

Faculty Academic Freedom: Faculty as Employees and Citizens

Louis M. Benedict

Bowling Green State University

Abstract

Faculty at state colleges and universities are both government employees and citizens. The United States Supreme Court has provided some First Amendment free speech guidance for public employee speech, but state college faculty represent a unique category of government employees. Academic freedom is a term that is often used to describe the special free speech rights of college and university faculty. However, the general concept of academic freedom is recognized, but the parameters are not fully established. This article discusses the concept of faculty academic freedom utilizing court cases as examples of how faculty speech has been analyzed by courts and what conclusions we can draw as to what factors courts may consider when analyzing faculty speech. The analysis finds that courts provide protection for faculty speech utilizing both First Amendment jurisprudence and the concept of academic freedom. The legal application of academic freedom in public colleges and universities is subject to the law relating to public employees as employees and as citizens. Thus, academic freedom remains an amorphous right where determining the boundaries remains an extremely difficult task for both faculty and administrators.

Faculty Academic Freedom: Faculty as Employees and Citizens

Recent events have caused increased concern over the future interpretation of academic freedom. A website is devoted to identifying professors accused of harassing conservative students in their classrooms (Hamilton, 2004). Critics claim that Middle East studies programs are anti-American and demand a review board (Jacobson, 2004). The North Carolina state legislature blocked an assignment of a book on the Koran to all freshman and transfer students at the University of North Carolina at Chapel Hill (Burgan, 2002). Students are being approached by conservative activists to get them to spy on their professors (Denvir, 2003). The Ohio Senate had introduced legislation that would have required every state and private institution of higher education to adopt a grievance procedure to allow students and faculty to seek redress from a faculty member who presents only their own viewpoints on an issue, where other "serious scholarly viewpoints" exist (S.B. 24, 2005). Although this proposed legislation did not make it out of committee for a full vote, it is possible that it could emerge again in the future.

These are all examples of the increasing threats to academic freedom. The heightened concern about national security has resulted in opposition to anyone who espouses a different view from that of the official position of the United States government. Liberal college professors are especially vulnerable, as they have traditionally relied on the principles of academic freedom to discuss and question the actions of those in power.

The opponents of academic freedom have taken advantage of the concern over terrorism to curtail academic freedom in the name of national security. According to a statement from the American Studies Association, the climate for academic freedom in the United States has drastically worsened since September 11, 2001 (Fuller, 2003). However, it is not just liberals who are complaining about the attack on academic freedom. Republican Colorado State Senator John Andrews is concerned that conservative faculty and students face hostile academic environments (Hebel, 2003).

The paper will begin by defining academic freedom. Because there is no accepted legal definition of academic freedom, the American Association of University Professor's definition will be employed because it is the definition that is often utilized as the starting point for defining

academic freedom in many institutions (American Association of University Professors, 2001). Nevertheless, the courts have not recognized the American Association of University Professor's definition as the legal definition of academic freedom.

I will next discuss court cases that established the legal concept of academic freedom in the United States. However, these cases do not precisely define the extent of what academic freedom encompasses and what academic freedom does not encompass. Thus, the paper will discuss applications of the concept of academic freedom as decided by the lower courts to examine the current legal parameters of academic freedom. Because private universities are subject to less constitutional restrictions than are public universities, my analysis will focus on academic freedom at state universities.

Defining Academic Freedom

Academic freedom is term that has great meaning and history in higher education, but has little meaning and history in United States jurisprudence. "Academic Freedom" is actually a "modern term for an ancient idea" (Hofstadter & Metzger, 1955, p. 3). "Although the struggle for freedom in teaching can be traced at least as far back as Socrates' eloquent defense of himself against the charge of corrupting the youth of Athens, its continuous history is concurrent with the history of universities since the twelfth century" (Hofstadter & Metzger, 1955, p. 3). Medieval professors were given the freedom to explore and contribute new knowledge as long as they did not cross into the authority of the church (Poch, 1993). Even though the faculty were restricted by religious beliefs, the faculty "exerted considerable power in the selection of institutional leaders, the establishment of the institution's mission, the content of the curriculum, and the definition of academic standards" (Poch, 1993, p. 3).

