

“Garcetti’s Back”

I’d like to share an interesting report from *The Chronicle of Higher Education*. On August 16, 2011, Bill Gleason wrote “[Like Jason in ‘Friday the 13th’? Garcetti’s back!](#)” He offers a step-around to one of the most ill-conceived and harmful Supreme Court decisions in its history: *Garcetti v Ceballos*. It’s well worth our consideration.

There is ... a possible mechanism for handling Garcetti. At the University of Minnesota we have been concerned about the implications of Garcetti for some time. [See: Trust Me, I’m a Lawyer...](#) Our provost, the lawyer and former law school dean, Thomas Sullivan, was initially skeptical about the applicability of *Garcetti* to academic freedom. To his credit, however, he and faculty members agreed on a [revised statement on academic freedom that was approved by the Board of Regents](#).

SECTION II. ACADEMIC FREEDOM. [Emphasis mine]

“**Academic freedom** is 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.” (June 12, 2009)

Faculty and administrators at public universities may wish to consider developing such statements for approval. This would remove any doubt that public criticism of universities by their faculty is protected speech.

Mr. Gleason’s last line was thoughtful and encouraged participation by readers:

Of course having such a policy and enforcing it are different matters.

My participation in the CHE comment section to Mr Gleason’s report follows:

So very true, Mr. Gleason.

Enforcing a policy when administrators choose to ignore it or defending your speech is very expensive. Administrators and their ally faculty who choose not to tolerate your speech have for all practical purposes unlimited resources. The AAUP, ACLU, FIRE, etc. do not have the resources to undertake the long-term defense required to help individuals. (Note the phrase, long-term. I’m talking years.) Be very clear, you are on your own. Unless there is effective united support to take action against

the assault on freedom of speech, individuals will remain on their own. And no effective united support to defend an individual's freedom of speech exists at this time.

The courts have whittled away at freedom of speech of individual human beings (thanks, hoffpeter) until it hardly exists. And only exists if you can afford to protect your freedom of speech. I was fortunate to have the resources to fight administrators and their ally faculty at the University of Southern Mississippi who disliked my research. They tried every slander and accusation they could think of. Keep in mind, no one, not even administrators, are going say they are punishing you for exercising your right to freedom of speech.

The University of Southern Mississippi spent approximately \$2.5 million to shut me up. They lost and I am still a tenured, full professor at USM and sign my name to research that USM administrators went to extremes to silence. However, be very clear, I could not depend of the AAUP, ACLU, FIRE, etc. It is highly doubtful you will be able to depend on them either should administrators take a dislike to your speech. Depend on yourself and the resources you can bring to bear in the event that administrators and their ally faculty should dislike your speech. Defense #1: be the historian and record/document keeper. In my case, I observed a colleague ask a question of our administration. I decided to treat the question and the response of the administration as a research project. The administration had the choice to act with integrity or otherwise. They chose otherwise. But, we had a wealth of documentation and evidence that proved invaluable to our defense. See, "Is Accreditation A Reliable Authority On Academic Quality?"

That study stems from "A General Theory to Test Social Reality." Tests of social reality are reported in "Is Accreditation A Reliable Authority On Academic Quality?" and "University and AACSB Diversity." The research reports are free online at the Social Science Research Network. See, <http://ssrn.com/author=397169>

Chauncey M. DePree, Jr., DBA, Professor, School of Accountancy, College of Business, University of Southern Mississippi, m.depre@usm.edu An ongoing test of social reality can be reviewed at www.usmnews.net : "MS Open Records Request Reveals USM's Actual Costs of President Saunders' Plane."

Mr. Gleason responded:

That last sentence was not just a casual throwaway.

Getting into a legal battle, or even a quasi-legal battle, with a university

administration is an unfair fight in the extreme. The administration has unlimited “free” legal services. They also have secretarial and other support services to do the enormous amount of work that a faculty member must do themselves in such circumstances, unless they can afford a lawyer.

Don't ask how I know...

He deserved a thank you for discussing an issue important to our freedom:

Thank you for writing the article. They are ideas that need to be discussed. I thought your last sentence was thoughtful and deserved amplification.