Academic Freedom Manual

Academic Freedom Committee

Queensborough Community College
City University of New York

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."

(Chief Justice Earl Warren's opinion in the Sweezy vs. New Hampshire (1957) Supreme Court decision)

Table of Contents

1: Prologue

1.1. Definitions of Academic Freedom

Since its recognition as an aspect of the educational endeavor, the concept of academic freedom has been interpreted in different ways:

Academic definition: Teachers and students may express their ideas, thoughts, and opinions within the classroom unrestricted by a higher authority, and without fear of retaliation.

> *Legal Definition 1*: The right of a teacher or student, especially at the college or university level, to discuss or investigate an issue, or express any opinions on any topic without interference or fear of penalty or reprisal from either the school or the government.
>
> *Legal Definition 2*: A school's freedom to control its own policies without government interference, penalty, or reprisal. The extent to which academic freedom exists depends upon many facts, including whether the school is a public or private institution, and whether it is a primary or secondary school or a college or university.

The academic definition is a consensus definition of many. The legal definitions come from *Webster's New World Law Dictionary 2010* (Wiley Publishing).

1.2. A History of Academic Freedom

AAUP Definitions

The American Association of University Professors provided definitions of academic freedom in 1940 and added additional commentary in 1970. The original definition is presented with the later comments bracketed:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matters, which have no relation to their subject. [The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry, which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material, which has no relation to their subject.] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment. [Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.]

3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. [This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows]:

> If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 *Statement* should also be interpreted in keeping with the 1964 *Committee A Statement on Extramural Utterances,* which states *inter alia*: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

> As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

Historic Case : Sweezy v. New Hampshire, 354 U.S. 234 (1957).

Paul Sweezy was an economist, a lecturer at Harvard, and the founding editor of the Monthly Review. He had also worked for the OSS (Office of Strategic Services, the forerunner of the CIA) on the British economy during World War II, for which he received a bronze star and the Social Science Research Council Demobilization Award at the end of the war.[1]

In 1951, the New Hampshire legislature passed "The Subversive Activities Act of 1951," which delegated significant powers to the State Attorney General (Louis C. Wyman at that time) to investigate subversion, which in the Zeitgeist of the time, was defined mainly as connections to

[1] Paul Swezey: Wikipedia: Paul Sweezy - Wikipedia

communism. Paul Sweezy was one of the individuals that Wyman investigated. Among other aspects of his investigation, in June of 1954 Wyman asked Sweezy questions about a particular lecture on Marxism that he had given at the University of New Hampshire. Sweezy refused to answer those questions. Wyman had the Merrimack County Superior Court find him guilty of contempt for not answering them. Sweezy appealed to the New Hampshire Supreme Court, which affirmed his conviction, and then to the U.S. Supreme Court[2].

The Court, in a plurality decision, due to Justice Charlers Evans Whittaker, who replaced Justice John Caskie Collet, not yet being seated on the Court during the March 5th Argument, supported Sweezy against the New Hampshire Attorney General. Warren's opinion, from which there is a quotation above, did reference academic freedom, but its main thrust was that the case violated due process (the 14th Amendment) because legislative investigative function had been delegated to the state's Attorney General's Office[2,3].

Justice Felix Frankfurter, in a concurring opinion, focused mainly on the questions of academic freedom. Interestingly, one of the most cited passages from his opinion is actually a quotation from two South African justices who had become the presidents of two South African universities, and were decrying governmental interference in the academic freedom of what was referred to as "The Open Universities in South Africa:"

"In a university knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates — `to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself [...]"

"[...] Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university.

"[...] It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail `the four essential freedoms' of a university — to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." The Open Universities in South Africa 10-12. (A statement of a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand, including A. v. d. S. Centlivres and Richard Feetham, as Chancellors of the respective universities.)[3]

The "Four Essential Freedoms" of a University:

[2] Sweezy vs. New Hampshire: Wikipedia: Sweezy v. New Hampshire - Wikipedia

[3] Sweezy vs. New Hampshire, Opinion: Casetext: Sweezy v. New Hampshire, 354 U.S. 234 | Casetext Search + Citator

As outlined above, Sweezy marks a landmark in the Court's recognition and acceptance of academic freedom, and of academic freedom's grounding in the Constitution. ***The Supreme Court accepted Justice Frankfurter's reasoning from Wieman and stated its belief that Academic Freedom is protected by the Constitution. In addition, Justice Frankfurter outlined the "four essential freedoms" of a university: "to determine for itself on academic grounds:***

1) ***Who may teach***
2) ***What may be taught***
3) ***How shall it be taught***
4) ***Who may be admitted to study"***

The four essential freedoms are frequently cited as guidelines when formulating policy on academic freedom, or when determining when a principle of academic freedom has been violated.

