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# Matters of Public Concern Standard in Free Speech Cases

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convict him of knowingly filing false tax returns. The court of appeals affirmed the conviction.

The U.S. Supreme Court reversed. Pursuant to its decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court held that when an individual is in government custody and interrogated on matters that may incriminate him, he must be warned beforehand of his right to remain silent and his right to counsel. Any information obtained, absent these warnings, must be excluded from trial. The Court's decision therefore extended the *Miranda* warning requirement in two important ways. First, it was made clear that tax investigations of people in government custody necessitate a *Miranda* warning. Under the Court analysis, since tax investigations are often made in contemplation of a criminal prosecution, the person under investigation needs to be warned of his or her rights. Second, the Court's decision made it clear that a *Miranda* warning is required to be given to a person in custody even when, as here, the investigation is unconnected to the reason why the person is in custody.

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Israel, Jerold H., and Wayne R. LaFare. *Criminal Procedure in a Nutshell*. St. Paul, MN: West, 2001.

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*Miranda v. Arizona*, 384 U.S. 436 (1966)

See also **Coerced Confessions/Police Interrogations; Miranda Warning; Self-Incrimination: Miranda and Evolution**

### MATTERS OF PUBLIC CONCERN STANDARD IN FREE SPEECH CASES

The public concern standard has operated primarily in two categories of free-speech cases: those involving speech by government employees and those involving defamation. In both, the public concern standard limits the constitutional protection of speech. The Supreme Court has held that government employee speech must relate to a matter of public concern to be protected from retaliation by employers (*Pickering v. Board of Education*, 391 U.S. 563, 1968).

If speech meets this threshold test of public concern, a balancing test is applied. If the interests of the employer in providing efficient government outweigh the employee's speech interests, the employer can discipline the employee based on the speech. In defamation cases, the Court held in *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749 (1985), that the First Amendment is not implicated when the plaintiff

claiming defamation is not a public figure and the allegedly defamatory speech does not relate to a matter of public concern. Accordingly, the plaintiff need not prove actual malice to obtain damages under state law.

Determining when speech is a matter of public concern has not proved to be an easy task. In *Connick v. Myers*, 461 U.S. 138 (1983), the Court indicated that matters of public concern are those of "political, social or other concern to the community." The content, form, and context of the speech will determine whether it is protected, with content the most important factor. The manner, time, and place of delivery are encompassed within this test. The speaker's motive alone does not determine whether speech is protected, but may be a relevant factor.

The standard has been applied most frequently in employee speech cases. In *Connick*, the Court concluded that speech that relates to an employee's personal grievance does not rise to the level of public concern, even if it raises questions about the efficient functioning of the government, for every employee complaint is not a constitutional matter. But in *Ran-kin v. McPherson*, 483 U.S. 378 (1987), the employee's statement to a coworker about the attempted assassination of President Reagan that "if they go for him again, I hope they get him" met the threshold. The Court noted that the statement was in the context of a discussion on the president's policies and just after the attempt on his life. Additionally, the Court indicated in *Givhan v. Western Line Consolidated School District*, 439 U.S. 410 (1979), that discrimination is inherently a matter of public concern.

In the October 2005 term, in *Garcetti v. Ceballos* (361 F.3d. 1168, 9th Cir. 2004, cert. granted, 125 S. Ct. 1395, 2005), the Court considered whether an employee's speech in the course of his job duties is protected when it deals with a matter of public concern. The employer is arguing that such speech is not protected; instead, the protection only inheres in citizen speech by a government employee. If this argument prevails, some employee speech designed to bring governmental wrongdoing to public light will lose protection. Regardless of the outcome, the decision in this case will provide further guidance to the lower courts, employers, and employees in determining what is protected employee speech and it may modify the public concern requirement in government employee speech cases.

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*Connick v. Myers*, 461 U.S. 138 (1983)  
*Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749 (1985)  
*Garceetti v. Ceballos*, 361 F.3d. 1168 (9th Cir. 2004), cert. granted, 125 S. Ct. 1395 (2005)  
*Givhan v. Western Line Consolidated School District*, 439 U.S. 410 (1979)  
*Pickering v. Board of Education*, 391 U.S. 563 (1968)  
*Rankin v. McPherson*, 483 U.S. 378 (1987)

See also **Defamation and Free Speech; Disciplining Public Employees for Expressive Activity; *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Rankin v. McPherson*, 483 U.S. 378 (1987); Speech of Government Employees**

#### MCCARRAN–WALTER ACT OF 1952

The McCarran–Walter Act, formally known as the Immigration and Nationality Act of 1952, was a comprehensive reworking of the nation’s immigration laws. Passed at the height of the cold war, the law reflected anxiety about the large numbers of refugees from southern and eastern Europe who entered the United States following World War II and their possible connection to Soviet Communism. It also removed many of the racial exclusions, primarily affecting Asians, of earlier immigration laws. The act prohibited immigration of any person found to be a member of a subversive organization by the attorney general and allowed for the deportation of resident aliens who were, or had been, members of communist and “communist-front” organizations.

The McCarran–Walter Act built upon earlier prohibitions regarding radical aliens. U.S. immigration law had prohibited admission of anarchists since 1903, and the Smith Act of 1940 had allowed for exclusion of members of organizations advocating the violent overthrow of the government. The act specifically allowed for the admission of a formerly communist alien if that individual had been actively opposed to Communism for at least five years or had joined the Communist Party under threat or compulsion.

The McCarran–Walter Act provided for greater administrative discretion in exclusions and deportations and curtailed federal courts’ ability to review immigration decisions. All grounds for deportation were made retroactive, and noncitizens might be

deported for acts that were legal at the time committed. These provisions caused President Harry Truman to veto the act, stating that its lack of adequate judicial safeguards departed from the traditional American insistence on established standards of guilt. Congress overwhelmingly overrode his veto, and the McCarran–Walter Act set America’s immigration standards until 1965.

The act also provided for the denial of a visa of any person who advocated Communism or the violent overthrow of the U.S. government, while allowing for a waiver under the attorney general’s authority. This section was used to exclude a number of foreign intellectuals from touring the United States and speaking or teaching at universities. It was upheld by the Supreme Court in *Kleindienst v. Mandel*, 408 U.S. 753 (1972), but was limited by amendments in 1977 and repealed in 1990, though restrictions remained on travel from Cuba. A similar provision, allowing the government to deny visas to those advocating or publicly endorsing terrorist activity, was enacted in the USA PATRIOT Act of 2001.

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*Kleindienst v. Mandel*, 408 U.S. 753 (1972)  
 Immigration and Nationality Act of 1952, 66 Stat. 163 (1952)  
 USA PATRIOT Act, 115 Stat. 272 (2001)

#### MCCARTHY, JOSEPH (1908–1957)

A United States senator from Wisconsin, Joseph McCarthy from 1950 to 1954 led a campaign against communists in government that was routinely disdainful of civil liberties. He was so ruthless and effective that the term “McCarthyism” was applied to all of his era’s red-baiting and, more abstractly, to outbursts in later eras of rabid political labeling employing innuendo, assigning guilt by association, and lying shamelessly.

McCarthy was born in Grand Chute, Wisconsin, the son of devout Catholics who were struggling farmers. He received his early education in a one-room schoolhouse and quit school at fourteen. However, after unsuccessful ventures as a grocer and chicken farmer, he returned to school at the age of twenty and managed to complete four years of high school in only one year. He then enrolled at Marquette University in