The first American universities were based on the ancient and medieval universities of England, which had this rich tradition of freedom (Poch, 1993). However, the American system of collegiate education differed not only from the familiar English models but also from all other university models (Hofstadter & Metzger, 1955). Hofstadter and Metzger (1955) provided three reasons for the uniqueness of American universities. First, although American collegiate education was founded by religious organizations, similar to that of Europe, it was essentially

private denominational sponsorship with limited state religious supervision. Second, the American colleges, unlike European universities, had no connection with advanced professional faculties. Third, American colleges developed a system of external governance that did not include the teachers of the college (Hofstadter & Metzger, 1955). Tierney (2004) found that academic freedom only became a transcendent value in the United States in the last century. Hofstadter and Metzger (1955) trace the introduction of the concept of academic freedom into the United States from the German universities in the later half of the nineteenth century. Hofstadter & Metzger (1955) concluded that the German university philosophies of *Lehrfreiheit* (freedom to learn) and *Lehrfreiheit* (freedom to teach) were introduced into our university culture by the increasing numbers of American scholars educated in Germany. Poch (1993) found this point debatable, but conceded that “German conceptions of academic freedom played a major role in framing modern notions of academic freedom in the United States” (p. 6).

Despite this formidable beginning, there was no authoritative attempt to clearly define the concept of academic freedom in the United States until the American Association of University Professors (AAUP) published the 1915 Declaration of Principles (later revised as the 1940 Statement of Principles) (Bird & Brandt, 2002; Hofstadter & Metzger, 1955; Lynch, 2003). McGuinness (2002) found that the development of academic freedom in the United States made little progress until the founding of the American Association of University Professors in 1915. The AAUP’s 1915 Declaration of Principles on Academic Freedom and Tenure defined academic freedom under the caption, “General Declaration of Principles,” as the following:

The term “academic freedom” has traditionally had two applications—to the freedom of the teacher and to that of the student, *Lehrfreiheit* and *Lernfreiheit*. It need scarcely be pointed out that the freedom which is the subject of this report is that of the teacher. Academic freedom in this sense comprises three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action. (American Association of University Professors, 2001, p. 292)

The AAUP refined this definition in its 1940 Statement of Principles on Tenure and Academic Freedom. Under the caption, “Academic Freedom,” the document, in relevant part, states:

- (a) 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 on an understanding with the authorities of the institution.

- (b) Teachers are entitled to 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. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of appointment.
- (c) 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 opinion of others, and should make every effort to indicate that they are not speaking for the institution. (American Association of University Professors, 2001, pp. 3-4)

The 1940 definition is retained today by the AAUP, with some additional interpretive comments included (American Association of University Professors, 2001). This definition has been endorsed by a numerous organizations, including the American Association of Colleges and Universities and the Association of American Law Schools (American Association of University Professors, 2001). Many college and university faculty handbooks or other official documents have expressly referenced or incorporated the 1940 Statement of Principles (Bird & Brandt, 2002).

Nevertheless, the United States Supreme Court has never fully accepted the term, academic freedom, as defined by the AAUP, as a legal right. The Supreme Court has recognized that faculty have some legal protection for speech that is related to the concept of academic freedom, but how much and to what extent remains open to debate (Daly, 2001). In *Sweezy v. New Hampshire* (1957), the United States Supreme Court recognized that there was an essentiality of academic freedom in the community of American educators. The Court emphasized the importance of teachers and students being free to study and to evaluate material. The Supreme Court reaffirmed its commitment to the concept of academic freedom in *Keyishian v. Board of Regents* (1967). However, it did not elaborate or explain how the concept of academic freedom was to be applied in future cases.

Some legal scholars believe that academic freedom is not the same as freedom of speech and is therefore not guaranteed by the First Amendment (De George, 2003; Weidner, 2003). Moreover without specific authoritative guidance by the Supreme Court, lower courts have

been almost completely free to interpret what role academic freedom plays on a case-by-case basis. Some courts have even proclaimed that academic freedom is held by the institution and not individual faculty (Strauss, 2004). This has been a subject of continuing debate by legal commentators (Rabban, 2001). In the absence of a clarifying decision by the Supreme Court, this legal debate will continue to garner proponents and critics. The issue is further complicated by the fact that some are arguing that academic freedom is being used as a shield by professors for activities such as sexual harassment (Smith, 1998; Woodward, 1999).

