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**Faculty academic freedom in North Carolina community colleges
and technical institutes**

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The University of North Carolina at Greensboro, 1986

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FACULTY ACADEMIC FREEDOM IN NORTH CAROLINA
COMMUNITY COLLEGES AND
TECHNICAL INSTITUTES


by

Thurman DeWitt Hollar

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

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Approved by


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APPROVAL PAGE

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This study presents a historical perspective of academic freedom and of the development of community colleges and technical institutes. This examination was undertaken to identify the beginnings of academic freedom within public two-year institutions. Such roots within the public two-year institutions, unlike that of the university, were difficult to pinpoint.

An examination of the fifty state statutes governing public two-year colleges revealed that only four addressed academic freedom. A questionnaire indicated that forty-two North Carolina community colleges and technical institutes have academic freedom statements, and the principles incorporated in them are similar to those principles outlined in the American Association of University Professor's 1940 statement on academic freedom. Only three of the participating North Carolina colleges provide faculty tenure.

A legal background was presented for the analysis of judicial decisions involving four areas: (1) teaching, (2) research, (3) the teacher as a member of a learned society, and (4) the teacher as a citizen beyond the confines of the campus.

Litigation, involving teachers and their First Amendment rights, influenced decisions concerned with the balancing of interests between the state's interest in efficiency in the workplace and the teacher's right to academic freedom. Several court decisions recognized the Supreme Court decision in Connick to be a narrower one favoring the state.

The overall purpose of this study was to provide educational decision-makers in North Carolina community colleges and technical institutes with direction when confronted with matters concerning academic freedom. Court cases, academic freedom statements, and the literature were reviewed to interpret judicial issues and the following conclusions were formulated.

1. Courts have recognized that teaching is a right and that academic freedom is synonymous with the First Amendment.
2. An institution's right to establish the curriculum has been recognized.
3. A teacher may use his/her own discretion in making assignments or in using a particular instructional method that pertains to the subject being taught.
4. In personnel decisions concerning teacher evaluation and course selection, courts have differed to the institution.
5. Courts have shown a concern for the working relationship of employees.
6. Courts have recognized a teacher's right to speak on matters of public interest if the workplace is not disturbed.
7. Courts are concerned with speech content.
8. The courts have defined salary concerns and teacher schedules as "private speech" which is not protected.
9. The welfare of students is considered to be a subject under "public speech" and is protected.
10. A teacher who adheres to institutional policy concerning research is protected.
11. Nontenured teachers can be dismissed without any given reason; a North Carolina court has said that the community college system in that state has no provision for tenure.
12. Tenured teachers, where tenure has been authorized by law, are to be afforded full protection of due process as outlined in the tenure policy itself.¹

¹Paul R. Berrier, "Legal Aspects of Faculty Employment: Tenure, Contracts, and Dismissal in the Community Colleges and Technical Institutes of North Carolina (Ed.D. dissertation, University of North Carolina at Greensboro, 1978).

13. Courts have recognized a college's non-renewal policy for nontenured teachers which gives the teacher one year's notice prior to dismissal.
14. In determining a First Amendment violation, courts have established that a nontenured teacher has the burden of proof.
15. Courts will intervene when a teacher's First Amendment rights have been violated regardless of tenure status.

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CHAPTER I
INTRODUCTION

Overview

Continuously, college administrators on all levels are obligated to defend their decisions. Because of this, community college administrators need to become aware of their legal rights and responsibilities. Within the community college setting, administrators have several responsibilities: (1) assisting the college in meeting its objectives; (2) providing for the safety and welfare of its teachers and students; (3) maintaining order and discipline; (4) acting reasonable and in good faith; and (5) working within the scope of the law. Further, administrators are responsible for proper instruction and learning.

Implied in this area of instruction and learning is the idea that a teacher must be given freedom to explore, to experiment, and to disseminate information. Conversely, an administrator must limit or restrain actions by a teacher that could adversely affect the learning atmosphere. Further implication is that this academic freedom requires responsibility. As illustrated in a definition by Sidney Hook:

Academic freedom is the freedom of professionally qualified persons to inquire or investigate, to discuss, publish, or teach the truth as they see it in the discipline of their competence subject to no religious or political control or authority except the control of standards of professional

ethics or the authority of the rational methods by which truths and conclusions are established in the disciplines involved.¹

A review of judicial decisions can help identify a proper balance between the administrator's enthusiasm for and practical need to insure accountability and the faculty member's right to academic freedom. Furthermore, this study will assist the faculty members of community colleges and technical institutes to become more aware of academic freedom and responsibility.

Significance of the Study

"In one sense the right of academic freedom exists for and extends to the whole citizenry because of the extreme importance of free inquiry in a system of self government."²

A university must provide the truth on political and economic issues. It should be an open forum on all issues, and it should provide for full discussion. If restraints are given, the students will not be able to reach full mature thinking adults. Furthermore, if these freedoms are not provided, there is unsureness of one's beliefs.³

¹Sidney Hood, "The Principles and Problems of Academic Freedom," Vital Speeches, September 1984, p. 704.

²Virginia Nordin, "The Legal Protection of Academic Freedom," The Courts and Education, ed. Clifford P. Hooker (Chicago: The Seventy-Seventh Yearbook of the National Society for the Study of Education, 1978), p. 307.

³Grayson Kirk, "The University in Our National Life," Leaders, Teachers, and Learners in Academe, ed. Stanley Lehrer (New York: Appleton-Century-Crofts, 1970), p. 25.

Healy provides further insight in the following statement:

Because we are open in our progress and open in our places, we are deliberately vulnerable to ill-aimed force, which can at times attack our own freedoms. The very being of a university makes it easy to disrupt, and our centuries have taught us that we are weakly defended by policemen. A university's great gift is the grant of room for young and old to speculate, to dream, to rear great buildings of ideas. A second gift is the absolution from consequences should those ideas crash down about our ears. Unless the young learn first hand how supple and strengthening our freedoms are, they will never learn to defend them. Imposed order is a poor teacher for any free people.⁴

Today universities and colleges are faced with declining enrollments, declining revenues, and increasing costs. Simultaneously, these institutions are being asked to improve education and provide for equal opportunity. Furthermore, there has been an increase of state and federal regulations along with an increase in relationships with the private sector. All of this outside pressure has a negative impact upon the environment of teachers.⁵

Accountability has become an important issue of the 1980s. Those who support colleges and universities are interested in how their monies are being spent and are concerned with the performance of the faculty. This concern has led many to become censors of ideas and literature, and censorship activity has been an integral part of earliest history.

⁴Timothy S. Healy, "In Defense of Disorder," Newsweek, May 23, 1983, p. 11.

⁵Steven G. Olswang and Barbara A. Lee, Faculty Freedoms and Accountability, Interactions and Conflicts. ASHE-ERIC Higher Education Research Report No. 10 (Washington, D.C.: Association for the Study of Higher Education, 1984), p. 23.

Censorship today is growing at a rapid pace in society and is involved in almost all media involving education.⁶

One example of governmental influence is Accuracy in Academia (AIA), a spin-off of Accuracy in Media. It is a nonprofit organization established in August 1985. The statement of purpose is as follows:

The corporation is founded for the purpose of educating the public, the learned societies, professional educators, and academicians as to desirable standards of accuracy and truth in academic teaching and how to raise professional standards in academia with respect to objective truth and acceptable standards of balance and fairness. In furtherance of these objectives, the corporation shall examine cases in which academic performance is alleged to fall short of these standards and it shall publicize its findings. The corporation shall publish and distribute literature, provide speakers at seminars and other meetings and gatherings, conduct classes, cooperate with other like-minded societies, and corporations and individuals, and employ such other means as are deemed feasible by the Board of Directors to communicate to the public its views on the standards of accuracy and truth in academia.⁷

AIA president Malcolm Lawrence explained that the principal function of AIA was to establish a network of students and other volunteers to report on the university professors and instructors in order to obtain truth and balance whatever the persuasion.⁸

Another indication that academic freedom is being threatened can be observed in a case dealing with free speech that occurred outside of education. Connick v. Myers was decided by the Supreme Court, April 20, 1983, "and may narrow the free speech rights articulated in Pickering

⁶Joseph E. Bryson and Elizabeth W. Detty, Censorship of Public School Library and Instructional Material (Charlottesville: Michie Co., 1982), p. 70.

⁷Malcolm Lawrence, "Accuracy in Academia: Is It a Threat to Academic Freedom?" Vital Speeches 52 (November 1985):44.

⁸Ibid.

and its progeny."⁹ Myers, an assistant district attorney in New Orleans, distributed a questionnaire to fifteen other district attorneys after she had been told that she was to transfer to another section. She was subsequently fired by Connick for refusing to be transferred and for insubordination due to distributing the questionnaire.¹⁰ The Supreme Court upheld Connick's decision, and this decision may be a narrow one when compared with previous cases.¹¹ Furthermore, the most important test used by Justice White--the balancing of the relevant circumstances in the case--suggests that there are no guidelines for educators when making termination decisions.¹²

Tenure has been identified by scholars as a protection for academic freedom, but many educators regard tenure merely as a method for protecting incompetent teachers.¹³ However, as noted by Olswang and Lee, academic freedom is meaningless without a set of legal procedures which are afforded by tenure.¹⁴ In a dissertation written in 1979, only five of the responding fifty-three community college and

⁹Thomas J. Flygare, "Dejure, the Supreme Court Adds a New Twist to Free Speech for Public Employees," Phi Delta Kappan, October 1983, p. 144.

¹⁰Connick v. Myers 461 US 138 (1983).

¹¹Flygare, p. 145.

¹²Ibid.

¹³Olswang and Lee, p. 13.

¹⁴Ibid.

and technical institutes in North had tenure plans.¹⁵ Since the majority of these institutions do not have tenure, this study can further be of assistance to those educators faced with litigation that involves academic freedom.

Questions to be Answered

A major emphasis of this study is to examine and analyze the legal aspects of academic freedom as they apply to faculty in the community colleges and technical institutes of North Carolina. The areas to be covered in the study are the following:

1. Freedom of speech within the school environment--the classroom along with the associations that faculty have with students and colleagues.
2. Freedom of speech outside the school environment.

Guidelines for making policies and decisions depend upon the answers to the questions listed below.

1. Who or what are the assailants of academic freedom?
2. What are the legal issues involved in academic freedom for faculty?
3. When faced with a problem involving academic freedom, what are the constitutional rights of those involved?

¹⁵Paul R. Berrier, "Legal Aspects of Faculty Employment: Tenure, Contracts, and Dismissal in the Community Colleges and Technical Institutes of North Carolina" (Ed.D. dissertation, University of North Carolina at Greensboro, 1978).

4. What control can a community college or technical institute exercise over the conduct of faculty?
5. What conduct of faculty may not be limited by a community college or technical institute?
6. What legal guidelines may be used to assist North Carolina community colleges and technical institutes implement policy?

Methods, Procedures, and Sources
of Information

In order to determine a need for the study, Joseph Bryson, Professor of the Educational Administration Department, was consulted. Through this consultation certain procedures were articulated, and the study was begun.

Certain research tools aided in the location of information: (1) the Index to Legal Periodicals, (2) the Education Index, (3) Current Law Index, (4) Reader's Guide to Periodical Literature, and (4) Resources in Education. A list of related sources was also received through a computer search from the Educational Resources Information Center (ERIC).

In order to locate cases involving academic freedom, copies of the Noipe School Law Reporter, School Law News, School Law Bulletin, Corpus Juris Secundum, Shepherd's Citations, West's Education Law Reporter, the National Reporter System, and the American Digest System were reviewed. Cases were read and analyzed.

Included as a part of the study was the examination of the fifty state statutes to determine the extent in which public two-year college systems address academic freedom. A questionnaire was

used in order to gather information concerning statements and policy on academic freedom and tenure in North Carolina community colleges and technical institutions. These statutes and statements were read and analyzed.

Scope of the Study

This is a study of the legal aspects of faculty academic freedom as it applies to teachers in the community colleges and technical institutes of North Carolina. It examines the development of academic freedom as well as the evolution of the community college and technical institute. It also examines the current statutory provisions and the history of litigation involving academic freedom since 1952, and the academic freedom statements of community colleges and technical institutes are analyzed. This study makes no attempt to examine tenure, although it does examine its current status in the above institutions.

Coverage and Organization of the Study

The remaining chapters of this study are divided as follows:

Chapter II traces the development of academic freedom. Also, this chapter includes the evolution of the community and technical college system to determine if these institutions contain the seeds of academic freedom.