1.3. Academic Freedom at CUNY

The Professional Staff Congress of the City University of New York defines academic freedom as a professional right of the faculty. Freedom to teach, research, write, and speak as citizens unrestrained by the administration of the college. Different from the First Amendment of the Constitution because it is necessary for faculty members to carry out their professional obligations and responsibilities as teachers, researchers, and writers. It is meant as protection for faculty members from retaliation when they exercise their right of free speech. Academic freedom protects the faculty in the governance of the institution when they address matters of educational policy, even when their views oppose the views of the college administration.

1.4. Academic Freedom at QCC

To fulfill a resolution of the CUNY UFS (University Faculty Senate), the QCC Academic Senate created the QCC Academic Freedom Committee during the 2008 - 2009 Academic Year. The Committee was to be composed of the membership of the FEC (Faculty Executive Committee minus its Chair, and three elected members from the faculty). The committee held its first regular meeting in the Fall of 2009. The committee has met regularly since. The protocol of the committee is that, upon a decision of the membership, a recommendation is made to FEC, which then takes further action depending on its interpretation of the recommendation. Since six of the members of the FEC are also members of the Academic Freedom Committee, the recommendation and further action almost always coincide.

The committee has examined issues affecting the academic freedom of the College at large, but has also confidentially (a function usually invested in the Chair) addressed issues brought by a single faculty member.

The committee is endeavoring to place a record of its decisions, as well as background information on academic freedom, as represented by this primer, on the QCC website. There was also an attempt to place documents in a reserved shelf of the library, but that has been superseded by web-posting.

2: Charge of the Academic Freedom Committee

According to the Bylaws of the Faculty in accordance with section 5.3f, the Faculty Executive Committee recommended the establishment of the Standing Committee on Academic Freedom on 9/28/2007.

The Bylaws of the Faculty suggest the following charges of the Academic Freedom Committee:

- **12.2a** Address issues of academic freedom through the colleges' existing channels of communication and governance structure.
- **12.2b** Provide information and guidance to the faculty concerning their rights, responsibilities, and recourse concerning violations of academic freedom.
- **12.2c** Hear faculty concerns regarding issues of academic freedom. Recommendations made by the Committee shall be forwarded to the Chairperson of the Faculty Executive Committee, who will then refer them to the College's appropriate parties.
- **12.2d** Monitor, examine, and report on the status of academic freedom at the College on an annual basis at the Spring General Faculty Meeting.
- **12.2e** Meet at least once each semester.

3: Types of Situations That May Arise

3.1.Case Studies[4]

The following are examples of the types of situations that might be brought to the QCC Academic Freedom Committee. They address the degree of freedom faculty have as they conduct themselves within and beyond the classroom. These are situations that faculty might bring to the committee which will then determine how to proceed. For more details on each case visit the AAUP link above.

3.2.Classroom Teaching Methods

Faculty members should be determining their own teaching methods and choosing materials. Courts may restrict or reduce professors' autonomy, however, if they think that she or he has crossed the line from pedagogical choice to sexual harassment or methods irrelevant to the class. *Court decision summaries are quoted directly from the AAUP site in italics.*

1. *Hardy v. Jefferson Community College*, 260 F.3d 671 (6th Cir. 2001), *cert. denied*, 535 U.S. 970 (2002). Hardy, an adjunct communications professor in his "Introduction to Interpersonal Communication" course, asked students to examine how language "is used to marginalize minorities and other oppressed groups in society," and the discussion included examples of derogatory language

A student sued the instructor, and the college revoked his reappointment.

'*A federal appeals court concluded that the topic of the class – "race, gender, and power conflicts in our society" – was a matter of public concern and held that "a teacher's in-class speech deserves constitutional protection." The court opined: "Reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment.*"'

[4] All the cases here reported are described in more details in the following source : (https://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007)

2. *Vega v. Miller*, 273 F.3d 460 (2d Cir. 2001), *cert. denied*, 535 U.S. 1097 (2002)

Vega, a non-tenure-track professor of English, sued the New York Maritime College after not being reappointed for conducting what the college referred to as an "offensive" classroom exercise in "clustering" (or word association) in a remedial English class, when students chose the topic of sex.