Faculty and Academic Freedom

Faculty are both educators and employees at state institutions of higher education. Therefore, the law related to public employee speech is also applicable to faculty speech. The United State Supreme Court analyzed the issue of teacher as employee in *Pickering v. Board of Education* (1968). In *Pickering v. Board of Education* (1968), a public school teacher was dismissed after writing a letter to the editor of local newspaper that criticized the board of education's appropriation of funds and its actions in two failed tax levy campaigns. Pickering was terminated by the school district, which alleged that his statements were false and disruptive to his work. The state court rejected Pickering's First Amendment claim and upheld his dismissal. The United States Supreme Court reversed the decision (*Pickering v. Board of Education*, 1968). The Supreme Court acknowledged that a teacher's speech can be restricted as an employee. However, the Court found that the unique problem in public educator speech cases is to balance the interests of the teacher as a citizen, in commenting on matters of public concern, with the interests of the state as employer, in promoting the efficiency of public services it performs through its employees (*Pickering v. Board of Education*, 1968).

The Supreme Court held that teachers do not give up their free speech rights merely by signing a public contract (*Pickering v. Board of Education*, 1968). The Court found that the threshold question is whether the speech is related to a matter of public concern. If it is, then courts will favor the speaker as a citizen and limit the employer from restricting that speech. If the issue is not one of public concern, then the courts will allow the employer to have wide latitude in the governance of its internal operations. The Court found that absent proof of false statements

knowingly or recklessly made, a teacher's exercise of his right to speak on matters of public importance may not be made the basis for dismissal (*Pickering v. Board of Education*, 1968).

The Supreme Court added to its public employee speech doctrine in *Connick v. Myers* (1983). In this case, an assistant district attorney complained about several actions of the New Orleans District Attorney, Harry Connick, Sr. The assistant district attorney was dismissed because of her actions, including her refusal to accept a transfer and her circulation of a questionnaire regarding the office transfer policy and other actions of the District Attorney. The Supreme Court reaffirmed the *Pickering* balancing test (*Connick v. Myers*, 1983). However, the Supreme Court concluded that in this case, the speech was not related to any matter of public concern, and therefore the disruption of the employer's operations is not protected by the First Amendment (*Connick v. Myers*, 1983). The Court found that the employee speech was related only to an internal employment dispute and that courts should not provide judicial oversight of purely internal disputes (*Connick v. Myers*, 1983).

Both *Pickering v. Board of Education* (1968) and *Connick v. Myers* (1983) are applicable to faculty as employees in public institutions of higher education. However, faculty are somewhat unique state employees whose daily duties involve speech to others that is not prepared by the employer. Faculty are paid to utilize their individual expertise to express their personal opinions on matters of public concern. Academic knowledge is advanced when faculty postulate different opinions on issues. Faculty are not assumed to speak for the university or even other professors in the same department. Nevertheless, the free speech rights of the faculty are not unlimited and must be balanced with the rights of the institution. Thus, the specific facts of each case are very important to consider.

In *Trejo v. Shoben* (2003), the United States Court of Appeals for the Seventh Circuit found that the mere fact that speech occurs among university personnel does not transform that speech into speech related to matters of public concern. The University of Illinois Urbana-Champaign terminated the contract of an untenured assistant professor after receiving several complaints about his conduct at a research conference in Canada (*Trejo v. Shoben*, 2003). Several professors from different universities and several graduate students from the University

of Illinois engaged in casual conversations over dinner and drinks. The discussions were sexual in nature and Trejo made several sexual comments and solicited female companionship (*Trejo v. Shoben*, 2003). Trejo appealed his dismissal and argued that the conversations were intellectual in nature and based upon a television documentary about primates that he recently viewed. The district court dismissed Trejo's suit and the Seventh Circuit Court of Appeals affirmed (*Trejo v. Shoben*, 2003). The Seventh Circuit held that Trejo's speech was related to matters of only private concern.

This case is important in that it concerned speech outside of campus in a social situation. Can faculty be disciplined for their personal conversations that occur off campus in a public place? If the same speech occurred on campus in a meeting with a student, there would be little doubt that if the allegations were true, the faculty member could be subject to discipline. But this was off campus in a bar open to the public. However, the conference was related to the professor's employment and his speech was directed at students from his university. Graduate students may have felt some pressure to be around and listen to the faculty member. Nevertheless, this case demonstrates that idle conversation that may have started as an academic discussion (the court of appeals doubted this) and turned toward other speech may not be protected (*Trejo v. Shoben*, 2003).