Chapter III contains an examination of the fifty state statutes pertaining to community and technical colleges to ascertain if academic freedom is addressed. It also contains an analysis of North Carolina community colleges and technical institutes' policy statements on academic freedom. These statements were acquired through the use of a questionnaire which also served as a vehicle for gathering current information on the status of tenure in these institutes.

Chapter IV includes major legal issues relating to academic freedom. Included in this study are the following: (1) freedom of speech within the classroom, (2) freedom of speech as it pertains to associations with students and colleagues, and (3) freedom of speech outside the school environment.

Chapter V contains discussions and analyses of major cases that relate to the categories listed in Chapter IV. Facts, decisions, and discussions of the cases are presented in each category.

The cases involved in Chapters IV and V, respectively, are cases involving the public schools, universities, and community colleges and technical institutes.

Chapter VI will be a conclusion to the study. It will contain a summary of the prior chapters that will give educators insight into academic freedom. Also included in this chapter will be recommendations for further study.

Definition of Terms

For the purposes of this study it is important to distinguish between academic freedom and tenure. In 1937, The Yale Law Journal

equated tenure with academic freedom,¹⁶ however, tenure cannot overcome financial exigency, and it leaves probationary teachers with no protection at all except in cases whereby a clear violation of constitutional rights can be found. The guaranteed right of freedom of expression is not the same as a guarantee of job security.¹⁷ "Professors have no more guaranteed right to a lifetime income than any other class of citizens except as that right relates to the freedom of academic inquiry and dissemination."¹⁸

Tenure, however, gives the institution a method for deciding if the proposed dismissal is due to behavior outside the range of academic freedom.¹⁹ Herein is how the two concepts are related for the purposes of this study.

The following programmatic definitions are used also:

Academic freedom. A constitutional freedom that allows a teacher freedom to inquire and to teach without fear of dismissal. This implies that the teacher has a right to reach conclusions that he feels are valid. Further, this means that a teacher may hold to truths that others may conclude to be communist, socialist, or racist.²⁰ Thus, academic freedom relates closely with the first amendment--Congress shall make no law respecting an establishment of religion or

¹⁶Bruce Wasserstein, "Academic Freedom and the Law," Yale Law Journal 46 (March 1973):670-686.

¹⁷Nordin, p. 313.

¹⁸Ibid.

¹⁹Olswang and Lee, p. 18.

²⁰Hook, p. 18.

prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances. Also included in the definition is responsibility as noted by the American Association of University Professors:

It is a teacher's mastery of his subject and his own scholarship which entitle him to his classroom and to freedom in the presentation of his subject. Thus, it is improper for an instructor persistently to intrude material which has no relation to his subject, or to fail to present the subject matter of his course as announced to his students and as approved by the faculty in their collective responsibility for the curriculum.²¹

Tenure. An "earned" grant of permanent employment that protects a teacher from arbitrary or capricious dismissal.

Faculty member. An employee, full-time or part-time who teaches students the content from courses that are described in the curriculum of the community and technical colleges.

Nontenured faculty member. One who serves in the capacity listed above and receives year-to-year contracts without any guarantee of renewal contracts.

Probationary teacher. A nontenured faculty member.

Community college. An educational institution dedicated to the educational needs of the people in a particular area. The freshman and sophomore courses of arts and sciences are offered. Also offered are courses for technicians. The courses may carry transfer credit to a senior college or university where the course is comparable in content

²¹Council of the American Association of University Professors, "Freedom and Responsibility," AAUP Bulletin 60 (June 1974):168.

and quality and is appropriate to a chosen field of study. Further course offerings include vocational, trade, and technical courses and programs. Adult education courses are also offered.

Technical college. The community and technical colleges both have similar services with the exception of arts and science courses that are offered to freshmen and sophomores by the community colleges.

Public two-year college. Includes the above colleges, and also includes the public junior college which offers the freshman and sophomore courses of arts and sciences.

CHAPTER II
REVIEW OF THE LITERATURE

Introduction

Historically, academic freedom has continued to be an issue. "In all ages the weight of tradition presses in varying degrees upon the capacity of the individual to pose new hypotheses and find new truths."¹ This tradition can be traced to Socrates who questioned the beliefs of his community, and even though he was considered a master teacher, his intellectual freedom was violated. He was convicted of corrupting the youth. His defense, found in the Apology by Plato, is quoted by many who are concerned with the problems of academic freedom.²

Socrates pleads:

Men of Athens, I honor and love you, but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy, exhorting anyone whom I meet after my manner, and convicting him saying: "O my friend, why do you who are a citizen of the great and mighty and wise city of Athens care so much about laying up the greatest amount of money and honor and reputation, and so little about wisdom and truth and the greatest improvement of the soul, which you never regard or heed at all? Are you not ashamed of this?" And if the person with whom I am arguing says: "Yes, but I do care"; I do not

¹Richard Hofstadter, Academic Freedom in the Age of the College (New York: Columbia University Press, 1955), p. 11.

²Russell Kirk, Academic Freedom, An Essay in Definition (Chicago: Henry Regnery Co., 1955), p. 33.

depart or let him go at once; I interrogate and examine and cross-examine him, and if I think that he has no virtue, but only says that he has, I reproach him with undervaluing the greater and overvaluing the less. And this I should say to everyone whom I meet, young and old, citizen and alies, but especially to the citizens, inasmuch as they are my brethren. For this is the command of God, as I would have you know, and I believe that to this day no greater good has ever happened in the state than my service to the God. For I do nothing but go about persuading you all, old and young alike, not to take thought for your persons and your properties, but first and chiefly to³ take care about the greatest improvement of the soul.

During the Middle Ages the church and teaching were closely related since the church was the governing body, but the university achieved great autonomy simply because the church was involved in its own preservation. When teachers were threatened, they responded by migrating or by ceasing to hold lectures. However, during the period of the inquisition, several teachers were punished and killed because of the alleged teaching of heresy. Teacher's use of migration and cessation were no longer effective means of sanction, mainly due to the increase of universities and permanent libraries.⁴

In Germany there were two forms of academic freedom, Lernfreiheit and Leirfreiheit. Lernfreiheit gave faculty an "absence of administrative coercions in the learning process"; Lehrfreiheit gave the teacher freedom to teach and inquire.⁵

³Ibid., p. 33.

⁴Hofstadter, pp. 11-18.

⁵Richard Hofstadter and W. P. Metzger, The Development of Academic Freedom in the United States (New York: Columbia University Press, 1955), p. 386.

Hofstadter and Metzger believe that the modern concept of academic freedom is a mixture of science and political liberalism. There is currently a broader concept of academic freedom, a more positive one and not merely a negative condition.⁶

Historical Perspective of Academic Freedom

Early History

Freedom in teaching can be traced back to Socrates; however, Hofstadter states, "the continuous history of academic freedom is concurrent with the history of the university since the twelfth century."⁷ Universities were organized in France and Italy and were very simple, consisting chiefly of students and instructors or master teachers.⁸

The teacher was the school during the Middle Ages. The university was a "self-constituted community" of scholars, teachers, and learners.⁹ During this time students came to the university to learn

⁶Ibid., p. 363.

⁷Richard Hofstadter and Walter P. Metzger, The Development of Academic Freedom in the United States, p. 3.

⁸Ibid., pp. 3-4.

⁹Ralph F. Fuchs, "Academic Freedom: Its Basic Philosophy, Function, and History," in Academic Freedom, the Scholastic's Place in Modern Society, ed. Hans W. Beade (New York: Oceana Publications, Inc., 1964), p. 3.

from the professor and to see the rare manuscripts.¹⁰ The first universities of Bologna, Paris, and Oxford were a corporate framework of faculty. The faculties elected their own leaders and held secret meetings. Also, they were consulted about many different subjects.¹¹ The university was one of the greatest medieval contributions given to the modern world. Richard Hofstadter continues, "they were intellectual cathedrals, not buildings but organizations."¹² The universities came clearly into being in the latter part of the twelfth century.¹³

As a social structure the universities at this time were filled with power and prestige chiefly because learning was highly respected and was an important part of the spiritual process. They were spiritual and vocational centers, and their strength came from the loyalty of former students and masters who had attained importance in society.¹⁴

The curricular trends during the rise of the first universities consisted mainly of the arts (grammar, rhetoric, dialectic, arithmetic,

¹⁰Ithiel de Sola Pool, "Academic Practices, Freedoms and the New Technologies," Current Issues in Higher Education 1 (1983-84):19-24.

¹¹Clark Byse and Louis Joughlin, Tenure in American Higher Education (New York: Cornell University Press, 1959), p. 155.

¹²Hofstadter and Metzger, p. 5

¹³Lowrie J. Daly, S.J., The Medieval University 1200-1400 (New York: Steed and Ward, Inc., 1961), p. 16.

¹⁴Ibid.

geometry, astronomy, and music). The arts were considered to be the path to a philosophical culture.¹⁵

The dialectic method of theology was the area of trouble for Abelard because many of his thoughts and teachings were in disagreement with the church.¹⁶ He came under criticism, and many of his enemies felt that as a Christian he was "treating things that do not pertain to the faith."¹⁷

The history of medieval thought is conveyed by the tensions between faith and inquiry and between the individual and traditional authority. The most controversial areas were philosophy and theology. Research and experimentation were relatively free of controversy since the men of science were so often clerics.¹⁸ There seems to be no recorded instance of punishment of men of science by the church in the twelfth and thirteenth centuries.¹⁹

When there were great controversial differences over doctrine, freedom was kept alive but only within the limits of a particular orthodoxy. The heterodox teachings of Martin Luther were opposed by the church, and he won his freedom with the aid of a number of secular princes. Subsequently, church and state made Luther's heterodoxy a

¹⁵Richard Hofstadter, Academic Freedom in the Age of the College, pp. 6-8.

¹⁶Ibid., p. 12.

¹⁷Hofstadter and Metzgen, The Development of Academic Freedom in the United States, p. 12.

¹⁸Ibid., p. 13.

¹⁹Ibid.

new orthodoxy which would safeguard teachers against claims of heresy.²⁰ However, for the most part the church of the Middle Ages was more concerned with its own temporal interest than with the work of scholars.²¹ Furthermore, as Hofstadter notes "the inherited pattern of deference to philosophic authority as well as the traditional desire for salvation itself were more imposing and consistently operating inhibitions on free speculation than were the formal acts of the church."²² According to Hofstadter, there were two kinds of authority in the Middle Ages. The first (which dealt with external controls such as rules and regulations) was positive; the other (which was more psychological) was traditional. It consisted of the beliefs and habits of thought that were interwoven into the intellectual life and assessed only in an impressionistic way.²³ But the church's control was sporadic and inconsistent.²⁴

In the twelfth century the church did try to make an organized movement toward censoring books and doctrines that it thought were heretical, and the organized inquisition replaced the inefficiency of

²⁰John S. Brubaker, A History of the Problems of Education (New York: McGraw-Hill, 1966), pp. 596-597.

²¹Hofstadter, Academic Freedom in the Age of the College, pp. 18-19.

²²Ibid., p. 11.

²³Ibid.

²⁴Fuchs, "Academic Freedom: Its Basic Philosophy, Function, and History," pp. 3-4.

the church. Matters outside church affairs were not attacked, but criticisms of doctrine and popes were cause for punishment. The inquisitors and the popes guarded orthodoxy; the bishops and the officials of the universities handled the academic affairs. This tendency of the church to stay out of university affairs gave the teacher much protection.²⁵ To keep their freedom or control of their affairs, teachers asked others to help them, especially kings and popes. The struggle at the University of Paris led to the faculty becoming the full corporate body. After a period of time, the medieval faculties appointed their own members, issued degrees, established curriculums, and gave licenses to teach.²⁶

Students were also potential threats to the freedoms of professors. In Bologna in the twelfth century, the students who employed the teachers would not allow them to leave town without permission, issued fines when teachers were tardy, prescribed certain books to be read, and told the professors the number of pages to be covered in class. The faculty sought and obtained compensation from the town.²⁷

Teaching, being the primary function of teachers during this time, was another protection for instructors. Teaching was mostly

²⁵Hofstadter, Academic Freedom in the Age of the College, pp. 18-23.

²⁶Carroll Atkinson and Eugene T. Maleska, The Story of Education (Philadelphia: Chilton Books, 1965), pp. 44-45.

