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BERRIER, PAUL RAYMOND
LEGAL ASPECTS OF FACULTY EMPLOYMENT; TENURE,
CONTRACTS, AND DISMISSAL IN THE COMMUNITY
COLLEGES AND TECHNICAL INSTITUTES IN NORTH
CAROLINA.

THE UNIVERSITY OF NORTH CAROLINA AT
GREENSBORO, ED.D., 1979

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LEGAL ASPECTS OF FACULTY EMPLOYMENT: TENURE, CONTRACTS,
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TECHNICAL INSTITUTES
IN NORTH CAROLINA

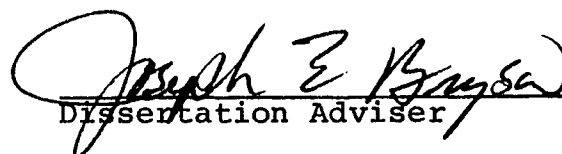
by

Paul R. Berrier

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1979

Approved by


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APPROVAL PAGE

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ABSTRACT

BERRIER, PAUL RAYMOND. Legal Aspects of Faculty Employment: Tenure, Contracts, and Dismissal in the Community Colleges and Technical Institutes in North Carolina. (1979)
Directed by: Dr. Joseph Bryson. Pp. 200.

The purpose of this study was to examine and analyze certain legal aspects of faculty employment in the community colleges and technical institutes in North Carolina. Major legal aspects of faculty employment studied were tenure, contracts, and dismissal.

The study included examination of court cases, faculty contracts, procedural manuals, and unpublished documents used in community colleges and technical institutes. A survey was conducted among the presidents of the twenty-one community colleges and thirty-six technical institutes in North Carolina.

The investigation revealed that there was little uniformity in tenure plans across the United States. There was no definitive legal norm which judges applied with consistency. Courts tended to stress procedures, giving the tenure plan itself the weight of law in terms of faithfulness in applying it as written.

Generally, in instances where permanently tenured faculty members had been dismissed, specific cause, impartial hearings, and the full protection of due process had been encouraged. Faculty dismissal appeared to have been

the dominant legal issue in court cases between the college and the faculty member.

The pattern that emerged in the North Carolina legal cases studied was some kind of settlement out of court, with the institution agreeing to make a cash settlement, often including attorney's fees. These settlements were sometimes accompanied by statements in which neither the faculty member nor the institution acknowledged guilt or wrongdoing.

The percentage of participation in the survey of presidents was high. Ninety-three percent of the institutions returned a usable survey.

One major finding was that only five of the fifty-three responding institutions had formal tenure plans. Four community colleges, as opposed to only one technical institute, had formal tenure plans. Nationally, two-thirds of community college faculty members serve in institutions which have tenure plans.

North Carolina instructors were more likely to have been dismissed in community colleges than in technical institutes during the past five years. Eighty-five percent of community colleges, compared to sixty-four percent of technical institutes, have had dismissals. The average number of dismissals per responding institution was 2.2, but the community college average was 2.6, compared to the technical institute average of 1.9.

Dissimilar results were obtained on the question of whether faculty had used due process procedures. All institutions had such procedures, but they had been used in sixty-five percent of community colleges responding to the survey as opposed to thirty-nine percent of the technical institutes.

One of the more important findings was that presidents of institutions which had tenure/de facto tenure plans had a more positive attitude toward tenure than those who did not have such plans. Examples of this are: (1) Only fourteen percent of presidents who operated with tenure/de facto tenure felt tenure encouraged mediocrity, but seventy-two percent of presidents operating without tenure/de facto tenure felt tenure encouraged mediocrity. (2) Fifty-seven percent of the former presidents felt tenure was good for the institution, while only four percent of the latter presidents felt that tenure was good for the institution.

ACKNOWLEDGEMENTS

The author wishes to express his sincere appreciation to his adviser, Dr. Joseph Bryson, and to committee members Dr. Dale Brubaker, Dr. E. M. Rallings, Dr. Donald Russell, and Dr. William Purkey. Their support, advice, and guidance in the planning and completion of this dissertation have been invaluable.

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Chapter I

INTRODUCTION

STATEMENT OF THE PROBLEM

The purpose of the study was to examine and analyze certain legal aspects of faculty employment in the community colleges and technical institutes in North Carolina. Major legal aspects of faculty employment studied included contracts, tenure, and dismissal.

METHODOLOGY

The investigation examined both primary and secondary sources related to the topic. Primary sources included court cases, faculty contracts, procedural manuals, and unpublished documents used in community colleges and technical institutes. The National Reporter System, Corpus Juris Secundum, and the various digest systems were employed in research of legal cases. Secondary sources included books and journal articles. These investigations led to conclusions which helped to explain present events and may assist in anticipating future developments.

There was also a descriptive element in the study. Data were collected from the institutions of the system

of community colleges and technical institutes in North Carolina. These data were compiled from a survey instrument. Results were key-punched, and a computer program was developed.

LIMITATIONS OF THE STUDY

The survey of related literature, both primary and secondary sources, focused on broader aspects of faculty employment. That is, selection of court cases was not limited to those dealing with community college faculty employment. The assumption was that many court rulings concerning faculty employment in general would have application in a community college setting.

The study investigated the following areas of legal aspects of faculty employment: (1) contracts, (2) tenure, and (3) dismissal.

Community college faculty contracts were examined with special emphasis on the specifications of these contracts. The investigation also studied the term or length of contracts and the specific nature of the contractual assignment.

Tenure was discussed in terms of its current usage. The study showed the extent of tenure in the United States today, with special reference to community colleges. The recent phenomenon of "expectancy of reemployment" as

defined in Perry v. Sindermann was discussed in relation to the tenure issue.¹

Dismissal was examined from several viewpoints, including, but not limited to: (1) tenured and nontenured legal disparities, (2) due process, (3) academic freedom, (4) freedom of speech, (5) personal life style, and (6) conduct within the classroom.

The study deliberately avoided detailed discussion of collective bargaining and unionization of faculty. These are legitimate subjects of inquiry for other studies. They were treated incidentally as they had relevance in a specific instance, but they were beyond the scope of this investigation.

A survey was conducted involving the twenty-one community colleges and thirty-six technical institutes in North Carolina. The president received a letter informing him of the nature of the study being conducted and asking for his cooperation. Five presidents were selected on a nonrandom basis and received an early mailing to validate the survey instrument. The instrument was revised after this sampling procedure. After the initial response, a follow-up letter was sent to those presidents who did not complete and return the survey.

¹Perry v. Sindermann, 408 U.S. 593 (1972).

The purpose of the survey was to determine what was actually occurring in the institutions in areas related to this study. Special emphasis was given in the data-gathering instrument to tenure, contractual arrangements, and dismissals. An attempt was made to secure samples of faculty contracts from each institution so that they could be examined and analyzed.

SIGNIFICANCE OF THE STUDY

There is considerable public discussion concerning our era as the age of the consumer. The people of this nation do not hesitate to question their values and to challenge widely held verities. The open hostility and violence of the 1960's have dissipated, but the questioning spirit of that era still permeates the political and social fabric of the nation.

This questioning attitude and a new awareness of the constitutional rights of individuals have led, especially in the last ten to fifteen years, to continual challenges to the power and authority of college presidents and boards of trustees. Court cases continue to proliferate which involve the rights of faculty in institutions of higher learning.

John S. Brubacher stated that more and more people were getting involved and that everyone had an opinion

about what could and could not be legally done. He continued by asserting that most college administrators did not know the law and that they were becoming desperate as they sought help in determining what was legal and what was not.²

Developments within the past few years produced changes in the relationship between the colleges and the courts. Court dockets frequently included college faculty cases involving contractual obligations, tenure, hiring and dismissal, conflict of interest, loyalty oaths, academic freedom, and many other issues. Yet, many educators and administrators were not aware of these changes or were not fully informed on the implications of this legal quagmire in which so many institutions found themselves.³

Those who make decisions relative to faculty employment should be as knowledgeable in the area of law as they are about education, psychology, administrative theory, sociology, human relations, or other traditional sources of intelligent decision making.

This study, then, sought to provide information and make recommendations which would assist both administrators and faculty members in making reasonable decisions concerning

² John S. Brubacher, The Courts and Higher Education (San Francisco: Jossey-Bass Inc., 1971), (cover).

³ Ibid.

employment status of faculty members. The study also attempted to acquaint concerned academic policy makers with the attitude of the courts, to delineate in which areas of policy administrators and governing boards had authority, and to specify the limits of this authority.

In the process of providing this information, a catalog of pertinent cases was presented which may serve as a convenient source of reference. The study essentially proposed to develop and specify authoritative guidelines on the legal rights and obligations of college officials and faculty, with particular reference to the public community college.

Part of the justification for this study was the nature of the community college systems in the United States in general and North Carolina in particular. The growth of these North Carolina institutions has been so rapid that it has been difficult for local boards of trustees and the North Carolina Board of Education to formulate policies which are appropriate and based on recent court decisions.

A brief look at certain aspects of this growth may support this contention. Following is a listing of total expenditures by the institutions in North Carolina from 1965-66 through 1975-76.⁴

⁴North Carolina System of Community Colleges, 1974-76 Biennial Report, 1976, pp. 24-27.

1965-66	\$ 11,716,339
1966-67	\$ 16,055,229
1967-68	\$ 22,170,820
1968-69	\$ 28,894,954
1969-70	\$ 41,041,433
1970-71	\$ 48,062,574
1971-72	\$ 60,141,195
1972-73	\$ 70,955,473
1973-74	\$ 92,755,233
1974-75	\$112,656,424
1975-76	\$117,061,221

In 1976, the institutions had \$47,105,764 invested in equipment.⁵ Community colleges and technical institutes had, in 1976, 6,728,366 square feet in buildings, with an estimated replacement cost of \$230,890,546.⁶

A study of student enrollment in terms of unduplicated head count revealed a growth from 52,870 in 1963-64 to 534,833 in 1976.⁷ This represented an increase of 988 per cent in just twelve years.

It was surmised that during a period of such spectacular growth there was a lag in the development of appropriate goals, objectives, and policies. Institutional

⁵Ibid., p. 32.

⁶North Carolina State Commission on Higher Education Facilities, Facilities Inventory and Utilization Study, 1976, p. 135.

⁷1974-75 Biennial Report, op. cit., p. 40.

resources were expended in managing the growth rather than giving energy to leadership that anticipated the future.

Since community colleges are a relatively recent phenomenon, there is considerably less experience and expertise available among trustees and administrators to manage complex legal/contractual matters than there is in the university system. This assumption lent added impetus to the value of conducting a study on certain legal aspects of faculty employment in the system of community colleges and technical institutes in North Carolina.

SPECIFICATIONS OF MEANINGS OF TERMS

Contracts

A contract is a written agreement, enforceable by law, between two or more parties. Every contract involves the exchange of something of value between the participants.

Tenure

Tenure is permanent status, granted after a period of trial or probation, especially to a member of a faculty.

Dismissal

Dismissal is removal from office or service, not allowing to keep a job. More directly, dismissal means discharging someone from a position. In this study, the

term was used in both this narrow meaning and in the sense of failure to reappoint or offer a contract, an action tantamount to dismissal.

ORGANIZATION OF THE REMAINDER OF THE STUDY

This study was organized into five chapters. The problem was discussed in Chapter I. Chapter II presented a review of related literature, with special reference to tenure, contracts, and dismissal. This section contained discussion of the subject matter and summaries of the legal cases.

Chapter III presented detailed summaries of selected significant legal cases and decisions that related specifically to the community colleges and technical institutes in North Carolina.

Chapter IV delineated the results of the survey of the fifty-seven North Carolina institutions. The presidents' opinions on certain of these issues were presented along with an analysis of the contracts used in the employment of faculty members.

Chapter V was a summary chapter which presented conclusions and recommendations. There was emphasis in the final chapter on making recommendations that could have practical value to faculty members, administrative personnel, and boards of trustees in the system of community colleges and technical institutes in North Carolina.

Chapter II

REVIEW OF RELATED LITERATURE

Several years ago, James Perkins, president of Cornell University, issued warnings to the educational community about the dangers it would confront if recourse to legal action became a routine occurrence on the campuses of institutions of higher education. Academic careers and institutions could grind to a standstill while months or years of court delay froze things as they were and prevented innovative administrative and academic techniques from being implemented. The cost of legal procedures would be a nightmare for both the individual and the institution. Institutional autonomy, "the surest guardian of academic freedom," could be destroyed. If the educational establishment is perceived as cautious, conservative, bureaucratic now, "they haven't seen anything compared to what it could be if every move and every conversation were liable to replay in the courtroom." In short, judicial review of campus affairs could prevent academic institutions from making individual qualitative decisions, and institutional autonomy could be so damaged that it would threaten the survival of academic freedom. Perkins urged the academic community:

as an educated and presumably civilized body of men and women...to work out a modus vivendi that will free them from the fear of daily encounter with the commons server.⁸

The proliferation of legal issues and court cases relative to faculty employment in colleges and universities has made Perkins' statements of over ten years ago seem prophetic. Some essential legal issues in higher education focus on tenure, the specifications of contracts, and factors relative to dismissal of faculty members.

TENURE

Toward a Definition

In their 1959 study of tenure in American higher education, Byse and Joughin stressed as the essential characteristic of tenure not any concrete legal norm, but, rather, continuity of service. They saw continuity as a product of the relinquishment, through legal obligation or moral commitment, of the freedom or power the educational institution otherwise would possess to terminate the teacher's services.⁹

Rosenblum says that there is a paucity of definitive legal content regarding tenure and contends that it would

⁸J. A. Perkins, The University and Due Process (American Council of Education, 1967). Reprinted in C. Byse and S. Nahmod, Cases and Materials on the Role of Law on the Campus (1971), pp. 54-67.

⁹C. Byse and L. Joughin, Tenure in American Higher Education (Ithaca: Cornell University Press, 1959), p. 71.

be a serious mistake to think of the legal dimensions of tenure as specific codified rules or principles subject to uniform enforcement in the courts.

On the contrary, reluctance, amorphousness, a substantial degree of diversity, and even a modicum of whimsy have marked judicial conceptions and appraisals of tenure over the years.¹⁰

A tenure plan promulgated by the governing board of a public institution is generally considered to be a form of sublegislation having the force of law. If a discharge is contrary to the tenure plan, the court will generally issue an order to reinstate the teacher, since the discharge was, in effect, beyond the board's authority and contrary to law.¹¹

Some General Principles

There are some general principles that apply in the legal aspects of tenure. It should be emphasized that these are generalizations and have broad application, but that they may or may not have specific application in a particular case.

1. Courts have been less interested in allocating rights on a stratified basis between tenured and nontenured faculty than in examining basic due process and First

¹⁰Victor G. Rosenblum, Faculty Tenure (San Francisco: Jossey-Bass Publishers, 1973), p. 161.

¹¹Ibid.

Amendment questions that can affect the whole academic community.

2. Courts have generally ruled that public employees should not lose their jobs because of their exercise of substantive constitutional rights such as free speech.

3. Constitutional procedural protection is assured tenured faculty in public institutions, but nontenured faculty can be certain of constitutional protection only against dismissal in the course of an employment contract.

4. The courts have stressed procedure in public institutions, entitling faculty to adequate notice, hearing, and opportunity for presentation before they can be dismissed.¹²

Tenure plans are in effect in the overwhelming majority of colleges and universities in the United States. Ninety-four percent of faculty members in public and private four-year colleges and universities are covered by tenure plans. Two-thirds of community college faculty serve under tenure plans.¹³

AAUP statement. A 1940 statement by the American Association of University Professors says that tenure is a means of ensuring academic freedom and of providing

¹²Ibid., p. 162.

¹³Rosenblum, op. cit., p. 1.

sufficient economic security to make the academic profession attractive to men and women of ability. Both objectives are indispensable to the successful fulfillment of the social purposes of higher education. This report further recommends that after a probationary period, all faculty should have permanent or continuous tenure, and that their services should be terminated only for adequate cause, except in the case of retirement for age or under extraordinary circumstances because of financial exigencies. Terms of academic appointment should be in writing, the probationary period should not exceed seven years, teachers should have full academic freedom even during the probationary period, and dismissal for cause should occur only under full academic due process.¹⁴

Extent of Tenure

There is no one tenure system in the United States. There are many tenure systems and little uniformity. Institutional policies vary in terms of definition of tenure, criteria for appointment, reappointment and award of tenure, length of the probationary period, categories of personnel eligible for tenure, relationships between tenure and rank, procedures for appeal from decisions,

¹⁴Ibid., p. 2.

roles of faculty, administrators, students, and governing boards in personnel action, and methods of evaluation.¹⁵

A 1972 study reveals that the median for all faculty members falls within the range of forty-one to fifty percent on tenure. In universities and public two-year colleges, fifty-one to sixty percent are on tenure. Four-year colleges have forty-one to fifty percent on tenure. Forty-five percent of all institutions had more than fifty percent on tenure. Twenty-five percent had more than sixty percent.¹⁶

The Roth and Sindermann Cases

Perhaps the two most famous cases involving tenure are Roth v. Board of Regents and Perry v. Sindermann. A brief summary of these cases has relevance at this point.

In 1968, David Roth was hired for his first teaching job as assistant professor of political science at Wisconsin State University at Oshkosh. He had no formal contract, but his notice of appointment was the equivalent of an employment contract. Roth completed the term and was notified that he would not be rehired for the next academic year.

Roth had no tenure rights, for under Wisconsin law, a state university teacher can acquire tenure only after

¹⁵ Ibid.

¹⁶ Ibid., p. 4.

four years of year-to-year employment as a permanent employee. Further, under rules promulgated by the Board of Regents, there was no real protection for a nontenured teacher who is not reemployed for the next year. In conformance with these rules, the president of the university gave Roth no reason for the decision and no opportunity to challenge the decision at a hearing.

Roth brought suit and charged that the true reason for his not being rehired was to punish him for certain statements he made critical of the administration, and that failure of university officials to give him notice of any reason for nonretention and an opportunity for a hearing violated his right to procedural due process. Overturning lower court decisions, the United States Supreme Court held that Roth had no such rights.

The court pointed out that the university did not make any charge against Roth that might seriously damage his standing and associations in his community. Further, the court held that Roth had not proven that the decision not to rehire him was, in fact, based on his exercise of his constitutional right of free speech.¹⁷

Robert Sindermann was employed at Odessa Junior College in Texas for four consecutive years under a series

¹⁷Roth v. Board of Regents, 310 F. Supp. 972 (1970).

of one-year contracts. During the 1968-69 year, Sindermann became involved in public disagreements with the policies of the college's Board of Regents. In May, 1969, his one-year contract expired, and the Board voted not to offer him a new contract and issued a press release setting forth allegations of his insubordination. The Board did not provide him with an official statement of the reasons for the nonrenewal of his contract, and it allowed him no opportunity for a hearing to challenge the decision.

Sindermann brought action in federal district court. He charged that the Board's decision was based on his public criticism of their policies and was thus an infringement of his right of free speech, and that the Board's failure to provide him with an opportunity for a hearing violated his right to procedural due process.

The district court upheld the Board, but the appeals court reversed that decision. Under a grant of certiorari, the United States Supreme Court held that Sindermann's lack of tenure did not negate his claims.

Sindermann's lack of tenure or a formal contractual security was highly relevant to his due process claim. He alleged that the College had a de facto tenure program, and that he had tenure under that program. While a subjective expectancy of tenure is not protected by the Fourteenth Amendment, the de facto tenure policy entitled Sindermann to an opportunity of proving the legitimacy of his claim to

tenure. Thus, Sindermann should have been given a hearing to challenge the reasons for his nonretention because he had a property interest in his position.¹⁸

Legal Aspects of Tenure

Generally, in instances where permanently tenured faculty members have been dismissed, specific cause, impartial hearings, and the full protection of due process have been encouraged, and they have been generally followed. Dismissing a nontenured teacher has not usually been so formal in procedure. All that is necessary is to hold a fair hearing and be able to support with evidence the decision for dismissal. Historically, the courts, experts in law and not so much in academic policy, have leaned toward the expertise and special knowledge of college officials on problems concerning nontenured faculty members.

Increased use of the courts as a means of settling faculty complaints is signaled by new guidelines for dismissal of tenured faculty members issued by the Association of American Colleges. Early warning, careful documentation, consideration of compensation, and job placement are critical issues when an institution is forced to dismiss faculty because of budgetary problems. Procedural due

¹⁸Perry v. Sindermann, 408 U.S. 593 (1972).

process must be followed to ensure protection of both the institution and the individual.¹⁹

A community-junior college terminated a program and dismissed instructors with permanent status (Beseman, et al., v. Remy, et al.). The teachers accepted positions elsewhere at less pay and filed suit to reclaim the difference in compensation. The court held that teachers wrongfully dismissed without cause are entitled to such financial relief.²⁰

Hechinger comments that faculty members have been dismissed in a substantial number of colleges where enrollment and income have been reduced. He concludes that academic tenure is not an absolute shield against economic disaster.²¹

It is known for certain, according to Lieberman, that tenure is a high priority issue whose resolution is not apparent. Declining enrollments, rising unemployment, excess teacher supply, pressure to employ more teachers from racial minorities, rising costs, and increased insistence

¹⁹Richard J. Frankie, "Students and Faculty of Community and Junior Colleges: A Summary of Recent Legal Cases," Journal of Education, (August, 1974), p. 58.

²⁰Ibid., p. 60.