Burnham v. Ianni (1997) involved a history department photographic display. The history department's display case was used to display photographs of history professors in costumes and props related to their teaching and research interests. Two of the eleven professors posed with weapons. One professor posed with a .45 caliber military pistol and the other posed with a Roman sword (*Burnham v. Ianni*, 1997). There was a complaint relayed from the university's affirmative action officer who claimed the two photos of professors with weapons was related to a threat sent to an unrelated professor several weeks earlier. The affirmative action officer also claimed the display constituted sexual harassment and demanded the two photos be removed (*Burnham v. Ianni*, 1997). The history department refused to remove the photos. However, after the faculty had several meetings with Chancellor Ianni, the chancellor ordered the police to remove the photos.

The two professors filed suit, alleging a constitutional violation of their free speech rights (*Burnham v. Ianni*, 1997). The United States Court of Appeals for the Eighth Circuit held that the photographs were expressive conduct by the professors (*Burnham v. Ianni*, 1997). The court found that the dispute was more than merely an internal employee grievance. It involved a content-based decision regarding the history department's public display. Chancellor Ianni also attempted to apply a *Pickering* balancing test, stating that the removal of the photos was necessary to promote an efficient and harmonious workplace. However, the court of appeals found that there was no evidence that the photos were linked to any threats or exacerbated an atmosphere of fear on the campus (*Burnham v. Ianni*, 1997). The professor who was threatened did not even consider those photos a threat (*Burnham v. Ianni*, 1997).

Thus, the court examined the nature of the faculty speech and the reasons for the university's curtailment of faculty speech. This case demonstrates that faculty speech on campus does not have to take place in a classroom to be protected. The expressive activity does not even have to consist of verbal speech. Expressive behavior that conveys an educationally related message may be protected. Many faculty hang political or other cartoons on their doors. This case indicates that this form of faculty expression (or speech) may be protected by the courts.

The United States Court of Appeals for the Sixth Circuit was faced with two cases of allegedly vulgar and offensive faculty speech in the classroom. In *Bonnell v. Lorenzo* (2001), a student filed a complaint at Macomb Community College, alleging that Professor Bonnell had consistently engaged in profanity and other vulgar conduct in class. Because the college had received similar complaints in the past, the administration informed Bonnell of the complaint and ordered him to stop engaging in such conduct as it was a potential violation of college policy and could render the college liable under Title IX (*Bonnell v. Lorenzo*, 2001). Bonnell claimed that the language was relevant to the content and discussion in his English classes. Eight months later, the college received another letter with similar complaints. In the letter, the complaining student asked for an apology and wanted Bonnell terminated. In response, Bonnell wrote an eight-page satirical essay (*Bonnell v. Lorenzo*, 2001). Bonnell circulated a copy of the complaint (with the names blacked out) and his essay to all of his students, to numerous faculty members, and to

television and the newspapers. Bonnell was subsequently suspended with pay pending investigation.

Bonnell filed suit (*Bonnell v. Lorenzo*, 2001) seeking an injunction against the university. The district court granted Bonnell's injunction. The court of appeals applied the *Pickering/Connick* balancing test and reversed (*Bonnell v. Lorenzo*, 2001). The court examined whether Bonnell's speech touched a matter of public concern. The court found that Bonnell was speaking both as a citizen and as an employee (*Bonnell v. Lorenzo*, 2001). This was a case of mixed speech that related to both public and private concerns. The court noted that Bonnell's essay on academic freedom in higher education that was circulated to students, faculty, and the media was a matter of public concern (*Bonnell v. Lorenzo*, 2001). However, the court also noted that Bonnell's classroom speech that gave rise to the sexual harassment complaint and disciplinary measures did not relate to a matter of public concern (*Bonnell v. Lorenzo*, 2001). The court of appeals found that if any part of the speech involved an issue of public concern that the court should apply the *Pickering* balancing test (*Bonnell v. Lorenzo*, 2001). After doing so, the court held that the institution's interest in maintaining the confidentiality of sexual harassment complaints, avoiding institutional liability for allowing harassment to continue, and providing a safe and hostility-free classrooms for its students outweighed Bonnell's interests in academic freedom (*Bonnell v. Lorenzo*, 2001).