²⁷Robert W. Merry, "Tenure and Academic Freedom," in Challenge and Change in American Education, ed. Seymore E. Harris (San Francisco: McCutchen Publishing, 1965), p. 321.

informal, and if controversial issues arose, there was usually no mention of them; at other times the scholar would defer to the theologians for judgment.²⁸ There were times when the status quo was challenged. Godfrey of Fontaines, an outspoken scholar, refused to acknowledge the validity of the condemnations of 1277. Hofstadter gives this outstanding quote by this scholar:

To bind men to an opinion on questions on which there may be a diversity of views without danger to faith would impede the pursuit of truth.²⁹

Faculties also used cessation or suspension of lectures and migration as further forms of sanctions against pressure.³⁰ However, as the universities began to grow in number during the late fourteenth and fifteenth centuries, the scholars began to lose some of their protections, especially cessation and migration. Furthermore, the university began to lose much of its corporate autonomy, and with the rise of national states, there was more intervention by kings, princes, and parliaments.³¹

The medieval period was not a nightmare of dogmatism as many of the rationalistic scholars claim it to be nor was it a time of open and free expression that modern medievalists at times claimed it to be. The teacher assumed that some authority would use pressure of some sort

²⁸Hofstadter, Academic Freedom in the Age of the College, p. 30.

²⁹Ibid., p. 31.

³⁰Ibid., pp. 8-11.

³¹Ibid., pp. 41-44.

in the areas of theology and philosophy. The Middle Ages looked for unity and completeness in philosophy and theology.³²

Fifteenth-Sixteenth Centuries

In the fourteenth century and toward the middle of the fifteenth century as humanistic learning spread, princes and nobles influenced the curriculum. They gathered the libraries with the universities playing a very small part.³³

The humanist teacher was faced with threats to intellectual freedom; skepticism was rampant in Italy, and free thought was broad. These types of intellectual freedom did give boldness to the humanistic scholar who wanted a latitude of scholarship.³⁴

The history of the Copernican system reveals that the church was not as tolerant of astronomical views as it had been in the thirteenth century. When Copernicus brought forth his publication, De Revolutionibus Orbium Coelestium (1543), he exercised great caution and used hypothetical statement.³⁵

Scientific findings stood a better chance of survival than the speculations of theorists. Bruno provides a case in point. As a wandering scholar with a great amount of imagination and courage, he was able to cause much controversy with his theological ideas. His ability to live for many years in the university world shows that intellectual

³²Richard Hofstadter and Walter P. Metzger, pp. 15-16.

³³Ibid., p. 48.

³⁴Ibid.

³⁵Ibid., p. 53.

freedom was not totally absent. But he was not secure in his career, and his burning in 1600 was the turning point that changed indifference into persecution.³⁶

The sixteenth century was the age of the reformation. It was also a time of faith when men were ready to die for religion. The reformation was both Protestant and Catholic, and these two faiths cannot agree in their interpretation of the events and causes.³⁷

Protestantism has been credited with contributing to the gains in intellectual freedom. Its establishment of a breach in authority and assertion of rights of the individual conscience aided freedom of thought, but these gains of freedom did not surface until two centuries later.³⁸

Seventeenth Century

Galileo's work, Dialogue on the Two Chief Systems, was allowed to be published in 1632, but soon it was found to be a plea for the truth of the Copernican system. He was charged with violation of the decree of 1616 and with the belief of the heliocentric system which was contrary to the scripture. It was arranged that he admit to some

³⁶Ibid., p. 54.

³⁷Roland H. Bainton, The Age of the Reformation (New York: D. Van Nostrand Co., 1956), pp. 11-17.

³⁸Hofstadter and Metzger, p. 62.

wrongdoing, and he was sentenced to indefinite imprisonment until he died in 1642.³⁹

According to Drake, a few days after Galileo's death, Luke Holste, a friend, wrote the following to an acquaintance in Florence:

Today news has come of Signor Galilei, which touches not just Florence but the whole world, and our whole century which from this divine man has received more splendour than from almost all the other ordinary philosophers. Now, envy ceasing, the sublimity of that intellect will begin to be known which will serve all posterity as a guide in the search for truth.⁴⁰

As the above example manifests, the seventeenth century had inherited the shackles of persecution of the Middle Ages, and the curriculum was still influenced by the medieval period. However, it is considered by many to be a century of genius with new advances in science, liberal theology, and philosophy.⁴¹ The church was the dominant force, and the University of Paris was the center of tradition. The church was the censor of books, and its rules were strict as to what teachers could teach and publish.⁴²

However, amidst this atmosphere of conformity, toleration began to grow, and even pious men perceived that forced acceptance of a faith caused hypocrites.⁴³

³⁹Stillman Drake, Galileo (New York: Hill and Wang, 1980), pp. 73-93.

⁴⁰Ibid., p. 93.

⁴¹Hofstadter and Metzger, p. 60.

⁴²Ibid.

⁴³Ibid., p. 65.

Also, some freedom did survive, not because universities were committed to it but due to the fact that many complex and rapid changes in religion had taken place in England.⁴⁴

Seventeenth and Eighteenth Centuries in America

It was not until the seventeenth century that America offered protection for the oppressed and opportunity for those who were bold.⁴⁵ However, the colonial colleges had inherited the strict religious doctrines of Europe. The course of arguments in theology led directly to Christian conclusions, and those in charge of the youth were interested in seeing them receive "sound doctrine" in the faith, and teachers were not to be seen as straying from the faith.⁴⁶

During the seventeenth century there was no claim to academic freedom; religious orthodoxy was the central theme.⁴⁷ Colleges in America at this time did not embrace academic freedom as a whole. For the most part, they were under church control and even though the separation of church and state began at the end of the seventeenth century, freedom in teaching opposing views of religious doctrines did not take place in the classrooms at this time.⁴⁸

⁴⁴Ibid., p. 74.

⁴⁵Bainton, The Age of the Reformation, p. 11.

⁴⁶John S. Brubacher, High Education in Transition (New York: Harper & Row, 1978), p. 308.

⁴⁷Ibid.

⁴⁸Paul Nash, Authority and Freedom in Education (New York: John Wiley & Sons, Inc., 1965), p. 92.

The first universities in America were religious in nature, and the oldest, Harvard, was founded in 1636 by the Congregationalists. The Episcopalians helped to found William and Mary and Columbia University. The Presbyterians founded Princeton, and Brown University was established by the Baptists. The first public university was Pennsylvania (1755), and varied religious opinions were tolerated. Many universities in the eighteenth century were beginning to rebel against religious control.⁴⁹

However, for the most part, schools were established to teach the prevailing views in the community, and an example of pressure from the community was the dismissal of Henry Dunster, the first president of Harvard University, for accepting the Baptist view of infant baptism.⁵⁰ This event represents the first instance in which a college official's tenure was broken because of a conflict between his personal beliefs and the traditional view of his community.⁵¹

Teachers, during the Revolutionary War, were required to conform to the prevailing religious and political views of the country. All states required oaths from its citizens including teachers.⁵² In 1776,

⁴⁹Frederick Mayer, A History of Educational Thought (Ohio: Charles E. Merrill Co., 1973), p. 407.

⁵⁰Daniel Selakovich, The Schools and American Society (Lexington: Xerox College Publishing, 1973), p. 100.

⁵¹Hofstadter and Metzger, p. 86.

⁵²Howard K. Beale, "Teacher as Rebel: His War for Freedom," The Nation 176 (May 1953):412.

Massachusetts enacted a loyalty oath for teachers, and in the following year New Jersey instituted an oath of allegiance for teachers, requiring citizens to witness against teachers who did not take the oath. Also, a fine of six pounds was levied on those teachers who did not comply.⁵³

The eighteenth century saw a shift from religion to politics, and during this time there was a feeling of liberty.⁵⁴ One sympathizer of the liberal thought of the French Revolution was Thomas Jefferson, author of the Declaration of Independence and the founder of the University of Virginia. He chose as the motto for the university: "Ye shall know the truth and the truth shall make you free."⁵⁵ But at the same time he suppressed freedom by asking the Board of Visitors of the University to adopt a resolution that listed certain books to be read in a course on government.⁵⁶

Nineteenth Century

In the nineteenth century, personal viewpoints continued to be a bone of contention, and many presidents were attacked because of their maturity and stature. Faculty were usually tentative employees without

⁵³Edgar W. Knight and Clifton L. Hall, eds., Readings in American Educational History (New York: Appleton-Century-Crofts, 1951), p. 37.

⁵⁴Brubacher, Higher Education in Transition, p. 308.

⁵⁵Brubacher, A History of the Problems of Education, p. 603.

⁵⁶Brubacher, Higher Education in Transition, pp. 311-312.

seniority. Thomas Cooper, who became president of South Carolina College in the 1830s, was attacked because of his unorthodox opinions, and, in defense, he invoked the clauses of freedom stating that not being tolerant of different views can harm the student later in his life.⁵⁷ He claimed that an educator should enjoy the same rights of freedom of speech that are enjoyed by other citizens. Cooper further pointed out the expectations of teachers: they should treat their subjects fairly and fully including unpopular views.⁵⁸

In the nineteenth century another issue arose along with religion. This was the political, economical, and social issue of slavery. Around 1830 it was still possible to speak freely about slavery.⁵⁹ But after 1830 restrictions were placed upon teachers in the South, and there were several instances in which they were dismissed and ostracized from their communities because they took a stand against slavery.⁶⁰

In 1859, with the publication of Charles Darwin's The Origin of Species, professors began to think of themselves as discoverers of knowledge rather than just transmitters.⁶¹ William Sumner, noted sociologist, used Herbert Spencer's textbook in his classes, and Noah Porter, Yale president, stated that the book would cause harm to the

⁵⁷Brubacher, Higher Education in Transition, p. 312.

⁵⁸Robert W. Merry, pp. 322-323.

⁵⁹Brubacher, Higher Education in Transition, p. 309.

⁶⁰Beale, p. 413.

⁶¹Merry, p. 324.

students. Sumner withdrew the book from his classes. Other professors who were less prominent were dismissed for their evolutionist views.⁶²

The business community began to grow, and the trustees of colleges were selected from it. It became difficult for professors to speak out on issues that were deemed unpopular.⁶³ Two professors, Edward Bemis, an economist, and the sociologist, Edward Ross, were dismissed during the late 1800s because of their verbal criticisms of the railroads and "coolie labor," respectively. The administrators were not trying to repress unpopular points of view, but they were receiving pressure from the local communities. Usually if professors confined their comments to the classroom, they were relatively safe, but if they aired their views publicly, their status was in danger.⁶⁴

Other pressures were apparent during the nineteenth century. Among them were such organizations as the United Daughters of the Confederacy and the Grand Army of the Republic which tried to interfere with the curriculum.⁶⁵

In the late 1800s, teachers were expected to devote themselves to low status and high scholarship. But there were some in opposition to this point of view. Frederick Jackson would not stay at the University of Wisconsin unless certain educational demands were met.

⁶²Fred M. Hechinger and Grace Hechinger, Growing Up in America (New York: McGraw-Hill, 1975), p. 329.

⁶³Ibid.

⁶⁴Fred M. and Grace Hechinger, pp. 392-430.

⁶⁵Wallace E. Davies, Patriotism on Parade (Mass.: Harvard University Press, 1955), p. 230.

However, even a teacher of Jackson's caliber had to beg for funds to purchase books.⁶⁶

At the end of the 1800s even though low pay and an austere life were still the rule, the degree of Doctor of Philosophy brought a new status upon the professor that was once denied him.⁶⁷

After the Civil War, many educators, such as Stanley Hall, Russell Pope, and Richard Ely, praised the freedom of the German university. The above scholars attended the freest universities--Gottinger and Berlin.⁶⁸ Nineteenth century Germany, where autocratic government co-existed with academic freedom, marked the beginnings of the modern conception of academic freedom. The idea that the university was a place for scholars to pursue truth became dominant. Intellectual restrictions during the age of science over scholars was abandoned so that a true search could be carried out. Scholars from America, hearing of this freedom, went to Germany to learn. There they adopted the concept.⁶⁹ Hart stated that the German mind thought that a university was not a university unless it had complete freedom in teaching and in learning.⁷⁰

⁶⁶Walter P. Metzger, "Academic Freedom in Delocalized Institutions," in Dimensions of Academic Freedom (Chicago: University of Illinois Press, 1969), pp. 8-10.

⁶⁷Ibid., p. 3.

⁶⁸Hofstadter and Metzger, p. 392.

⁶⁹Richard Hofstadter, Academic Freedom in the Age of the College, p. 5.

⁷⁰James Morgan Hart, German Universities: A Narrative of Personal Experience (New York: G. P. Putnam's Sons, 1874), p. 264.