²¹Fred M. Hechinger, "Loss of Tenure: Return of a Nightmare," Saturday Review (May, 1975), p. 49.

upon managerial accountability have intensified job security issues at all levels of education.²²

Richard C. Williams states that the community college movement is still struggling to define its place in the educational universe. It continually faces issues which are new to the movement but which have been faced for years by four-year colleges and universities. He asserts further that the matter of tenure is as yet unresolved. His recommendation is that community colleges draw from the experience of the rest of the educational community to solve this difficult problem. It is also his hope that the junior colleges may help to solve the problem, as well as draw from the experiences of others.²³ Tenure in community colleges will be reviewed in more detail later in this chapter.

CONTRACTS

Certain parts of this study dealt with contracts between the educational institutions and faculty members. Specifically, an attempt was made to secure actual contracts when the survey was conducted among the system of community colleges and technical institutes in North

²²Myron Lieberman, "Tenure: A New High-Priority Issue," Phi Delta Kappan (March, 1975), p. 450.

²³Richard C. Williams, "Tenure Practices-Redefined," Junior College Journal, 39, No. 8 (May, 1969), 26.

Carolina. The concern of the study was to analyze these contracts with reference to their specifications as to the nature of the employment, term or length of contracts, and compensation specified in the contracts.

Since there was a narrow and specific concentration in the study in regard to contracts, no extensive review of related literature will be undertaken here. The concern is to develop a minimal understanding of the basic legal aspects of contractual obligations.

Every contract involves the exchange of something. "A contract is an agreement, enforceable by law, between two or more parties."²⁴ When two or more parties enter into a legally binding agreement for the purpose of exchanging objects of value or securing the performance of acts or services, a contract is created. Therefore, there exists a bargain which cannot later be revoked or escaped without risking penalties imposed by a court.²⁵

There are several types of offers made in contracts. A unilateral offer promises an act in return for an act. Performance of the acts requested constitutes acceptance. A bilateral offer gives a promise and requests a promise

²⁴Robert A. Farmer, What You Should Know About Contracts (New York: Arco Publishing Company, 1969), p. 7.

²⁵Ibid., p. 9.

instead of an act in return.²⁶

Mutual assent is basic. The party to whom the offer is made must respond faithfully to the conditions of the offer. He must agree to do exactly what the offerer has proposed. Only outward manifestations matter. Intent is immaterial. A party cannot rely on unexpressed intent to negate or alter a contract.²⁷

The following are ways that an offer may be terminated once it has been tendered:

1. Rejection by the offeree.
2. Death of one of the parties or destruction of the subject matter of the contract.
3. Legal prohibition of the contract.
4. Express revocation of the offer by the offerer before the stated time or reasonable time has elapsed.²⁸

The contract, to be legal and binding, must be accepted. An acceptance must conform to the conditions and requests of the offer. The intention of the offeree to agree to enter into the proposed contract must be communicated to the offerer.²⁹

²⁶ Ibid., p. 29.

²⁷ Ibid.

²⁸ Ibid., p. 30.

²⁹ Ibid., p. 39.

There must be a consideration for the contract to be valid.³⁰

In the event of breach of contract, remedies may be imposed by the court. These generally take three forms: (1) damages, or money, (2) specific performance--the court instructs a party or parties to carry out their part of the contract, and (3) restitution--the loser is to return to the winner whatever the latter has already given him.³¹

DISMISSAL

Frankie says that the legal relationship between a community college faculty member and his institution has essentially three characteristics: (1) individual rights which a teacher possesses, (2) statutory requirements which must be followed by both institution and employee, and (3) contractual conditions of employment agreed upon by both parties. Community college faculty problems which have most often led to litigation have dealt with the general area of employment. Faculty dismissal appears to be the dominant legal issue in court cases between the college and the faculty member.³²

³⁰Ibid., p. 45.

³¹Ibid., p. 121.

³²Frankie, op. cit., p. 57.

Teachers' Rights and Students' Rights: A Comparison

Kirp and Yudof state that in many respects the legal rights of teachers are indistinguishable from the legal rights of students. The teacher must often put aside his personal preferences and interests in order to conform to the goals of the institution, however. From this perspective, the teacher is neither more nor less able to disrupt the educational process or challenge policy decisions of administrators or governing bodies.³³ Tinker v. Des Moines states that neither the teacher nor the student may be prohibited from conduct unless it would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."³⁴

Nolte, in commenting on this famous case, states that any word spoken that deviates from another person's views may start an argument or cause a disturbance, but that the Constitution says that we must take this risk.³⁵

Kirp and Yudof assert further that there are some respects in which the position of the teacher differs from that of the student. These differences may in some cases

³³David L. Kirp and Mark G. Yudof, Educational Policy and the Law (Berkeley: McCurchan Publishing Corporation, 1974), p. 198.

³⁴Tinker v. Des Moines School Board, 393 U.S. 503 (1969).

³⁵M. Chester Nolte, School Law in Action (West Nyack, N. Y., Parker Publishing Company, 1971), p. 64.

argue that the teacher should have greater personal autonomy than students. In other cases, this may not be true.

They delineate these differences as:

1. The age, maturity and experience of teachers argue for a more expansive definition of their rights. Teachers should be afforded the same rights as other adults, subject to the special nature of the environment of the educational institution.

2. Teachers are not just dedicated public servants; they are also employees.

3. The nature of the teacher's job itself makes it closely connected to freedoms of speech, belief, and association. This is commonly called "academic freedom."

4. Teachers may be limited by the fact that they are free to seek employment elsewhere.

5. Teachers function in a compulsory school environment as models for conduct and attitudes. They are an important instrument in the educational institution's effort to socialize students.³⁶

Fischer and Schimmel contend that in many localities, teachers are still second-class citizens. There are still to be found extreme examples of control over teachers' private lives. These may take the form of religious

³⁶Kirp and Yudof, op. cit., p. 199.

restrictions, appearance directives, or personal conduct requirements.³⁷

Teachers' Rights: Some Major Cases

Several cases which have relevance to academic freedom, conduct in the classroom, and conduct outside the classroom will be examined below.

Parducci v. Rutland is concerned with a teacher's assigning of a short story which was interpreted as controversial by some students and school officials. The teacher was subsequently dismissed for assigning materials that had a disruptive effect. The teacher claimed violation of her First Amendment right to academic freedom.

The court said they could find no evidence of disruption and ordered the teacher reinstated. She was also to be paid for the period during which she was suspended.³⁸

Epperson v. Arkansas challenges the constitutionality of the "anti-evolution" statute which the state of Arkansas adopted in 1928 to prohibit the teaching of theories that man evolved from other species of life. The Supreme Court struck down the statute on its vagueness.³⁹

³⁷ Louis Fischer and David Schimmel, The Civil Rights of Teachers (New York: Harper and Row, Publishers, 1973) p. 7.

³⁸ Parducci v. Rutland, 316 F. Supp. 352 (M.D. Ala. 1970).

³⁹ Epperson v. Arkansas, 393 U.S. 97 (1968).

The Keyishian Case concerns a teacher's refusal to sign a statement in New York affirming that he was not a Communist. His contract was not renewed, and he went to court to challenge the constitutionality of the law.

The Supreme Court held that it is unconstitutional to disqualify a teacher merely because he is a member of a subversive organization.⁴⁰

Pickering v. Board of Education is a 1968 case in which a teacher sent a letter to a local newspaper in which he was critical of methods of the board and superintendent relative to their proposals for raising new revenues. The court ruled that a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.⁴¹

In the area of conduct, there were different results in the Sarac and Morrison cases involving homosexuality. In the Sarac Case, the teacher's dismissal for homosexuality was allowed to stand because his conduct was abhorrent to the "mores and moral standards of the people of California."⁴²

⁴⁰Keyishian v. Board of Regents, 385 U.S. 589, 645 (1967).

⁴¹Pickering v. Board of Education, 391 U.S. 563 (1968).

⁴²Sarac v. State Board of Education, 57 Cal. Rptr. 69, 71 (1967).

The court ruled in favor of Morrison. Quoting the court:

The board of education should not be empowered to dismiss any teacher whose personal, private conduct incurs its disapproval. A teacher's behavior should disqualify him only when it is clearly related to his effectiveness in his job. When his job as a teacher is not affected, his private behavior is his own business and should not form a basis for his discipline.⁴³

Faculty have been dismissed from their academic posts for many reasons. Tenure has been devised to protect faculty against the more arbitrary and capricious decisions of college officials, but tenure has raised legal questions of college officials, but tenure has raised legal questions which have not been definitively resolved.⁴⁴

Although we have some directions in the matter of dismissal and a relationship to tenure, the academic community must await further decisions from the federal courts before these issues are ultimately decided.

FACULTY EMPLOYMENT IN THE COMMUNITY COLLEGES

This section proposes to examine the three major concerns of the study--tenure, contracts, and dismissal--with particular reference to community colleges. Statements have been made earlier which demonstrated that certain aspects of faculty employment are atypical in these

⁴³Morrison v. Board of Education, 461 P. 2d 375, 385 (1969).

⁴⁴Brubacher, op. cit., p. 50.

institutions. It was reported that over ninety percent of faculty members in public and private four-year colleges and universities are covered by tenure plans while only two-thirds of community college faculty are serving under such plans.⁴⁵ These two-year colleges are relatively new in American education, and they are still in the process of formulating policies and procedures to guide them in their unique circumstances.

This investigation reports at this point on the situations that actually exist in certain community colleges across the nation. Findings are largely based on copies of working documents which are or have been in use in these institutions.

Tenure Plans in Use in Community Colleges

A study by the Department of Education, Indiana University, was concerned with 592 community colleges and their practices relative to recruitment, retention, and tenure. The study was conducted in 1968, with an 85.5 percent response, or 507 institutions replying. Even though the survey is somewhat dated, the results have some interest in this study. Pertinent elements are summarized below.

Just under two colleges out of five had the traditional academic ranks commonly found in four-year colleges

⁴⁵Rosenblum, op. cit., p. 1.

and universities. At these institutions, one individual in fourteen was a full professor; one in six was an associate professor; under one in three an assistant; and more than one in three, but fewer than two out of five, held the rank of instructor. Better than a third reported a faculty turnover of under five a year; one in five lost from five to nine; eight out of a hundred from ten to fourteen; and three out of a hundred lost over fourteen.⁴⁶

On the subject of tenure, eighty of the 426 usable sources of data reported that they did not grant tenure. When questioned on the number of years of service required before granting tenure, twenty had no stipulations for granting it. In one out of twelve colleges, fewer than three years of prior service were required; in another two out of three, the probationary period ranged from three to seven years. Two colleges required more than seven years of prior service, and thirty others had requirements which fitted none of the categories.⁴⁷

Forty-nine schools out of every one hundred required the tenure candidate to demonstrate exceptional teaching ability. Six required research and eight the publication

⁴⁶Robert H. Kinker, "Public Junior College Recruitment, Retention and Tenure Practices, with Emphasis on Technological Subjects Instruction" (Study by the Department of Education, Indiana University, 1969), p. 4.

⁴⁷Ibid., p. 5.

of articles in scholarly journals. Seventy-nine demanded a master's degree and seven an earned doctorate. The prevailing practice in seventy-two cases out of every one hundred was to make the initial appointment--and all subsequent ones prior to attaining tenure--for one academic year only. In one out of ten cases there was no specific length.⁴⁸

Virginia: a state deals with tenure. In 1966, the Virginia General Assembly created a separate board to govern the community college system. A statement on "Tenure, Conditions of Employment, and Appeal Procedure" was approved by the State Board in 1969. Decisions on granting tenure were to be made near the end of the third year of consecutive full-time service. Faculty members with a "distinguished background" could be granted tenure earlier. Those denied tenure could continue to serve on annual appointment until reaching a maximum of seven years of full-time service. The faculty member was required to manifest "professional discretion" and "good citizenship."⁴⁹

On September 20, 1972, the State Board for Community Colleges adopted a new "Faculty Appointment and Tenure Policy" which removed faculty tenure from the Virginia

⁴⁸Ibid., p. 6.

⁴⁹"The Virginia Community College System: A Report on Tenure and Due Process," AAUP Bulletin, LXI (April, 1975), 31.

Community College System except for those who already possessed tenure or had been recommended for tenure. The new policy provided for one-year appointments with notification in the event of nonrenewal due by March 1 in the first year and by February 1 each year thereafter. Faculty members could be kept on renewable one-year appointments indefinitely. The document provided for three-year appointments, in both cases with nonrenewal notice due by January 1 of the final year of the appointment. Normally, a minimum of three one-year appointments and at least one three-year appointment would be required before the first five-year appointment was offered.⁵⁰

A faculty member who went on unpaid leave of absence would break the sequence, and upon return would have to complete at least two one-year appointments before he again qualified for a three-year or a five-year appointment. Resignation and return required starting the entire sequence all over again. Voluntarily moving to another institution within the system required the completion of two one-year appointments at the new college before becoming eligible for a new multi-year appointment.⁵¹

Responding to criticisms and objections directed toward the new policy by several faculty groups, the

⁵⁰ Ibid., p. 32.

⁵¹ Ibid.

Assistant Attorney General asserted that the new policies met constitutional requirements and that professors no longer require the protections of tenure since the courts are receptive to complaints relative to dismissal of faculty for political or other impermissible reasons. He stated that younger faculty members would benefit because they would not find it necessary to receive tenure or lose their jobs. They would also be entitled to due process.⁵²

Tenure in selected community colleges. Faculty and administrative leaders at William Rainey Harper Community College (Illinois) initiated a review of the College's tenure policies in relation to present needs and long-range projections. Writers of their report state that many institutions faced with problems of staff retrenchment and program reductions find themselves taking a hard look at the issues.

In the past year, no system of academic employment has been so quickly debated, and often challenged, than that provision for employment that has one foot in the abstractions of academic freedom, and the other in the month-end, practical world of continued employment expectation.⁵³

The authors of this report, administrators at William Rainey Harper College, offer community colleges a number

⁵²Ibid., p. 34.

⁵³John Franklin White and others, "Academic Tenure: A Model for Self-Study" (paper prepared by a task force at William Rainey Harper College, Palatine, Illinois, 1974), p. 4.

of suggestions for preparing recommendations that cope with the real world and have wide acceptance on campus. They were concerned, as they studied Harper, to develop tenure policies that were steady state policies, since the college had not faced the issue of forced staff reductions and did not anticipate facing that eventuality for at least eight to ten years.⁵⁴

Their report concludes with a series of recommendations for community college officials to use as they prepare a self-study on the tenure issue for presentation to the board of trustees. These recommendations are summarized below.

1. Establish a strong relationship with the college's Office of Planning and Research.
2. Make provision for external consultants.
3. Present the staffing concept in a humanistic perspective. Avoid a coldly corporate or unfeeling air.
4. Recommendations should cover a ten-year period.
5. Give adequate attention to gathering facts.
6. The chairman of the study committee may be either a faculty member or an administrator, but he/she must be provided time away from regular duties. Qualities needed include experience, interest, ability to lead discussions, deliberative capability, ability to prepare reports,

⁵⁴Ibid., p. 5.

ability to develop strengths and leadership capability in carrying out managerial assignments.

7. A large committee is recommended (18-20 members) in order to incorporate broad faculty representation.

8. Survey and study areas include long-range projections of staff, surveys of other community colleges, survey of the local faculty regarding the issues, development of a bibliography of reading materials, and consideration of outside resource personnel to assist the committee.

9. Have extended discussions to achieve closure on the crucial issues.

10. Prepare an interim report for trustees.

11. Review the final report with the entire faculty before presentation to the chief executive officer.⁵⁵

Whatcom Community College in Ferndale, Washington, developed policies on permanent faculty status in 1974. They were promulgated "in order to provide and maintain employment security and academic freedom."⁵⁶ Among many provisions, the plan specifies that a faculty member with

⁵⁵Ibid., pp. 6-14.

⁵⁶"Permanent Faculty Status" (paper prepared by the Board of Trustees, Whatcom Community College, Ferndale, Washington, 1974), p. 3.

permanent status shall not receive a current salary which is less than the average of the previous six quarters.⁵⁷

The following specifications apply to awarding or withholding permanent status:

1. The Board of Trustees has final authority to determine whether to award permanent status to a probationary faculty member.

2. The Board of Trustees will give reasonable consideration to the recommendation of review committees, but it is not bound by their recommendations.

3. The probationary faculty member shall be notified of the board's decision no later than the last day of the eighth consecutive quarter he/she has been employed.⁵⁸

Criteria for granting tenure at College of the Mainland, Texas City, Texas, were developed in 1969. An introductory statement affirms the belief that tenure grants to the faculty member the option of continuing employment in the institution and specifies that he/she can only be discharged for cause and through due process. Tenure also enables a teacher to lead students into controversial areas of study without fear of losing his job. It also gives the faculty member protection when an

⁵⁷Ibid., p. 4.

⁵⁸Ibid., p. 7.

influential person, for whatever reason, desires his termination from employment.⁵⁹

Tenure is to be granted only on recommendation from the President. It applies only to instructional positions. Administrators are not eligible. A person becomes eligible for consideration for tenure when he/she has completed three full academic years of uninterrupted service. If the instructor has not been granted tenure at the end of five years and is retained, tenure is automatically granted.⁶⁰

The following criteria shall be used by the President in recommending tenure:

1. The individual must demonstrate that he/she is teaching each course on the basis of behaviorally specified objectives.
2. Cooperation both laterally and with the supervisor must be demonstrated.
3. There must be evidence of adherence to the ends-means process in student learning.
4. There must be innovation in teaching.
5. The capacity to have a sustained colleague relationship with students is necessary.

⁵⁹"Criteria for Granting Tenure at College of the Mainland" (paper prepared by the Board of Trustees, College of the Mainland, Texas City, Texas, 1969), p. 1.

⁶⁰Ibid., p. 3.

6. The instructor's students must be taught to relate to the public social institutions.

7. The individual must demonstrate that he/she understands the model of the open society and the model of the free and responsible individual.⁶¹

In 1972, Schenectady County Community College's Board of Trustees adopted policies governing procedures on continuing and career appointments. Staff members could, for the first time, receive appointments for more than one year. The policy applies to instructional staff (continuing appointments) and professional noninstructional staff (career appointments) in full-time positions.⁶²

A continuing appointment is a five-year appointment to a full-time position as instructor, assistant professor, associate professor, or professor at the College. This appointment is not affected by changes in rank or by designation by some other title.⁶³

Between September 1 and November 1 of the fifth full year of service by a staff member who has held a position of academic rank during each of the preceding four years, a determination will be made as to eligibility. The

⁶¹Ibid., pp. 4-8.

⁶²"Continuing and Career Appointments" (paper prepared by the Board of Trustees, Schenectady County Community College, Schenectady, New York, 1972), p. 1.

⁶³Ibid., p. 2.

immediate supervisor prepares the recommendation regarding continuing appointment. This recommendation is submitted to a committee appointed by the President. The committee forwards its recommendation to the Dean of Faculty prior to December 1. The Dean of Faculty makes his recommendation and submits it and all prior recommendations to the President, who makes a recommendation to the Board of Trustees at its January meeting. The staff member shall be informed of the decision prior to February 1. There shall be no appeal of the Board's decision.⁶⁴

Between September 1 and November 1 of the fifth full year of a continuing appointment, the same procedure shall be followed. In the case of a staff member who has been denied a continuing appointment, an opportunity shall be provided to accept a one-year term appointment for the following academic year, after which time his appointment is terminated.⁶⁵

The policy concerning career appointments is virtually identical to continuing appointments. The positions covered by this designation are named individually. Career appointments include such positions as: technical specialist, assistant to the registrar, director of financial aids, and assistant librarian.⁶⁶

⁶⁴ Ibid., p. 4.

⁶⁵ Ibid.

⁶⁶ Ibid.

Certain limitations are placed on these provisions. The total number of continuing and career appointments held in a given year shall not exceed sixty percent of the total number of positions. Furthermore, the total number of continuing and career appointments held by staff members who report to a given immediate supervisor shall not exceed seventy percent. But the Board reserves the right to waive these limitations.⁶⁷

Contracts in Community Colleges

In this section, the writer proposes to examine the following: (1) the criminal and legal liability of community college presidents and board members in regard to contracts, (2) the areas covered by a contract between a faculty association and the board of trustees of a community college, and (3) fringe benefits typically desired by faculty members in community colleges.

Criminal and legal liability of community college

presidents and board members. D. H. Blumer addressed the Annual Convention of the American Association of Community and Junior Colleges at the Washington Hilton Hotel on March 18, 1976. He points out that the subject of legal liability in this area is not new, but the nature and scope of such liability and the outcome of such cases are new.

⁶⁷ Ibid., p. 6.

The author states that the great danger for continuing good management is the vulnerability that middle managers feel. There is a reticence on the part of some to move quickly in situations where they may expose themselves to risk. One result is a tendency to refer decisions to a superior authority. This tends to adversely affect departmental autonomy and collegial judgment.⁶⁸

One area which can possibly lead to personal liability is that of contracts. Adequate management can reduce this possibility considerably, however. So long as officials sign contracts in the clear capacity as an agent and not in a personal capacity, liability on contracts can be avoided.⁶⁹

Tort liability involves a civil, rather than a criminal, wrong against another. In the college context, potential tort liability exists almost everywhere--in the lab, on the athletic field, in hallways, and in dozens of other areas where civil wrongs may be committed. But perhaps the bulk of suits which have received great publicity have been in violation of civil rights. It is in this area that

⁶⁸D. H. Blumer, "Legal Liability of Community College Presidents and Board Members" (paper presented at Forum 6, Annual Convention of the American Association of Community and Junior Colleges, Washington, D. C., 1976), p. 5.