Vega argued that the non-reappointment violated his constitutional academic freedom.

'The federal appeals court sided with the administrators, holding that at the time they made their decision on Vega's contract, no court opinion had conclusively determined that an administration's discipline of a professor for not ending a class exercise violated the professor's clearly established First Amendment academic freedom rights.'

'The same court has, however, recognized as constitutionally protected a professor's First Amendment academic freedom "based on [his] discussion of controversial topics in the classroom." '

3. *Bonnell v. Lorenzo* (Macomb Community College), 241 F.3d 800, *cert. denied*, 534 U.S. 951 (2001).

John Bonnell, a professor of English at Macomb Community College's was suspended for creating a hostile learning environment. A student sued the professor, claiming that he had repeatedly used lewd and graphic language in class.

'While recognizing the importance of the First Amendment academic freedom of the professor, the court concluded that "[w]hile a professor's rights to academic freedom and freedom of expression are paramount in the academic setting, they are not absolute to the point of compromising a student's right to learn in a hostile-free environment." Significantly, unlike the speech in Hardy, the court found Bonnell's use of vulgar language "not germane to the subject matter" and therefore unprotected.'

3.3.Curricular Choices

Under the *1940 Statement* teachers are "entitled to freedom in the classroom in discussing their subject". The AAUP's *Statement on Government of Colleges and Universities* says that faculty have "primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction."

The following cases are described in more detail at the AAUP site. *Court decision summaries are quoted directly from the AAUP site in italics.*

1. *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004). Axson-Flynn was a Mormon student at the University of Utah who claimed she told the theater department she would not "take the name of God or Christ in vain" or use certain "offensive" words, before she was accepted.

After joining the theater program, she changed some words in assigned scripts and was warned that she would not be able to do this for subsequent assignments. She dropped out of the program and sued her professors, for restricting her First Amendment free speech and free exercise of religion rights.

'In 2001, a federal trial court ruled against Axson-Flynn. The court reasoned that if the program requirements constituted a First Amendment violation, "then a believer in 'creationism' could not be required to discuss and master the theory of evolution in a science class; a neo-Nazi could

refuse to discuss, write or consider the Holocaust in a critical manner in a history class."

The federal appeals court agreed that courts should defer to faculty members' professional judgment with respect to teaching and curriculum, but sent the case back for the trial court to determine whether the professors' rationale for compelling Axson-Flynn to perform the scripts as written "was truly pedagogical or whether it was a pretext for religious discrimination." The court ruled that the teachers were allowed to compel speech from Axson-Flynn as long as doing so was "reasonably related to pedagogical concerns." Although the court did not recognize a specific right to academic freedom within the First Amendment, it did observe that within the university context, the First Amendment had special significance.'

2. *Yacovelli v. Moeser*, Case No. 02-CV-596 (M. D. N.C., Aug. 15, 2002), *aff'd*,Case No. 02-1889 (4th Cir. Aug. 19, 2002). At the start of the school year, UNC scheduled a schoolwide discussion for all new students based on the book *Approaching the Qur'an: The Early Revelations*.

A group of students and taxpayers sued to stop this program, arguing that the assignment of the book violated the First Amendment doctrine of separation of church and state under the "guise of academic freedom, which is often nothing other than political correctness in the university setting."

The university responded that "the decision was entirely secular, academic, and pedagogical."

The federal trial court ruled in favor of the university and denied the plaintiffs' request to halt the reading sections, holding: "There is obviously a secular purpose with regard to developing critical thinking, [and] enhancing the intellectual atmosphere of a school for incoming students." The day of the reading program, the federal appeals court upheld the trial court's ruling. In general, academic courses are not subject to a legal mandate for "equal time" to explore the "other side" of an issue. As Justice Stevens noted in his concurrence in the Supreme Court case Widmar v. Vincent, 454 U.S. 263,278-79 (1981), the "judgments" about whether to prefer a student rehearsal of Hamlet or the showing of Mickey Mouse cartoons "should be made by academicians, not by federal judges."

3. *Linnemeir v. Board of Trustees*, Indiana University-Purdue University, Fort Wayne, 260 F.3d 757 (7th Cir. 2001). In *Linnemeir*, taxpayers and state legislators sued to force Indiana University-Purdue University (IPFW) to halt the campus production of Terrence McNally's play *Corpus Christi*, which had been unanimously approved by the theater department faculty committee.