Hofstadter pointed out that the one chief German contribution to the American idea of academic freedom was that "academic freedom, like academic searching, defined the true university."⁷¹ Presidents like Charles W. Eliot and William Rainey Harper used this idea of the university in their speeches. Academic freedom was beginning to be used as a part of the definition of a university.⁷²

Around the turn of the century, colleges and universities generally had freedom of discretion, and there was little regulation or standardization. The university at this time was not regarded as a public utility, and the federal government, although it had given land to the universities, was not a meddler.⁷³ During this period, it became a powerful institution, and its trustees and administrators had embraced a managerial psychology that would not bend to the demands of the new academic profession.⁷⁴

An example of this new authoritarianism is exemplified by the case of Scott Nearing, the economist, and in 1915, the board of trustees of the University of Pennsylvania dismissed him without giving reasons. Many believed that a professor had no right to contradict his employer. The editors of the New York Times noted that the university belonged to its donors.⁷⁵

⁷¹Hofstadter and Metzger, p. 393.

⁷²Ibid., pp. 394-395.

⁷³Walter P. Metzger, "Academic Freedom in Delocalized Institution," pp. 8-10.

⁷⁴Ibid., p. 12.

⁷⁵Ibid., pp. 12-13.

1900-1920

Despite German influence, academic freedom in America did not become crystalized until 1915 when Arthur O. Lovejoy, John Dewey, and others wrote the General Report on Academic Freedom and Academic Tenure for the new organization, the American Association of University Professors (AAUP).⁷⁶ This report was an answer to the rash dismissals that were occurring at the turn of the century. The authors concluded that a set of regulations, such as academic tenure and due process, would protect teachers against dismissal.⁷⁷ These university professors devised a statement of academic freedom and tenure that was called the 1915 Declaration of Principles and was endorsed by the AAUP on December 31, 1915, and January 1, 1916. In 1925 a shorter statement was formulated and called the 1925 Conference Statement on Academic Freedom and Tenure.⁷⁸ Academic freedom in Germany was defined as Lehrfreiheit and Lernfreiheit, freedom to teach and freedom to learn, but the framers of the above statement were concerned only with the freedom to teach.⁷⁹

Teacher loyalty became an issue once again during World War I. Even teachers demanded resignation of disloyal teachers.⁸⁰ Columbia was

⁷⁶Fred and Grace Hechinger, Growing Up in America (New York: McGraw-Hill, 1973), p. 324.

⁷⁷Ibid.

⁷⁸Clark Byse and Louis Joughlin, Tenure in American Higher Education: Plans, Practices, and the Law (New York: Cornell University Press, 1959), p. 171.

⁷⁹Hofstadter and Metzger, p. 393.

⁸⁰Selakovich, p. 101.

the first university to require a "loyalty" investigation. University President Butler made several dictates, but despite these warnings, several professors opposed sending draftees to fight in Europe. Among them were James Cattell, a noted psychologist, and Henry Dana, professor of literature. These dismissals caused the resignation of Charles Beard, the historian who verbally attacked the decisions of Columbia's trustees and its composition. However, Howard's President Lowell protected a pro-German professor from outside pressure.⁸¹ Also, during this time many German teachers were fired, and courses on German literature and music were banned in many schools.⁸²

1920-1940

During the inter-war years, there were numerous external threats on teachers in the classroom. Many states passed laws to ban books that were "unpatriotic," and some states passed "monkey" laws and history laws that restricted or dictated course content in science and history.⁸³

In the 1920s there were constant battles between fundamentalist religion and the theory of evolution. The Scopes trial in Tennessee in 1925 provides a good example. John T. Scopes, a high school teacher, was charged with teaching the doctrines of evolution in violation of a Tennessee state law. The prosecutor was William Jennings Bryan, and Scopes was defended by Clarence Darrow. The right of a teacher to use

⁸¹Fred and Grace Hechinger, pp. 331-332.

⁸²Raymond E. Callahan, An Introduction to Education in American Society (New York: Alfred A. Knopf, 1967), p. 432.

⁸³Selakovich, p. 102.

findings of biological science rather than use the literal interpretation of the Bible to describe the origin of man was the key argument. At this time the ideas of science and religion had not been reconciled, evidenced by the trial.⁸⁴

Other pressures on teachers in the 1930s included "Red scares," and several teachers who espoused the New Deal were labeled Communists.⁸⁵ Also those who were thought to be members of the Communist Party or were known to have Marxist views were pressured to resign. In one case Morris Schapps, a tutor in the English department at New York City College for six years, was not recommended for reappointment. Used as a reason by the chairman was the fact that a tutorship was only temporary. But a letter received by Schapps stated that the real reason for dismissal was his membership in the Communist Party. His party associations had never been established, but his Marxist views were well known.⁸⁶

Certain groups such as the American Legion also were threats to teachers. Dr. Ellis Freeman of Louisville University resigned his position as professor "under duress." Colonel Stites of the American Legion had gained information about a check (Russian) for 176 dollars

⁸⁴R. Freeman Butts, A Cultural History of Western Education (New York: McGraw-Hill, 1955), p. 555.

⁸⁵Carroll Atkinson and Eugene T. Maleska, The Story of Education (Philadelphia: Chilton Books, 1965), p. 152.

⁸⁶Freda Kirtchway, "Academic Freedom at City College," The Nation 142 (May 20, 1936):634.

that Freeman was going to cash at the First Citizens' Union Bank. The assistant cashier was also state finance director of the American Legion. At the trial, based on the above evidence and questions answered by the professor who had brought suit against Stites, the judge held for the defense stating that Professor Freeman was a public servant and had no right to violate public matters.⁸⁷

The depression of the late 1920s caused many problems for teachers. Enrollments in college declined; jobs were scarce. The editors of the New Republic in 1934 spoke of a decline in the interest of academic freedom:

During the depression we have not heard a great deal the perennial subject of academic freedom in the United States, and on the whole this is a bad sign. The absence of discussion has not meant that freedom was well established, but that at a time when colleges and other educational institutions were dismissing members of the faculty right and left, and slashing the salaries of those who remained - in many cases with cruel discrimination against the younger men, whose salaries were already the smallest - victims of injustice have not dared to complain. It may be significant that cases involving academic freedom are beginning to obtain public notice.⁸⁸

During this period many universities wielded power over their faculty. In one instance President Conant of Harvard, who dismissed Walsh and Sweezy, appointed a committee of full professors to investigate the case. The committee voted to reinstate the two professors, but Conant refused their recommendation.⁸⁹

⁸⁷Freda Kirtchway, "The Teacher Has No Privacy," The Nation 145 (October 23, 1937):459-460.

⁸⁸Bruce Bliver, ed., et al., "Enforcing Academic Freedom," The New Republic 65 (December 10, 1930):87-88.

⁸⁹Freda Kirchway, "Democracy at Harvard," The Nation 146 (June 11, 1938):662.

In the 1930s the American Association of University Professors was active in investigating cases concerning dismissal of teachers. In one example, the dismissal of Dr. Jerome Davis, a professor at Yale, was investigated by the faculty. A report of their conclusions was submitted to the American Association of University Professors: ". . . it is therefore fitting that the American Association of University Professors should make a thorough examination of the controversy."⁹⁰

In an editorial appearing in the New Republic in 1930, the editors stated that the American Association of University Professors had been successful in bringing to public attention the offending institution, but in many cases the institutions have discovered ways of removing teachers that are not recognized.⁹¹

There was also some governmental pressure on education. James Angell, in Harper's in 1934, issued a warning that as a by-product of grants-in-aid, many land grant colleges experienced governmental control over certain parts of their teaching. He also mentioned that prior to this time, democracy was thought of as purely political: "Now it is political, social, economic, and industrial, and the government has its hands in all of it."⁹²

A number of states during this time enacted loyalty oaths. The American Association of University Professors strongly opposed any oath

⁹⁰Editor et al., "Yale on Trial," New Republic 89 (November 18, 1936):86-92.

⁹¹Bliven, p. 88.

⁹²James Roland Angell, "The University in a Time of Change," Harper's 169 (July 1934):130.

that refrained teachers from criticizing or suggesting changes in the laws of the country. At the time that the above committee made their report, no court had been called upon to interpret the wording of the loyalty oaths. But, in most cases, loyalty oaths were not pervasive threats.⁹³

In 1937 academic freedom was not yet a legal term and was not listed in Words and Phrases.⁹⁴ Furthermore, up to this time, courts were reluctant to interfere in the affairs of a college or university.⁹⁵

1940

In 1940 after a series of joint conferences, representatives of the American Association of University Professors and of the Association of American Colleges formulated a restatement of principles that were part of the 1925 conference statement.⁹⁶ Hopefully, this would have afforded protection for the wave of Cold War hysteria that was to come. It was hoped its statement that academic tenure was fundamental to the rights of the teacher in teaching would have given teachers a sense of political and economic security.⁹⁷ But critics of the restatement, such as Brubacher, felt it to be archaic saying it was not as sweeping as the guidelines set down by Jefferson.⁹⁸

⁹³Brubacher, Higher Education in Transition, p. 322.

⁹⁴Comment, "Academic Freedom and the Law," Yale Law Journal 46 (1937):670-671.

⁹⁵Ibid.

⁹⁶Byse and Joughin, p. 172

⁹⁷Brubacher, Higher Education in Transition, p. 322.

⁹⁸Ibid.

However, in the 1940s many Americans felt that telling the truth would endanger their well being. During 1945-1950, the AAUP's Committee on Academic Freedom dealt with 227 cases concerning attacks on "academic freedom."⁹⁹

In 1940, Bertrand Russell was disallowed appointment at the College of the City of New York. Many joined in the fight against Russell, including William T. Manning, the powerful bishop of the Protestant Episcopal Church. In this case concerning Russell's dismissal, Kay v. Board of Higher Education of the City of New York, academic freedom was defined as "the freedom to do good and not to teach evil."¹⁰⁰

Another significant case was that fought at the University of California at Berkeley where President Sproul acquiesced to the establishment of a loyalty oath requirement. Berkeley's Chancellor Kerr declined to dismiss teachers for refusing to sign the oath. Freedom finally won, and the loyalty oath was rescinded; one year later the Supreme Court of California declared such oaths unconstitutional.¹⁰¹

In the 1940s and 1950s the central issues of controversy were "subversive" acts of teachers. The tensions, caused by the "Cold War" with Russia and the war with Korea made teachers targets for patriotic groups. Orthodoxy became a way to insure protection. By 1952 thirty

⁹⁹ Fred and Grace Hechinger, Growing Up In America, p. 333.

¹⁰⁰ Kay v. Board of Higher Education of the City of New York, 173 Misc 943, 951 18 NYS 2d. 829 (1940).

¹⁰¹ Fred and Grace Hechinger, pp. 334-335.

states had passed loyalty oaths. Most professionals opposed these oaths because they infringed upon teachers' rights to believe as they wanted and their rights of association. Professionals believed them to be ineffective because a real subversive would have no scruples about taking such an oath.¹⁰² Victor S. Bryant, in an address at North Carolina State College in 1954, stated that a true subversive would probably lie when subjected to a loyalty oath.¹⁰³

Another approach to orthodoxy was to pass laws to discover teachers who belonged to certain subversive groups, such as the Communist Party. One such law was the Feinberg law of New York (1949). It was declared constitutional in 1952 by the United States Supreme Court. This law allowed for the drawing up of a list of subversive groups, and after a hearing and a trial, any teacher found to belong to a group on the list was declared disqualified to teach. A teacher who had been a Communist was required to make himself known to the State University of New York.¹⁰⁴

Bryant also pointed out in his speech that many people who belonged to Communist organizations during the war were members because Russia was an ally and this was a way to help the American cause. But

¹⁰²R. Freeman Butts, A Cultural History of Western Education, p. 545.

¹⁰³Victor S. Bryant, "Academic Freedom." An address given on the occasion of the Sixth Annual Oliver Max Gardner Award Dinner, Leazer Hall, N.C. State College, March 22, 1954. In The South Atlantic Quarterly 53 (October 1954):19-20.

¹⁰⁴See Joseph E. Bryson, Legality of Loyalty Oath and Non-Oath Requirements for Public School Teachers (Asheville, N.C.: Miller Printing Co., 1963).