⁶⁹Ibid., p. 9.

so much has been written concerning legal liability of administrators and trustees.⁷⁰

Fiduciary responsibility is another major area which provides potential for legal liability. Fiduciary duties are those special responsibilities which accrue to trustees and administrators because of the nature of their jobs. Officials cannot ordinarily be liable for simple mistakes in business judgment. Their liability increases if they profit from dealings with the college.⁷¹

There are ways that officials can protect themselves in times of increased liability and litigation. One such protection is indemnity. In this context, indemnity simply means that the institution should pay all costs incurred by the trustee or administrator who incurs loss as a result of his acts when he was acting in good faith. The problem with indemnity is that it requires that the person be found worthy of indemnification in a particular situation; therefore, the protection is not certain.⁷²

Insurance is the preferable protection. The biggest problem here is lack of policies presently available. There are policies which cover tort liability, but it is

⁷⁰ Ibid., p. 10.

⁷¹ Ibid., p. 11.

⁷² Ibid., p. 12.

difficult to find a policy that adequately covers liability for violation of constitutional rights. Insurance companies do not yet have enough experience to assess adequately the risks involved in such coverage.⁷³

Administrators are encouraged to assess their risks. They should consult the college attorney on state laws and other factors that affect the particular situation; explore the possibility of liability insurance; and read current books, articles, and periodicals on the subject of legal liability. An absolute necessity for administrators and trustees is access to legal counsel who is familiar with special areas of college law.

Administrators should have a third party present when dealing with controversial issues. Memos written and filed after potentially problematical conversations could be helpful. Administrators should remember that almost no conversations or memos are private or confidential. "Almost everything is subject to subpoena, and conversations may be quoted in a trial as an admission against you."⁷⁴

Legal counsel should review all contracts before execution. In some cases, standard contracts may be used and individual review will not be necessary. Senior administrators should meet periodically in a seminar with legal

⁷³ Ibid., p. 13.

⁷⁴ Ibid., p. 14.

counsel. If an administrator acts prudently, reasonably, and in good faith, the possibility of being sued is minimized, and the probability of winning those suits which are actually instituted are maximized.⁷⁵

In short, then, administrators face yet another and new risk. We are in a time of transition, and, therefore, it is a particularly uncomfortable time. Yet, we must ride with the waves, and work to develop adequate protection for our trustees and administrators. In the meantime, it is incumbent upon us to continue to move with our ordinary prudence and good faith and that, perhaps more than indemnity, insurance, or other devices, will⁷⁶ serve us in good stead as a protection and support.

A faculty association/trustees contract. There is no apparent pattern running through contracts in community colleges either nationally or in the state of North Carolina. It is true, however, that in institutions where unions and/or faculty organizations negotiate with trustees and administrators, significant amounts of institutional control are often sacrificed to avoid strikes and other forms of confrontation. In such cases, individual faculty contracts are largely shaped by the overall agreement with the bargaining agency.

A case in point is the contract between the Faculty Association of Jamestown (New York) Community College and the Board of Trustees. Items covered include: Association

⁷⁵Ibid., p. 15.

⁷⁶Ibid., p. 16.

and instructors' rights, rights of the Board of Trustees, deductions and professional dues, appointment and tenure policies, faculty dismissal, grievance procedures, academic organization, working conditions, leave of absence, sabbatical leave, guidelines for promotion and hiring, and conditions of employment.

Under conditions of employment, almost any item to which an individual contract could address itself is covered by this general agreement. A partial list includes: hiring and retention, travel expenses, salary of faculty, faculty loads and overloads, course preparation, class size, summer faculty assignments, and professional faculty responsibility.⁷⁷

An examination of some of these areas reveals that such items are covered in the minutest detail. Examples follow: Full-time faculty load shall consist of 12-15 credit hours or 15-18 clock hours for each semester. An instructor shall normally be assigned no more than two separate preparations per registration period; and under no circumstances shall they exceed three without his written consent. Decision on hiring full-time and part-time

⁷⁷"Contract Between the Faculty Association of Jamestown Community College and the Board of Trustees of Jamestown Community College" (Jamestown Community College, Jamestown, New York, 1973), p. 1.

faculty shall be made by the administration after the recommendation of the faculty at the division level.⁷⁸

Fringe benefits. Many competent community college instructors are becoming increasingly concerned about fringe benefits. The contract itself is thus representative of a host of benefits. While the contract may be a relatively simple document, the benefits that accompany the signing of the contract are intrinsic to its execution.

While most institutions are not faced with a critical shortage of teachers, there is still a need to recruit and retain outstanding educators. Authorities are urging administrators to utilize employee benefit programs to assist them in developing a quality faculty.⁷⁹

A study was conducted by polling a nationwide sample of junior college teachers. It was designed to measure the importance of selected employee benefits. The study surveyed 464 public junior college teachers from sixty different institutions. The seventy-eight percent return indicated interest on the part of the teachers.

Teachers rated benefit categories from most to least important as: (1) security benefits, (2) teaching benefits,

⁷⁸Ibid., p. 5.

⁷⁹R. Jerry Barber and Lloyd G. Cooper, "Which Fringes for Faculty?" Junior College Journal, 42, No. 5 (1972), 14.

(3) research benefits, and (4) income supplement benefits.⁸⁰

A comparison made between tenured and nontenured teachers revealed that tenured teachers valued security benefits significantly more than nontenured teachers. Security benefits include sick leave provisions, medical insurance, retirement, disability insurance, life insurance, leave with pay, tenure provisions, and tax sheltered annuity programs.⁸¹

Teaching benefits include offices, supplies, attending professional meetings, travel expenses, modern teaching facilities, aid in pursuing advanced degrees, and inservice professional training. It is suggested that administrators view benefits in this category quite closely because dollars spent also benefit the institution.⁸²

The emergence of research benefits was surprising since it is well known that community colleges are not research-oriented institutions. Large numbers of teachers in these colleges consider such items as professional libraries, opportunities to engage in research, and research equipment and facilities to be of major significance. A finding in the survey is that teachers recruited from the

⁸⁰Ibid., p. 15.

⁸¹Ibid.

⁸²Ibid., p. 16.

public school system placed a significantly lower degree of importance on research benefits than teachers who had been four-year college instructors or working in business, industry, or government.⁸³

The least important category was income supplement benefits. Opportunity to teach night classes for extra pay, use of college facilities, discount at bookstore, discount on purchases made through the college, and faculty dining room were less desirable than other benefits. Administrators are advised that these things do not hold great attraction in themselves, but that they are relatively inexpensive and may be successfully used to round out a total package of benefits.⁸⁴

Dismissal Policies and Procedures

John Lombardi published an extensive analysis of dismissal policies and procedures in community colleges in 1974. He discusses such topics as merit, faculty participation, seniority, notification of dismissal, rights of dismissed instructors, severance pay, affirmative action, administrators and liability for damages, and tenured v. nontenured.

Of particular concern to this study are Lombardi's comments and analysis relative to legal aspects of

⁸³Ibid.

⁸⁴Ibid.

dismissal. His contention is that the proliferation of dismissal policies is the direct result of the desire on the part of administrators to avoid court action by dismissed instructors and on the part of instructors to prevent discriminatory and arbitrary action by administrators. Despite the best of intentions, differences arise that cannot be settled by individuals involved, and court action often follows. A great deal of case law on the respective rights of administrators to dismiss instructors and of the rights of instructors to their jobs has developed out of the increased numbers of dismissals in recent years.⁸⁵

A 1970 document published by the National Education Association presented three basic statements on dismissal:

1. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage because of the exercise of constitutionally protected rights.

2. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage for arbitrary or discriminatory reasons.

3. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional

⁸⁵John Lombardi, "Reduction in Force. An Analysis of the Policies and their Implementation." (topical paper No. 48, California University, Los Angeles, 1974), p. 20.

advantage unless he is given notice of the charges against him, a fair hearing, and related procedural safeguards.⁸⁶

Generally, numbers of dismissal policies attempt to make the dismissal procedures court-proof by insuring that administrators comply with the law and current court rulings regarding discriminatory and arbitrary action and by advising the instructor of his right to request a hearing.⁸⁷

Where tenure is authorized by law or regulations, dismissal of tenured professors must follow policies incorporated within the tenure procedures themselves. If seniority is the criterion for determining order of dismissal, every effort must be made to retain instructors with longer service records over others. A New York judge ruled that a tenured teacher could only be released according to statutory procedures, including a hearing by state statutes (Lynch v. Nyquist, 1973). In this case, a teacher with tenure had been dismissed while others without tenure or less seniority had been retained. The ruling was that even readjusting teaching assignments might be necessary to protect the tenured teacher's position.⁸⁸

⁸⁶ Ibid., p. 21.

⁸⁷ Ibid.

⁸⁸ Ibid., p. 22. (See Lynch v. Nyquist, 343 N.Y.S. 2d, 179 (1973).)

Where merit is the criterion for dismissal, the administrator may have more latitude in selecting those to be laid off. Even so, a Wisconsin judge set up four minimal procedures to be used in dismissing a tenured teacher:

1. Furnishing the instructor with a reasonably adequate description of the basis for the initial decision to lay off.

2. Furnishing the instructor with a reasonably adequate description of the manner in which the initial decision had been made.

3. Making a reasonably adequate disclosure of the information and data upon which the decision makers had relied.

4. Providing the instructor an opportunity to respond.

If these procedures are followed, faculty members do not have a right to cross examine those who made the decisions, to be consulted, or to be given the opportunity to persuade those who made the decisions to change their minds.⁸⁹

The above guidelines seem to be at odds with a Bloomfield College (New Jersey) ruling that the administration had an obligation to consider alternatives proposed by the faculty. The College had hired twelve new faculty members while dismissing thirteen, eleven of whom had tenure.

⁸⁹ Ibid., p. 23.

The cases have an important difference, however. In the Wisconsin case, the University was found to have fulfilled minimal procedures, and the faculty had not claimed that they were laid off arbitrarily or for exercising their constitutional rights (Johnson, et al., v. Board of Regents of the University of Wisconsin). In the New Jersey case, the judge felt that the primary objective was the abolition of tenure, not relieving the immediate financial situation.⁹⁰

Lombardi concludes that legislatures, administrators, and faculty are developing fair procedures for the unpleasant task of reducing staff for reasons they cannot control. Generally, the policies and their implementation involve participation by the faculty and the use of seniority as the principal criteria for dismissal. Quoting Lombardi:

Administrators can do much to reduce the uneasiness, uncertainty, and fear of instructors by early communication with the faculty and consultation with their representatives when conditions seem to require the implementation of the reduction in force process. Frankness is necessary in describing the relative seriousness of the conditions and the probable number of instructors that may be involved. It is worth repeating that the faculty will feel less aggrieved if the criteria for activating the process are objective and easily identified, if they participate in the process from the beginning, if all of the possible alternatives to dismissal are thoroughly explored, if opportunity for retraining in another area is available, and if, when dismissals are made, severance pay, aid in obtaining jobs elsewhere, and rehiring rights are offered.⁹¹

⁹⁰ Ibid.

⁹¹ Ibid., p. 28.

Sprenger and Schultz conducted a study of staff reduction, which was published in May, 1974. Their purpose was to publish guidelines for institutions which were forced to dismiss instructors. In their study of 163 institutions in fourteen states, they found that community colleges had had fewer reductions in staff than public or private four-year colleges. Seventy-four percent of private four-year institutions, sixty-six percent of public four-year institutions, and forty-one percent of two-year colleges had had such reductions in force between 1971 and 1974.⁹²

Following are the methods used to reduce the number of instructors:

1. Not filling vacancies.
2. Terminating nontenured faculty.
3. Terminating part-time faculty.
4. Terminating teaching assistants.
5. Requesting early retirement.
6. Establishing seniority of tenured faculty.
7. Reassigning.
8. Assessing performance.⁹³

⁹² Joanne M. Sprenger and Raymond E. Schultz, "Staff Reduction Policies," College Management, (May, 1974), p. 22.

⁹³ Ibid.

The authors recommend the following procedures:

1. Continuous review. An institution should install a process of continuous program review for establishing priorities and moving resources.

2. Documentation of decisions. Keep data on costs, enrollment, student-faculty ratios, program need, and program quality.

3. Maintenance of flexibility. Flexibility in decision-making is likely to produce better decisions than rigid adherence to policies.

4. Furloughing as an alternative to terminating. Granting unpaid leave may soften the blow.

5. Appeal procedure. This is needed for legal reasons and to assure fairness.

6. Advance notice. Notice of nonreappointment should be given as early as possible.⁹⁴

Harold H. Kastner, Assistant Director of the Division of Community Colleges for the State of Florida, has developed a legal framework for faculty selection, evaluation, and retention. He states that the sources of authority which establish this legal framework range from constitutional provisions to local directives. This usually includes a broad authorization by the state constitution and provisions in state statutes, state level regulations,

⁹⁴Ibid., p. 23.

local governing board policies, and administrative memoranda.⁹⁵

State legislation is generally both enabling and permissive. It defines the mission of the institution and establishes the authority of the local governing board. Statutes thus provide a legal basis for establishing the public community college and the general framework for its operational control.⁹⁶

A state-level educational agency is normally established to implement and administer the provisions of statutory directives. State regulations often specifically identify minimum sets of criteria that must be included when considering the dismissal of a faculty member and choosing between or among faculty members holding tenure when reduction in staff is necessary. When these regulations and guidelines are authorized by statute, they have the full force and effect of law.⁹⁷

The local community college board has the authority to implement laws and regulations governing its operation.

⁹⁵Louis W. Bender and others, "First-Level Management: Legal Implications and Responsibilities for Selection and Retention of Faculty" (articles prepared for use by department or division chairpersons in the Division of Community Junior Colleges in the State of Florida, Florida State Department of Education, Tallahassee, Florida, 1973), p. 15.

⁹⁶Ibid., p. 16.

⁹⁷Ibid., p. 17.

Action of the board may be published in such forms as policy handbooks, employee and faculty handbooks, catalogs, procedures, and job descriptions. This is the last level of authority which establishes the operational framework for administering the college.⁹⁸

The final level of authority resides with the administrators of the institution. Administrative directives, memoranda, and procedures which are commensurate with laws, policies, and regulations have the full effect of law. That which has not been clarified at prior levels of authority must be finalized at this level.⁹⁹

Charles E. Miner, Jr., is General Counsel for the State Board of Education of Florida. He wrote concerning dismissal of faculty members in community colleges in the spirit of preventive law. Miner points out that the courts have said that refusal to reappoint nontenured faculty members cannot be grounded on reasons that are constitutionally impermissible. Recent decisions speak of nontenured teachers having gained a sort of implied tenure or "property right" in continued employment. He recommends establishing due process procedures at the campus level which will insure that the rights of nontenured faculty members are scrupulously protected.¹⁰⁰

⁹⁸Ibid., p. 18.

⁹⁹Ibid.

¹⁰⁰Ibid., p. 38.

Miner continues by recommending that by April 1 of each year, determination should be made as to who is not to be reappointed for the coming year. The appropriate college official should notify the faculty member in a personal conference and in writing. His performance should be reviewed and reasons given to him for his not being reappointed. Notification that he will not be reappointed should be treated by the college in such a way that the name, reputation, or professional standing of the faculty member will not be injured. Written notice should advise of options in the matter and request that they be exercised within a stated period.¹⁰¹

If a hearing is requested, it should be provided, with special reference to the impartiality of the hearing body. The hearing should determine, on the facts, if there was a constitutionally impermissible act involved in his non-reappointment.¹⁰²

Generally, the following requisites must be present to assure due process in hearings:

1. Timely notice of the hearing.
2. Opportunity for the faculty member to produce evidence and witnesses in his behalf.

¹⁰¹Ibid., p. 39.

¹⁰²Ibid., p. 41.

3. The opportunity afforded to the faculty member to cross-examine witnesses presented by the institution.

4. The development and preservation of a record of the hearing.

5. Notice to the faculty member of the decision of the hearing panel.¹⁰³

The hearing body should make written findings of fact and notify both the faculty member and the designated college officials of such findings. Upon receipt of written findings of fact, the appropriate college official should deliver as soon as possible the faculty member's personnel file and the findings of fact to the president for his decision. Unless there is a stated board policy to the contrary, the president's decision should be final.¹⁰⁴

The Virginia Community College System adopted procedures for dismissal in 1972. Grounds for dismissal include, but are not limited to, incompetence, inadequate performance of duties, insubordination, or misconduct. A faculty member may also be dismissed because of mental or physical incapacity, lack of sufficient funds, loss of enrollment, or change in curriculum.¹⁰⁵

¹⁰³Ibid., p. 42.

¹⁰⁴Ibid., p. 43.

¹⁰⁵"Virginia Community College System Professional Employment Appointment Policy with Supporting Due Process Documents for Grievance, Non-Reappointment and Dismissal" (procedures adopted by the Virginia State Department of Community Colleges, Richmond, Virginia, 1973), p. 1.

The Virginia procedures give six levels whereby due process is provided. They are summarized below.

1. Level one: When reason arises to question the continued employment of a faculty member, the faculty member's immediate supervisor discusses the matter with him/her. A memorandum is issued by the supervisor in which the matter of possible dismissal is stated. The faculty member may respond in writing.

2. Level two: The supervisor or faculty member may request a conference with the appropriate dean. The response is similar to item one above.

3. Level three: Within ten days, the dean or faculty member may request that the President appoint an ad hoc review committee. Within ten days of appointment, the chairman of the review committee shall report findings of fact to the President. The President makes a decision, and if the decision is for dismissal, the faculty member shall be given written reasons for the dismissal.

4. Level four: Within ten days, the faculty member may request a hearing before the President. If no written request is made, the President may proceed to terminate the faculty member's employment without a hearing. If a hearing is requested, held, and the President again recommends dismissal, he shall transmit his decision to the faculty member in writing within ten days.

5. Level five: The faculty member may appeal the President's decision to the Chancellor of the Virginia Community College System within ten days. The Chancellor shall communicate his decision in writing within thirty days.

6. Level six: Within ten days, the faculty member may appeal to the State Board for Community Colleges, whose decision shall be final.¹⁰⁶

Dismissal procedures at four selected community colleges are presented below. Gray's Harbor College at Aberdeen, Washington, has developed procedures to be followed if full-time faculty members are to be laid off for program termination or reduction, decreases in enrollment, changes in educational policy or substantial evidence of a serious shortage of funds.

If the President determines that reduction in force may be necessary, he will give notice of potential reduction to the employee organization. He will give reasons for the proposed reductions and the number of academic employees to be considered for layoff. The employee organization shall have the right to meet with the President, and he will fully document the need for reductions. The President's determination of the most necessary course

¹⁰⁶Ibid., pp. 1-3.

offerings and/or other services is not subject to review by the dismissal review committee.¹⁰⁷

If a reduction is necessary within a division, the following order of layoff will be utilized: first, part-time academic employees; second, probationary employees with the least seniority; third, full-time tenured employees with the least seniority.¹⁰⁸

Whatcom Community College, Ferndale, Washington, adopted procedures for dismissal in 1974. A faculty member with a permanent appointment shall not be dismissed except for cause. Sufficient cause includes, but is not limited to, the following:

1. Participating in any unlawful act of violence.
2. Interfering with the orderly conduct of the educational process.
3. Incompetence.
4. Neglect of duty.
5. Insubordination.
6. Conduct which is unbecoming a member of the faculty or is detrimental to the College.
7. Conviction of a crime involving moral turpitude.

¹⁰⁷"Academic Employee Reduction Procedure" (procedures and criteria for dismissal adopted by the Board of Trustees of Grays Harbor College, Aberdeen, Washington, 1974), p. 1.

¹⁰⁸Ibid., p. 2.

8. Willful violation of policies, rules or regulations.

9. Gross misconduct.

10. Malfeasance.¹⁰⁹

The Dean of Instruction shall have initial responsibility for initiating dismissal procedures. He notifies the President. If the President believes that dismissal is warranted, he draws up a written list of particulars. He then forwards this to the faculty member and the review committee. The Board of Trustees appoints a neutral hearing officer to preside over the dismissal hearing. The Dismissal Review Committee prepares written recommendations within ten days and submits them to the faculty member and the Board of Trustees. The Board of Trustees has final authority to determine whether any faculty member should be dismissed.¹¹⁰

Three areas in which terminations are permitted are listed in the official policies of Schenectady County Community College, Schenectady, New York. The services of staff members may be terminated at any time by the Board of Trustees, on recommendation of the President and upon receipt of medical advice, for physical or mental

¹⁰⁹"Permanent Faculty Status" (policy adopted by the Board of Trustees, Whatcom Community College, Ferndale, Washington, 1974), p. 8.

¹¹⁰Ibid., p. 10.

incapacity which prevents these staff members from adequately performing their duties. Termination for cause may be implemented before the completion of a five-year appointment if there is evidence of inadequate performance of duty, misconduct, or violation of policies of the Board of Trustees. Due notice and an opportunity to be heard will be given. A staff member may appeal the action of the Board of Trustees by following the College's stated grievance procedures. Finally, the services of any staff member may be terminated in the event of financial or program retrenchment. The President is instructed to give due consideration to the question of seniority in making his recommendations to the Board of Trustees. There is no right of appeal from such action.¹¹¹

A much more detailed statement on procedural standards in faculty dismissal proceedings was adopted by Jamestown Community College, Jamestown, New York. Their policy is a part of the contract between the Board of Trustees and the Faculty Association. The College, in this instance, accepted the joint statement (1958) of the Association of American Colleges and the American Association of

¹¹¹"Continuing and Career Appointments" (policy adopted by the Board of Trustees, Schenectady County Community College, Schenectady, New York, 1972), pp. 6-7.

