speech related to their official duties. In *Hong v. Grant* (2007), a federal district judge ruled that the University of California “is entitled to unfettered discretion when it restricts statements an employee makes on the job and according to his professional responsibilities.”

Under such an interpretation, a college or university administration might seek to discipline a professor for publishing research that antagonized a major corporate donor to the university, or for criticizing, either publicly or privately, the college president, or for writing a letter to the editor of a newspaper. If administrations throughout the country actually sought to engage in what now might be considered such legally permissible actions, the ability of America’s colleges and universities to serve the common good and to retain their preeminent status in the world would be severely undermined.

The national AAUP has recommended that universities adopt language in their policies and faculty handbooks that clarifies their commitment to academic freedom for faculty when they speak or write on matters of public interest, or in carrying out all aspects of their professional duties. Hence, the local AAUP chapter initiated the process of proposing a modification to existing handbook language to include the right to academic freedom for faculty in relation to speech relating to institutional governance. After the local chapter discussed its proposal with Provost Mazey and President Gogue, it was sent to the Senate Steering Committee.