McCarthyism applied pressures to many of these people who were innocent and had disbanded the organizations when the "Cold War" set in.¹⁰⁵

Bryant stated in his address:

The member of the Communist Party who does not know what his party stands for is too incredibly ignorant to occupy a position on a university faculty. The person who remains a member of the Communist Party, after finding out what it does stand for, thereby disqualifies himself for faculty membership.¹⁰⁶

These enactments to suppress "subversive" activities were often hastily written and left room for much latitude in interpretation.¹⁰⁷ Robert MacIver, in analyzing the threats to academic freedom, states that it is important to understand that when a threat is near, it is natural to have strong emotions against that which may be threatening; the protection is not wrong, but the misdirection can be.¹⁰⁸ Concerning pressure groups, MacIver points out that they give the false impression that everyone is on their side.¹⁰⁹

Special interest groups also raised their heads during the 1950s. The National Association of Real Estate Boards brought pressure so that certain courses would be established and supervised the selection of texts for use in the courses. Other special interest groups included the National Economic Council and the Foundation for Economic Education.¹¹⁰

¹⁰⁵Victor S. Bryant, p. 21.

¹⁰⁶Ibid., p. 12.

¹⁰⁷Robert M. MacIver, Academic Freedom in Our Time (New York: Columbia University Press, 1955), p. 35.

¹⁰⁸Ibid., p. 44.

¹⁰⁹Ibid., p. 45.

¹¹⁰Ibid., p. 58.

The "Cold War" that increased in intensity after the Korean War brought with it a new wave of intolerance. MacIver quotes Robert M. Hutchins: "The miasma of thought control that is now spreading over this country is the greatest menace to the United States since Hitler."¹¹¹

With all of these pressures in the 50s and 60s, academic freedom began to be recognized by the courts as a constitutional right.¹¹² Murphy points out four Supreme Court decisions in the 1950s which support this recognition: Adler v. Board of Education; Wieman v. Updegraff; Sweezy v. New Hampshire; and Barrenblott v. United States.¹¹³

Furthermore, Murphy concludes after reviewing several court cases:

What is needed now is a decision from the court squarely invalidating the termination of a teacher's employment made without a hearing or because of a violation of academic freedom. Until there is such a decision, it is probably more accurate to refer to academic freedom as an emerging constitutional right.¹¹⁴

1960-1980

A new form of pressure appeared on the school scene in the 1960s; it came from students and blacks who were thought to be alienated.¹¹⁵

¹¹¹ Ibid., pp. 34-35.

¹¹² William P. Murphy, "Academic Freedom: An Emerging Constitutional Right," in The Constitutional Status of Academic Freedom, ed. Walter P. Metzger (New York: Arno Press, 1977), pp. 453-457.

¹¹³ Ibid.

¹¹⁴ Ibid., p. 486.

¹¹⁵ Selakovich, p. 113.

William W. Brickman wrote an editorial, "Anarchy vs. Freedom in Academia" about the student movement:

The student movement, activism, power, unrest, revolution, or whatever word one wishes to describe the recent disruptions of colleges and universities all over the world, is no longer a phenomenon; it is an established fact, a reality of the times. Relatively few are shocked anymore by the happenings which bring universities to a sudden stop. The expectation for the future seems to be more of the same activity that characterized the academic year 1967-68. The turmoil and turbulence of the town has been transformed to the territory of the gown. Neo-nihilism threatens to become the norm.¹¹⁶

In a February issue of School and Society, President W. Allen Wallis was quoted as saying: "None of the other traditional academic freedoms is as conspicuously corroded as is freedom of speech on the campus today." He made this statement while also commenting that during this time many speakers, such as George Wallace and J. Edgar Hoover, while allowed to speak on campus, would be met with pickets, placards, and other disorders while trying to present their views.¹¹⁷

In the 1960s, teachers were attacked for positions they supported personally and professionally. They were accused of supporting students who were considered to be rebels.¹¹⁸

¹¹⁶William W. Brickman, "Anarchy vs. Freedom in Academia," School and Society 96 (October 26, 1968):356.

¹¹⁷William W. Brickman, "Campus Freedom and Fairness," School and Society 96 (February 17, 1968):93-94.

¹¹⁸American Civil Liberties Union, Academic Freedom, Academic Responsibility, Academic Due Process in Institutions of Higher Learning (New York: 156 Fifth Avenue, September 1966), p. 4.

In September 1969, President Walter C. Langsam gave an address to the new freshman class, and in it he referred to freedom and responsibility. As School and Society notes, he cited disrupting classes, breaking up lectures, and threatening violence against individuals as breaches against academic freedom. He went further by listing the responsibilities of the faculty and students. Finally, he remarked that the university would listen to proposals for change, but would not tolerate the above mentioned abuses.¹¹⁹

Nathan Glazer states that academic freedom was threatened more than any other concept of the university during the period of the student revolt. Attacks were made on ROTC units and research that was geared toward defense. Furthermore, the Civil Rights Movement, especially the black movement, created new problems for academic freedom in decisions on what to teach and in topics for research.¹²⁰ Arthur M. Cohen and Florence B. Brawer point out that once the American university accepted research as one of its functions, it grew so much that in many places student development was ignored, and the student unrest in the 1960s was the direct result of that function.¹²¹

¹¹⁹William W. Brickman, ed., "Academic Freedom and Responsibility," School and Society 98 (March 1970):138-141.

¹²⁰Nathan Glazer, "The Aftermath of the Student Revolt," American Education 21 (1985):3.

¹²¹Arthur M. Cohen and Florence B. Brawer, Confronting Identity, The Community College Instructor (New Jersey: Prentice Hall, 1972), p. 20.

This statement on academic freedom in 1969 by the American Association of University Professors was quoted in Charles Monroe's book, Profile of the Community College, published in 1972:

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution. (b) The teacher is entitled to freedom in the classroom in discussing his subject; but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be already stated in writing at the time of the appointment. (c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.¹²²

According to an article on academic freedom in the April 1971 issue of School and Society, the American Association of State College and Universities, which includes in its membership 274 college and university presidents, added to the American Association of University Professors' statement on academic freedom "the component of academic responsibility." The major reason for the addition was the concern expressed by the AASCU about the attitudes of many professors who have claimed academic freedom without claiming the obligation that goes with

¹²² Charles R. Monroe, Profile of the Community College (San Francisco: Josey Bass, 1972), p. 278.

it. In many cases, professors have contributed to disruption and have cried academic freedom when college presidents have tried to correct the problems. Thus the addition was made to give assistance to those presidents who were looking for guidance.¹²³

In the 1970s, academic freedom continued to be an issue. At the end of the school term in 1970, Angela Davis, Professor of Philosophy at UCLA, did not receive a contract renewal allegedly because of her membership in the Communist Party and because of her controversial speech off campus. Davis' being dismissed because of personal political beliefs was the issue. The board of regents, in firing Miss Davis went over the faculty's high evaluations and President Young's hesitating signature.

Newsweek quoted President Young:

This is a real case of academic freedom because Angela Davis is an undesirable character to much of the public . . . You find out whether the system works in the tough cases, not the easy ones everybody agrees with.¹²⁴

In 1972 the Equal Employment Opportunity Act exposed a hidden tension between the concepts of academic freedom and individual civil rights. In many cases, faculty members who have claimed discrimination against a college have not been allowed access to the evidence that

¹²³William W. Brickman, ed., "AASCU Statement on Academic Responsibility," School and Society 99 (April 1971):204.

¹²⁴Kermit Tansner, ed., et al., "The Davis Affair," Newsweek 75 (June 22, 1970):78.

would prove their claims because institutions have stated it would violate the academic freedom of the institution.¹²⁵

In 1982 Gray, a black educator, claimed discrimination when he was denied reappointment and tenure, and at this time, he requested disclosure of the tenure votes; but he was denied access by the district court. The second circuit reversed stating that Gray's need for disclosure and the university's need for confidentiality weighed in favor of Gray.¹²⁶

The significance of this decision was that the court recognized that the preservation of academic freedom requires judicial protection of a faculty member's rights as well as protection of the institution.

Another threat to academic freedom raised its head in 1971 with Cornelius Gallagher's attempt to create a Select Committee on Privacy, Human Values and Democratic Institutions. According to the editors of Science News, Gallagher's attack on B. F. Skinner's book, Beyond Freedom and Dignity, was engineered to garner support for his committee.¹²⁷ "True," said Kendrick Frazier, "Skinner's book is controversial," but he added:

Whether or not the National Institute of Mental Health, the academic world, or the general public agree with him, the whole concept of academic freedom requires that Skinner

¹²⁵Betsy Nathan, "The Second Circuit Strikes a Balance Between Academic Freedom and Individual Employment Rights," Brooklyn Law Review 50 (April 1984):628.

¹²⁶Gray v. Board of Higher Education 692 F. 2d 907-08, 1982.

¹²⁷Kendrick Frazier and Ed., "Freedom and Finding: Skinner Support Queried," Science News 100 (December 25, 1971): 420-421.

be accorded the right to draw his own conclusions from years of academic research and study.¹²⁸

The 1960s and 1970s were times of revolt against authority; the 1980s have begun as a revolt against modernity. Both have their roots in the anti-institutional populist currents in American culture and history.¹²⁹ Modernity finds its basis in the French Revolution where men found that they could remake society overnight. It is an effort to repudiate the past and orient to the future.¹³⁰ The thread that is common to the various revolts to modernity is the emphasis on continuity and tradition and the rejection of secularism. This revolt also rejects universalism which was the center of the period of the Enlightenment.¹³¹ The Moral Majority, the Christian Right, and the Reagan administration's efforts to instill school prayer, to curb the practice of abortion, and to return to the "basics" in education are examples of a tendency to revolt against modernity.¹³²

Francis Fox Piven states that the threat to academic freedom today is economic due to declining enrollments and reduction of government funds. Because of cuts, the reductions in faculty will result,

¹²⁸Ibid.

¹²⁹David Bell, "The Revolt Against Modernity," Public Interest 81 (Fall 1985):53.

¹³⁰Ibid.

¹³¹Ibid., pp. 53-54.

¹³²Ibid., p. 55.

but they will not be equal. "Those who are more outspoken on their contradictions will be the ones to be dismissed."¹³³

As fiscal cuts occur, institutes will rely more on private donors. Piven states in his article:

There are signs that corporate leaders have developed a position and a program to make use of their increased influence, a program for reforming the university, for revising the drift to the political left with which the university has come to be associated. Institutions like the American Enterprise Institute and the Heritage Foundation are exemplars of the corporate context of a politics at least momentarily dominated by the intolerance of the Republican right is further cause for worry.¹³⁴

According to Piven, space for alternative solutions and ideas is not easily attainable or protected. The university in the last twenty years has provided space to look at alternatives that may prove important in the political situations that lie ahead. This gives meaning to academic freedom and serves to show its importance.¹³⁵

Development of the Community College
and Technical Institute in America

Background

Community colleges have been the most dynamic and moving forces in American education, and a historical perspective of this development

¹³³ Francis Fox Piven, "Academic Freedom and Political Dissent," in Regulating the Intellectuals, eds. Craig Kaplan and Ellen Schrecker (New York: Praeger Publishers, 1983), p. 22.

¹³⁴ Ibid.

¹³⁵ Ibid., p. 23.

of the community college will provide the reader an insight into this movement. Early education was based on religious doctrine and the three R's. Compulsory elementary education came into being, and the high school emerged. More people were choosing to enter college, and higher institutions were faced with meeting the demands of diverse populations.

Two-year colleges emerged during the middle of the nineteenth century to meet the needs of the people in a given area. This trend has been evident throughout the development of two-year community colleges.

The First Junior Colleges

The first two-year colleges were located in New England and the eastern states. Most of these were extensions of academies that included elementary and secondary instruction.¹³⁶ It is difficult to determine the first junior college founded in the United States because of lost records, identification problems, and inaccurate accounts.¹³⁷ However, some scholars point out that the first nonpublic two-year college, Monticello in Virginia, was founded in 1835, and that the second one, Susquehanna in Pennsylvania, was founded in 1858. These first two-year colleges grew out of a desire, on the part of religious

¹³⁶Win Kelly and Leslie Wilbur, Teaching in the Community College (New York: Appleton-Century-Croft, 1970), p. 6.

