



ACADEMIC PERSONNEL: SPEECH AND CIVILITY ISSUES

A Webinar Panel Presentation by

EPIC – Employment Practices Improvement Committee

The presentation will start at **2:00p.m.**

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Academic Personnel: Speech and Civility Issues

**A webinar panel presentation by EPIC-
UC's Employment Practices Improvement
Committee**

March 9, 2011



Panelists

Barbara Aguirre

Director of Academic Employment & Labor Relations, Davis

Richard Paul

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Margaret Wu

Senior Counsel, Litigation, Office of General Counsel

Moderator: Carolyn Yee

Senior Counsel, Litigation, Office of General Counsel



Presentation Guide

- A Quick Overview of the Sources of Faculty Duties of Civility
 - Internal U.C. Policies
 - External and General Principles
- A Quick Overview of Sources of Faculty Speech and Protest Rights
- A Day in the Life of the University: Case Studies Exploring Faculty Duties and Rights



Sources of Faculty Duties of Civility

Internal U.C. Policies

- Academic Personnel Manual: APM 005, 015, 010
- General University Policies
- Principles of Community

External and General Principles of Law

- Obligations not to harass, threaten or intimidate
- Obligations not to defame or disparage
- Obligations not to discriminate or retaliate



Sources of Faculty Rights of Speech, Opposition and Protest

Constitutional Rights of Free Speech

- Academic Freedom
- U.S. and State Constitutional Protections

Rights of Free Speech Created by UC

Rights of Protest, Opposition, or Accommodation

- Whistleblower protections
- Fair employment laws
- Other

Historical and Cultural Values of the Institution



A Day in the Life: Accusatory Speech

Case Study 1

Professor Jack sends his department colleagues emails accusing them of being anti-Arab, anti-Muslim and racist. His colleagues are outraged that these messages are “prejudiced, insulting and inflammatory.”



A Day in the Life: Accusatory Speech

Case Study 1 (cont.)

- Jack accuses only the department chair of being a racist, but copies everyone in the department. He adds, “this behavior will not get you far nationally.”
- Instead of using email, Jack puts his accusations in a letter to the editor of the local newspaper or posts them to his personal blog.
- Jack tells students, in class, that the U.S. is a “racist nation, biased against Islam.”



A Day in the Life: Accusatory Speech

Case Study 2

Professor Mack is brought up on charges before the Privilege and Tenure Committee. In response to the charges, he sends a department-wide email in which he blasts the investigator as “racist” and “biased”, calls the witnesses “administration toadies,” and describes the process as a “kangaroo court.”



A Day in the Life: Obscene or Intemperate Speech

Case Study 3

Professor Jill is putting together a conference with non-UC professors, gets frustrated and unloads in an obscenity-laced email to a non-UC professor, who complains to Jill's chair.

- Jill adds “next time I see you at a conference, you'd better stay out of my way.”



A Day in the Life: Berating or Belittling Speech

Case Study 4

PI Joe criticizes subordinates (students and other researchers) in front of the entire lab for being “idiots,” “stupid,” and doing acts that only those “from a lesser school” would do. A few of the targeted members complain that this creates a hostile environment; others shrug their shoulders and say the complainers should study harder or have thicker skins.



A Day in the Life: Speech Critical of the Administration

Case Study 5

Professor Vox speaks at a campus rally of students vigorously criticizing individual members of the administration for their greed, lack of concern for students, poor planning, and incompetence related to the program cuts that will be made due to the lack of funding. She encourages the students to “take matters into their hands.”



A Day in the Life: Speech Critical of the Administration

Case Study 5 (cont.)

- Vox picks up a brick and encourages students to “take matters into their own hands.”
- Instead of criticizing program cuts, Vox criticizes an administration decision to close an inner-city hospital and implores students and the public to contact their legislators.
- Instead of contacting representatives, Vox pleads with hospital employees to strike.
- Vox uses University letterhead in a letter to a public advocacy group informing them of his concerns about closing the hospital.



A Day in the Life:

Speech Related to the Merit/Promotion Process

Case Study 6

Professor Meany is a member of the Department of Hispanic Languages. During a department vote on Meany's merit action, comments are provided by anonymous colleagues that describe the candidate as "non-collegial." The specific comments are that Meany is "arrogant," "condescending," and "abrasive." The department chair and other reviewers repeat the comments during the course of the review.



A Day in the Life:

Speech Related to the Merit/Promotion Process

Case Study 6 (cont.)

- Meany argues that the lack of “collegiality” cannot be defined and can’t be used against him to deny him a merit increase.
- Meany is informed of the comments and asserts that the department is biased against him because he is a person of color. He thereafter refuses to participate in department service activities.
- Meany is informed of the comments and asserts that the department is biased against him because he teaches and advocates for the use of Mexican-based Spanish, and his colleagues are Castilian purists.



Collegiality in the Merit/Promotion Process

Davis exemplar:

P & T recognizes that academic collegiality may be considered as it relates to scholarship, teaching and service but that the record must be clear and factually well-supported.

- There should be specificity and substantiation in the Chair's Letter to the Dean;
- The Dean should fully explore and comment upon allegations of non-collegiality in the Dean's Letter.



A Day in the Life:

Speech Related to the Merit/Promotion Process

Case Study 7

During faculty meeting discussions, Professor John opposes a merit increase for a colleague, claiming there are potential conflicts of interest in her research funding, even though the campus Conflict of Interest Committee is aware of and has approved the funding. He also criticizes the use of lecturers, arguing that tenured professors should bear more of the teaching load. When John is later denied a merit increase, he claims the department retaliated against him for his speech in the meetings.



A Day in the Life: Potentially Retaliatory Speech/Action

Case Study 8

Researcher Sarah complains to management that PI Mary is fraudulently applying grant funds to an unrelated program. As a result, the grant is audited. Mary does not know who made the complaint. She loses her temper and yells at Sarah and the entire lab staff, saying that “irresponsible behavior will not go unpunished” and that everyone “better watch their step.” Mary glares at the staff and exits the lab, furiously slamming the door behind her.



A Day in the Life: Potentially Retaliatory Speech/Action

Case Study 8 (cont.)

- Sarah and others are afraid that Mary might cause them bodily harm because they are aware that she once got into a physical altercation with her neighbor after which the neighbor ended up in the emergency room.
- Mary tells the entire lab that she will fire one person per day until the whistleblower steps forward.



A Day in the Life: Academic Expression

Case Study 9

Professor Michael teaches a popular course, Human Sexuality. After a lecture on sexual arousal, Michael allowed a participant, Ken, whom he had invited as part of a discussion on “kinky people”, to perform a sex act that involved a woman being penetrated by a device. The incident took place in an after-class session that students were not required to attend and students were advised in advance, several times, of the explicit nature of the activity.