Academic Freedom Do’s and Don’ts for Faculty and Administrators

By: Mary Bart in Academic Leadership, Teaching Careers

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Have you heard of Garcetti v. Ceballos? This 2006 U.S. Supreme Court case involving Gil Garcetti, a district attorney for Los Angeles County, and Richard Ceballos, a deputy DA, had nothing to do with higher education and yet it has had a profound effect on the academic workplace, particularly at state-supported colleges and universities.

In a 5-4 ruling, the Court found that the First Amendment does not prevent employees from being disciplined for expressions they make “pursuant to their professional duties” and that “public employees are not speaking as citizens when they are speaking to fulfill a responsibility of their job.” Although faculty at state institutions are public employees, the Court declined to say if its decision would apply to speech related to scholarship or teaching, leaving that for lower courts. Since then, a number of cases nationwide have been decided based on Garcetti—some in favor of faculty, some against, said Deborah Gonzales, founder of Law2sm, a legal consulting firm.

During the recent online seminar Academic Freedom and Free Speech: What You Need to Know, Gonzales and Rob Jenkins, an associate professor at Georgia Perimeter College, outlined a number of these lower court rulings related to the First Amendment rights of faculty and offered suggestions on how faculty and administrators can protect themselves.

“I think it’s very important for faculty and administrators to understand Garcetti, to understand these cases that are out there, and how they’re being applied, and that they’re also aware of some of the consequences and ramifications,” said Gonzales.

Gonzales and Jenkins also provided a long list of academic freedom do’s and don’ts for faculty members and administrators. We’re including some of them here:

For Faculty Members:
Do understand the courts’ rulings, in Garcetti v. Ceballos and subsequent cases, regarding First Amendment protection for public and private employees.

Don’t assume you can say whatever you want in your classroom and that you’ll be protected by academic freedom.

Do familiarize yourself with your institution’s statement on academic freedom and policy manual, as well as with your professional organization’s guidelines for the proper exercise of academic freedom.

Don’t be intimidated into silence by the Garcetti ruling.

Do have the courage to stand up for what you believe in a civil, professional, and appropriate manner.
For Administrators

Don’t ignore the potential impact of Garcetti on your faculty and your institution.

Do familiarize yourself with the relevant rulings and their possible ramifications.

Don’t assume that your faculty members are familiar with Garcetti and its impact on them.

Do make sure that faculty members know about the rulings and understand how to protect themselves both in and out of the classroom.

Don’t assume that Garcetti won’t affect your institution.

Do take steps to protect your institution and its faculty, staff, and administrators through training, policy revisions where necessary, and other appropriate steps.

“The point that we’re really trying to get across here more than anything else is that the federal government isn’t going to protect the right of faculty members to speak out,” said Jenkins. “For so long, we’ve relied on the government, and we’ve assumed that we’d be protected by free speech, or we’ve mistakenly thought that academic freedom was, you know, somehow written in stone. The Garcetti ruling makes it abundantly clear that that’s not the case. The government isn’t going to take care of it for us. We have to take care of it ourselves. In general, I believe that higher education should encourage speech not squelch it. I think that should be one of the underlying principles behind our approach to academic freedom in this post-Garcetti environment.”

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Tags: academic freedom, academic freedom and tenure, legal issues for faculty, legal issues in higher education

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The Founding Fathers created the First Amendment precisely because they did not trust government. Other than government's ability to intrude and persecute, through advances in technology and sophistication, little has changed on this score. The article is right: we take care of our cherished rights ourselves and should not rely on government because our rights were codified as protection against government.

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V the educator · 1 day ago

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The right to freedom of speech is inherent however as professionals representing an education body we must be careful of expressing personal opinion. The general public does not view the educator or administrator as separate from the governing body of the school. We become a direct reflection of the board or governing body.

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