¹³⁷James W. Thorton, Jr., The Community Junior College (New York: John Wiley and Sons, 1972), p. 47.

denominations, to provide instruction for the young, and the purpose was to emphasize a particular faith.¹³⁸

According to Edmund J. Gleaser, the junior college began in Joliet, Illinois when President Harper of the University of Chicago encouraged the offering of two years of schooling beyond the high school. Those students who finished these additional years would be accepted in the third and fourth years at the University of Chicago.¹³⁹

Thorton stated that, according to Bogue, Lasell Junior College in Auburndale, Massachusetts, was the first successful and continuous junior college. It offered two years of standard college instruction in 1852. But many agree that the first junior college connected with a high school was at Goshen, Indiana.¹⁴⁰

The nonpublic junior colleges and prominent leaders laid the groundwork for the public two-year college. In 1888 at a meeting of the National Education Association, controversy over the age of entering freshmen arose. William Harper, many thought, offered a radical solution that changed the 8-4 system of elementary and secondary school to a 7-7 system. Also, he advocated separating the four years of college (2 + 2).¹⁴¹ Because Harper regarded the first two years in

¹³⁸Clyde E. Blocker, Robert H. Plummer, and Richard C. Richardson, Jr., The Two-Year College: A Social Synthesis (New Jersey: Prentice Hall, 1965), p. 24.

¹³⁹Edmund J. Gleaser, Jr., This is the Community College (Boston: Houghton Mifflin, 1968), p. 5.

¹⁴⁰James W. Thorton, Jr., The Community Junior College, pp. 50-51.

¹⁴¹Leland L. Medsker and Dale Tillery, Breaking the Access Barriers: A Profile of Two-Year Colleges (New York: McGraw-Hill, 1971), p. 13.

college as secondary, he wanted the high schools to include the junior college years in their curricula. The Joliet Board of Education regarded the addition of college courses as an extension of the high school, but later the extension was defined as a junior college. These colleges were in high school buildings and shared the same faculties; the curricula had continuity.¹⁴²

Henry Tappan in 1851 and William Folwell in 1896 also were interested in seeing the four-year college separated. They saw a need for the university to be relieved of studies at the freshman and sophomore levels. Also many leaders took the example set by the German universities and secondary schools whereby the universities were responsible for higher order scholarship while the lower schools handled curricula that took students to the eighteenth or nineteenth year.¹⁴³ A major impetus for this idea of separation was the comparison of the German and American systems of education. It was found that a large part of the work done in an American college was equal to that work done at a German secondary school. Many of these separation advocates were educated in Germany, and they were convinced that American high school graduates were not prepared for college work. It was believed that universities should consist of an upper division and a graduate school, but none of these colleges at the time were able to accomplish these separations.¹⁴⁴

¹⁴²Win Kelly and Leslie Wilbur, pp. 8-9.

¹⁴³Arthur M. Cohen and Florence B. Brawer, The American Community College (San Francisco: Jossey-Bass, 1982), p. 7.

¹⁴⁴Ibid.

Because of their German frame of reference, Tappan, Folwell, Jasse, and Lange represented a conservative influence even though they were "liberal" in the opinions of their peers.¹⁴⁵ Finally, under the inspiration of William Rainey Harper, the University of Chicago in 1892 was separated into the "Academic College" (the first two years), and the "University College" (the last two years).¹⁴⁶

Stanford President David Stan recommended that the junior college be separated from the university and that it or college work become a requirement for admission to the higher university. Many faculty members believed that students from the two-year schools and extended high schools would not be as advanced as those who began their college work at the university.¹⁴⁷ Four-year colleges never saw themselves as being responsible for educating the majority. They were beyond the reach of many students economically and geographically. This void was filled by the two-year college.¹⁴⁸

As an extension of the high school and a division from the college, the junior college grew, and by 1921 there were 207 in America (70 public and 137 nonpublic). Their administrators believed them to be truly collegiate. According to Thorton, the definition of the newly formed American Association of Junior Colleges in 1922 was

¹⁴⁵Win Kelley and Leslie Wilbur, pp. 7-8.

¹⁴⁶James W. Thorton, Jr., p. 48.

¹⁴⁷Ibid., pp. 49-50.

¹⁴⁸Clyde E. Blocker, The Two-Year College: A Social Synthesis, p. 26.

as follows: "The junior college is an institution offering two years of instruction of strictly collegiate grade."¹⁴⁹

Another development that emerged, along with the junior college, was the technical institute. Today these are a part of the total framework of two-year colleges.¹⁵⁰ By 1900 there were at least 144 technical institutions.¹⁵¹ These institutes were a corollary development that began in 1895.¹⁵²

Another factor that influenced community college development was the passage of the Morrill Act of 1862 that contained provisions for the foundation of land-grant colleges. These institutions provided courses in agriculture and mechanics, and the Act provided the impetus for students to concentrate in vocational education.¹⁵³

1900-1920

Legal procedures for the establishment of community colleges first appeared in California law in 1907.¹⁵⁴ Another law in California came along in 1917¹⁵⁵ which paved the way for other states to follow.

¹⁴⁹Thorton, The Community Junior College, p. 51.

¹⁵⁰Blocker, p. 27.

¹⁵¹Kelly & Wilbur, Teaching in the Community College, p. 10.

¹⁵²Blocker, p. 26.

¹⁵³Collins W. Burnett, "Overview and Present Status," The Community and Junior College (University of Kentucky: The Center for Professional Development, 1977), p. 15.

¹⁵⁴Blocker, p. 81.

¹⁵⁵Kelly and Wilbur, p. 9.

It provided for secondary schools to offer subjects that were suggested for the first two years of college.¹⁵⁶ Most other states enacted legislation after 1920. Nonpublic junior colleges grew more rapidly than the public ones, but the public ones finally moved ahead.¹⁵⁷

In Fresno, California in 1911, the high school extended into a junior college and began one of the largest public junior colleges in America.¹⁵⁸ Also, New York and Mississippi established state-supported public junior colleges to meet the needs of students in rural areas.¹⁵⁹

California was the leader in the development of the community college because of support from the University of Stanford and the University of California. Another reason for the Western lead may have been that many nonpublic colleges were growing in other states.¹⁶⁰ When Fresno founded its junior college, it used the idea that there was no college within 200 miles, and this type of argument has been used to help establish similar colleges throughout the two-year college development.¹⁶¹

Other states, such as Arizona and Kansas, followed the same pattern as California. In some cases the junior colleges were part of the secondary school district, and in others they were independent

¹⁵⁶Cohen and Brawer, pp. 13-14.

¹⁵⁷Ibid., p. 10.

¹⁵⁸Medsker and Tillery, Breaking the Access Barriers, p. 14.

¹⁵⁹Ibid.

¹⁶⁰Cohen and Brawer, p. 6.

¹⁶¹Ibid., p. 11.

systems.¹⁶² Many junior colleges were started by public universities which wanted branches.¹⁶³ These extension centers were programs that met population needs away from the main campus.¹⁶⁴ Pennsylvania State College organized the first two-year college in its state. Other universities, such as Kentucky, Alabama, and the University of South Carolina, began branch colleges. Other two-year colleges grew out of agricultural schools.¹⁶⁵

At one time there were two thoughts concerning higher education. One was the idea of a college where students would go to study and live together. Another was the great university where people would come from all over the world. It was student centered, not community centered.¹⁶⁶ The university was interested in specialization, whereas the college was interested in educating the "whole" person; whenever thoughts arose concerning the idea of a two-year college that would prepare a student for the university, the four-year college was threatened. To a large degree, the story of the junior college has been a struggle between the concepts of educating a person and the concept of educating a specialist.¹⁶⁷

¹⁶²Ibid., pp. 14-15.

¹⁶³Ibid., p. 14.

¹⁶⁴Kelly and Wilbur, p. 10.

¹⁶⁵Cohen and Brawer, p. 14.

¹⁶⁶Ralph R. Fields, The Community College Movement (New York: McGraw-Hill, 1962), p. 3.

¹⁶⁷Ibid., pp. 15-16.

The influence of the university is important in understanding the junior college movement. The functions of the university are as follows: the dissemination of knowledge, the attraction of students who are scholars and researchers, and the preparation of professional workers.¹⁶⁸ These functions suggest that the student should have finished his liberal education when he enrolls at the university. This is similar to the idea in Germany in the Gymnasium and the Lycee where students had been prepared for the specialized training in the universities. Even though the universities were looking for select students, all types of potential students were coming to them because of their convenient locations--near population centers. By the turn of the century, the population had doubled, and the enrollment in higher education increased four and one-half times.¹⁶⁹

At this time, the public two-year colleges were endeavoring to meet the needs of a society that was changing from an agrarian to an industrial population. Usually these colleges followed the traditional concept of the nonpublic colleges already in existence. However, this new industrial society required a curricula consisting of both liberal arts and vocational studies. Medsker and Tillery state that American junior colleges were egalitarian, allowing each person to develop to the limits of his capabilities.¹⁷⁰

¹⁶⁸Ibid., pp. 16-17.

¹⁶⁹Ibid., p. 17.

¹⁷⁰Medsker and Tillery, pp. 13-14.

1920-1945

At the beginning of the 1920s, most junior colleges were small and were involved with the liberal arts curricula, along with the possibility that a student could transfer. However, occupational and terminal programs began to catch on mainly because the liberal arts colleges and universities were engaged in academic studies and preparation for professionals.¹⁷¹

During World War I, vocational education bills began to be passed by Congress. California, as noted earlier, answered this by passing its statute of 1917 which included industrial arts and agriculture courses in its vocational program. Also, the American Association of Junior Colleges, formed in 1920, expanded its definition to include a larger curricula to fit the vocational needs of the community.¹⁷²

The idea of vocational education had come in existence earlier and had caught on in some colleges. According to Thorton, Alexis Lange stated that the junior college should be concerned first with those students who would not attend a four-year institution. Chaffey Junior College in 1916 was the first of its kind to offer terminal vocational courses in California. Later, Los Angeles Junior College in 1929 instituted fourteen terminal vocational curriculums, but President Snyder of that college was concerned that the junior college be not only terminal in nature but also collegiate. He did not care

¹⁷¹Kelly and Wilbur, p. 11.

¹⁷²Thorton, pp. 52-53.

for the secondary reputation that the junior college had in certain places.¹⁷³

During the 1920s and 1930s, junior colleges, according to Kelly and Wilbur, were riding on the coattails of secondary education, but they began to thrive with the passage of the Smith Hughes Act of 1917. Also, because of unemployment during the depression and program needs during World War II, the government saw a need for training more people for technical skills.¹⁷⁴ Harris and Grede state:

Vocational education soon became the empire of vocational educators within secondary education, and for many decades its programs were defined in federal guidelines and in state plans for vocational education as being of "less than college grade."¹⁷⁵

With these new skill programs came a new identity for the junior college. Not being part of the high school nor part of the university, the junior college began to take on a status of its own.¹⁷⁶ Terminal occupational education became established in America, and in 1940 the General Education Board in New York City gave a 25,000 dollar grant to the American Association of Junior Colleges to study terminal education in these institutions. With an additional sum of 45,500 dollars, four volumes concerned with the concept of terminal education in the junior college were published.¹⁷⁷

¹⁷³Ibid., pp. 53-54.

¹⁷⁴Kelly and Wilbur, p. 12.

¹⁷⁵Norman C. Harris and John F. Grede, Career Education in Colleges (San Francisco: Jossey-Bass, 1977), p. 67.

¹⁷⁶Kelly and Wilbur, p. 12.

¹⁷⁷Thorton, p. 54.

The idea of a community college began to emerge during the nineteenth century, but the Progressive Education Association of the 1920s began to initiate thoughts about learning activities beyond the classroom. The project introduced in the nineteenth century began to move toward a unit of work, and extracurricula activities came into being. With these and other influences and the depression of the 1930s the "community school" was born.¹⁷⁸

1945-1965

The junior college began to change rapidly after World War II. The population of the United States was increasing and education was everybody's business.¹⁷⁹ With the end of the war in 1945, many ex-servicemen came home to America, and with them came aspirations for a new life that included going to college. The G.I. Bill of Rights encouraged many of them to return, and the junior college met the needs of many. This enrollment growth and other factors caused the junior college to begin to develop into the comprehensive community college.¹⁸⁰ Medsker and Tillery state that the junior college became known as the "people's college" during this time and that the junior college began to gain an identity and to become a major part of postsecondary education.¹⁸¹

¹⁷⁸Fields, p. 10.

¹⁷⁹Gleazer, p. 6.

¹⁸⁰Kelly and Wilbur, p. 12.

¹⁸¹Medsker and Tillery, p. 15.

Another factor that added to the development of the comprehensive community college was the report of the President's Commission on Higher Education in 1948 which urged the availability of education through the fourteenth grade level and requested each state to establish community colleges to meet the needs of the local population.¹⁸² Another factor was New York's legislation that provided for a statewide system of community colleges. New York was the first to use the term "community college."¹⁸³ Thorton pointed out that even though the junior college had begun to offer terminal occupational courses, it had not included in its curriculum adult education and community services. Since many day classes were terminated during World War II, the junior college began to take community action. With this involvement in the community, the junior college became known as the community junior college.¹⁸⁴

Also the universities were demanding more appropriations. Issues, such as who should go to college, how resources should be allocated, and what types of educational institutions are needed, were formulated. States made studies and recommendations. Education was a primary need, especially at a higher level. As recommendations flooded the scene, the community college emerged.¹⁸⁵

Still another factor that gave the community college its impetus was the prevention of junior colleges from becoming four-year

¹⁸²Kelly and Wilbur, p. 12.