University Professors as the Board of Trustees' policy in these matters.¹¹²

Some of the salient features of this joint statement are listed below:

1. Preliminary proceedings concerning the fitness of a faculty member. A personal conference with a tenured faculty member and administrative officials is required when his fitness is questioned. If no agreement is reached, a faculty committee shall be appointed to find the facts and make a recommendation to the President.

2. Commencement of formal proceedings. A written communication shall be sent to the faculty member informing him that dismissal is being recommended and on what grounds and that a hearing is to be held by a faculty committee. The faculty member responds in writing if he wishes a hearing and he shall answer the charges in writing.

3. Hearing Committee. A faculty committee is to be elected, and they will select their own chairperson.

4. Committee proceedings. The President has the option of attendance. The hearing may be public or private at the committee's discretion. The faculty member has the right to counsel and may present and question witnesses.

¹¹²"Contract Between the Faculty Association of Jamestown Community College and the Board of Trustees of Jamestown Community College" (Jamestown Community College, Jamestown, New York, 1973), p. 7.

All evidence shall be duly recorded. It will not be necessary to follow formal rules of court procedure.

5. Consideration by the Hearing Committee. The committee shall give opportunity to the faculty members or his counsel and the representative designated by the President to argue orally before it. The President and the faculty member shall be notified of the decision in writing. Any release to the public shall be through the President's office.

6. Consideration by the Board of Trustees. The President shall submit materials and recommendations relative to the hearing to the Board of Trustees. If the Board of Trustees chooses to review the results of the hearing, the decision of the Hearing Committee shall either be sustained or returned to the committee with objections specified in writing. Only after study of the committee's reconsideration shall the Board of Trustees make a final decision overruling the committee.¹¹³

¹¹³Ibid., pp. 7-9.

Chapter III
SELECTED NORTH CAROLINA CASES

The survey conducted in connection with this study will be reported in detail in the following chapter. One finding of this survey is that fourteen institutions, or twenty-six percent of the fifty-three institutions responding, have had lawsuits filed against them during the past five years.

This chapter will delineate in some detail selected cases in which faculty members in the technical institutes and community colleges in North Carolina have instigated legal proceedings against those institutions. In several cases, judges have declined to rule on the merits of the case and have encouraged the litigants to settle their differences out of court.

BORDEAUX V. MCINTYRE

Cecelia Tripp Bordeaux filed suit against Charles B. McIntyre, President of Edgecombe Technical Institute, and others. Plaintiff Bordeaux alleged a violation of her rights under the Fourteenth Amendment to the United States Constitution. The complaint was filed April 6, 1977, in the New Bern Division of the Eastern North Carolina Federal District Court. The suit was for damages, punitive and compensatory, and retroactive benefits due the plaintiff

"as a result of the defendants' policy, practice, custom or usage of discriminating against conditions and privileges of employment."¹¹⁴

Bordeaux lived in Greenville, North Carolina. She was hired as an instructor in the Business Department of Edgecombe Technical Institute in 1968. She became chairman of the Business Department in 1971.¹¹⁵

In 1973, the business manager resigned and plaintiff applied for the position. Edgecombe Technical Institute's policy regarding promotions was that the institution would promote from within whenever possible. Only when a qualified person could not be found from within the staff would outside applicants be considered. Promotion of faculty was based upon education experience, professional experience, acceptance of responsibility, competence in present position, and qualification and competence for a higher position. On February 13, 1973, the President told her that she was qualified but that he doubted her ability to supervise maintenance personnel because she was a woman.¹¹⁶

Plaintiff claimed she was capable. When she appeared before the hiring committee, she was asked questions

¹¹⁴Brief for Plaintiff, p. 3, Bordeaux v. McIntyre, (E.D. N.C. 1977).

¹¹⁵Ibid., p. 4.

¹¹⁶Ibid., p. 6.

related to her sex. Examples are: "Do you have children?" "How will your husband react if you have to be away overnight?"¹¹⁷

A man named Charles Overton was selected for the position. He was less qualified academically. He had a B.S.B.A. from East Carolina University, while plaintiff had a master's degree from East Carolina University and had done work on her doctorate at Duke University.¹¹⁸

Overton then refused to accept the position. The defendant had told the plaintiff that she was second choice, but when Overton refused to accept the position, the Institute advertised outside the staff for applicants for the position. The plaintiff was told that she could not climb the water tank or look for trouble in the sewer lines because she was a woman. Supervision of maintenance personnel was required as a part of the job description.¹¹⁹

A male from outside was selected. The administration attempted to force her to resign after she filed an EEOC complaint in 1973. Plaintiff alleged that defendants had discriminated on the basis of sex and had injured her professionally.

¹¹⁷Ibid., p. 7.

¹¹⁸Ibid., p. 8.

¹¹⁹Ibid.

Plaintiff alleges that such discriminating practices described above were part of the pattern of discrimination engaged in by defendants against her based on sex, and were in addition, effected in reprisal for plaintiff's continuous efforts, including but not limited to public expression regarding arbitrary discrimination based on sex exerted against her by defendants, and such retaliation was in violation of her right to freedom of speech guaranteed her by the First Amendment.¹²⁰

The plaintiff sought compensatory damages for pain and anguish and injury to her professional standing in the amount of \$100,000, punitive damages in the amount of \$100,000, retroactive benefits of \$25,000, and attorney's fees.¹²¹

Defendants answered by denying all charges. They stated that the promotional policy alleged by plaintiff was not the policy set forth by the Board of Trustees of Edgecombe Technical Institute but was an answer made to the Southern Association of Colleges and Schools.¹²² The defendants said that they acted in good faith, not to deny the rights of the plaintiff.¹²³

This case was settled out of court in July, 1978. Mrs. Bordeaux was given a \$6,000 settlement in lieu of all other

¹²⁰Ibid., p. 9.

¹²¹Ibid.

¹²²Brief for Defendants, p. 7, *Bordeaux v. McIntyre*, (E.D. N.C. 1977).

¹²³Ibid., p. 14.

financial considerations in return for her agreement to release the institution from liability.¹²⁴

HANIG V. MILLS AND GASTON COLLEGE BOARD OF TRUSTEES

Mrs. Mary Hanig was head of the Nursing Department at Gaston College at the beginning of the presidency of Dr. Joseph Mills in July, 1975. In August of that year, Mrs. Hanig was removed from that position and made an instructor in the Nursing Department. She filed suit on September 15, 1975, in the United States District Court for the Western District of North Carolina, Charlotte Division.¹²⁵

The plaintiff stated, in her complaint, that Dr. Mills, Dr. Robert Howard, dean of instruction, and members of the Gaston College Board of Trustees had demoted her from department head to instructor in violation of liberty and property and without the due process of law secured to her by the Fourteenth Amendment to the United States Constitution. She alleged further that the defendants thereby damaged her in her good name, honor, integrity and reputation, and deprived her of continuing rights under her contract of employment at Gaston College. The

¹²⁴ Statement by Edwin M. Speas, Jr., Special Deputy Attorney General, Raleigh, North Carolina, September 7, 1978.

¹²⁵ Brief for Plaintiff, p. 1, Hanig v. Mills et al., (W.D. N.C. 1975).

complaint continued by stating that the actions of President Mills were arbitrary and the product of personal bias.¹²⁶

The following relief was sought: that

1. Defendants be enjoined to return plaintiff to the duty and pay of Head of the Department of Nursing at Gaston College.

2. Such relief be made permanent at final trial.

3. Plaintiff be awarded the sum of twenty-five thousand dollars (\$25,000) damages from President Mills.

4. Plaintiff recover her costs and have further relief as merited in the premises.¹²⁷

A supplemental complaint was filed on December 30, 1975. It stated:

1. All previous allegations are realleged.

2. Defendants Howard and Mills, by requesting that plaintiff resign, by assigning her to a building other than that housing the Department of Nursing, by denying her requested leave of absence, and other means, forced plaintiff to resign as an instructor in the Department of Nursing.

3. The alleged bases for demoting plaintiff from department head to instructor, and for causing her resignation, were arbitrary and without basis in fact.

¹²⁶ Ibid., p. 2.

¹²⁷ Ibid.

4. The forced resignation was in violation of liberty and property and without the due process of law secured to plaintiff by the Fourteenth Amendment to the United States Constitution. Defendants Mills and Howard damaged plaintiff in her good name, honor, integrity and reputation, and deprived her of continuing rights under her contract of employment with Gaston College.

5. Plaintiff had been deprived of pay, benefits, and allowances which rightly would have accrued to her had she not been wrongfully terminated as head and instructor.

6. Defendants were sued both individually and in their official capacities.

Additionally, plaintiff wanted her demotion and forced resignation declared illegal. She also asked to be returned to duty and pay as head of the Department of Nursing. Further, defendants should be ordered to pay back pay.¹²⁸

Gaston College filed an answer in October, 1975. The defense questioned the jurisdiction over the defendants because, they alleged, no proper legal questions arose that were not within the jurisdiction of the courts of North Carolina. The defense then essentially denied all allegations.¹²⁹

¹²⁸ Supplement to Brief for Plaintiff, pp. 1-2, Hanig v. Mills et al., (W.D. N.C. 1975).

¹²⁹ Brief for Defendants, p. 2, Hanig v. Mills et al., (W.D. N.C. 1975).

A more detailed defense prepared by Gaston College and its attorneys made the following points:

1. The Board of Trustees acted upon successive recommendations of the Dean of Instruction and the President to transfer Mrs. Hanig from the position of department head to instructor.

2. This action was taken after extensive efforts had been made to find a solution to Mrs. Hanig's apparent inability to lead this department.

3. The department had a history of resignations by faculty.

4. The department had a history of internal conflict among faculty members.

5. Mrs. Hanig discriminated among members of her staff by holding secret meetings.

6. Mrs. Hanig had a poor relationship with many students and excluded some of them arbitrarily.

7. Mrs. Hanig was asked to move her office but refused to comply.

8. Mrs. Hanig's salary had not been basically changed. She would only lose a local supplement of about \$1,000.

9. Dr. Mills had indicated to the plaintiff that he believed she should resign but that she could remain on the staff at her discretion.

10. Mrs. Hanig should not be returned to her original position because this would have a disruptive effect on the

department. There was agreement among the Board of Trustees, the President, the Dean of Instruction, the division dean, the acting head, and the current staff that such would be the case.

11. Mrs. Hanig's attempt to recover \$25,000 from Dr. Mills was in itself malicious in that Dr. Mills was only one individual in a chain of individuals who recommended that she be transferred, not fired. Dr. Mills acted upon the recommendation of the Dean of Instruction and passed his recommendation on to the Board of Trustees, who authorized her transfer.

12. Mrs. Hanig was not provided a full due process hearing because individuals in such positions serve at the pleasure of the administration and the Board of Trustees.

13. While Mrs. Hanig claimed a violation of her Fourteenth Amendment rights, the defendants contended that any damage to her name, honor, reputation, integrity, and continuing rights under her contract of employment were a result of her inability to lead the department and not that of the defendants. Mrs. Hanig would have been granted a hearing if she had been dismissed. The interest of the College in maintaining an important department outweighed any interest of the plaintiff in remaining as head of that department. This decision was purely an administrative

decision which accrues to the administrative and Board leadership at Gaston College.¹³⁰

A memorandum of decision and order was filed by Judge James B. McMillan in December, 1975. Conclusions of law were as follows:

1. The court had jurisdiction of the parties.
2. The court had jurisdiction of the subject matter.
3. Plaintiff had a sufficient expectancy of continuation as department head for the academic year 1975-76 to constitute a property interest in retention of this position.
4. Plaintiff was entitled to due process of law.¹³¹

Judge McMillan declined to order plaintiff's reinstatement to her position because the College was in the middle of a term and such relief needed to await a reasoned determination of the validity of the alleged bases of plaintiff's demotion. The parties were ordered to attempt to work out an agreement and to report back to the court.¹³²

On March 25, 1976, after agreement between the parties had been reached, Judge McMillan dismissed the

¹³⁰ Ibid., pp. 6-9.

¹³¹ Memorandum of Decision and Order, pp. 3-4, Hanig v. Mills et al., (W.D. N.C. 1975).

¹³² Ibid., p. 4.

action with prejudice and ordered the plaintiff to pay costs.¹³³

The formal agreement between the parties was signed on March 23, 1976. The trustees agreed to pay Mrs. Hanig \$8,500 in full settlement. Plaintiff agreed to discharge all claims against defendants and acknowledged that she was no longer employed by the college in any capacity. The College agreed that none of its officials would make any unfavorable recommendation to any prospective employer of Mrs. Hanig.¹³⁴

DAVIS V. MILLS, ET AL.

On November 28, 1975, Gaston College received a letter from the office of the Attorney General of North Carolina which stated that it was not legal for the board of trustees of a community college to grant tenure. A summary of this letter follows.

It appears that the State Board of Education has authority to implement a tenure policy for faculty members within the community college system or to delegate such authority to individual community colleges, but that a board of trustees itself does not have such authority.

¹³³Judgment of Judge James B. McMillan, p. 1, Hanig v. Mills et al., (W.D. N.C. 1976).

¹³⁴Formal Agreement, p. 1, Hanig v. Mills et al., (W.D. N.C. 1976).

The letter states that G.S. 115A-3 gives the Board of Education the authority to adopt and administer all policies, regulations, and standards which it considers necessary for the establishment and operation of the Department of Education. It also has authority to administer standards for professional personnel.

The authority of the local boards of trustees are set forth in G.S. 115A-14. The boards have authority to employ personnel upon nomination of the president, subject to standards established by the State Board of Education.

The position of the Attorney General is that boards of trustees may only employ faculty members and may not establish tenure regulations or policies. Their power in this area is specifically circumscribed by the State Board of Education. The State Board of Education has neither adopted such tenure policies nor delegated that authority to local boards of trustees.

The letter concludes by stating that this position by the Attorney General does not address the question of de facto tenure which conceivably could arise in the institutions.¹³⁵

¹³⁵ Letter from Rufus Edmisten, Attorney General of North Carolina, and Edwin M. Speas, Jr., Special Deputy Attorney General, to Honorable Carl J. Stewart, Jr., Gaston College attorney, November 28, 1975.

Subsequent to receiving this opinion from the Attorney General, Gaston College approved a new plan for faculty members and other college employees which was called, "Expectancy of Reemployment." The major features of this plan were contained in the Gaston College Policies and Procedures Manual. This plan, which was a substitute for the old tenure policy, granted to all employees at the beginning of their sixth consecutive year of employment the expectancy that they would be rehired except for financial exigency, low student demand and/or cancelling a course of study, or for cause.¹³⁶

On February 18, 1976, Claude Davis, a Gaston College faculty member, filed suit against President Joseph Mills, Robert Howard, dean of instruction, and the Board of Trustees.

In the first claim in the complaint, Davis said that he had been awarded tenure in 1971 and had worked at the College since 1965. He further claimed that these tenure rights were an integral part of his contract and that President Mills had, in December, 1975, declared that tenure rights were no longer effective at Gaston College. This declaration, the complaint continued, was issued without notice or hearing and in contravention of the

¹³⁶ Policies and Procedures Manual of Gaston College, 1976, pp. 64-65.

requirements set forth in college regulations. As a result of this action, plaintiff had been arbitrarily deprived of property rights and attendant procedural rights without due process of law in violation of the Fourteenth Amendment to the United States Constitution.¹³⁷

The second claim is that the actions of the defendants have breached the contract of employment between the plaintiff and the defendants, causing the plaintiff to lose salary in the amount of \$4,200.00 per year and further denying to the plaintiff the benefit of other terms and conditions of employment to which he was certified under the contract.¹³⁸

Plaintiff sought relief in the form of restoration of tenure, recovery of the alleged loss of salary and back pay, and his costs and attorney's fees.¹³⁹

Gaston College answered the complaint in March, 1976. The defendants stated that the complaint failed to state a claim against them upon which relief could be granted. The court did not have jurisdiction over the persons of the defendants nor over the subject matter of this action for the reason that no proper legal questions arose that

¹³⁷ Brief for Plaintiff, p. 2, Davis v. Mills et al., (W.D. N.C. 1976).

¹³⁸ Ibid.

¹³⁹ Ibid., p. 3.

were not within the jurisdiction of the courts of the State of North Carolina.¹⁴⁰

Defendants denied that the tenure rights held by the plaintiff were part of the contract of employment. Defendants also denied that Davis was arbitrarily deprived of property rights. They denied breach of contract. They admitted that in December, 1975, President Mills, acting under authority of the Board of Trustees of Gaston College and in his capacity as president announced that he had been informed by the office of the Attorney General of North Carolina that the College had no authority under the laws of the State of North Carolina to grant tenure. Defendants prayed that the plaintiff have and recover nothing in this action and that the same be dismissed.¹⁴¹

The case was settled out of court on June 26, 1978. The minutes of the Gaston College Board of Trustees reveal the following settlement:

1. Tenure is not reinstated at Gaston College.
2. The suit to reinstate tenure will be dismissed and the settlement is not to be construed as an admission of error or wrongdoing on the part of either party.
3. Davis will continue to be employed at the College as a faculty member and will be treated as fairly as any

¹⁴⁰Brief for Defendants, p. 1, Davis v. Mills et al., (W.D. N.C. 1976).

¹⁴¹Ibid., p. 2.

other faculty member with regard to employment, pay, evaluation, and other conditions of employment, including summer employment.

4. Certain direct expenses incurred by the plaintiff, including reasonable attorney's fees, will be paid by Gaston College.

5. The board will consider certain changes in the Policies and Procedures Manual as recommended by the college attorneys.¹⁴²

BATEMAN AND COX V. THE TRUSTEES OF
BEAUFORT COUNTY TECHNICAL
INSTITUTE, ET AL.

On September 13, 1971, Doris Bateman and Glenn T. Cox filed a complaint in the United States District Court for the Eastern District of North Carolina alleging that their contracts of employment had not been renewed for the 1970-71 academic year because of their exercise of their First Amendment rights, with specific reference to their support of two other employees dismissed in September of 1970. Defendants filed a motion to dismiss which was denied in an order dated November 12, 1971.¹⁴³

¹⁴²Minutes of Gaston College Board of Trustees, XII (June 26, 1978), 5.

¹⁴³Brief for Defendants-Appellants, p. 2, Bateman and Cox v. The Trustees of Beaufort County Technical Institute et al., (E.D. N.C. 1974).

Trial was held on February 25, 26, and 27, 1974, in New Bern, North Carolina. Presiding judge was the Honorable John Larkins, district judge. In a memorandum opinion and order dated April 11, 1974, the district court concluded that defendants had failed to reemploy plaintiffs because of the exercise of their constitutionally protected rights and ordered plaintiffs reinstated in their former positions beginning with the 1974 academic year.¹⁴⁴

Plaintiff Bateman was employed at Beaufort County Technical Institute as an instructor in secretarial science from 1965 until June of 1971. For the 1970-71 academic year, she was named chairperson of that department, but only one additional person was employed in the department. Plaintiff Cox was employed by Beaufort County Technical Institute in January of 1970 as a counselor-recruiter. His primary duties were to visit local schools and attempt to recruit them on behalf of the Institute.¹⁴⁵

The case arose after a period of controversy which began in September of 1970 and continued through the summer of 1971. The immediate cause of the controversy was the elevation of defendant Blanton by President Byrd from Dean of Instruction to Dean of Academic Affairs and the change in title of Charles R. Davis from Dean of

¹⁴⁴ Ibid.

¹⁴⁵ Ibid., pp. 3-4.

Student Affairs to Director of Student Affairs. Mr. Davis and other members of the faculty strongly disagreed with these decisions.¹⁴⁶

On September 11, 1970, Mrs. Martha Godley, president of the Faculty Senate, called a meeting of the faculty. At that meeting and at a subsequent meeting, various members of the faculty were critical of the administration concerning the "Davis demotion" and other policies. It was suggested that members of the faculty appeal to the Board of Trustees to dismiss defendant Byrd. Among those persons critical of the administration were David Milligan, Ken Chalk, Linda Titus, Aida Byrd, Martha Godley, Carol Henry, and plaintiffs Bateman and Cox. Of these persons, Chalk, Titus, and Byrd remain on the faculty. Godley and Henry have since resigned. Plaintiffs Bateman and Cox were not reemployed after the 1970-71 academic year. Davis and Milligan were dismissed.¹⁴⁷

On the night of September 14, 1970, David Milligan, Charles R. Davis, Martha Godley, Loretta Moose, Buddy Harrell, Pat Rawls, and plaintiffs Bateman and Cox met with two attorneys to discuss the dismissal of Davis and Milligan. The trial court found that all eight of these persons had either been dismissed or resigned from the

¹⁴⁶ Ibid., p. 4.

¹⁴⁷ Ibid., pp. 4-5.

institution by February of 1971. Defendants claimed that this finding was in error. There was no evidence that Moose or Harrell was ever employed by the Institute. There was no evidence of the reasons for the resignation of Henry, and it cannot be assumed, in the absence of such evidence, that her resignation was connected with this case. The President had written Godley, "When you complete your graduate studies, we hope that you may consider reemployment."¹⁴⁸

There was an adverse effect on the efficient and orderly functioning of the institution as a result of the controversy. There was a hectic and unorganized atmosphere. Students observed the discord that developed, and the learning environment suffered. Staff members were suspicious of each other, and tension existed at many institutional functions. There were major disputes and accusations against the President.¹⁴⁹

During the summer of 1970, before the eruption of any controversy, Bateman was evaluated by Blanton, dean of instruction and her immediate superior. Defendant Blanton listed several negative qualities and stated that these qualities had caused considerable displeasure with Bateman's services at the institution and could lead to the

¹⁴⁸Ibid., pp. 5-6.

