AAUP Announces Effort to Shore Up Academic Freedom at Public Colleges
By Peter Schmidt

Washington

The American Association of University Professors is embarking on a campaign to protect academic freedom at public colleges in response to recent federal-court decisions seen as eroding faculty members' speech rights.

The new campaign urges national faculty unions and higher-education associations, as well as individual public colleges' faculty groups and administrators, to push such institutions to adopt policies broadly protecting faculty speech dealing with academic matters, institutional governance, teaching, research, and issues outside the workplace. The campaign also calls for faculty members to work with the AAUP to help it monitor and weigh in on new court cases in which the speech rights of faculty members are threatened.

"The right of faculty members at public colleges and universities to speak freely without fear of retribution is endangered as never before," the association said in a newsletter sent to about 400,000 faculty members that describes the campaign, called "Speak Up, Speak Out: Protect the Faculty Voice on Campus."

In a report being issued in connection with the campaign, an AAUP subcommittee consisting mainly of prominent First Amendment scholars says that recent federal-court decisions dealing with academic freedom are "unexpected and potentially ominous."

A Ruling of Consequence

What triggered the shift in the legal climate, the report says, was a 2006 U.S. Supreme Court ruling, in the case Garcetti v. Ceballos, which held that government agencies can restrict statements their employees make in connection with their official duties. The case
did not deal directly with higher education, and the court majority's opinion explicitly put aside the question of whether its reasoning "would apply in the same manner to a case involving speech related to scholarship or teaching." Nevertheless, several federal courts have cited the *Garcetti* ruling in subsequent decisions holding that faculty members at public colleges were not protected by the First Amendment in speaking out about matters related to their official duties.

Most recently, the U.S. Court of Appeals for the Third Circuit held last spring that Delaware State University acted within its rights in disciplining a professor for statements made in connection with activities that were not specifically covered by his contract. In another case pending before the U.S. Court of Appeals for the Ninth Circuit, *Hong v. Grant*, a lower federal court held that an emeritus professor at the University of California at Irvine was acting officially—and thus not entitled to First Amendment protections against actions by his employer—when he made statements connected with the hiring, promotion, and staffing decisions of his academic department.

In light of such rulings, the new AAUP report says, faculty members at public colleges can no longer count on the courts to protect their First Amendment rights and instead should work to ensure their speech is protected by institutional policies.

In an interview on Monday, Rachel Levinson, senior counsel at the AAUP, said, "If we were to say what is the one single most important thing people should do, it is to look at the current academic-freedom policy language in a faculty handbook or contract or collective-bargaining agreement, and make sure that it protects the sort of speech or involvement in institutional governance that we discuss in the report."

The AAUP report, "Protecting an Independent Faculty Voice: Academic Freedom After *Garcetti v. Ceballos*," was endorsed by the association’s Committee A on Academic Freedom and Tenure. It offers suggestions of policy language that colleges can adopt, calling attention to what it regards as a model policy adopted by the University of Minnesota’s Board of Regents in June.

The Minnesota policy defines academic freedom as "the freedom to
discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the university." It also states, however, that faculty members have a responsibility to faithfully perform their professional duties, to recognize "the demands of the scholarly enterprise," and to make clear when they are speaking on matters of public interest that they are not speaking for their institution.

In a written statement announcing the new AAUP campaign, Cary Nelson, the organization's president, said, "The current threat to faculty speech jeopardizes more than just individual educators" because faculty members speak out on "issues critical to society."

Among the organizations that the AAUP subcommittee's report suggests enlisting in the campaign is the American Council on Education, an umbrella group for colleges and higher-education associations. That organization's general counsel, Ada Meloy, said Monday that the council has not officially joined the AAUP's campaign but "we do have the important issue of academic freedom on our radar screen," and that ACE plans to devote a session to the broad subject, and the recent court rulings, at its next annual meeting, in March.

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