¹⁸³Ibid.

¹⁸⁴Thorton, pp. 55-56.

¹⁸⁵Gleazer, p. 13.

institutions. The Strayer Report discouraged this idea and requested that each junior college meet the needs of the people within its locale.¹⁸⁶

With the increase in population, community colleges in the 1950s and 1960s expanded to fill the needs. Usually when a community college was established in an area not previously served by a college, the number of high school graduates who went to college increased.¹⁸⁷

The returning veterans of the Korean War and the Vietnam conflict were added pressures that caused the community colleges of the 1960s to grow. Recognized by both the Truman and Eisenhower Commissions on Higher Education, the two-year college was one of the most notable developments of post-high school education in America in the twentieth century.¹⁸⁸ Medsker and Tillery comment, ". . . the public community colleges have come a long way in a very short time."¹⁸⁹

Two states that took the lead in establishing community colleges were Florida and California. Florida began a plan in 1957 to insure that each person that resided in the state would be within commuting distance.¹⁹⁰

¹⁸⁶Kelly and Wilbur, p. 13.

¹⁸⁷Cohen and Brawer, p. 11.

¹⁸⁸Medsker and Tillery, p. 16.

¹⁸⁹Ibid.

¹⁹⁰Gleazer, p. 24.

By 1969 there were twenty-eight community colleges. In 1957 one out of five college aspirants enrolled in the community colleges; in 1967 two out of three enrolled.¹⁹¹

Another variation in college education happened during this time. Two colleges--Florida Atlantic and West Florida--were founded, and their purpose was to provide for the last two years of college. The community college's purpose was to supply the first two years and be feeder schools for the senior four-year colleges.¹⁹²

By the 1960s, despite its growth, the community college was not a respected force in American education,¹⁹³ and several problems had developed. One was the question of determining the respective college districts. Another problem was the lack of enthusiasm among the several existing institutions of higher learning.¹⁹⁴

Furthermore, the fledgling community college was having trouble determining its identity. Many began in high schools, and school boards in many areas were in charge of the public schools and the colleges. The problem was to find a place where the community college would fit.¹⁹⁵

Since junior was used as an alternate name for the community college, it was seen by many as a preparatory place for the bachelor's

¹⁹¹Ibid.

¹⁹²Ibid., pp. 26-27.

¹⁹³Arthur M. Cohen and Florence B. Brawer, *Confronting Identity, the Community College Instructor* (Englewood Cliffs: Prentice-Hall, 1972), p. 23

¹⁹⁴Gleazer, p. 15.

¹⁹⁵Ibid., pp. 11-12.

degree.¹⁹⁶ However, the Eisenhower Commission in 1960 acknowledged that terminal education was to be the two-year college's primary purpose.¹⁹⁷ With the idea that the community college was a vocational school, it was looked upon as an extension of the high school. To many people it was regarded as beneficial for other people's children.¹⁹⁸ In the July 1970 issue of Saturday Review, a writer states that the community college had a reputation of low prestige and that it was only a shade above the high school.¹⁹⁹

But with all these problems the community college was able to grow. It met a need that other institutions did not. The nation needed manpower, and it looked to the community college to provide for it through the development of human resources. Furthermore, many national organizations, including the National Commission on Technology, Automation, and Economic Progress, established by Congress in 1964, began to speak of the importance of education and opportunity and that the community and technical colleges would be a part of that. Much progress came about because of certain groups and legislation, but the most important push came from the local areas who were to be served by

¹⁹⁶Ibid., pp. 14-20.

¹⁹⁷L. Steven Zwerling, The Crisis of the Community College, Second Best (New York: McGraw-Hill, 1976), p. 63.

¹⁹⁸Gleazer, p. 13.

¹⁹⁹Norman Cousins, ed., "New Role for Community Colleges," Saturday Review 53 (July 18, 1970):55.

these colleges. Gleazer reiterates:

The community college had its force and meaning rooted in the urgent needs of community life, in the process of change and in the faith that among the ways to better life none were more important than education.²⁰⁰

In his book, This Is the Community College published in 1968, Gleazer confirms:

The community college became both the catalyst to stimulate a community consciousness and the product of this consciousness. The college became a symbol of what the community, sometimes almost wistfully, wanted to become. The slow and difficult process of establishing new alignments and groupings of people into concentrations of somewhat common interests was unexpectedly facilitated by the development of the college. In building the college the groundwork was laid for identification of new aggregations of people with potentially important values of membership and social participation.²⁰¹

1965-Present

In School and Society of March 2, 1968, Loughlin spells out the the responsibilities of citizens. The first was to restrain from panic in times of crisis; the second was to encourage respect for all people. The community college would be the vehicle for accomplishing these goals. Through education in the sciences and the arts and through vocational education, people will become more responsive as citizens.²⁰² During this time certain educators still thought of the community

²⁰⁰Gleazer, pp. 14-20.

²⁰¹Ibid., p. 20.

²⁰²Richard L. Loughlin, "The Community Colleges and Civilization," School and Society 2 (March 1968):176-177.

college as a part of the high school, but the prevailing view placed it in higher education.²⁰³

Until the boom of the 1950s and 60s, community colleges were few in number, and there were no more than 1,000,000 students enrolled in 1960. The citizen began to think of it as a way to fill the gaps in education. The community college was seen as a school for commuting; it was low in costs and flexible in admission policies. More than 4,000,000 students were enrolled in community colleges by 1975, and a push to enroll women and older Americans emerged. Ways to meet the needs of students were being examined rather than ways for the person to fit the program.²⁰⁴ President Carter was concerned with education as was perceived throughout his public speeches, and "lifelong learning" became the catch phrase.²⁰⁵

During this period, the phases of responsibility of the community college moved from the single purpose of a transfer program to a three-fold one: a transfer program that prepares a student to enter a four-year college; a terminal program that leads directly into employment; and the short-term program (vocational) that meets the immediate needs of the community.²⁰⁶

²⁰³E. K. Fretwell, Jr., "Issues Facing Community Colleges Today," Today's Education 57 (October 1969):46.

²⁰⁴Edmund Gleazer, "The Future of the Community College," Intellect 106 (October 1977):152-154.

²⁰⁵Ibid.

²⁰⁶Milton K. Reimer, "Areas of Concern for Comprehensive Community Colleges," School and Society 99 (January 1971):47.

As mentioned earlier, the emergence of the phrase, "life long learning," came about in the 1970s. The Carnegie Commission Report concerning open-door colleges found that around one-half the students in two-year colleges are adults ranging in age from 22-70 years. At the State University of New York's forty-four two-year colleges, one-half of the students are going part-time. It has become evident that the idea of completing college before going to work is changing to one where a student works while he goes to college.²⁰⁷

A decline in transfer programs has taken place. In the 1950s 65 percent of the students in college were in transfer programs, and the shift to occupational programs began in the 1960s. By 1973 there were fewer than 40 percent in transfer programs. In 1980 there were less than 10 percent, and in 1976 the arts and sciences were down to 42 percent.²⁰⁸

Community colleges in the 1980s and beyond are and will be in dynamic change and development. Clark Kerr views them "as the most protean, plastic and mobile of all the institutions of higher education."²⁰⁹ They are the least predictable of all. In 1960, one-sixth of the students enrolled in colleges were in community colleges; in

²⁰⁷Ernest L. Bozer, "Neither Transfer Nor Terminal: The Next Step for Two-Year Colleges," Intellect 101 (November 1972):110-112.

²⁰⁸Jack Friedlawder, "The Decline of Transfer Education in Community Colleges," Education Digest 46 (March 1981):24-27.

²⁰⁹Clark Kerr, "Changes and Challenges Ahead for Community Colleges," Education Digest 46 (October 1980):32-35.

1980, one-third were enrolled in community colleges; and by the year 2000, two-fifths will be enrolled in community colleges.²¹⁰ In June 1970, the Carnegie Commission of Higher Education reported that the community college should become the cornerstone of higher education.²¹¹

According to Cohen and Brawer, the instructor in the two-year college operates somewhere between the secondary school teacher and the university professor. His station is one of ambiguity; he is still looking for identity.²¹² The community college instructor has begun to associate himself closely with the university professor. Faculty senates patterned after those of the senior institutions were on the uprise in the 1970s. Also, many instructors were beginning to take part in studies, and ranking systems were on the upswing; in many states there was a complete reduction in credential requirements.²¹³

According to Arthur Cohen, instruction in the junior colleges comes from higher education's roots in the monasteries and the efforts of the lower schools to meet the needs of a growing enrollment. Also, the two-year college has inherited its custodial functions from the high school and its lecture discussion mode of instruction from higher education.²¹⁴ The two-year college teacher's main concern is to teach.

²¹⁰Ibid.

²¹¹Cousins, pp. 54-55.

²¹²Cohen and Brawer, Confronting Identity, p. 12.

²¹³Ibid., pp. 12-13.

²¹⁴Arthur M. Cohen, Dateline '79: Heretical Concepts for the Community College (Beverly Hills: Glencoe Press, 1969), pp. 86-87.

Any research carried on is secondary and related to students and learning.²¹⁵

Community colleges across America have varied aims, and the entire field of education after the high school is expanding rapidly. Because of this fast alteration, traditional concepts and behavior of the college are changing and no longer relate to the two-year college.²¹⁶

Summary

The community college has developed through a variety of ways: (1) they were extensions of academies located in New England; (2) the two-year colleges were extensions of secondary education; (3) separation advocates were interested in separating secondary work from that of the universities (this idea derived from Germany); (4) the small college had trouble offering a four-year program; (5) the Morrill Act of 1862 provided an impetus for growth; (6) legislation at the turn of the century also provided impetus; (7) colleges and universities established branches in concentrated population areas; (8) growing numbers of students and automation provided for growth.

The community college has evolved from a two-year religious institution, dedicated to religious instruction, to a comprehensive college, offering a large number and variety of curricula to meet the needs of different people within a locality.

²¹⁵Cohen and Brawer, Confronting Identity, pp. 13-15.

²¹⁶Ibid.

The community college is still developing as it meets the needs of the people who are located around it. Gleazer states that the community college owed its start to a "grass-roots, citizen-based movement to expand educational opportunity."²¹⁷ This idea will continue to hold as the community college moves toward the future.

Academic Freedom in Community Colleges

Monroe in the book, Profile of the Community College published in 1972, states that academic freedom is accepted more widely by large universities than by community colleges.²¹⁸ As he points out the community college has more of its roots in the public high school than in the university; therefore, academic freedom is uncertain and recognition of it by authorities is not persistent.²¹⁹ The typical two-year college is a part of the local community, and the teachers are usually friends with parents, board members, and prominent people. Any stray movements from the traditional are readily detected. This close involvement places pressure toward conformity. Too, local people tend to be conservative on most issues, if faculty were to become associated with issues that may cause an imbalance in the economic and political structure, there will likely be a negative reaction. This will not

²¹⁷Gleazer, "The Future of the Community College," p. 154.

²¹⁸Charles R. Monroe, Profile of the Community College (San Francisco: Josey-Bass, 1972), p. 256.

²¹⁹Ibid.

happen when the college is large serving a large population; here the interaction between people is of lesser importance to their values and interests. Third, students enrolled in public two-year colleges tend to be more conservative and less sophisticated than students located at four-year institutions and universities. The student who carries home new and different ideas can cause misunderstandings concerning course content and ideas taught to take place.²²⁰

However, Charles Monroe predicts that as community colleges and technical institutes continue to become a part of higher education, teachers will want the attributes of university teachers and will insist on the guarantees of academic freedom.²²¹ "There is very little community college literature concerned with academic freedom, and if one were to judge the importance of academic freedom by the amount of space given to it, one would have to conclude that community colleges are not concerned with it."²²² Monroe states further that the number of written statements on academic freedom is not known.²²³ In their book, Teaching In the Community Junior College published in 1970, Win Kelly and Leslie Wilbur explain a study concerning faculty attitudes and opinions:

The question What Faculty Like Best was open ended. It was felt that planting the seeds of response is apt to limit responses rather than foster creative ones. Weighing

²²⁰Blocker, p. 162.