¹⁴⁹Ibid., pp. 6-7.

nonrenewal of her contract. Bateman was again evaluated in February of 1971. This was a part of the normal process of employment, according to the defendants. The evaluation was conducted by Mr. Jack Cherry, who had succeeded Blanton as Dean of Instruction. Mr. Cherry had indicated disagreement with certain administration policies in the past. There was no evidence that Mr. Cherry was coerced or pressured by defendants Byrd and Blanton in making his recommendations. It does not appear that any conversation was ever held concerning his recommendations prior to their being made, claim the defendants. Mr. Cherry recommended that Bateman not be reemployed for the 1971-72 academic year.¹⁵⁰

Mr. Cherry's recommendation went to defendant Blanton and from him to the President. Both concurred in Mr. Cherry's recommendation to dismiss Bateman, and their recommendation was supported by the Board of Trustees. Defendants Blanton and Byrd said their recommendation to dismiss Bateman was not based on her anti-administration stance.¹⁵¹

Evidence was presented at the trial that Bateman was often late for class, that noise from her class sometimes disrupted other classes, that employers of secretarial

¹⁵⁰ Ibid., p. 9.

¹⁵¹ Ibid., p. 10.

graduates were often dissatisfied with their performance, that Bateman criticized other members of the faculty in front of her classes, that she was overly friendly with her students, and that her appearance and mannerisms were not acceptable to the institution.¹⁵²

Plaintiff Cox was employed at the Institute in January of 1970 upon recommendation of Mr. Charles R. Davis. He was formerly employed as an automobile salesman and had no college training and no experience in the area of recruitment and counseling.¹⁵³

Another person, Mr. Francis Mebane, was employed as a recruiter/counselor at this time. Mr. Mebane had a master's degree and thirty years experience in the public schools. In spite of this, Mr. Davis placed Mr. Cox in charge of recruiter/counselors. This was done without the knowledge of Mr. Blanton or President Byrd. Upon dismissal of Mr. Davis in September of 1970, Mr. Durmont K. Reid became Mr. Cox's immediate supervisor. It was he who recommended that Mr. Cox not be rehired for the 1971-72 academic year. President Byrd and Mr. Blanton concurred in the recommendation not to rehire Mr. Cox, and the Board of Trustees approved.¹⁵⁴

¹⁵² Ibid., p. 11.

¹⁵³ Ibid.

¹⁵⁴ Ibid., p. 12.

Testimony purported to show that Mr. Cox was inadequate as a counselor because he had no training. The state personnel guidelines for the community college system suggest that a counselor/recruiter should have at least a master's degree. No one was hired to replace Mr. Cox on the staff of counselor/recruiters.¹⁵⁵

Arguments by the defendants when the case was appealed to the United States Court of Appeals for the Fourth Circuit are summarized below. The appeal is dated November 12, 1974.

1. Plaintiffs have not shown that the decision not to renew their contracts was motivated by any constitutionally impermissible reason. Defendants argued that the District Court erred because all those in attendance at a meeting in which faculty members criticized the administration were not forced out of the institution. Further, several members of the faculty who had been openly critical of the administration were still employed at the institution. Another argument is that Mrs. Bateman and Mr. Cox had received poor evaluations prior to their dismissal. Finally, the conduct of the plaintiffs cannot be constitutionally protected free speech because their activities were calculated to undermine the President in the process of performing his normal duties.¹⁵⁶

¹⁵⁵Ibid., pp. 13-14.

¹⁵⁶Ibid., pp. 15-19.

2. The evidence clearly shows that plaintiffs' conduct disrupted the normal functioning of the school, so they should not prevail in this action. Since the right of free speech is not absolute, the significant disruption of the orderly processes of the Institute caused by the defendants made their dismissal justifiable. Their speech and conduct affected the performance of normal duties and responsibilities. Plaintiffs' speech and conduct outside the institution affected their performance inside the institution and adversely affected harmonious working relationships between and among the faculty, students, and administration. Their conduct and speech did not deal with a "public" issue. In summary, it was evident that disruption and interference with the orderly and efficient functioning of the institution flowed from the conduct and activities of plaintiffs so as to remove that conduct and activity from the protection of the First and Fourteenth Amendments.¹⁵⁷

3. Even if constitutionally impermissible reasons were involved in the decision not to rehire the plaintiffs, such reasons were not the primary or motivating factor in that decision. The District Court concluded that if failure to renew the plaintiffs' contracts were even partially motivated by constitutionally impermissible

¹⁵⁷ Ibid., pp. 21-27.

reasons, plaintiffs should prevail. Defendants argue that a teacher could ensure permanent employment by engaging in behavior that was constitutionally protected and thus make himself/herself immune from dismissal. Plaintiffs must show a constitutionally impermissible reason to have been the primary motivating factor. It is unrealistic to require an educational institution to retain incompetent, unqualified, or uncooperative teachers merely because of the incidental involvement of a First Amendment right.¹⁵⁸

4. Under the facts of this case, reinstatement is not an appropriate remedy. In this case, reinstatement would cause undue friction and disturb staff morale. The institution was at this time operating smoothly. To reinstate individuals harboring strong feelings about the controversy could only open old wounds and disrupt the efficient functioning of the Institute. Also, there was no longer a position of counselor/recruiter available at the institution. It would thus be necessary to create a position with no duties.¹⁵⁹

The Court of Appeals confirmed the decision of the District Court. Neither of the plaintiffs returned to Beaufort County Technical Institute. The Institute bought

¹⁵⁸ Ibid., pp. 28-30.

¹⁵⁹ Ibid., pp. 33-34.

their rights to be reinstated for a total amount to both plaintiffs of \$18,000.¹⁶⁰

JEFFUS V. BEERMAN

Charles J. Jeffus, a faculty member at Guilford Technical Institute at Jamestown, North Carolina, filed suit against William Beerman, a trustee, and others, on November 1, 1973. The suit was filed in the United States District Court for the Middle District of North Carolina, Greensboro Division.¹⁶¹

Plaintiff claimed breach of contract and deprivation of civil rights. Defendants were sued individually and in their official capacities.¹⁶²

Principals in the suit were: Luther Medlin, president; the Board of Trustees; N. J. Owens, Jr., vice-president for instruction; Pepino, associate dean for curriculum programs; and Nikfarjam, chairman of the Math-Science Department.¹⁶³

Plaintiff was a qualified engineer and teacher of mathematics and technical subjects, according to the brief filed by the plaintiff. He had a B.S. degree from the

¹⁶⁰ Statement by Edwin M. Speas, Jr., Special Deputy Attorney General, Raleigh, North Carolina, June 1, 1978.

¹⁶¹ Brief for Plaintiff, p. 1, Jeffus v. Beerman, (M.D. N.C. 1975).

¹⁶² Ibid., p. 1-2.

¹⁶³ Ibid., p. 2.

United States Military Academy, an M.S. from MIT, and an M.T.M. from North Carolina State University. He served in the United States Army Corps of Engineers and taught at North Carolina State University and Holding Technical Institute in Raleigh, North Carolina.¹⁶⁴

The complaint continued by stating that the plaintiff was on the faculty at Guilford Technical Institute from 1971 to 1973. In 1971-72, he was assigned to the Civil Engineering Technology Department and taught subjects related to engineering. In 1971-72 and 1972-73, the plaintiff was shocked at the lack of equipment, facilities, and the organization and administration at the institution. He alleged that he was directed to falsify reports about classes and that he was required to give certain grades despite student performance. He spoke out against these alleged abuses of professionalism, academic freedom, and honesty. Plaintiff worked extra hours, served on committees, and made recommendations to rectify these matters.¹⁶⁵

In 1972-73, he requested and received a transfer from the Civil Engineering Technology Department to the Math-Science Department. He was required to teach four courses in the Guided Studies Division. These remedial courses were not part of his contract and were imposed on him in

¹⁶⁴Ibid., p. 3.

¹⁶⁵Ibid.

violation of his understanding that he would be teaching in the Math-Science Department.¹⁶⁶

To avoid repetition of the above, Jeffus requested and received a contract which specifically provided that he would be teaching in the Math-Science Department, according to the complaint.¹⁶⁷

Registration was on August 23, 1973. Plaintiff was informed that he would teach remedial arithmetic in the Guided Studies Program. He stated that he would not accept the assignment. Nikfarjam took him to Pepino. Pepino attempted to coerce the plaintiff into taking the assignment, the complaint alleged. He was given an ultimatum by Pepino. Plaintiff had his contract breached and was entitled to restitution and damages. He had been unemployed since August 28, 1973.¹⁶⁸

The complaint continued by stating that actions by the defendants were taken to punish the plaintiff for his exercise of free speech. He was punished for his constructive, detailed criticism in violation of his First and Fourteenth Amendment rights under the United States Constitution. He

¹⁶⁶Ibid., p. 4.

¹⁶⁷Ibid.

¹⁶⁸Ibid.

was deprived of his employment and professional position for exercising his constitutional rights.¹⁶⁹

Guilford Technical Institute had provision for due process and a hearing for dismissal. Jeffus was entitled to his constitutional rights of due process as he had a property interest in his employment. Plaintiff was deprived of advance notice of change in his status and was given no hearing. He was given an ultimatum to obey or resign in violation of his Fourteenth Amendment right of due process.¹⁷⁰

Plaintiff sought the following relief:

1. The sum of \$250,000 for violation of his constitutional rights.

2. The sum of \$11,655 in damages for breach of contract.

3. Reinstatement to his contracted position with the rights and privileges to which he was entitled and clearance of the plaintiff's record of all matters placed thereon because of the activities involved in this lawsuit.

4. Attorney's fees.

5. Defendants to pay court costs.

6. The court would award any other relief it deemed proper.

7. Trial by jury.¹⁷¹

¹⁶⁹ Ibid., p. 5.

¹⁷⁰ Ibid.

¹⁷¹ Ibid., p. 6.

Defendants answered by denying most charges. The answer states that since 1969, remedial math courses have been taught by qualified faculty as needed. Most students at Guilford Technical Institute needed remedial courses.¹⁷²

All members of the teaching faculty in the Math-Science Department qualified to teach math taught at least one remedial math course during the period from September, 1972, through August, 1973. Department Chairman Nikfarjam taught six remedial math courses himself.¹⁷³

In the spring of 1973, the plaintiff asked Nikfarjam if he would have to teach remedial math courses in the fall quarter. Nikfarjam told the plaintiff that he could not guarantee that he would not. In the summer of 1973, Nikfarjam showed the plaintiff a tentative schedule and told him his assignment would include remedial math courses. Plaintiff raised no objections.¹⁷⁴

On August 11, 1973, a certified letter from President Medlin notified the plaintiff that, "We have only one contract with our employees and therefore cannot enter into any supplemental contractual arrangement."¹⁷⁵ Plaintiff

¹⁷²Brief for Defendants, p. 3, Jeffus v. Beerman, (M.D. N.C. 1975).

¹⁷³Ibid., p. 4.

¹⁷⁴Ibid.

¹⁷⁵Ibid.

returned his executed contract to President Medlin with no exceptions, amendments, or supplemental contracts attached.¹⁷⁶

The events surrounding registration day, August 28, 1973, were recounted by the defendants as follows. Plaintiff reported to Nikfarjam and asked to see his schedule for the fall. Plaintiff refused to teach remedial math and said he needed time to think. Plaintiff was advised to make his decision soon as to whether he planned to accept the assignment. There was no attempt to coerce or force him to resign, and no one said he would be discharged. He came back later that day and resigned. He said that he would not talk with Vice-President Owens and would give his letter of resignation to President Medlin. He said that teaching at Guilford Technical Institute was a waste of his time and talents and an affront to his professional dignity.¹⁷⁷

The resignation of the plaintiff was entirely voluntary and without coercion by the defendants.¹⁷⁸

Due process policies applied only in case of dismissal or nonrenewal or any other action that would have serious adverse effect on the individual's status or working

¹⁷⁶ Ibid.

¹⁷⁷ Ibid., p. 5.

¹⁷⁸ Ibid.

conditions. When an employee resigned, such voluntary resignation did not come under the purview of the requirements of this policy.¹⁷⁹

The answer was filed December 3, 1973. It asked that the relief requested by the plaintiff be denied and costs of the action be taxed against the plaintiff.¹⁸⁰

A release of all claims was signed April 14, 1975, by Charles J. Jeffus, plaintiff. In summary, the agreement specified the following:

1. The defendants, without admitting liability and without admitting the allegations, agreed to pay \$15,540.00 to the plaintiff. This amount equaled one year's salary at Guilford Technical Institute.

2. Since the trial judge indicated that attorney's fees would be in order if the case continued, defendants, without admitting any liability for attorney's fees, agreed to pay an amount of \$2,460.00 to Charles J. Jeffus.

3. In consideration of the \$18,000 sum, Jeffus agreed to release and settle all matters and things which were alleged or may have been alleged arising out of the employment contract during his employment at Guilford Technical

¹⁷⁹ Ibid., p. 6.

¹⁸⁰ Ibid.

Institute. This release applied to the Institute and to all individuals named in the lawsuit.¹⁸¹

Eugene A. Gordon, district judge, signed a judgment of dismissal. This document stated that since the parties had settled and agreed upon matters in action and plaintiff desired to take a dismissal with prejudice, the action was so ordered.¹⁸²

¹⁸¹Release of all claims, p. 1, Jeffus v. Beerman, (M.D. N.C. 1975), April 14, 1975.

¹⁸²Judgment of Dismissal, p. 1, Jeffus v. Beerman, (M.D. N.C. 1975), April 16, 1975.

Chapter IV

RESULTS OF THE SURVEY OF THE PRESIDENTS IN THE SYSTEM OF COMMUNITY COLLEGES AND TECHNICAL INSTITUTES

This survey was undertaken in an attempt to: (1) particularize the study to the system of community colleges and technical institutes in North Carolina, (2) present current and relevant material, and (3) secure information directly from the institutions in the system.

BACKGROUND

A survey instrument was designed specifically for this study. It was mailed to the presidents of the fifty-seven institutions in the system of community colleges and technical institutes in North Carolina. Table I (page 100) reveals that twenty of twenty-one community colleges returned the survey instrument. This is a response of ninety-five percent. Thirty-three of thirty-six technical institutes returned the instrument. This is a response of ninety-two percent. Total returns are fifty-three of fifty-seven, or ninety-three percent. In addition, one survey instrument was returned blank from a technical institute. The survey was designed to investigate the relationship, if any, between the responses to individual

questions by community colleges and technical institutes.

Statistical information secured from the survey was processed by IBM computer 370/165 at the North Carolina Research Triangle. Cards were punched at Gaston College, Dallas, North Carolina, and fed into the IBM computer at Research Triangle Park using Data 100 equipment on the Gaston College campus.

The computer program involved crosstabulations and subprogram crosstabs which produced contingency tables. Essentially, this produced a joint frequency distribution of cases as defined by the categories of two or more variables.

Table II (page 102) shows the breakdown of responses to the survey by community colleges and technical institutes. Size of the institutions was determined by securing the head count enrollment of students for fall, winter, and spring quarters of the academic year 1977-78. These figures were averaged for each institution. The median for all institutions was then obtained. The median was used so that the size of the institutions would not be affected by extremes of student enrollment. The largest institution had an average enrollment of 13,317, while the smallest had an average enrollment of 186.

The figures in Table II reveal that twelve community colleges are above the median figure of 1,279, and eight are below. Eleven technical institutes are above the

TABLE I
NUMBER AND PERCENT OF RESPONSES BY
COMMUNITY COLLEGES AND
TECHNICAL INSTITUTES

	<u>Type of institution</u>		Total
	Community College	Technical Institute	
Number of Institutions Surveyed	21	36	57
Number of Institutions Responding	20	33	53
Percent of Responses	95	92	93

median, and sixteen are below. Six technical institutes did not respond to the request for student enrollment.

CONTRACTS

The following areas of inquiry were listed in the section on contracts:

1. Which employee groups on campus are issued written contracts (faculty, administrators, administrative support, office personnel)?

2. Indicate length of faculty contracts (nine months, ten months, twelve months, other).

3. Briefly describe the typical faculty contractual arrangement in regard to length of contracts.

4. Do faculty contracts specify that a faculty member will teach?

5. If so, do contracts specify what subjects will be taught?

6. Do contracts specify in which division the instructor will teach?

7. Do contracts specify under what conditions the contract may be abrogated by the institution?

8. Briefly describe these conditions.

9. Do contracts specify the teaching load (contact hours) and minimum work week?

10. Do contracts make any reference to tenure, continuity of employment, or expectancy of reemployment?

TABLE II
 SIZE OF INSTITUTIONS*

	Median enrollment			Total
	No response	Above	Below	
Community Colleges	0	12	8	20
Technical Institutes	6	11	16	33
Total	6	23	24	53

*For the purposes of this study, size was determined by obtaining the mean average of head count student enrollment for fall, winter, and spring of 1977-78. The median size was then obtained for all institutions. This number (1,279) is not affected by extremely large or extremely small institutions.

11. Do faculty members agree to abide by established policies in signing the contract?

12. Have the institution's contracts been changed in any significant way in the past five years?

13. Were these changes made by the administration or the trustees? (Specify.)

14. Briefly discuss the nature of these changes.

15. In the president's personal judgment, are members of the faculty satisfied with contractual arrangements?

Employee Groups which are Issued Written Contracts

Faculty members are issued written contracts in nineteen (95 percent) of twenty community colleges responding to the survey (Table III, page 105). Thirty-two (97 percent) of thirty-three technical institutes responded positively to the question. Ninety-six percent of all institutions issue contracts to faculty, and four percent do not. Totals are fifty-one of fifty-three institutions.

Administrators receive contracts in eighteen (90 percent) of twenty community colleges and thirty (91 percent) of thirty-three technical institutes. Forty-eight (91 percent) of fifty-three issue contracts in the combined institutions.

Results are similar in the area of administrative support. Nineteen (95 percent) of twenty community colleges and thirty (91 percent) of thirty-three technical

institutes issue contracts to this group of employees. Totals are forty-nine (93 percent) which issue contracts and seven (7 percent) which do not.

Office personnel receive contracts at thirteen (65 percent) of twenty community colleges and twenty-four (73 percent) of thirty-three technical institutes. Totals are thirty-seven (70 percent) which do issue contracts and sixteen (30 percent) which do not.

Length of Faculty Contracts

Eighteen (90 percent) of twenty community colleges have nine-month contracts for faculty (Table IV, page 107) and twenty (61 percent) of thirty-three technical institutes. Totals are thirty-eight (72 percent) institutions which do issue nine-month contracts and fifteen (28 percent) which do not.

Table IV also reveals that twelve (60 percent) of twenty community colleges and nineteen (58 percent) of thirty-three technical institutes have ten-month contracts. Totals are thirty-one (59 percent) which do and twenty-two (41 percent) which do not.

Twelve-month contracts are issued in seventeen (85 percent) of twenty community colleges and thirty-one (94 percent) of thirty-three technical institutes. Totals are forty-eight (91 percent) which do issue such contracts and five (9 percent) which do not.

TABLE III
 EMPLOYEE GROUPS WHICH ARE ISSUED
 WRITTEN CONTRACTS

	<u>Employee groups</u>											
	<u>Faculty</u>			<u>Administrators</u>			<u>Administrative Support</u>			<u>Office Personnel</u>		
	No	Yes	Total	No	Yes	Total	No	Yes	Total	No	Yes	Total
Community College Responses	1	19	20	2	18	20	1	19	20	7	13	20
Technical Institute Responses	1	32	33	3	30	33	3	30	33	9	24	33
Total	2	51	53	5	48	53	4	49	53	16	37	53
Percent of Responses	4	96	100	9	91	100	7	93	100	30	70	100

Other types of contracts are issued in ten (50 percent) of twenty community colleges and twelve (36 percent) of thirty-three technical institutes. Totals are twenty-two (42 percent) which do and thirty-one (58 percent) which do not.

Typical faculty contractual arrangements. Eighteen (90 percent) community college presidents responded to the request for a description of the typical faculty contractual arrangement. Six (30 percent) institutions have nine-month contracts or nine-plus-three-month contracts. Eight (40 percent) institutions state that twelve-month contracts are typical. Four (20 percent) specified some other arrangement. These included:

1. Some twelve-month contracts, plus some nine-month contracts, with an additional six or twelve weeks contracted during the summer.
2. Contracts drawn for the exact term of employment.
3. Numerous contracts, including twelve-month, eleven-month, ten-month, and three-month contracts.
4. No pattern, but including ten-and-one-half-month, twelve-month, and nine-month contracts.

Thirty-one (94 percent) technical institute presidents responded to this question. Three (9 percent) had nine-month or nine-plus-three-month contracts. Seventeen (52 percent) responded that a twelve-month contract was typical.