The federal appeals court permitted the play to be performed. The majority opined: "The contention that the First Amendment forbids a state university to provide avenue for the expression of views antagonistic to conventional Christian beliefs is absurd." It continued: "Classrooms are not public forums; but the school authorities and the teachers, not the courts, decide whether classroom instruction shall include works by blasphemers. . . . Academic freedom and states' rights alike demand deference to educational judgments that are not invidious."

4. *Edwards v. California University of Pennsylvania*, 156 F.3d 488 (3rd Cir. 1998),*cert. denied*, 525 U.S. 1143 (1999). 'In *Edwards*, Dilawar M. Edwards, a tenured professor in media studies, sued the administration for violating his right to free speech by restricting his choice of classroom materials in an educational media course. The classroom materials, which emphasized issues of "bias, censorship, religion and humanism," had been disapproved by the media studies department, which had voted to use an earlier version of the syllabus.'

The court concluded that because "a public university professor does not have a First Amendment right to decide what will be taught in the classroom," it was not relevant whether the professor's course content was "reasonably related to a legitimate educational interest." ***The court's conclusion, however, appears to have been influenced by the fact that Edwards'***

departmental colleagues had approved a different syllabus – reinforcing the principle that professors as a whole, if not always individual professors, have the right to determine curricular focus.

5. ***FAIR v. Rumsfeld***, 547 U.S. (2006). a federal law known as the Solomon Amendment, which required that colleges and universities allow the military full access to recruiting on campus, with the campus losing federal funding for not following the law.

A coalition of law schools sued the federal government, on the basis that having to decide between the military's 'don't ask, don't tell' violating their nondiscrimination policies and losing funding, violated their First Amendment rights to academic freedom, free speech, and freedom of association.

The Supreme Court decided that the law schools must permit the military to recruit on campus. Reasoning that law schools still had a number of other ways to publicize their objections to the military's policies, including signs and protests, the Court concluded that "the Solomon Amendment neither limits what law schools may say nor requires them to say anything.

3.4 Determining Grades

In 1997, AAUP's Committee A on Academic Freedom and Tenure approved a statement on "The Assignment of Course Grades and Student Appeals," AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 29–30.

Courts:

1. Faculty have the right to evaluate student performance and assign grades.
2. Faculty should conform to university wide grading policy
3. Faculty can't be compelled to change grades, but administrations have the legal right to change grades.

3. 5. Conduct Beyond the Classrooms

A. Extramural Speech

According to the AAUP 1940 Statement of Principles on Academic Freedom and Tenure, extramural speech is a speech that occurs outside the classroom and it is considered one controversial and challenging aspect of academic freedom, because it doesn't necessarily relate to the faculty's expertise in their discipline. The AAUP 1940 Statement of Principles on Academic Freedom and Tenure states:

"*College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and* ***should make every effort to indicate that they are not speaking for the institution****".*

Court Cases in Defense of Extramural Speech

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- **Keyishian v. Board of Regents (1967)**: The case argues against the constitutionality of requiring New York State public employees and professors at state university to swear an oath of loyalty to the state. The court determined that the law was unconstitutional because it represented a violation of the First Amendment's protection of free speech. **Also this case established that the principle that academic freedom extends to extramural speech (speech that occurs outside of the classroom).**
- **Pickering v. Board of Education (1968):** This case refers to the firing of a public school teacher who wrote a letter to the editor of a local newspaper complaining about how the school board handled a bond issue. The court ruled in favor of the teacher because the teacher's speech was protected by the First Amendment given that it concerned **a matter of public concern.**

B. Faculty Speech and Institutional Matters

These cases illustrate a series of rulings on legal issues that might arise when a faculty member speaks out on institutional matters.The main question is whether faculty's criticisms of the institution are protected or not by the First Amendment. In what follows several cases are cited in this regard. The contradictory results of several courts' rulings suggest that "it is not yet clear how much latitude public faculty members have to speak, and under what circumstances". However, " If the professor could show that he or she spoke as a private citizen on a matter of public concern, then the court would balance the employee's interest in speaking against the public employer's (i.e., the university's) interest in the overall functioning of the workplace. Only if the employee's interest in speaking on the issue in question outweighed the employee's interest in a functioning workplace would the employee's speech be protected by the First Amendment."