The Sixth Circuit Court of Appeals decided another case dealing with vulgar faculty speech in the classroom later that same year (*Hardy v. Jefferson Community College*, 2001). However, in *Hardy v. Jefferson Community College* (2001), the faculty member prevailed. In this case, an adjunct instructor was not renewed after he led a classroom discussion on the impact of oppressive and disparaging words, including "girl," "faggot," and "bitch" (*Hardy v. Jefferson Community College*, 2001). Hardy taught in the college's communications program, teaching a class on introductory personal communication. As part of his classroom discussion, students examined how language is used to marginalize minorities and other oppressed groups in society (*Hardy v. Jefferson Community College*, 2001). One student complained that the discussion was racist, sexist, and offensive.

Similar to Bonnell, Hardy argued the use of such words was related to the discussion on language and society (*Hardy v. Jefferson Community College*, 2001). However, in this case the Sixth Circuit Court of Appeals applied the *Pickering/Connick* balancing test and agreed with Hardy (*Hardy v. Jefferson Community College*, 2001). This case may be distinguished from *Bonnell v. Lorenzo* (2001) because the court found that the use of vulgar and profane language by Hardy was directly related to the topic of discussion. On the other hand, Bonnell appeared to continue to interject his vulgar speech regarding sex into discussions that had no connection to that topic. Additionally, in *Bonnell v. Lorenzo* (2001), the Sixth Circuit based its holding on the fact that Bonnell had disclosed the contents of an internal complaint of sexual harassment, which was contrary to the confidentiality policy of the university.

In *Brown v. Armenti* (2001), the United States Court of Appeals for the Third Circuit upheld the suspension of a professor for refusing to follow an order to change the grade of a student. Professor Brown had been teaching at California University of Pennsylvania for almost three decades and had been tenured since 1972 (*Brown v. Armenti*, 2001). Brown had refused to follow an order to change the grade of a student in a practicum class after the student attended only three of the fifteen required meetings. Armenti, the president of the university, ordered that the grade be changed to an incomplete (*Brown v. Armenti*, 2001). Brown refused to change the grade and wrote a letter to the board of trustees criticizing the president.

Brown claimed that he had been suspended in retaliation for refusing to change the grade (*Brown v. Armenti*, 2001). The Third Circuit held for the university. The court discussed in some detail those aspects of academic freedom that belong to the institution and found that the professor was acting as a proxy for the university (*Brown v. Armenti*, 2001). Therefore, the professor has to follow the directions of the university with regard to what is to be taught, which included how courses will be graded. However, the court noted that had the professor been speaking generally on the issue of grade inflation, the speech might have been protected as a matter of public interest (*Brown v. Armenti*, 2001).

This case can be compared to an earlier case, albeit in a different federal circuit. In *Parate v. Isibor* (1989), the Sixth Circuit Court of Appeals held that the assignment of a letter

grade by a professor is a symbolic message and is entitled to some First Amendment protection (*Parate v. Isibor*, 1989). The court found that the professor's assignment of grades is central to the professor's teaching methods and therefore a professor should retain wide discretion over the evaluation of students (*Parate v. Isibor*, 1989).

The Institution and Academic Freedom

As *Brown v. Armenti* (2001) indicated, courts have found that the higher education institution possesses its own academic freedom. This may dominate (Strauss, 2004) or conflict with faculty academic freedom (Rabban, 2001). In an earlier case, *Bishop v. Aronov* (1991), the university asserted its right of academic freedom against that of the faculty member's academic freedom in a case involving religious speech. Bishop was a professor of health, physical education, and recreation at the University of Alabama, and taught exercise physiology to undergraduates and graduates (*Bishop v. Aronov*, 1991). Bishop occasionally made comments in class about his Christian faith and its relationship to human physiology. Bishop told his students that his relationship with Jesus Christ influenced everything he did in life. Bishop also organized special discussion sessions after class and invited any students and faculty who were interested in exploring the Christian relationship with exercise physiology (*Bishop v. Aronov*, 1991).

After receiving several complaints from students, the university wrote Bishop a letter asking that he refrain from interjecting his religious beliefs in classes and from scheduling the optional class to discuss religion (*Bishop v. Aronov*, 1991). The letter noted Bishop's right of academic freedom and his right to hold and speak about his religious views, but asked that he not subject his students to his religious views in class. Bishop filed suit alleging that the letter violated his First Amendment rights. The district court held for Bishop, but the Eleventh Circuit Court of Appeals reversed (*Bishop v. Aronov*, 1991). The court of appeals recognized the right of the university to control the content of its curriculum. The court found that as long as the institution does so reasonably, a college or university has the authority to direct curriculum based conduct of teachers (*Bishop v. Aronov*, 1991). The court interpreted the contents of the letter narrowly to include no more of Bishop's speech than was necessary to restrict employee speech. The court

found that the university had a legitimate interest in not subjecting students to religious proselytizing in an official university class.