TABLE IV
LENGTH OF FACULTY CONTRACTS

	<u>Contract length in months</u>											
	<u>Nine months</u>			<u>Ten months</u>			<u>Twelve months</u>			<u>Other</u>		
	No	Yes	Total	No	Yes	Total	No	Yes	Total	No	Yes	Total
Community College Responses	2	18	20	8	12	20	3	17	20	10	10	20
Technical Institute Responses	13	20	33	14	19	33	2	31	33	21	12	33
Total	15	38	53	22	31	53	5	48	53	31	22	53
Percent of Responses	28	72	100	41	59	100	9	91	100	58	42	100

Other arrangements included were specified by eleven (33 percent) institutions. These included:

1. Differences in length of contracts by divisions within the institutions. For example, twelve-month contracts in technical and/or vocational divisions where programs are of one-year duration.

2. Nine or twelve months, depending on curriculum and need.

3. Ten and twelve months with summer employment if needed.

4. Some nine, ten, or twelve-month contracts.

5. Nine or twelve months, with contracts not written as nine-plus-three months.

6. All contracts for a specific term which varies.

Specifications of Faculty Contracts

Seven questions were included in this section. Results are presented below. Data in this section are depicted in Table V, pages 113 and 114.

Do contracts specify that a faculty member will teach? One (5 percent) community college and two (6 percent) technical institutes did not respond. Twelve (60 percent) community colleges of the nineteen remaining responded positively and seven (35 percent) negatively. Seventeen (52 percent) of the technical institutes responded positively and fourteen (42 percent) negatively. Totals are three (6 percent) with

no response, twenty-nine (54 percent) responding positively, and twenty-one (40 percent) responding negatively.

Do contracts specify what subjects will be taught? One (5 percent) community college and six (18 percent) technical institutes did not respond. Two (10 percent) community colleges responded positively to the question and seventeen (85 percent) responded negatively, while six (18 percent) technical institutes responded positively and twenty-one (64 percent) responded negatively. Totals are eight (15 percent) positive responses and thirty-eight (72 percent) negative responses.

Do contracts specify in which division the instructor will teach? Table V reveals that three (6 percent) institutions did not respond to this question. Six (30 percent) community colleges and twelve (36 percent) technical institutes responded positively, while thirteen (65 percent) community colleges and nineteen (58 percent) technical institutes responded negatively. Totals are eighteen (34 percent) positive responses and thirty-two (60 percent) negative responses.

Do contracts specify conditions for abrogation of the contract? Three (6 percent) institutions did not respond. Twelve (60 percent) community colleges and sixteen (48 percent) technical institutes responded positively, while

seven (35 percent) community colleges and fifteen (45 percent) technical institutes responded negatively. Totals are twenty-eight (53 percent) institutions responding positively and twenty-two (41 percent) responding negatively.

Conditions for abrogation of contract. Twenty-eight survey instruments responded to this request for a brief description of the conditions under which the contract could be abrogated by the institution. These responses either presented information (fourteen responses) or referred to an attached contract or faculty handbook (fourteen responses).

Portions of responses are presented below:

1. Lack of students or funds.
2. Reorganization, decreased enrollment, insufficient funds.
3. Inadequate funds, enrollment.
4. Cause, financial exigency.
5. Program termination, failure of employee to abide by terms of contract.
6. Incompetence, neglect of duty, unbecoming conduct.
7. Moral turpitude, inability or unwillingness to perform assigned duties, insubordination, illegal acts.
8. Date of contract expires.
9. Lack of sufficient funds.
10. Board of Trustees action.
11. Financial exigency, unprofessional conduct.

12. All employees must work a probationary period. Each contract has a specific beginning and ending date.

13. Neglect of duty, incompetence, serious misconduct, mental or physical incapacity of a permanent nature, financial exigency, changes in programs.

14. Violation of policy.

Twenty-seven (51 percent) institutions enclosed a contract or other document relating to contractual arrangements. An examination of these documents reveals that twenty refer to an expectation that the faculty member will abide by established policies, rules, or regulations. Twelve refer to financial exigency or sufficient funding. Six refer to causes for dismissal; five refer to termination of programs; three refer to enrollment.

Do contracts specify the teaching load and minimum work week? Two (4 percent) institutions did not respond. One (5 percent) community college and six (18 percent) technical institutes responded positively, while eighteen (90 percent) community colleges and twenty-six (79 percent) technical institutes responded negatively. Totals are seven (13 percent) responding positively, forty-four (83 percent) responding negatively, and two (4 percent) not responding.

Do contracts make any reference to tenure, continuity of employment, or expectancy of reemployment? Three (6 percent) institutions did not respond. Six (30 percent)

community colleges and twelve (36 percent) technical institutes responded positively, while thirteen (65 percent) community colleges and nineteen (58 percent) technical institutes responded negatively. Totals are eighteen (34 percent) institutions indicating a positive response, thirty-two (60 percent) indicating a negative response, and three (6 percent) not responding.

Do faculty members agree to abide by established policies in signing the contract? Four (8 percent) institutions did not respond. Fifteen (75 percent) community colleges and twenty-seven (82 percent) technical institutes responded positively, and three (15 percent) community colleges and four (12 percent) technical institutes responded negatively. Totals reveal that forty-two (79 percent) institutions responded positively and seven (13 percent) responded negatively.

Changes in Contracts

Responses to the question of whether contracts have been changed significantly within the last five years are delineated in Table VI (page 116). One (5 percent) community college and two (6 percent) technical institutes did not respond. Seven (35 percent) responded that there had been significant changes in contracts within the past five years and twelve (60 percent) responded negatively. Technical institutes had a higher percentage of positive

TABLE V
SPECIFICATIONS OF FACULTY CONTRACTS

	<u>Type of institution</u>									<u>Percent of responses</u>		
	<u>Community college</u>			<u>Technical institute</u>			<u>Total</u>			<u>No</u>	<u>Yes</u>	<u>No</u>
	<u>No response</u>	<u>Yes</u>	<u>No</u>	<u>No response</u>	<u>Yes</u>	<u>No</u>	<u>No response</u>	<u>Yes</u>	<u>No</u>			
Do contracts specify that a faculty member will teach?.....	1	12	7	2	17	14	3	29	21	6	54	40
Do contracts specify what subjects will be taught?.....	1	2	17	6	6	21	7	8	38	13	15	72
Do contracts specify in which division the instructor will teach?.....	1	6	13	2	12	19	3	18	32	6	34	60

TABLE V (continued)

	Type of institution											
	Community college			Technical institute			Total			Percent of responses		
	No response	Yes	No	No response	Yes	No	No response	Yes	No	No response	Yes	No
Do contracts specify conditions for abrogation of the contract?..	1	12	7	2	16	15	3	28	22	6	53	41
Do contracts specify the teaching load and minimum work week?.....	1	1	18	1	6	26	2	7	44	4	13	83
Do contracts make any reference to tenure, continuity of employment, or expectancy of reemployment?.....	1	6	13	2	12	19	3	18	32	6	34	60
Do faculty members agree to abide by established policies in signing the contract?.....	2	15	3	2	27	4	4	42	7	8	79	13

responses. Eighteen (55 percent) responded positively and thirteen (39 percent) responded negatively.

Sources of Contract Changes

Twelve (60 percent) community colleges and sixteen (48 percent) technical institutes had no changes or did not respond. Two (10 percent) community colleges and four (12 percent) technical institutes had contracts changed by the administration. No community colleges and two (6 percent) technical institutes had contracts changed by the trustees. Six (30 percent) community colleges and eleven (33 percent) technical institutes had changes made by the administration and trustees working together. Institutional totals are: twenty-eight (53 percent) had no changes or no response, six (11 percent) had changes by the administration, two (4 percent) had changes by the trustees, and seventeen (32 percent) had changes made by both. (Table VII, page 117.)

Discussion of the nature of the contract changes. Twenty-three (43 percent) of the survey instruments discussed the nature of changes in contracts during the past five years. These responses are presented below:

1. Contracts revised to give instructors probationary contracts for the first three years, a nontenured contract beginning with the fourth year, and a tenured contract at time of eligibility.

TABLE VI
CHANGES IN CONTRACTS

	<u>Type of institution</u>							
	<u>Community college</u>				<u>Technical institute</u>			
	No response	Yes	No	Total	No response	Yes	No	Total
Contracts have been changed significantly in last five years.....	1	7	12	20	2	18	13	33
Percent of Responses...	5	35	60	100	6	55	39	100

TABLE VII
SOURCES OF CONTRACT CHANGES

	<u>Contract change agent</u>				Total
	No changes or no response	Administration	Trustees	Both	
Community Colleges	12	2	0	6	20
Technical Institutes	16	4	2	11	33
Total	28	6	2	17	53
Percent of Responses	53	11	4	32	100

2. Conditions of continuity of employment delineated.
3. Holidays, length of contract, merit pay sections added.
4. Paragraph added to distinguish between nonrenewal and dismissal for cause.
5. Contract changed to show employee's address and the specific months of the contract rather than just the school year.
6. Length of contract specified.
7. Original contract written.
8. Clarification made.
9. Changes recommended by president as a result of study in doctoral program.
10. Exigency clause added.
11. Any mention of teaching subject area and subjects to be taught omitted.
12. conditions for abrogation included and assignment of teaching duties in another area or division added.
13. Annual letter changed to contract.
14. Letter of appointment changed to contract.
15. Written agreements instituted.
16. Constantly updated in light of legal and social change.
17. Statements added regarding new employees and special conditions for returning.

18. Amendment by college allowed if funds not forthcoming from the State.
19. References added to "no right of tenure" and conditions under which the contract can be abrogated.
20. Clarification of grounds for dismissal, work hours, wage calculation, tenure added.
21. Contracts not issued five years ago.
22. No changes needed as contract completely developed.
23. Clause added relative to presidential assignment and reassignment to day and/or evening instructional and noninstructional duties.

Satisfaction of Faculty Members
with Contractual Arrangements

Presidents were asked to give their judgment as to whether faculty members were satisfied with present contractual arrangements. The overwhelming majority responded in the affirmative. Nineteen (98 percent) community college presidents responded positively and only one (2 percent) responded negatively. Thirty-three (100 percent) of technical institute presidents responded positively.

(Table VIII, page 120.)

TENURE

The following areas of inquiry were listed in the section on tenure:

- A. Questions to be answered by all.

TABLE VIII
 SATISFACTION OF FACULTY MEMBERS WITH
 CONTRACTUAL ARRANGEMENTS

	<u>Type of institution</u>						<u>Total</u>
	<u>Community college</u>			<u>Technical institute</u>			
	No	Yes	Total	No	Yes	Total	
President's judgment--faculty members satisfied with contracts.....	1	19	20	0	33	33	53
Percent of Responses.....	2	98	100	0	100	100	

1. Does the institution currently have a tenure plan?
2. If not, did the institution have a tenure plan in the past?
3. If there was no tenure plan, was there any type of de facto tenure, such as continuing contracts or "expectancy of reemployment?"
4. Please describe the tenure or de facto tenure plan.

B. Questions to be answered if the institution had tenure.

1. What is the length of service required before tenure is granted?
2. Briefly describe the process of granting tenure.
3. What percentage of the faculty is covered by the tenure plan?
4. Has the board of trustees ever failed to grant tenure when an instructor was qualified?
5. For what reasons (typically)?
6. Does the president consider that the tenure plan is successfully accomplishing its purpose?
7. Would the president prefer to operate the institution without such a plan?
8. Does tenure encourage mediocrity?

9. Does tenure adversely affect the administration's relationships with the faculty?
 10. On balance, is tenure good or bad for an institution?
- C. Questions to be answered if the institution did not have tenure.
1. Would the faculty prefer to serve under a tenure plan?
 2. Have there been attempts by the faculty to develop a tenure plan?
 3. Is the president personally familiar with the concept of tenure and the legal aspects of tenure plans?
 4. Would tenure restrict or limit the president's relationships with the faculty?
 5. Does the president prefer to operate without tenure?
 6. Does tenure encourage mediocrity?
 7. On balance, is tenure good or bad for an institution?
 8. Is the administration currently considering instituting a tenure or de facto tenure plan?

Existence of Tenure/De Facto Tenure

Table IX (page 124) shows responses to questions involving the existence of tenure in the institutions.

These responses are discussed below.

Does the institution currently have a tenure plan? Four (20 percent) community colleges and one (3 percent) technical institute responded that they currently have a tenure plan. Sixteen (80 percent) community colleges and thirty-two (97 percent) technical institutes responded negatively. Totals show that five (9 percent) of the institutions have tenure plans.

Was there a tenure plan in the past? Four (20 percent) community colleges and one (3 percent) technical institute did not respond to the question. Four (20 percent) community colleges and no technical institutes responded affirmatively. Twelve (60 percent) community colleges and thirty-two (97 percent) of the technical institutes had not had a tenure plan. Totals are four (8 percent) institutions having tenure plans in the past.

Was there any type of de facto tenure? Five (25 percent) community colleges and ten (30 percent) technical institutes responded positively. Seven (35 percent) community colleges did not respond. Eight (40 percent) community colleges and twenty-three (70 percent) technical institutes responded negatively. Totals are: fifteen (28 percent) institutions responding positively and thirty-one (58 percent) responding negatively.

TABLE IX
EXISTENCE OF TENURE/DE FACTO TENURE

	<u>Type of institution</u>								
	<u>Community college</u>				<u>Technical institute</u>				
	No response	Yes	No	Total	No response	Yes	No	Total	Total
Does the institution currently have a tenure plan?.....	0	4	16	20	0	1	32	33	53
Percent of Responses	0	20	80	100	0	3	97	100	
Was there a tenure plan in the past?.....	4	4	12	20	1	0	32	33	53
Percent of Responses	20	20	60	100	3	0	97	100	
Was there any type of <u>de facto</u> tenure?.....	7	5	8	20	0	10	23	33	53
Percent of Responses	35	25	40	100	0	30	70	100	

Presidents' descriptions of the tenure or de facto tenure plan. The following descriptions of tenure/de facto tenure were made by presidents whose institutions have such plans:

1. Tenure may be granted a general faculty member by the board of trustees following three years of continuous service upon reelection for a fourth year and recommendation for tenure by the president.

2. Eligibility for tenure is dependent upon salary grade and years of service. Such eligibility ranges from four to eight consecutive years of service at the institution. The board of trustees, upon recommendation of the president, may withhold or confer tenure or dismiss the faculty member.

3. A full-time staff member who is continuously employed for five years is granted "expectancy of reemployment" when he/she is hired for the sixth year.

4. Tenure is based on length of service.

5. Tenure is granted after five years, but dependent on student interest, jobs for students, and State funding. Continuing contracts are also used.

6. One-plus-one provisional contract, then a three-year contract are used. Those retained after the five-year probationary period are placed on continuing contract and are subject to review every five years thereafter.

7. After the first two years, which are considered probationary, the employee is considered to be on a continuing contract. This gives the employee all rights and privileges as spelled out in the operational manual.

Responses of Institutions which Have Tenure or De Facto Tenure

Tables X through XVII are concerned with responses of institutions which have tenure or de facto tenure. It was reported in Table IX that four community colleges and one technical institute had formal tenure plans. In this section, we are reporting on five community colleges and two technical institutes. One community college and one technical institute have some type of de facto tenure or continuity of employment.

Length of service required for tenure/de facto tenure to be granted. Table X (page 127) shows that one technical institute requires two years, one community college requires three years, one community college requires four years, and three community colleges and one technical institute require five years before de facto tenure is granted.

Description of the process of granting tenure. The following descriptions of the process of granting tenure were received:

1. Eligibility lists of faculty members are forwarded to the appropriate dean annually. These lists and

TABLE X
LENGTH OF SERVICE REQUIRED FOR TENURE*

	Number of years required				Total
	Two	Three	Four	Five	
Community Colleges.....	0	1	1	3	5
Percent of Responses.....	0	20	20	60	100
Technical Institutes.....	1	0	0	1	2
Percent of Responses.....	50	0	0	50	100
Column Totals.....	1	1	1	4	7
Total Percent of Responses.....	14	14	14	58	100

*Institutions have tenure or de facto tenure.

statements of performance are forwarded to the dean of the college. The dean of the college makes a recommendation on each individual and forwards these recommendations to the president. The president submits a list of those whom he recommends for tenure to the board of trustees which has final authority in the matter.

2. Tenure is recommended for an individual by his/her department head. Recommendation must be approved by the vice-president for the division, the executive vice-president of the college, and the president. Tenure is granted by the board of trustees on recommendation of the president.

3. Tenure is granted on employment with contract.

4. Tenure is based on time (of employment).

5. After five years, the employee may be recommended by the tenure committee if in their opinion the employee's work record merits it. The president can then recommend to the board of trustees which can grant tenure.

6. Tenure is automatic, based on years of service, and includes all staff members, not just faculty.

7. During the last year of the three-year contract, a tenured faculty group reviews applicants' qualifications and makes a recommendation to the president. The president then makes a recommendation to the board of trustees. Tenure, if granted, is in a particular position, not general.

What percentage of the faculty is covered by the tenure plan? Table XI (page 130) reveals that twenty-five percent of the faculty are covered by tenure/de facto tenure in two institutions, thirty percent are covered in one institution, thirty-five percent are covered in one, fifty-five percent are covered in one, and eighty percent are covered in two institutions.

Has the board of trustees ever failed to grant tenure when an instructor was qualified? Table XII (page 131) gives the results of this inquiry. One community college responded positively and four negatively. Both technical institutes answered negatively.

Reasons for failure to grant tenure. The one response from the community college noted in Table XII states that the reason for denying tenure was financial exigency, the desire to protect the institution against over-delegation of funds.

Whether or not the tenure plan is successfully accomplishing its purposes. Table XIII (page 132) reveals that three community colleges responded positively and two negatively. Both technical institutes responded positively.

Institutional preferences in regard to operating with tenure. Two community colleges answered in the affirmative, two negatively, and one was uncertain. Both technical institutes answered negatively. (Table XIV, page 133.)

TABLE XI
PERCENT OF FACULTY TENURED*

	Percent					Total
	25	30	35	55	80	
Community Colleges.....	1	1	1	1	1	5
Percent of Responses.....	20	20	20	20	20	100
Technical Institutes.....	1	0	0	0	1	2
Percent of Responses.....	50	0	0	0	50	100
Column Totals.....	2	1	1	1	2	7
Total Percent of Responses....	29	14	14	14	29	100

*Institutions have tenure or de facto tenure.

TABLE XII

INSTITUTIONS IN WHICH TRUSTEES FAILED TO GRANT
TENURE WHEN AN INSTRUCTOR WAS QUALIFIED*

	<u>Failed to grant tenure</u>		
	Yes	No	Total
Community Colleges.....	1	4	5
Percent of Responses.....	20	80	100
Technical Institutes.....	0	2	2
Percent of Responses.....	0	100	100
Column Totals.....	1	6	7
Total Percent of Responses.....	14	86	100

*Institutions have tenure or de facto tenure.

TABLE XIII
 INSTITUTIONS IN WHICH THE TENURE PLAN IS
 SUCCESSFULLY ACCOMPLISHING
 ITS PURPOSES*

	<u>Tenure plan successful</u>		
	Yes	No	Total
Community Colleges.....	3	2	5
Percent of Responses.....	60	40	100
Technical Institutes.....	2	0	2
Percent of Responses.....	100	0	100
Column Totals.....	5	2	7
Total Percent of Responses.....	71	29	100

*Institutions have tenure or de facto tenure.

TABLE XIV
 INSTITUTIONAL PREFERENCES IN REGARD TO OPERATING WITH TENURE*

	<u>Preferences</u>			Total
	Yes	No	Uncertain	
Community Colleges.....	2	2	1	5
Percent of Responses.....	40	40	20	100
Technical Institutes.....	0	2	0	2
Percent of Responses.....	0	100	0	100
Column Totals.....	2	4	1	7
Total Percent of Responses..	29	57	14	100

*Institutions have tenure or de facto tenure.

Does tenure encourage mediocrity? Table XV (page 135) shows that one community college responded positively, two negatively, and two were uncertain. Both technical institutes were negative in their response.

Responses regarding tenure adversely affecting relationships between the administration and the faculty. Table XVI (page 136) indicated that one community college responded positively, three negatively, and one was uncertain. Both technical institutes responded negatively.

Responses to question of whether tenure is good for the institution. Table XVII (page 137) reveals that two community colleges answered affirmatively, two negatively, and one was uncertain. Both technical institutes felt that tenure was good for the institution.

Responses of Institutions which do not Have Tenure or De Facto Tenure

Tables XVIII through XXV are concerned with responses of institutions which do not have tenure or de facto tenure. In this section, we are involved with fifteen community colleges and thirty-one technical institutes.

Institutional responses to the question of whether the faculty would prefer to serve under a tenure plan. Table XVIII (page 139) indicates that two (13 percent) community colleges did not respond, four (27 percent) answered

TABLE XV
 INSTITUTIONAL RESPONSES REGARDING TENURE
 ENCOURAGING MEDIOCRITY*

	Responses			Total
	Yes	No	Uncertain	
Community Colleges.....	1	2	2	5
Percent of Responses.....	20	40	40	100
Technical Institutes.....	0	2	0	2
Percent of Responses.....	0	100	0	100
Column Totals.....	1	4	2	7
Total Percent of Responses..	14	57	29	100

*Institutions have tenure or de facto tenure.

TABLE XVI
 INSTITUTIONAL RESPONSES REGARDING TENURE ADVERSELY
 AFFECTING RELATIONSHIPS BETWEEN
 ADMINISTRATION AND FACULTY*

	Responses			Total
	Yes	No	Uncertain	
Community Colleges.....	1	3	1	5
Percent of Responses.....	20	60	20	100
Technical Institutes.....	0	2	0	2
Percent of Responses.....	0	100	0	100
Column Totals.....	1	5	1	7
Total Percent of Responses..	14	72	14	100

*Institutions have tenure or de facto tenure.

