

Date: March 28, 2005  
To: ALA Executive Board  
From: Judith F. Krug, director, Office for Intellectual Freedom  
Subject: "Resolution on Workplace Speech" (CD#38)

At the 1999 Annual Conference, Sandy Berman, then an ALA Councilor, submitted "Resolution *Library Bill of Rights* Amendment," that sought to amend the *Library Bill of Rights* by adding a point 7: "Libraries should permit and encourage a full and free expression of views by staff on library and professional issues." The resolution was defeated. A motion to refer it to the Committee on Professional Ethics "to consider how wording an equivalent to the resolution can be included in the ALA *Code of Ethics*" also was defeated. Council, however, did vote to refer it to the Committee on Professional Ethics.

The Committee on Professional Ethics (COPE) wrote an explanatory statement of the ALA *Code of Ethics* entitled "Questions & Answers on Librarian Speech in the Workplace," in which the committee addressed how much of employee speech rights are determined by law.

At the 2005 Midwinter Meeting in Boston, the Social Responsibilities Round Table (SRRT) submitted its "Resolution on Workplace Speech" (CD#38). On Tuesday, January 18, 2005, during the ALA Council II Meeting, the Council voted to postpone action on this resolution until the 2005 Annual Conference to enable the ALA Executive Board to secure review by legal counsel and the IFC to review the language and implications of the proposed policy.

During its 2005 spring meeting, the IFC reviewed SRRT's "Resolution on Workplace Speech" and determined that it does not comport with current case law regarding workplace speech. The Supreme Court has laid out very specific rules regarding workplace speech and the free speech rights of public employees. Employees do not have the same free speech rights that ordinary citizens enjoy. ALA cannot give its members advice and information that is contrary to current case law.

The IFC noted that librarians may contact the LeRoy C. Merritt Humanitarian Fund if they believe their rights have been violated; that is

- Denied employment rights or discriminated against on the basis of gender, sexual orientation, race, color, creed, age, disability, or place of national origin;
- Denied employment rights because of defense of intellectual freedom; that is, threatened with loss of employment or discharged because of their stand for the cause of intellectual freedom, including promotion of freedom of the press, freedom of speech, and the freedom of librarians to select items for their collections from all the world's written and recorded information.

In addition, the IFC encourages members to review Questions & Answers on Librarian Speech in the Workplace (attached), developed by the ALA Committee on Professional Ethics to answer questions on this issue.

**Questions & Answers on Librarian Speech in the Workplace**  
*An interpretive statement to the ALA Code of Ethics, adopted July 2001;  
Amended January 2004.*

**Q1. Since librarians have a special responsibility to protect intellectual freedom and freedom of expression, do librarians have a special responsibility to create a workplace that tolerates employee expression more than other professions?**

**A1.** Yes. Libraries play a special role in ensuring the free flow of information in a democratic society. Librarians are often called on to fight censorship and resist efforts to restrict individuals from receiving information and expressing ideas. If librarians are denied the ability to speak on work related matters, what does this say about our own commitment to free speech? We need to demonstrate our commitment to free speech by encouraging it in the workplace.

**Q2. Do I have an ethical obligation as a professional to raise questions and initiate change about policies I believe to be detrimental to the public interest or to the profession?**

**A2.** The first tenet of the *Code of Ethics of the American Library Association* begins “we provide the highest level of service to all library users... .” Examples of possible conflicts between your vision of highest level of service and your employer’s could include: you are a library director and your trustees insist on filtering but you disagree; you are a children’s librarian who disagrees with your library’s policy of fines for children; you are an academic librarian who disagrees with your university’s lack of privacy policy for electronic resources. In these and other situations, you should and probably will feel an ethical obligation as a professional to speak out and make your library values known. You will have to use your professional judgment as to when and how to do so, and you must be prepared to accept the consequences.

**Q3. As a Librarian, do I have free speech rights on policy related matters in my place of work?**

**A3.** Through the *Library Bill of Rights* and its *Interpretations*, the American Library Association supports freedom of expression and the First Amendment in the strongest possible terms. The freedom of expression guaranteed by the First Amendment, however, has traditionally not been thought to apply to employee speech in the workplace. The doctrine of “employment at will” (which is applicable in most states) has meant that just as employees may resign at any time, so too may employers dismiss employees at any time unless the dismissal is for prohibited reasons (e.g. racial or age discrimination). Some employers may believe that if employees were given full rights to free speech on work related issues, loyalty and discipline would be weakened and the coordination needed for the effective and efficient functioning of bureaucracies would dissolve. Many court decisions support employers on this issue.