Nevertheless, the court of appeals did hold that Bishop could continue to conduct Christian discussion group meetings for those interested (*Bishop v. Aronov*, 1991). However, the court also held that in doing so, Bishop must clearly state to his classes that these religious meetings are not required and that they will not affect his grading. To further ensure that students do not feel coerced into attending these optional sessions, the court mandated that Bishop must institute a blind grading system for his regular classes (*Bishop v. Aronov*, 1991). In its decision, the Eleventh Circuit Court of Appeals noted that academic freedom is not an independent First Amendment right, but the university must serve its own interests and that of the professors in pursuit of academic freedom (*Bishop v. Aronov*, 1991).

The Fourth Circuit was faced with a challenge that did not involve an individual faculty member in an isolated decision. In *Urofsky v. Gilmore* (2000), a group of faculty challenged a state law and university policy that made it illegal for state employees to access sexually explicit material on computers owned or leased by the state. The professors argued that their academic freedom outweighed the interest of the state as employer and that the professors have the right to determine the subjects of their research, writing, and teaching, without oversight by the state (*Urofsky v. Gilmore*, 2000). The district court held for the professors, but the court of appeals reversed (*Urofsky v. Gilmore*, 2000). The court of appeals held that any rights of academic freedom above and beyond the First Amendment protections provided to every citizen belong to the institution (*Urofsky v. Gilmore*, 2000). The court distinguished *Sweezy v. New Hampshire* (1957) by noting that in that case the challenger was speaking as a private citizen and not as a government employee (*Urofsky v. Gilmore*, 2000).

The courts decision in *Urofsky v. Gilmore* (2000) is not as one-sided as it may appear. The court relied on the facts that faculty could obtain prior permission to access sexually explicit material on state computers (*Urofsky v. Gilmore*, 2000). Thus, state law and university policy provided alternatives for faculty speech. Procedures were in place to allow faculty access to restricted material.

In the case of *O'Connor v. Washburn University* (2005), a group of students and faculty challenged the academic freedom of the institution. Some students and faculty claimed that a sculpture on campus conveyed an anti-Catholic message (*O'Connor v. Washburn University*, 2005). The statue was one of five chosen by a campus beautification committee to be placed in various public places on campus for the 2003-2004 school year. In the face of local and national complaints, the president upheld the committee's decision to keep the statue on campus. The university's Board of Regents voted 5-2 to keep the sculpture. In addressing the First Amendment establishment clause claim, the court of appeals found that the university had a secular purpose for selecting the statue and a reasonable observer viewing the sculpture would not believe the university placed it on campus as an attack against Catholicism (*O'Connor v. Washburn University*, 2005).

Conclusion

The general concept of academic freedom is recognized, but the parameters are not fully established. The legal application of academic freedom in public colleges and universities is subject to the law relating to public employees as employees and as citizens. However, college professors in state universities are unique public employees and citizens. They are employed to express their views related to their expertise of the subject matter in the classroom, in publications, and at conferences. They are also citizens who, as the AAUP and the courts recognize, should be free to speak on matters of public concern. However, both the courts and the AAUP recognize that this right has special obligations. Thus, it is difficult to determine when faculty speech exceeds the boundaries of academic freedom. The AAUP definition provides some general guidance and cautions, but as the court cases discussed above indicate, there is a grey line that is often difficult to determine without examining the specific circumstances.

The courts cases provide some guidance for institutions and faculty in determining the extent of protection provided by academic freedom. Higher education administrators that have legitimate concerns and make efforts to ensure that no more faculty speech is restricted than is necessary have a better chance of success against a First Amendment suit by a faculty member. Additionally, courts will attempt to decide the case on issues unrelated to faculty speech on

matters of public concern. Courts will also balance the interests of institutional academic freedom and faculty academic freedom in making a decision. Nevertheless, academic freedom remains an amorphous right where determining the boundaries remains an extremely difficult task for both faculty and administrators.

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