TABLE XVII

INSTITUTIONAL RESPONSES TO QUESTION OF WHETHER
TENURE IS GOOD FOR THE INSTITUTION*

	Responses			Total
	Yes	No	Uncertain	
Community Colleges.....	2	2	1	5
Percent of Responses.....	40	40	20	100
Technical Institutes.....	2	0	0	2
Percent of Responses.....	100	0	0	100
Column Totals.....	4	2	1	7
Total Percent of Responses..	57	29	14	100

*Institutions have tenure or de facto tenure.

positively, four (27 percent) answered negatively, and five (33 percent) were uncertain. Two (6 percent) technical institutes did not respond, eleven (36 percent) responded positively, ten (32 percent) answered negatively, and eight (26 percent) were uncertain. Total institutional responses are: four (9 percent) no response, fifteen (33 percent) positive, fourteen (30 percent) negative, and thirteen (28 percent) uncertain.

Institutional responses to the question of whether there have been attempts by the faculty to develop a tenure plan.

An examination of Table XIX (page 140) demonstrates that two (13 percent) community colleges indicated no response, three (20 percent) responded positively, and ten (67 percent) responded negatively. One (3 percent) technical institute gave no response, one (3 percent) responded positively, and twenty-nine (94 percent) responded negatively. Institutional totals are: three (6 percent) no response, four (9 percent) positive, and thirty-nine (85 percent) negative.

Degree of familiarity of presidents with tenure and the legal aspects of tenure plans. Table XX (page 142) indicates that one (6-7 percent) community college gave no response, seven (47 percent) presidents said they were very familiar with tenure, seven (47 percent) presidents indicated they were moderately familiar, and none said he

TABLE XVIII
 INSTITUTIONAL RESPONSES TO THE QUESTION OF WHETHER
 THE FACULTY WOULD PREFER TO SERVE UNDER
 A TENURE PLAN*

	Responses				Total
	No response	Yes	No	Uncertain	
Community Colleges.....	2	4	4	5	15
Percent of Responses.....	13	27	27	33	100
Technical Institutes.....	2	11	10	8	31
Percent of Responses.....	6	36	32	26	100
Column Totals.....	4	15	14	13	46
Total Percent of Responses...	9	33	30	28	100

*Institutions do not have tenure or de facto tenure.

TABLE XIX

INSTITUTIONAL RESPONSES TO THE QUESTION OF WHETHER
THERE HAVE BEEN ATTEMPTS BY THE FACULTY TO
DEVELOP A TENURE PLAN*

	Responses			Total
	No response	Yes	No	
Community Colleges.....	2	3	10	15
Percent of Responses.....	13	20	67	100
Technical Institutes.....	1	1	29	31
Percent of Responses.....	3	3	94	100
Column Totals.....	3	4	39	46
Total Percent of Responses..	6	9	85	100

*Institutions do not have tenure or de facto tenure.

was not familiar with tenure. One (3 percent) technical institute president did not respond, eighteen (58 percent) indicated that they were very familiar, twelve (39 percent) indicated they were moderately familiar, and none said that he was not familiar with tenure. Totals are: two (4 percent) no response, twenty-five (54 percent) very familiar, nineteen (42 percent) moderately familiar, and none was not familiar.

Institutional responses to question of whether tenure would restrict or limit the president's relationship with the faculty. Table XXI (page 143) shows that four (27 percent) community colleges indicated no response, six (40 percent) responded positively, and five (33 percent) responded negatively. Four (13 percent) technical institutes did not respond, nineteen (61 percent) responded positively, and eight (26 percent) responded negatively. Institutional totals are: eight (17 percent) no response, twenty-five (54 percent) positive, and thirteen (29 percent) negative.

Responses to question of whether the president would prefer to operate the institution without tenure. Table XXII (page 145) reveals that one (6-7 percent) community college did not respond, twelve (80 percent) would prefer to operate without tenure, and two (13 percent) responded negatively. One (3 percent) technical institute did not respond, thirty (97 percent) would prefer to operate without tenure, and no

TABLE XX
 DEGREE OF FAMILIARITY OF PRESIDENT WITH TENURE
 AND THE LEGAL ASPECTS OF TENURE PLANS*

	Responses				Total
	No response	Very familiar	Moderately familiar	Not familiar	
Community Colleges.....	1	7	7	0	15
Percent of Responses.....	6	47	47	0	100
Technical Institutes.....	1	18	12	0	31
Percent of Responses.....	3	58	39	0	100
Column Totals.....	2	25	19	0	46
Total Percent of Responses..	4	54	42	0	100

*Institutions do not have tenure or de facto tenure.

TABLE XXI

INSTITUTIONAL RESPONSES TO QUESTION OF WHETHER
TENURE WOULD RESTRICT OR LIMIT THE
PRESIDENT'S RELATIONSHIP
WITH THE FACULTY*

	Responses			Total
	No response	Yes	No	
Community Colleges.....	4	6	5	15
Percent of Responses.....	27	40	33	100
Technical Institutes.....	4	19	8	31
Percent of Responses.....	13	61	26	100
Column Totals.....	8	25	13	46
Total Percent of Responses..	17	54	29	100

*Institutions do not have tenure or de facto tenure.

president wanted tenure. Institutional totals are: two (4 percent) no response, forty-two (92 percent) positive, and two (4 percent) negative.

Institutional responses to question of whether tenure encourages mediocrity. One (6-7 percent) community college did not respond, nine (60 percent) indicated agreement that tenure encourages mediocrity, four (27 percent) responded negatively, and one (7 percent) was uncertain. Two (7 percent) technical institutes did not respond, twenty-four (77 percent) agreed that tenure encourages mediocrity, five (16 percent) responded negatively, and none was uncertain. Institutional totals are: three (6 percent) no response, thirty-three (72 percent) agree, nine (20 percent) disagree, and one (2 percent) was uncertain. (Table XXIII, page 146.)

Institutional responses to question of whether tenure is good for the institution. Table XXIV (page 148) shows that one (6-7 percent) community college did not respond, two (13 percent) indicated that tenure was good for the institution, eleven (73 percent) felt that it was not good for the institution, and one (6-7 percent) was uncertain. One (3 percent) technical institute did not respond, none responded positively, twenty-seven (87 percent) responded that tenure was not good, and three (10 percent) were uncertain. Institutional totals are: two (4 percent) no

TABLE XXII

RESPONSES TO QUESTION OF WHETHER THE PRESIDENT
 WOULD PREFER TO OPERATE THE INSTITUTION
 WITHOUT TENURE*

	No response	Responses		Total
		Yes	No	
Community Colleges.....	1	12	2	15
Percent of Responses.....	7	80	13	100
Technical Institutes.....	1	30	0	31
Percent of Responses.....	3	97	0	100
Column Totals.....	2	42	2	46
Total Percent of Responses...	4	92	4	100

*Institutions do not have tenure or de facto tenure.

TABLE XXIII
 INSTITUTIONAL RESPONSES TO QUESTION OF
 WHETHER TENURE ENCOURAGES MEDIOCRITY*

	Responses				Total
	No response	Yes	No	Uncertain	
Community Colleges.....	1	9	4	1	15
Percent of Responses.....	6	60	27	7	100
Technical Institutes.....	2	24	5	0	31
Percent of Responses.....	7	77	16	0	100
Column Totals.....	3	33	9	1	46
Total Percent of Responses..	6	72	20	2	100

*Institutions do not have tenure or de facto tenure.

response, two (4 percent) positive, thirty-eight (83 percent) negative, and four (9 percent) uncertain.

Institutional responses to the question of whether the administration is currently considering instituting a tenure or de facto tenure plan. Table XXV (page 149)

shows that one (6-7 percent) community college did not respond, one (6-7 percent) responded positively, and thirteen (87 percent) responded negatively. One (3 percent) technical institute did not respond, none responded positively, and thirty (97 percent) responded negatively. Institutional totals are: two (4 percent) gave no response, one (2 percent) was positive, and forty-three (94 percent) responded negatively.

DISMISSAL

The following areas of inquiry were listed in the section on dismissal:

1. Have instructors been dismissed from the institution during the past five years?
2. Approximate number of dismissals.
3. Reasons for dismissals. (Financial exigency, low FTE production and/or lack of student interest in subject areas, general reduction in staff, personal or professional misconduct, other.)

TABLE XXIV
 INSTITUTIONAL RESPONSES TO QUESTION OF WHETHER
 TENURE IS GOOD FOR THE INSTITUTION*

	Responses				Total
	No response	Yes	No	Uncertain	
Community Colleges.....	1	2	11	1	15
Percent of Responses.....	7	13	73	7	100
Technical Institutes.....	1	0	27	3	31
Percent of Responses.....	3	0	87	10	100
Column Totals.....	2	2	38	4	46
Total Percent of Responses..	4	4	83	9	100

*Institutions do not have tenure or de facto tenure.

TABLE XXV

INSTITUTIONAL RESPONSES TO QUESTION OF WHETHER THE
ADMINISTRATION IS CURRENTLY CONSIDERING
INSTITUTING A TENURE OR DE FACTO
TENURE PLAN*

	No response	Responses		Total
		Yes	No	
Community Colleges.....	1	1	13	15
Percent of Responses.....	6	7	87	100
Technical Institutes.....	1	0	30	31
Percent of Responses.....	3	0	97	100
Column Totals.....	2	1	43	46
Total Percent of Responses....	4	2	94	100

*Institutions do not have tenure or de facto tenure.

4. Does the institution have formal due process procedures for faculty members to follow if they disagree with their dismissal?
5. Are these published in a policy manual or faculty handbook?
6. Have faculty used these procedures?
7. Has a lawsuit been filed against the institution's administration and/or board of trustees within the last five years?
8. In which court(s) were these suits filed?
9. If no lawsuits have been filed, has the institution been threatened with such suits?
10. Briefly describe the resolution of any lawsuits.
11. Have any lawsuits been settled out of court?

Have Instructors Been dismissed from the Institution During the Past Five Years?

Data depicted in Table XXVI (page 151) reveal that the majority of the institutions have dismissed instructors during the past five years. Seventeen (85 percent) community colleges and twenty-one (64 percent) technical institutes have had dismissals, while three (15 percent) community colleges and twelve (36 percent) technical institutes have not. Institutional totals are: thirty-eight (72 percent) responding positively and fifteen (28 percent) responding negatively.

TABLE XXVI
 INSTRUCTORS DISMISSED DURING PAST
 FIVE YEARS

	<u>Type of institution</u>						<u>Total</u>
	<u>Community College</u>			<u>Technical institute</u>			
	Yes	No	Total	Yes	No	Total	
Instructors have been dismissed.....	17	3	20	21	12	33	53
Percent of Responses.....	85	15	100	64	36	100	

Approximate Number of Dismissals

Table XXVII (page 153) depicts the data concerned with the number of dismissals in the various institutions. Numbers of dismissals ranged from one to ten. Five community colleges had one dismissal; four had two; four had three; two had five; one had seven; one had ten. Four technical institutes had one dismissal; four had two; six had three; one had four; three had five; one had six; one had ten. Total dismissals are: community colleges with fifty-two and technical institutes with sixty-five. Total number of dismissals is one hundred and seventeen. The average number of dismissals per institution is 2.21. Average number per community college is 2.6. Average number per technical institute is 1.97.

Reasons for Dismissals

Data concerning reasons for dismissal of instructors are presented in Table XXVIII (page 156). An analysis of reasons for dismissal is presented below.

Financial exigency. Thirteen (65 percent) community colleges and twenty-six (79 percent) technical institutes responded that instructors had not been dismissed because of financial exigency. Seven (35 percent) community colleges and seven (21 percent) technical institutes responded positively. Totals are: thirty-nine (74 percent) institutions negative and fourteen (26 percent) positive.

TABLE XXVII
NUMBER OF INSTRUCTORS DISMISSED
DURING PAST FIVE YEARS

	<u>Number of dismissals</u>										Total institutions	Total dismissals
	0	1	2	3	4	5	6	7	10			
Community Colleges	3	5	4	4	0	2	0	1	1	1	20	52
Percent of Responses	15	25	20	20	0	10	0	5	5	5	100	
Technical Institutes	13	4	4	6	1	3	1	0	1	1	33	65
Percent of Responses	40	12	12	18	3	9	3	0	3	3	100	
Column Total	16	9	8	10	1	5	1	1	2	2	53	117
Total Percent of Responses	30	17	15	19	2	9	2	2	4	4	100	

Low FTE production and/or lack of student interest in subject areas. Fourteen (70 percent) community colleges and twenty-seven (82 percent) technical institutes reported that instructors had not been dismissed because of low FTE production and/or lack of student interest in subject areas. Six (30 percent) community colleges and six (18 percent) technical institutes responded positively. Institutional totals are: forty-one (77 percent) negative and twelve (23 percent) positive.

General reduction in staff. Less than ten percent of the institutions have dismissed instructors because of a general reduction in staff. Eighteen (90 percent) community colleges and thirty (91 percent) technical institutes have not dismissed instructors because of a general staff reduction. Two (10 percent) community colleges and three (9 percent) technical institutes responded positively. Institutional totals are: five (9 percent) positive and forty-eight (91 percent) negative.

Personal or professional misconduct. Percentages are virtually identical for the two types of institutions reporting on this question. Eight (40 percent) community colleges and thirteen (39 percent) technical institutes have dismissed instructors for personal or professional misconduct. Twelve (60 percent) community colleges and twenty (61 percent) technical institutes have not had such dismissals.

Institutional totals are: twenty-one (40 percent) positive and thirty-two (60 percent) negative.

Dismissals for other reasons. Six (30 percent) community colleges and eight (24 percent) technical institutes cite other reasons for dismissals. Fourteen (70 percent) community colleges and twenty-five (76 percent) technical institutes do not. Institutional totals are: fourteen (26 percent) positive and thirty-nine (74 percent) negative.

Institutions reported a variety of other reasons for dismissals. These include:

1. Failure to obtain required degree.
2. Failure to meet instructional work standards.
3. Violation of law or policy.
4. Professional incompetency.
5. No reason given.
6. Low evaluations.
7. Poor performance and changing enrollment patterns.
8. Lack of ability to teach.
9. Failure to achieve results in teaching.
10. Poor performance of assigned duties.

Due Process Procedures

Table XXIX (page 158) depicts data which presents the results of three queries regarding due process. These results are described below.

TABLE XXVIII
REASONS FOR DISMISSAL OF INSTRUCTORS

	Reasons														
	Financial			Low FTE			Reduction in staff			Misconduct			Other		
	No	Yes	Total	No	Yes	Total	No	Yes	Total	No	Yes	Total	No	Yes	Total
Community Colleges.....	13	7	20	14	6	20	18	2	20	12	8	20	14	6	20
Percent of Responses.....	65	35	100	70	30	100	90	10	100	60	40	100	70	30	100
Technical Institutes.....	26	7	33	27	6	33	30	3	33	20	13	33	25	8	33
Percent of Responses.....	79	21	100	82	18	100	91	9	100	61	39	100	76	24	100
Column Totals..	39	14	53	41	12	53	48	5	53	32	21	53	39	14	53
Percent of Responses by Column.....	74	26	100	77	23	100	91	9	100	60	40	100	74	26	100

Does the institution have due process procedures for faculty members to follow if they disagree with their dismissal? Twenty (100 percent) community colleges and thirty-three (100 percent) technical institutes responded that they do have formal due process procedures.

Are these published in a policy manual or faculty handbook? Twenty (100 percent) community colleges and thirty-three (100 percent) technical institutes indicate that their due process procedures are published in a policy manual or faculty handbook.

Have faculty used these procedures? One (5 percent) community college and one (3 percent) technical institute did not respond. Thirteen (65 percent) community colleges and thirteen (39 percent) technical institutes report that faculty members have used formal due process procedures. Six (30 percent) community colleges and nineteen (58 percent) technical institutes responded negatively. Institutional totals are: twenty-six (49 percent) positive, twenty-five (47 percent) negative, and two (4 percent) no response.

Question of Whether Lawsuits have been Filed Against the Institution in the Last Five Years

Responses to this question are depicted in Table XXX (page 160). Six (30 percent) community colleges and eight (24 percent) technical institutes have had lawsuits filed

TABLE XXIX
DUE PROCESS PROCEDURES

	<u>Type of institution</u>							
	<u>Community college</u>				<u>Technical institute</u>			
	No response	Yes	No	Total	No response	Yes	No	Total
Institution has due process procedures.....	0	20	0	20	0	33	0	33
Percent of Responses.....	0	100	0	100	0	100	0	100
Published in policy manual.....	0	20	0	20	0	33	0	33
Percent of Responses.....	0	100	0	100	0	100	0	100
Faculty have used procedures.....	1	13	6	20	1	13	19	33
Percent of Responses.....	5	65	30	100	3	39	58	100

against the institution's administration and/or board of trustees within the last five years. Fourteen (70 percent) community colleges and twenty-five (76 percent) technical institutes responded negatively. Institutional totals are: fourteen (26 percent) positive and thirty-nine (74 percent) negative.

Lawsuits Filed in Federal or State Courts

Table XXXI (page 161) reveals that fourteen (70 percent) community colleges and twenty-five (76 percent) have not had lawsuits. This is a total of thirty-nine institutions or seventy-four (74) percent. Four (20 percent) community colleges and five (15 percent) technical institutes have had lawsuits filed in federal courts. One (5 percent) community college and two (6 percent) technical institutes have had lawsuits filed in state courts. One (5 percent) community college and one (3 percent) technical institute have had lawsuits filed in both federal and state courts. Institutional totals are: nine (17 percent) in federal courts, three (6 percent) in state courts, and two (3 percent) in both courts.

Institutions Threatened with Lawsuits

Table XXXII (page 163) gives the results of an inquiry concerning whether institutions which had not been sued have been threatened with lawsuits. Since the question essentially excluded those institutions which had been

TABLE XXX

LAWSUITS FILED AGAINST INSTITUTION
IN THE LAST FIVE YEARS

	Lawsuits filed		
	Yes	No	Total
Community Colleges.....	6	14	20
Percent of Responses.....	30	70	100
Technical Institutes.....	8	25	33
Percent of Responses.....	24	76	100
Column Totals.....	14	39	53
Total Percent of Responses.....	26	74	100

TABLE XXXI
 LAWSUITS FILED IN FEDERAL
 OR STATE COURTS

	<u>Courts specified</u>				Total
	Neither	Federal	State	Both	
Community Colleges.....	14	4	1	1	20
Percent of Responses.....	70	20	5	5	100
Technical Institutes.....	25	5	2	1	33
Percent of Responses.....	76	15	6	3	100
Column Totals.....	39	9	3	2	53
Total Percent of Responses.....	74	17	6	3	100

sued, seven (35 percent) community colleges and ten (30 percent) technical institutes did not respond. Four (20 percent) community colleges and three (9 percent) technical institutes responded that they had been threatened with lawsuits. Nine (45 percent) community colleges and twenty (61 percent) technical institutes reported that they had not been so threatened. Institutional totals are: seventeen (32 percent) no response, seven (13 percent) positive, and twenty-nine (55 percent) negative.

Description of Resolution of Lawsuits

Presidents were asked to describe briefly the resolution of any lawsuits against the institution. Eleven replies were received. They are presented below.

1. None have been resolved at this time.
2. The case was settled out of court.
3. A \$4,000 settlement was made.
4. Case was dismissed without damages.
5. Plaintiff was awarded a sum equal to approximately one year's salary.
6. Lawsuits have not been resolved. They are still pending.
7. One case remains active. All others were resolved in favor of the institution.
- 8a. Institution was required to reinstate an instructor; however, a small settlement was made and the instructor was not reemployed.

TABLE XXXII
INSTITUTIONS THREATENED WITH LAWSUITS

	<u>Response to threatened with lawsuits</u>			Total
	No response	Yes	No	
Community Colleges.....	7	4	9	20
Percent of Responses.....	35	20	45	100
Technical Institutes.....	10	3	20	33
Percent of Responses.....	30	9	61	100
Column Totals.....	17	7	29	53
Total Percent of Responses...	32	13	55	100

8b. Courts upheld trustees' decision of firing.

9. Cases were settled out of court.

10. The case has not yet been resolved. The threat of a lawsuit has been turned over to a lawyer, and that is as far as it has gone to date.

11. Trial is still pending.

Lawsuits Settled out of Court

Table XXXIII (Page 165) reveals that three (15 percent) community colleges and seven (21 percent) technical institutes did not respond. Two (10 percent) community colleges and two (6 percent) technical institutes have had cases settled out of court. Fifteen (75 percent) community colleges and twenty-four (73 percent) technical institutes have not had cases settled out of court. Institutional totals are: ten (19 percent) no response, four (7 percent) positive, and thirty-nine (74 percent) negative.

TABLE XXXIII
LAWSUITS SETTLED OUT OF COURT

	<u>Response to settled out of court</u>			Total
	No response	Yes	No	
Community Colleges.....	3	2	15	20
Percent of Responses.....	15	10	75	100
Technical Institutes.....	7	2	24	33
Percent of Responses.....	21	6	73	100
Column Totals.....	10	4	39	53
Total Percent of Responses...	19	7	74	100

Chapter V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS FOR FURTHER STUDY

Subsequent to the development of the review of related literature, the summaries of selected cases, and the compilation of the results of the survey, it was believed desirable to present some of the principal findings in one chapter in order to facilitate the drawing of appropriate conclusions.