**Q4. Does this mean I have no free speech rights as an employee?**

**A4.** If you are a government employee, the Supreme Court in *Pickering v. Board of Ed.*, 391 U.S. 563 (1968) applied a balancing test between the interests of a citizen speaking on matters of public concern and the interests of the government as an employer promoting the efficiency of public services. If you are a government employee, and you speak on a matter of public concern, and it doesn't hamper your employer's ability to provide public services, then the courts may be on your side.

**Q5. What about whistle blowing?**

**A5.** According to *Black's Law Dictionary*, whistle blowing refers to an employee who reports, and may also refuse to engage in, illegal or wrongful activities of an employer or fellow employees. There are federal and state statutes to protect employees from retaliation for disclosing certain employer misconduct. Check to see if these statutes apply to your situation.

**Q6. What about questions of library policy? Do I have free speech rights to speak on internal library matters?**

**A6.** Since the relationship between employee and employer is a contractual one, employee speech is governed by the employment contract, not the First Amendment. The speech environment in a library as a workplace may vary according to the organizational hierarchy and an employee's place in it, the organizational culture, and the personalities that make up that culture. If you are a member of a union, check your union contract to see if it offers any protection. If you are a librarian who has tenure or an arrangement similar to tenure, check your tenure or reappointment documents.

**Q7. What are some issues to consider when speaking out on a library policy matter?**

**A7.** Try to know all the facts on the issue and attempt to understand it from your employer's point of view. Is the issue important enough to you to risk retribution? Assess your place in the hierarchy and know your workplace culture: you may have more job security than you think. If you are in a union you may be protected by your union contract. A tenured librarian may have more freedom to speak out than a new librarian. Library directors may be expected to make their views known to their trustees. Your boss may be more receptive to criticism at certain times than others. Some bosses may be open to disagreement in private but not in staff meetings. Some may prefer a verbal conversation to a written memo. Consult with your colleagues. Do your colleagues agree with you or are you alone? Can you build support among your colleagues for your position? Can you get others to raise the issue for you or can you do so anonymously? Will it be possible to work from within for change? If your convictions are strong enough, are you willing to resign? You will have to exercise your own professional judgment in assessing your workplace environment.

**Q8. As a library administrator should I solicit the opinions of my staff on policy and procedural matters?**

**A8.** The fifth tenet of the Code of Ethics states “we treat co-workers and other colleagues with respect, fairness and good faith, and advocate conditions of employment that safeguard the rights and welfare of all employees of our institutions.” The eighth tenet states, “we strive for excellence in the profession by ... encouraging the professional development of co-workers... .” For a long time, hierarchical models of organization involving centralized decision making and strict control of information were thought to be the most efficient way to organize libraries. Changes in organizational theory, however, have brought about new organizational models that seek to promote more flexibility, experimentation, and organizational responsiveness. If librarians and library staff are excluded from discussions on policy and procedural matters, they may become bored, dissatisfied, and disillusioned with their work.. They may lose their initiative and ability to envision new ways of providing services. The most creative people on staff may seek opportunities with other organizations. Not soliciting opinions from your staff could actually result in less efficiency for your library, impair your ability to adapt to a changing environment, and impede your ability to provide the best service to your users. Library professionals in leadership positions should encourage discussion on policy and procedural matters, and refrain from actions that result in a chilling effect on employee speech.

**Q9. If I speak out in the workplace on a matter of professional policy, and my employer retaliates against me, will the ALA support me?**

**A9.** The ALA does not at this time provide mediation, financial aid, or legal aid in response to workplace disputes. Your employer has an array of sanctions that may or may not be imposed on you, including but not limited to: reassignment, passing you up for promotion, passing you up for raises, denying you tenure, passing you up for the best assignments, and ultimately dismissal. If you decide to speak out on a matter involving professional policy, it will be a matter between you and your employer. The ALA does administer the LeRoy C. Merritt Humanitarian Fund, which has provided financial assistance for librarians who have been discriminated against or denied employment rights because of their defense of intellectual freedom including freedom of speech. More information on the fund can be found at [www.merrittfund.org](http://www.merrittfund.org)

**Q10. Where can I find more information?**

**A10.** Questions about Librarian Speech in the Workplace can be directed to the Committee on Professional Ethics c/o the Office of Intellectual Freedom, ALA, 50 E. Huron St., Chicago, IL 60611.