Negative Outcomes derived from applying Garcetti v Ceballos ruling

- **Garcetti v. Ceballos (547 U.S. 410 , 2006).** The case involved district attorney Ceballos who was demoted and transferred after he wrote a memorandum to his superiors criticizing certain practices used by the sheriff's department. Ceballos sued his supervisors for retaliation and violation of his First Amendment rights. The Ninth Circuit court agreed with Ceballos' claim of violation of his First amendment rights. However, the Supreme Court overturned the Ninth Circuit's decision and stated : ***"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."***

  Though the case doesn't involve the academia per se, the Supreme Court deliberated that this case should not be applied to academia (***"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.***"). However, **Garcetti v Ceballos** has been used in lower courts in matters of academic freedom.

- In the following cases, the court used **Garcetti v Ceballos** to deny the First Amendment protection of faculty speaking out on institutional matters, because not considered a matter of public concern. All the cases involved a dispute over shared governance matters between the faculty and the administration, or among faculty members.

  Savage v Gee, 665 F.3d 732 (6th Cir. 2012)[5]

[5] Full description of the following cases and more cases can be found at https://www.aaup.org/get-involved/issue-campaigns/speak-speak-out-protect-faculty-voice/legal-cases-affecting-academic

"Savage's speech as a committee member commenting on a book recommendation **was not related to classroom instruction and was only loosely, if at all, related to academic scholarship**. Thus, even assuming Garcetti may apply differently, or not at all, in some academic settings, we find that Savage's speech does not fall within the realm of speech that might fall outside of Garcetti's reach."

- **Abacarian v McDonald 617 F.3d 931 (7th Cir. 2010)**

  "We also reject Abcarian's unsupported assertion that his speech could be considered "expression related to academic scholarship or classroom instruction" possibly exempt from Garcetti. See 547 U.S. at 425. Abcarian's speech involved administrative policies that were much more prosaic than would be covered by principles of academic freedom."

  Renken v Gregory 541 F 3d 769 (7th Cir. 2008)

  "The Seventh Circuit Court of Appeal ruled "that because Renken was a principal investigator on the project, administering the grant was *"within the teaching and service duties that he was employed to perform,"* and that his complaints therefore were not protected by the First Amendment."

  Gorum v Sessoms 561 F. 3d 179 (3rd Cir. 2009)

  The Third Circuit Court of Appeal ruled "*that a public employee's speech could be "part of his official duties if it relates to 'special knowledge' or 'experience' acquired through his job*." Though the court agreed that *Garcetti* decision implied that academic speech might be treated differently than employees' speech, it ruled that *"Gorum's actions so clearly were not 'speech related to scholarship or teaching.*'" (ASK JONATHAT THE SOURCE-LINK)

  Ezuma vs City University of New York 2010 U.S. App. LEXIS 3495 (2d Cir. Unpublished, 2010)

  Ezuma, a professor and chairperson, reported the sexual harassment complaint of another faculty member to administration and discussed her accusations with lawyers and police investigating the complaint. Shortly after Ezuma was removed as department chair and from various committees. Ezuma sued the university claiming that these were retaliatory actions for reporting the sexual harassment. "The Second Circuit ruled that Ezuma's speech, including his discussions with lawyers and the police, was made "pursuant to his official duties" because, as department chair, he was obliged to report accusations of sexual harassment. The court further decided that "the instance case has nothing to do with academic freedom or a challenged suppression of unpopular ideas… The speech at issue here could have occurred just as easily in a private office, or on a loading dock." Hence Ezuma lost the case

Positive Outcomes derived from applying *Pickering v. Board of Education*[6]

Demers v Austin (2014 U.S. App. LEXIS 1811)

In 2008, professor Demers started to criticize the School of Communication's practices and policies orally and in two publications. Demers sued the school for retaliating against him by negatively evaluating his annual performance and by starting an unwarranted internal audit against him because of his public complaints of the administration's decisions.

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https://www.aaup.org/get-involved/issue-campaigns/speak-speak-out-protect-faculty-voice/legal-cases-affecting-academic

[6] Full description of the following cases and more cases can be found at https://www.aaup.org/get-involved/issue-campaigns/speak-speak-out-protect-faculty-voice/legal-cases-affecting-academic

The case was dismissed by the District court stating that " First Amendment claim, stating, primarily, that Demers made his comments in connection with his duties as a faculty member" and that "Demers was not speaking as a private citizen on matters of public concern". The court did not apply the language from *Garcetti v. Ceballos,* 547 U.S. 410 (2006), but drew their conclusions applying the Pickering balance test, a five part test set up by the Ninth Circuit in ruling on public employee speech cases.