SUMMARY AND CONCLUSIONS

One major finding in the review of literature was that there was little uniformity in tenure plans across the United States. Institutional policies varied significantly in terms of defining tenure, criteria for appointment and reappointment, length of the probationary period, appeal procedures, and relationships between tenure and rank. The survey of North Carolina institutions (Table X and Table XI, pages 127 and 130) showed this same lack of uniformity in that length of service required before tenure was granted varied from two to five years, and the percent of faculty members covered by tenure varied from twenty-five percent to eighty percent.

There were also significant differences in the extent of tenure in four-year institutions and the nation's community colleges. Nationally, over ninety percent of faculty members in public and private four-year colleges and universities were covered by tenure plans while only two-thirds of community college faculty members were serving under such plans.¹⁸³

In North Carolina, even fewer faculty members served under tenure plans. Only five of the fifty-three responding institutions had a formal tenure plan. This was only nine percent of the community colleges and technical institutes responding (Table IX, page 124).

Courts have generally not been as interested in the fine points of tenure as they have been in the protection of faculty members' basic First Amendment and Fourteenth Amendment rights. Judges tended to stress procedures, giving the tenure plan itself the weight of law in terms of faithfulness in applying it as written. Where tenure was authorized by law or regulations, dismissal of tenured professors had to follow policies and procedures incorporated within the tenure plan itself.

Generally, in instances where permanently tenured faculty members had been dismissed, specific cause, impartial

¹⁸³Victor G. Rosenblum, "Legal Dimensions of Tenure," Faculty Tenure, (San Francisco: Jossey-Bass Publishers, 1973), p. 1.

hearings, and the full protection of due process had been encouraged.

In the matter of dismissal, the best summary of the legal issues involved was presented by Richard J. Frankie. He said that the legal relationship between a community college faculty member and his institution has essentially three characteristics: (1) individual rights which a teacher possesses, (2) statutory requirements which must be followed by both institution and employee, and (3) contractual conditions of employment agreed upon by both parties. Community college faculty problems which had most often led to litigation dealt with the general area of employment. Faculty dismissal appeared to have been the dominant legal issue in court cases between the college and the faculty member.¹⁸⁴

The National Education Association published a statement in 1970 which presented some basic guidelines on dismissal. They stated that no teacher should be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage: (1) because of the exercise of constitutionally protected rights, (2) for arbitrary or discriminatory reasons, and (3) unless he/she was given

¹⁸⁴Richard J. Frankie, "Students and Faculty of Community and Junior Colleges: A Summary of Recent Legal Cases," Journal of Education, (August, 1974), p. 58.

notice of the charges against him/her, a fair hearing, and related procedural safeguards.¹⁸⁵

Much of what has been said in summary in the section immediately proceeding could be taken as a series of guidelines/recommendations for community college administrators, trustees, and faculty members to follow in establishing and enforcing the legal relationships between the faculty and the institution. Faithful adherence to these principles is likely to limit the number of lawsuits against the institutions and the attendant costs and unfavorable publicity for both parties.

The court cases presented in the third chapter of this study revealed that all of these cases were tried in federal courts and that they involved First Amendment and Fourteenth Amendment rights. There were attempts by the judges to safeguard the constitutional rights of the plaintiffs. These concerns were coupled with attempts to encourage settlements out of court by mutual agreement among all parties. In some cases, judges chose not to issue formal judgments, and results of the cases were not published in the National Reporter System.

The pattern that seemed to emerge from these cases was some kind of settlement out of court, with the institution

¹⁸⁵ John Lombardi, "Reduction in Force. An Analysis of the Policies and Their Implementation." (Topical paper No. 48, California University, Los Angeles, 1974), p. 20.

agreeing to make a cash settlement, often including attorney's fees. These settlements were sometimes accompanied by statements in which neither party acknowledged guilt or wrongdoing.

The survey which was delineated in chapter four was designed not only to show institutional responses to the inquiries but to determine if there were significant differences between the responses of community colleges and technical institutes. The majority of responses showed no such differences. There were differences in some specific areas, however.

The percentage of participation in the survey was high. Ninety-three percent of the institutions returned a usable survey. In addition, one survey was returned blank. One president wrote that he had sent the survey, but it was not received. One letter was sent stating that the president did not wish to participate. Only one institution did not respond in any manner.

One finding was that ninety percent of community colleges had nine-month contracts and only sixty-one percent of technical institutes had such contracts (Table IV, page 107). Eighty-five percent of community college contracts did not specify what subjects would be taught, while only sixty-four percent of technical institute contracts did not specify these subjects (Table V, pages 113 and 114). Community college contracts were more likely to

specify conditions for abrogation of the contract (sixty percent v. forty-eight percent) and less likely to specify the teaching load and minimum work week (ninety percent v. seventy-nine percent, Table V, pages 113 and 114). Table VI (page 116) showed that thirty-five percent of community colleges as opposed to fifty-five percent of technical institutes responding to the survey had changed their contracts significantly during the past five years.

Community colleges were more likely to have a tenure plan (Table IX, page 124). Four community colleges as opposed to only one technical institute had formal tenure plans. In those institutions which had tenure/de facto tenure plans, sixty percent of community colleges responded that the plan was successfully accomplishing its purposes in contrast to one hundred percent of technical institutes (Table XIII, page 132).

Table XIX (page 140) revealed that among institutions responding to the survey which did not have tenure plans, sixty-seven percent of community colleges, as opposed to ninety-four percent of technical institutes, reported that there had not been attempts by the faculty to develop tenure plans.

Instructors were more likely to have been dismissed in community colleges than in technical institutes during the past five years (Table XXVI, page 151). Eighty-five

percent of community colleges, compared to sixty-four percent of technical institutes, have had dismissals. Also, the total number of dismissals (fifty-two in community colleges and sixty-five in technical institutes, Table XXVII, page 153) revealed that the average number of dismissals per responding institution was 2.21, but that the community college average was 2.6 compared to the technical institute average of 1.97.

Table XXVII (page 156) further revealed some differences in reasons for dismissals. Thirty-five percent of community colleges responding listed financial exigency as a reason for dismissals as opposed to twenty-one percent of technical institutes. Thirty percent of community colleges responding, compared to eighteen percent of technical institutes, listed low FTE as a reason for dismissals.

Dissimilar results were obtained on the question of whether faculty had used due process procedures (Table XXIX, page 158). All institutions had such procedures, but they had been used in sixty-five percent of community colleges responding to the survey, compared to only thirty-nine percent of the technical institutes.

Community colleges responding were more likely to have been threatened with lawsuits (Table XXXII, page 163). Twenty percent of community colleges and nine percent of technical institutes indicated that they had been threatened with lawsuits.

Some comparisons may also be drawn between similar questions that were asked of institutions which had tenure/de facto tenure and those which did not.

Table XIV (page 133) and Table XXII (page 145) revealed responses to the question of whether the president would prefer to operate the institution without tenure. Twenty-nine percent of institutions with tenure responded that they would prefer to operate without tenure, indicating that the majority (fifty-seven percent) would not prefer to operate without tenure or were uncertain (fourteen percent). This was in marked contrast to presidents in institutions without tenure. Ninety-two percent stated that they would prefer to operate without tenure. Only two presidents of the forty-six who responded indicated that they would prefer to operate with tenure.

Table XV (page 135) and Table XXIII (page 146) presented the compilation of answers to the question of whether tenure encouraged mediocrity. A majority (fifty-seven percent) of responding presidents who had tenure/de facto tenure indicated that they did not feel that tenure encouraged mediocrity. Only fourteen percent indicated that they felt tenure did encourage mediocrity, and twenty-nine percent were uncertain. These results contrast significantly with the responses of presidents who did not have tenure. Seventy-two percent felt that

tenure did encourage mediocrity, while only twenty percent felt that tenure did not encourage mediocrity.

Two questions that were similar in content were reported in Table XVI (page 136) and Table XXI (page 143). These questions essentially inquired as to the possible adverse, restrictive, or limiting effects of tenure as the president/administration related to the faculty. Fourteen percent of responding presidents of institutions which had tenure/de facto tenure indicated that they felt there would be a negative impact on this relationship while seventy-two percent replied negatively, and fourteen percent were uncertain. Fifty-four percent of responding presidents of institutions which did not have tenure/de facto tenure responded that tenure did have a negative impact on the relationships between the president and the faculty. Twenty-nine percent responded negatively, and seventeen percent did not respond.

This same pattern of responses continued when responses to the question of whether tenure was good for the institution were compiled. Results were shown in Table XVII (page 137) and Table XXIV (page 148). Fifty-seven percent of responding presidents on institutions which had tenure/de facto tenure said that tenure was good for the institution. Twenty-nine percent responded negatively, and fourteen percent were uncertain.

The percentages were significantly different in institutions which did not have tenure. Only four percent felt that tenure was good for the institution, while eighty-seven percent felt that it was not. Nine percent were uncertain, and four percent did not respond.

The conclusion may be made, based on an analysis of the responding presidents, that those who had tenure/de facto tenure generally were more positively inclined toward tenure plans than those who did not have tenure/de facto tenure.

RECOMMENDATIONS FOR FURTHER STUDY

During the preparation of this study, it was determined that a limited number of studies in the general subject area of legal aspects of faculty employment in community colleges have been conducted. Some of the aspects of the subject area which seemed worthy of further study were:

1. Determine the extent to which faculty members agree or disagree with the opinions of the presidents of the community colleges and technical institutes in North Carolina in the areas of contracts, tenure, and dismissal.
2. Investigate the procedures delineated in institutional faculty handbooks and policy manuals concerning due process, contracts, employment benefits, dismissal, tenure/de facto tenure, and other matters related to employment.

3. Investigate the legal aspects of faculty employment in colleges and universities in North Carolina which are private and/or religious in orientation.

4. Investigate the legal aspects of faculty employment in the member institutions of the University of North Carolina.

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APPENDIXES

EXHIBIT A

Survey Correspondence

July 17, 1978

I have completed almost all the requirements for my doctorate in education at the University of North Carolina at Greensboro. My area of specialization is educational administration. One of the chapters of the dissertation requires a survey of the institutions in the system of community colleges and technical institutes.

My dissertation is essentially an investigation of some of the legal aspects of faculty employment in the community college system. I should like respectfully to request that you fill out the enclosed questionnaire. Only five institutions are involved in this sample, so your personal help in this project will be invaluable to me. After I receive your response, I shall revise the survey instrument and mail it to all the presidents.

May I give you my personal assurance of absolute confidentiality. Neither you nor the institution you serve will ever be identified in any way. I have attempted to make the survey instrument relatively uncomplicated. Most of the information I am requesting will be available in your office. Please make any comments or suggestions on page seven of the instrument.

Thank you in advance for your participation. If possible, I should like to have the questionnaire returned to me by Wednesday, July 26, 1978.

Sincerely,

Paul R. Berrier
Assistant to the President

PRB:jrp

Enclosures

August 10, 1978

I have completed almost all of the requirements for my doctorate in educational administration at the University of North Carolina at Greensboro. I am now a candidate for the degree. One of the chapters of the dissertation requires a survey of the institutions in the system of community colleges and technical institutes.

My dissertation is essentially an investigation of some of the legal aspects of faculty employment in the system. I should like respectfully to request that you fill out the enclosed survey instrument. Experience with my sample mailing indicates that you will be able to complete it in thirty minutes or less and that you will not find it necessary to secure information from other offices.

May I give you my personal assurance of confidentiality. Neither you nor the institution you serve will ever be identified in any way.

If it is convenient, would you please include a copy of a faculty contract when you mail the instrument. This will be especially helpful to me.

Thank you in advance for your participation. I should like to have the survey instrument returned to me by Friday, August 18, 1978.

Sincerely,

Paul R. Berrier
Assistant to the President

PRB:jrp

Enclosures

August 22, 1978

You may recall that on August 10, 1978, I mailed to you a survey form connected with my doctoral program. I have had a good response from the presidents, but your filling out the questionnaire would considerably strengthen the study.

If you have misplaced the original mailing, please write me and request another survey form. May I hear from you by Monday, August 28, 1978?

Thank you very much for your consideration.

Sincerely,

Paul R. Berrier
Assistant to the President

PRB:jrp

APPENDIXES

EXHIBIT B

Survey Instrument

SURVEY INSTRUMENT

Please identify the institution as follows:

1. Community College _____
 Technical Institute _____
2. Head-count student enrollment in curriculum programs in
 Fall, Winter, and Spring quarters, 1977-78.
 Fall _____
 Winter _____
 Spring _____

Contracts

1. The following employee groups on the campus are issued
 written contracts:
 Faculty _____
 Administrators _____
 Administrative Support _____
 Office Personnel _____
2. Please indicate length of faculty contracts. Check all
 appropriate contracts.
 Nine months _____
 Ten months _____
 Twelve months _____
 Other (specify) _____
3. Briefly describe the typical faculty contractual arrange-
 ment in regard to length of contracts. (Examples: nine
 months, plus three months for Summer Quarter, or twelve-
 month contract.

4. Do faculty contracts specify that a faculty member will teach? (Explanation: Some contracts simply require the instructor to provide professional services).

Yes _____
No _____

5. If so, do contracts specify what subjects will be taught?

Yes _____
No _____

6. Do contracts specify in which division the instructor will teach?

Yes _____
No _____

7. Do contracts specify under what conditions the contract may be abrogated by the institution?

Yes _____
No _____

8. Briefly describe these conditions.

9. Do contracts specify the teaching load (contact hours) and minimum work week?

Yes _____
No _____

10. Do contracts make any reference to tenure, continuity of employment, or expectancy of reemployment?

Yes _____
No _____

11. Do faculty members agree to abide by established policies in signing the contract?

Yes _____

No _____

12. Have the institution's contracts been changed in any significant way in the past five years?

Yes _____

No _____

13. Were these changes made by the administration or the trustees? (Specify) _____

14. Briefly discuss the nature of these changes.

15. In the President's personal judgment, are members of the faculty satisfied with contractual arrangements?

Yes _____

No _____

Tenure

16. Does the institution currently have a tenure plan?

Yes _____

No _____

17. If not, did the institution have a tenure plan in the past?

Yes _____

No _____

18. If there was no tenure plan, was there any type of de facto tenure, such as continuing contracts or "expectancy of reemployment?"

Yes _____

No _____

19. Please describe the tenure or de facto tenure plan.

20. Please answer the following if the institution has a tenure or de facto tenure plan.

a. Length of service required before tenure is granted.

Years _____

b. Briefly describe the process of granting tenure.

c. What percentage of the faculty are covered by the tenure plan?

Percent _____

d. Has the Board of Trustees ever failed to grant tenure when an instructor was qualified?

Yes _____

No _____

e. For what reasons? (Typically)

- f. Does the President consider that the tenure plan is successfully accomplishing its purpose?

Yes _____

No _____

- g. Would the President prefer to operate the institution without such a plan?

Yes _____

No _____

- h. Does tenure encourage mediocrity?

Yes _____

No _____

- i. Does tenure adversely affect the administration's relationships with the faculty?

Yes _____

No _____

- j. On balance, is tenure good or bad for an institution?

Good _____

Bad _____

21. Please answer the following if the institution does not have tenure.

- a. Would the faculty prefer to serve under a tenure plan?

Yes _____

No _____

- b. Have there been attempts by the faculty to develop a tenure plan?

Yes _____

No _____

- c. Is the President personally familiar with the concept of tenure and the legal aspects of tenure plans?

Yes, very familiar _____

Yes, moderately familiar _____

No _____

d. Would tenure restrict or limit the President's relationships with the faculty?

Yes _____

No _____

e. Does the President prefer to operate without tenure?

Yes _____

No _____

f. Does tenure encourage mediocrity?

Yes _____

No _____

g. On balance, is tenure good or bad for an institution?

Good _____

Bad _____

h. Is the administration currently considering instituting a tenure or de facto tenure plan?

Yes _____

No _____

Dismissal

22. Have instructors been dismissed from the institution during the past five years?

Yes _____

No _____

23. Approximate number of dismissals.

24. Reasons for dismissals. Check appropriate reasons listed below.

- _____ a. Financial exigency.
 _____ b. Low FTE production and/or lack of student interest in subject areas.
 _____ c. General reduction in staff.
 _____ d. Personal or professional misconduct.
 _____ e. Other (specify) _____

25. Does the institution have formal due process procedures for faculty members to follow if they disagree with their dismissal?

Yes _____
No _____

26. Are these published in a policy manual or faculty handbook?

Yes _____
No _____

27. Have faculty used these procedures?

Yes _____
No _____

28. Has a lawsuit been filed against the institution's administration and/or Board of Trustees within the last five years?

Yes _____
No _____

29. In which court(s) were these suits filed?

Federal _____
State _____

30. If no lawsuits have been filed, has the institution been threatened with such suits?

Yes _____
No _____

31. Briefly describe the resolution of any lawsuits.

32. Have any lawsuits been settled out of court?

Yes _____

No _____

Return to:

Mr. Paul R. Berrier
Box 35
Gaston College
Dallas, North Carolina 28034

APPENDIXES

EXHIBIT C

Attorney General's Opinion
Concerning Tenure in
Community Colleges

November 28, 1975

Honorable Carl J. Stewart, Jr.
P. O. Box 2356
Gastonia, North Carolina

Re: Authority of the Board of Trustees of a Community
College to Establish and Implement a Tenure Policy
for its Faculty Members

Dear Carl:

In your letter of November 4, 1975, you ask whether or not the board of trustees of a community college has the authority to adopt and implement tenure policies for its faculty members.

It would appear that the State Board of Education has authority to implement a tenure policy for faculty members within the community college system or delegate such authority to individual community colleges, but that a board of trustees of a community college itself does not have such authority. The general authority of the State Board of Education in regard to the Department of Community Colleges is set forth in G.S. 115A-3. It provides in pertinent part:

"The Board shall have the authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the Department."

G.S. 115A-5 specifically details the authority of the State Board of Education vis-a-vis individual institutions. It provides in pertinent part:

"The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions:...to establish and administer standards for professional personnel..."

The powers and duties of the boards of trustees of individual institutions are set forth in G.S. 115A-14. The power of individual boards of trustees with respect to faculty members are set forth in subsection 2 of that statute,

Honorable Carl J. Stewart, Jr.
November 28, 1975
Page 2

which provides:

"To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Education."

From an analysis of these statutes, it would appear that the authority of boards of trustees in regard to faculty members is limited to the election and employment of faculty members. We do not believe that the words, "elect or employ" can reasonably be construed as including the authority to establish tenure regulations or policies. More importantly, the authority of boards of trustees "to elect or employ" is specifically circumscribed by the authority of the State Board of Education as set forth in G.S. 115A-5 "to establish and administer standards for professional personnel." This authority to establish standards for professional personnel would probably authorize the State Board of Education to adopt and implement tenure policies or delegate that authority to local boards of trustees pursuant to G.S. 115A-14. The State Board of Education has neither adopted such tenure policies nor delegated that authority to local board of trustees. It is my understanding that the State Board of Education has previously considered the adoption of tenure regulations for faculty members at the various institutions, but has declined to adopt such policies.

You also ask whether or not a board of trustees of a community college would have authority to enter into a contract with a faculty member for more than a nine-month period. We believe that the board of trustees could enter into a contract with a faculty member for a ten, eleven or twelve-month period. The length of a contract is, of course, dependent upon need for classes and availability of students during the year. Tenure, in essence, is the award of a continuing contract of indefinite duration to a faculty member. If your question is addressed to the authority of boards of trustees to contract with faculty members for more than one school year's employment, we believe such a practice would resemble the award of tenure and should not be undertaken by boards of trustees, except in exceptional circumstances and then only if the contract is for a specified period of time.

Honorable Carl J. Stewart, Jr.
November 28, 1975
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I trust that this letter will be of assistance to you. Let me hasten to add, however, that this letter does not address the question of de facto tenure which conceivably could arise as the result of policies or practices at individual institutions.

Very truly yours,

Rufus L. Edmisten
Attorney General

Edwin M. Speas, Jr.
Special Deputy Attorney General

EMSjr:ckb

APPENDIXES

EXHIBIT D

Institutions Participating
in Survey

INSTITUTIONS PARTICIPATING IN SURVEY

Anonymous
Anson Technical Institute
Asheville-Buncombe Technical Institute
Beaufort County Technical Institute
Bladen Technical Institute
Blue Ridge Technical Institute
Caldwell Community College and Technical Institute
Cape Fear Technical Institute
Carteret Technical Institute
Catawba Valley Technical Institute
Central Carolina Technical Institute
Central Piedmont Community College
Cleveland County Technical Institute
Coastal Carolina Community College
College of the Albemarle
Davidson County Community College
Durham Technical Institute
Edgecombe Technical Institute
Fayetteville Technical Institute
Forsyth Technical Institute
Gaston College
Guilford Technical Institute
Halifax Community College
Haywood Technical Institute
Isothermal Community College
James Sprunt Institute
Johnston Technical Institute
Lenoir Community College
Martin Community College
Mayland Technical Institute
McDowell Technical Institute
Mitchell Community College
Montgomery Technical Institute
Nash Technical Institute
Pamlico Technical Institute
Piedmont Technical Institute
Pitt Technical Institute
Richmond Technical Institute
Roanoke-Chowan Technical Institute
Robeson Technical Institute
Rockingham Community College
Rowan Technical Institute
Sampson Technical Institute
Sandhills Community College
Southeastern Community College
Surry Community College
Tri-County Community College

Vance-Granville Community College
Wake Technical Institute
Wayne Community College
Western Piedmont Community College
Wilkes Community College
Wilson County Technical Institute