



TO: Dr. E. McMullen

FROM: Dean Curtis Ricker *CCR*

DATE: 12/05/2014

SUBJECT: Allegations of Constitutional and Ethical Violations in the Classroom

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As you are aware, the University recently received a letter alleging that you have committed Constitutional and ethical violations by attempting to convert students to your religious faith during classroom sessions. The purpose of this memo is to explain the results of the University's investigation into this matter and to give you directives intended "to avoid both Establishment Clause violations and undue pressure upon students," while simultaneously avoiding unnecessary restrictions on your academic freedom.<sup>1</sup>

First and foremost, the University respects, honors and values the academic freedom of our faculty. As stated by the Eleventh Circuit Court of Appeals, the University acknowledges "the strong predilection for academic freedom as an adjunct of the free speech rights of the First Amendment" and agrees that "quality faculty members will be hard to attract and retain if they are to be shackled in much of what they do."<sup>2</sup> However, the "classroom is not an open forum" and "the University as an employer and educator can direct [faculty] to refrain from expression of religious viewpoints in the classroom and like settings."<sup>3</sup> "The University can restrict speech that falls short of an establishment violation" and "even the appearance of proselytizing by a professor should be a real concern to the University."<sup>4</sup> As a public institution and an instrumentality of the State of Georgia, the University also must restrict speech that amounts to a violation of the Establishment Clause during school-sponsored activities.

After receiving the above-mentioned complaint, the University undertook to investigate whether problematic speech and/or conduct was, in fact, occurring in your classroom. This inquiry included review of ten (10) course syllabi, fifty-two (52) examinations, sixteen (16) extra-credit opportunities, and thirty-seven (37) course evaluations, all dated between 2008 and 2014. The review revealed the following issues:

- In each examination given between Fall 2012 and Fall 2014, there was an extra credit question asking students to identify one of the Ten Commandments. You have provided an article as your rationale for asking this question. The article

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<sup>1</sup> See *Bishop v. Aronov*, 926 F.2d 1066, 1069 (11<sup>th</sup> Cir. 1991).

<sup>2</sup> *Id.* at 1075.

<sup>3</sup> *Id.* at 1071, 1077.

<sup>4</sup> *Id.* at 1077 (emphasis added).

cites a study wherein students who were asked to recall the Ten Commandments prior to a test did not engage in cheating. However, the same article also states, “[w]e reran the experiment, reminding students of their schools’ honor codes instead of the Ten Commandments, and we got the same result.”<sup>5</sup> Thus, the question does not seem to be related to the subject matter of the course, but related to the integrity of the students taking the examination. In addition, the article you cite for your rationale provides a non-religious method of achieving the same desired result. “The University’s chief concern is that its courses be taught without personal religious bias.”<sup>6</sup> To that end, you are directed to avoid asking religion-based questions on examinations where such questions are not related to the curriculum of the course.

- In Spring 2014, you assigned as optional extra credit the opportunity to see the movie entitled, “Is God Dead” and “write a two-page report on the movie, concentrating on the arguments given in class” (emphasis added). The “arguments given in class” are not in the record, and therefore no conclusion can be made as to whether this assignment crossed Constitutional boundaries. However, to the extent that any of those arguments constituted “an interjection of religious beliefs and/or preferences during instructional time periods,” they would be inappropriate for the classroom.<sup>7</sup> To that end, you are directed to cease any such interjection of your personal beliefs into classroom discussions.
- A review of your student course evaluations showed that an overwhelming majority of students indicated that you are an interesting teacher, often providing stories from your own travels corresponding to the class discussions. However, there were several problematic comments:
  - “had a Christian agenda”
  - “preaches the Bible”
  - “does not give students the option to develop their own opinion”
  - “pushed Christianity”
  - “stands up for faith and against evolution and atheism”
  - “pounded into our heads that ‘evolution is a lie;’ ‘accept Jesus’”
  - “a Christian conservative bias”
  - “referenced his faith”

“The University’s interest [in restricting speech] is most obvious when student complaints suggest apparent coercion – even when not intended by the professor.”<sup>8</sup> Considering “the coercive effect upon students that a professor’s speech inherently possesses,”<sup>9</sup> it is inappropriate for you to interject your personal religious beliefs into classroom and class-related discussions with students, and you are accordingly directed to stop doing so immediately.

<sup>5</sup> DON ARIELY, WHY WE LIE (see copy attached)

<sup>6</sup> *Bishop*, 926 F.2d at 1076.

<sup>7</sup> *See id.* at 1069.

<sup>8</sup> *Id.* at 1074.

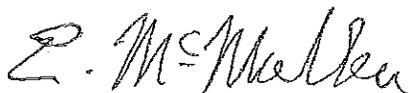
<sup>9</sup> *Id.*

It is important to note that this memo addresses only course-related and in-class remarks and “seeks only to prevent [you] from making assertions about [your] religious beliefs vis-à-vis the subject matter of [your] courses.”<sup>10</sup> Specifically, “if a student asks about [your] religious views, [you] may fairly answer the question.”<sup>11</sup> The “University [is] not suggest[ing] that [you] cannot hold [your] particular views; express them, on [your] own time, far and wide and to whomever will listen; or write and publish, no doubt authoritatively, on them.”<sup>12</sup> However, we are directing that you “not discuss your religious beliefs or opinions under the guise of University courses.”<sup>13</sup>

It is incumbent upon all University employees to uphold the Constitutional provisions to which our public institution is subject. By the majority of student reviews, your teaching in your subject area is well-received. I believe that following the directives in this memo to cease religious discussion unrelated to the subject matter of your curriculum will remedy the issues discovered during the investigation.

Please review this memo closely and make certain to comply with the restrictions contained therein. Failure to do so will place the University at risk of violating the Establishment Clause and will result in undue pressure on the students in your courses to conform to your personal religious views. Because of those risks, failure to comply with the directives herein may also subject you to personnel action, up to and including efforts to terminate your employment with the University. Please inform me immediately should you have any questions concerning this matter.

By signing below, you acknowledge that you have received this memo on the following date:



Dr. E. McMullen



Date

<sup>10</sup> *Id.* at 1076

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*