Demers appealed to the Ninth Circuit and The AAUP filed an amicus brief in his support. The Ninth Circuit court ruled that Demers' speech was protected under the First Amendment because it was a matter of public concern: "teaching and writing on academic matters" by publicly-employed teachers could be protected by the First Amendment because they are governed by *Pickering v. Board of Education*, not by *Garcetti v. Ceballos*." But interestingly in its 2014 superseding opinion ,the Court defined "speech related to scholarship or teaching" as protected speech broadening its description and matching the language from the Garcetti decision.

Adams v University of North Carolina Wilmington (UNCW) 640 F.3d 550 (4th Cir. 2011)

Professor Adams,who described himself as a conservative Christian, had several political discussions with faculty and publicly criticized the university as religious intolerant on an online column he curated. When Admas was denied promotion, he sued the university for retaliation for his political and criticizing UNCW speeches.

"The Fourth Circuit Court reasoned that "[a]pplying *Garcetti* to the academic work of a public university faculty member under the facts of this case could place beyond the reach of First Amendment protection many forms of public speech or service a professor engaged in during his employment." Choosing to recognize the particular characteristics of a professor's appointment, the court noted that "Adams' speech was not tied to any more specific or direct employee duty than the general concept that professors will engage in writing, public appearances, and service within their respective fields." The Fourth Circuit also concluded that "Adams' speech was clearly that of a citizen speaking on a matter of public concern."

Sheldon v Dhillon C-08-03438 (N.D.Cal. 2009)

June Sheldon was an adjunct professor teaching a Human Heredity course at California's San Jose Community . A Student complained with the administration about a class discussion regarding homosexuality. After the school investigated the complaint, it decided not to renew Sheldon's contract stating that " she was teaching misinformation as science". Sheldon sued the school in federal court declaring that her termination was in retaliation "for her in-class answer to a student's question, and that her classroom instruction was protected by the First Amendment."

The court rejected the college's arguments based on the Garcetti decision - "by its express terms," the decision did "not address the context squarely presented here: the First Amendment's application to teaching-related speech." The court added that prior court opinions "recognized that teachers have First Amendment rights regarding their classroom speech, albeit without defining the precise contours of those rights." and that "a teacher's

instructional speech is protected by the First Amendment, and if the defendants acted in retaliation for her instructional speech, those rights will have been violated unless the defendants' conduct was reasonably related to a legitimate pedagogical concern." However, the court could not determine at that moment whether she was terminated because of "reasonable pedagogical concerns". Therefore the case was settled and Sheldon was compensated $100,000 by the college.

4: Privacy and Confidentiality

The privacy of the party/parties bringing a complaint of a breach of Academic Freedom must be respected, and information obtained in connection with the submission of the complaint and any subsequent investigation or resolution of the complaint must be handled with utmost confidentiality.

5: Form of Complaints

Initial Inquiries to QCC Academic Freedom Committee

Faculty who think their academic freedom has been violated or at risk should contact the Chair and/or any other member of the Academic Freedom Committee by sending an email with a request for a phone call or an in-person meeting. Such an inquiry does not constitute a complaint and is only intended to inform the author of the inquiry about the issue. All inquiries will receive a timely response from the committee.

If a complaint is made confidentially the Chair and/or any other member of the Academic Freedom Committee, respecting the complainant's right to anonymity, will report the complaint to the committee and initiate an informal "fact-finding" inquiry. The committee will determine if the complaint falls within the purview of Academic Freedom and the complainant will be notified of this determination.

According to QCC Bylaws 12.2.c, the recommendations made by the Academic Freedom Committee shall be forwarded to the Chairperson of the Faculty Executive Committee, who will then refer them to the College's appropriate parties.

If a resolution cannot be reached through the above process, then the committee will assist the faculty member with the formal procedure outlined in section 6 of this document.

6: Procedures

If you think your academic freedom is under attack or has been violated, please consult your campus or PSC grievance counselor, or the PSC Academic Freedom Committee right away. The PSC has 30 working days from the date of the incident to file a grievance. Call PSC-CUNY (212-354-1252) and ask to speak to a grievance counselor. The grievance process protects the faculty's rights and allows faculty to weigh the best option to address the issue. **The current PSC Academic Freedom Committee chair is Tony Alessandrini**

Email: tonyalessandrini@gmail.com

The UFS Academic Freedom Committee, also recommends that faculty consult with their college Academic Freedom Committee without delay.