**The following sources were consulted in compiling this Q&A and provide further information on this issue.**

*Code of Ethics of the American Library Association* – <http://www.ala.org/alaorg/oif/ethics.html>. Statements of guidance for Library Professionals. See especially tenets I, II, and V. See also the British Library Association's Code, 2f refers to the issue directly, <http://www.la-hq.org.uk/directory/about/conduct.html>.

For a skit written by the Committee on Professional Ethics, see "How Free is YOUR Speech," available on request.

*Library Bill of Rights and Its Interpretations* - <http://www.ala.org/work/freedom/lbr.html>. See especially tenets III and IV, and the *Universal Right to Free Expression* [http://www.ala.org/alaorg/oif/univ\\_exp.html](http://www.ala.org/alaorg/oif/univ_exp.html).

For a review of legal cases and analysis, see Toni M. Massaro, "Significant Silences: Freedom of Speech in the Public Sector Workplace," *61 Southern California Law Review* 3, November 1987; Cynthia K. Y. Lee, "Freedom of Speech in the Public Workplace: A Comment on the Public Concern Requirement," *76 California Law Review* 1109, October 1988; and Andre G. Travieso, "Employee Free Speech Rights in the Workplace: Balancing the First Amendment Against Racist Speech by Police Officers," *51 Rutgers Law Review* 1377, Summer 1999.

For Whistle blowing, see *Black's Law Dictionary*. Definition includes a reference to the *Civil Service Reform Act*, 5 U.S.C.A sec. 2302(b). An example of a state statute is *N.J.S.A. 34:19-1.*

For an article about library organizational culture with references to articles on organizational theory see, Brian Quinn, "The McDonalidization of Academic Libraries?" *College & Research Libraries* 61, no. 3 (May 2000).

Two discussions of the issue as it relates to libraries are Tim Wojcik, "The First Amendment In-House: A Librarian's Work in Practice," *About.com Librarians and Library Science*, <http://librarians.about.com/careers/librarians/library/weekly/aa060900.htm>, (accessed June 30, 2000), and Lillian N. Gerhardt, "Ethical Back Talk: V," *School Library Journal*, (October 1990).

Engineers sometimes face their own variation of this issue. See IEEE Ethics Committee, "Draft Guidelines for Engineers Dissenting on Ethical Grounds," [http://www.ieee.org/organizations/committee/ethics/eth\\_guid.html](http://www.ieee.org/organizations/committee/ethics/eth_guid.html). See also American Association of University Professors, *Academic Freedom and Tenure*, <http://www.aaup.org/coma.htm>.

For general treatments see Richard Lippke, "Speech, Conscience, and Work," *Social Theory and Practice*, 18, no. 3 (Fall 1992); Mike W. Martin, "Professional Autonomy and Employer's Authority," in *Profits and Professions: Essays in Business and Professional Ethics*, Clifton NJ: Human Press, 1983.

On Tuesday, January 18, 2005, during the ALA Council II Meeting, the Council voted to postpone action on ALA CD#38, Resolution on Workplace, definitely until the 2005 Annual Conference to enable the ALA Executive Board to secure legal counsel review and Intellectual Freedom Committee review of the language and implications of the proposed policy.

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RESOLUTION ON WORKPLACE SPEECH

WHEREAS, The American Library Association is firmly committed to fostering human rights and freedom of expression (Policies 53 and 58.4); and

WHEREAS, Candid, robust debate is essential to the making of sound policy; and

WHEREAS, Library staff do not universally enjoy the right to openly discuss library and professional issues without fear of reprisal; now, therefore, be it

RESOLVED, That ALA Council amend Policy 54 (Library Personnel Practices) by adding:

54.21 Workplace Speech

Libraries should permit and encourage the full and free expression of views by staff on non confidential professional and policy matters.

Moved by Al Kagan, SRRT Councilor

Seconded by Mark Rosenzweig, Councilor at Large