²²¹Charles R. Monroe, p. 256.

²²²Ibid., p. 258.

²²³Ibid., p. 259.

and categorizing these responses, we found certain aspects to be mentioned frequently. Of the prominent areas involved, academic freedom and personal freedom had the highest frequency rate.²²⁴

Furthermore, academic freedom was rated highest.²²⁵ In other words, according to this attitudinal survey, teachers in community colleges felt that they possessed academic freedom.

However, from this brief historical perspective of academic freedom and the brief survey of the development of the community college and technical institute, it is difficult to pinpoint the roots of academic freedom in these institutions or to what degree academic freedom is espoused.

²²⁴Win Kelly and Leslie Wilbur, Teaching in the Community Junior College, p. 196.

²²⁵Ibid.

CHAPTER III
POLICIES THAT ADDRESS THE PRINCIPLES OF ACADEMIC
FREEDOM IN NORTH CAROLINA COMMUNITY COLLEGES
AND TECHNICAL INSTITUTES

Background

As noted earlier in the study, the number of statements on academic freedom for community and technical college teachers was not known. At institutions that have incorporated the American Association of University Professor's (AAUP) 1940 statement on academic freedom or other statements made by the AAUP into their faculty handbooks or other policies, the courts have maintained that these statements are a part of the teacher's employment contract.¹

The principles of academic freedom are outlined in the AAUP's 1940 statement on academic freedom:

- (a) The teacher is entitled to full freedom in research and publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- (b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution

¹ Steven G. Olswang and Barbara A. Lee, Faculty Freedom and Institutional Accountability: Interactions and Conflicts. ASHE-ERIC Higher Education Research Report No. 5 (Washington, D.C.: Association for the Study of Higher Education, 1984), p. 9.

should be clearly stated in writing at the time of the appointment.

(c) The college or university teacher is a citizen, a member of a learned profession and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterance. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.²

Therefore, because of the importance attached to academic freedom statements, a review of the fifty state statutes regarding community colleges and technical institutes revealed that only four of these address academic freedom: California, Connecticut, New Jersey, and Texas. Copies of these statutes addressing academic freedom are listed in Appendix A.

State Statutes Addressing Academic Freedom

California

California Education Code states that minimum standards shall be set by district governing boards to insure that faculty and students can express their opinions on the campus level and that they be given "reasonable consideration."³ In Section 51023(a) of the California

²Clark Byse and Louis Joughlin, Tenure in American Higher Education: Plans, Practices, and the Law (New York: Cornell University Press, 1959), pp. 173-174.

³California, Education Code, "Faculty and Student Participation," Section 71079.

Administrative Code, it is mandated that a governing board of a community college will adopt a policy statement on academic freedom. It further states that this policy will be articulated to the faculty and filed with the chancellor.⁴

Connecticut

The Connecticut General Statutes are very brief in their statement on academic freedom:

Subject to statewide policy and guidelines established by the board of governors of higher education, the board of trustees shall . . . establish policies which protect academic freedom and the content of courses and degree programs.⁵

New Jersey

Of the four states that address academic freedom in the statutes, New Jersey's is more specific in its language:

(a) The institution shall promulgate a statement concerning the academic freedom of faculty members which should include statements supporting the following principles: (1) freedom in research and publication where these activities do not interfere with adequate performance of academic duties; (2) freedom in the classroom to discuss controversial issues pertinent to the discipline; and (3) retention of all rights as a citizen to free speech and publication. Such rights are not, as such, subject to institutional censorship or discipline.⁶

⁴California, Administrative Code, "Faculty," Section 51023.

⁵Connecticut, General Statutes, "Board of Trustees for State Technical Colleges, Section 10a-81(C) (1), p. 430.

⁶New Jersey, Statutes Annotated, "Academic Freedom of Faculty Members," Section 9:1-5.9.

Texas

Texas statutes address the matter of academic freedom for the public colleges and universities in the state with the simple charge to the Coordinating Board to "develop and recommend minimum standards for academic freedom, academic responsibility, and tenure."⁷

Analysis of the Academic Freedom Statements in the
Community Colleges and Technical Institutes
of North Carolina

Because of the small number of statutes addressing academic freedom, and since Berrier in his study in 1978 found that only five of the fifty-three participating public two-year colleges in North Carolina had formal tenure plans,⁸ it became important to this study to (1) determine the number of two-year public colleges in North Carolina that currently provide tenure for faculty, (2) to examine the current policies of these institutes to determine the extent to which academic freedom is addressed, and (3) to particularize the study to the community colleges and technical institutes in North Carolina.

In order to facilitate the acquisition of current policies, a brief questionnaire was sent to the presidents of each of the fifty-eight community colleges and technical institutes in North Carolina. A

⁷Texas, Codes Annotated, "Promotion of Teaching Excellence," Section 61.057.

⁸Paul R. Berrier, "Legal Aspects of Faculty Employment: Tenure, Contracts, and Dismissal in the Community Colleges and Technical Institutes in North Carolina" (Ed.D. dissertation, University of North Carolina at Greensboro, 1979).

Table 1
 Number and Percent of Responses by
 Community Colleges and
 Technical Institutes

	Type of Institution		Total
	Community College	Technical Institute	
Number of Institutions Surveyed	24	34	58
Number of Institutions Responding	23	31	54
Percent of Responses	96	91	93

copy of the questionnaire is in Appendix B. Table 1 indicates that twenty-three of twenty-four community colleges returned the questionnaire; a response of 96 percent. Thirty-one of thirty-four technical institutes returned the instrument; a response of 91 percent. Total returns were fifty-four of fifty-eight colleges, representing a 93 percent response.

Contents of the Questionnaire

The following questions were asked:

1. Do you address academic freedom at your college?
2. How do you address academic freedom?
3. Do you have a tenure policy?

Also, college policy on these matters was requested.

Results of the Questionnaire

Colleges That Address Academic Freedom

Tables 2 and 3 indicate that twenty of the twenty-three community college respondents (87 percent) address academic freedom. Also indicated is the fact that twenty-eight of the thirty-one technical institutes (90 percent) address this issue. These numbers represent a total of forty-eight of the fifty-four respondents (89 percent) that address academic freedom. According to the questionnaire, six colleges (three community colleges and three technical institutes) do not address academic freedom.

Table 4 maintains that of the forty-eight public two-year colleges that address academic freedom, forty-two sent policies (nineteen community colleges and twenty-three technical colleges). This represents a return of 88 percent. Copies of these policies are in Appendix C.

Table 2
Number and Percent of Responding Institutions
That Address Academic Freedom

	Type of Institution		Total
	Community College	Technical Institute	
Number of Institutions Responding	23	31	54
Number That Address Academic Freedom	20	28	48
Percent That Address Academic Freedom	87	90	89

Table 3
The Fifty-Four Responding Institutes

Academic Freedom		
College	Address	Do Not Address
Anson T.C.	X	
Asheville-Buncombe T.C.	X	
Beaufort County C.C.	X	
Bladen T.C.	X	
Blue Ridge T.C.	X	
Brunswick T.C.	X	
Cape Fear T.I.	X	
Carteret T.C.	X	
Catawba Valley T.C.	X	
Central Carolina T.C.	X	
Central Piedmont C.C.	X	
Cleveland T.C.	X	
Coastal Carolina C.C.	X	
College of the Albermarle	X	
Craven C.C.	X	
Davidson County C.C.	X	
Edgecombe T.C.	X	
Fayetteville T.I.	X	
Forsyth T.C.	X	
Gaston College	X	
Guilford T.C.C.	X	
Halifax C.C.	X	
Haywood T.C.	X	
Isothermal C.C.	X	
James Sprunt T.C.		X
Johnston T.C.	X	
Lenoir C.C.	X	
Martin C.C.		X
Mayland T.C.	X	
McDowell T.C.		X
Mitchell C.C.	X	
Montgomery T.C.		X
Nash T.C.	X	
Pamlico T.C.	X	
Piedmont T.C.	X	
Pitt C.C.	X	
Richmond T.C.	X	
Roanoke-Chowan T.C.	X	
Robeson T.C.	X	
Rockingham C.C.	X	
Rowan T.C.	X	

Academic Freedom		
College	Address	Do Not Address
Sampson T.C.	x	
Sandhills C.C.	x	
Southeastern C.C.	x	
Southwestern T.C.	x	
Surry C.C.	x	
T.C. of the Alamance	x	
Tri-County C.C.		x
Vance-Granville C.C.		x
Wake T.C.	x	
Wayne C.C.	x	
Western Piedmont C.C.	x	
Wilkes C.C.	x	
Wilson County T.I.	x	

Table 4
 Number and Percent of the Institutions Addressing
 Academic Freedom That Sent Policies

	Type of Institution		Total
	Community College	Technical Institute	
Number of Institutions That Address Academic Freedom	20	28	48
Number of Institutions That Sent Policies	19	23	42
Percent That Sent Academic Freedom Policies	95	82	88

The forty-eight schools that address academic freedom indicate that academic freedom is communicated by a combination of one of the following means: (1) board or trustee policy, administrative policy, and faculty handbook; (2) administrative policy and faculty handbook; or (3) student handbook.

Table 5 indicates that of the forty-eight colleges, thirty-eight (twenty-two technical institutes and sixteen community colleges) use board or trustee policy, administrative policy, and faculty handbook, representing 78 percent. Ten colleges (six technical and four community) address academic freedom through administrative policy and the faculty handbook, representing 20 percent. Table 6 reveals these figures. One community college addresses academic freedom through the student handbook.

Table 5
Number and Percent of Institutions Addressing
Academic Freedom That Use Board or Trustee
Policy, Administrative Policy, and the
Faculty Handbook

	Type of Institution		
	Community College	Technical Institute	Total
Number of Institutions That Address Academic Freedom	20	28	48
Number of Institutions Using Board or Trustee Policy, Administrative Policy, and the Faculty Handbook to Address Academic Freedom	16	22	38
Percent of Institutions Using Board or Trustee Policy, Administrative Policy, and the Faculty Handbook to Address Academic Freedom	76	79	78

Table 6
 Number and Percent of Institutions Addressing
 Academic Freedom That Use Administrative
 Policy and the Faculty Handbook to
 Address Academic Freedom

	Type of Institution		Total
	Community College	Technical Institute	
Number of Institutions That Address Academic Freedom	20	28	48
Number of Institutions That Use Administrative Policy and the Faculty Handbook to Address Academic Freedom	4	6	10
Percent of Institutions Using Administrative Policy and the Faculty Handbook to Address Academic Freedom	8	12	20

Tenure Policies

Table 7 shows the seven responding public two-year colleges that sent copies of their tenure policies. Three community colleges (Gaston, Lenoir, and Surry) provide tenure for their faculty. Two community colleges and two technical colleges do not provide tenure, and this is indicated directly in their policies. Copies of these seven policies and statements are listed in Appendix D.

Table 7
 Responding Institutions Sending
 Faculty Tenure Policies

	Policies Providing Tenure	Policies Not Providing Tenure
Beaufort County Community College		x
Craven Community College		x
Forsyth Technical College		x
Gaston College	x	
Lenoir Community College	x	
Rowan Technical College		x
Surry Community College	x	

Policies That Address Academic Freedom

Policies that address academic freedom in North Carolina public two-year colleges range in complexity from brief, general statements to lengthy, explicit policies which pertain mainly to three categories: (1) teaching; (2) research; and (3) the faculty member as a citizen and as a member of a learned profession.

Teaching

Twelve colleges use the same statement in their policies:

The college is dedicated to the dissemination of knowledge; to the development of skills, competencies and understandings; and to the nature of those personal and intellectual habits and attitudes which are peculiar to responsible individuals in a free, open, democratic society. The Board of Trustees, therefore, shall guarantee and protect academic freedom in the college. The Board likewise

requires the exercise of responsible judgment on the part of personnel of the college as they exercise academic freedom in accomplishing the objectives of the college. (Policies 10-20, Appendix C)

The term responsibility or responsible is common throughout the policies. It is used in connection with other terms such as integrity and obligation. A teacher has freedom to pursue a role as a teacher so long as one uses responsibility is a concept that runs throughout the policies. In its policy, Sampson Technical College uses responsibility in this manner: "With this freedom, however, a certain amount of responsibility is incumbent upon the individual faculty member. He should recognize the intricate relationship between freedom and responsibility."⁹

Several policies also include the words controversial material, and Fayetteville Technical Institute uses the statement: ". . . they should be careful not to introduce into their teaching controversial matter which has no relation to the subject."¹⁰ Wilkes Community College points out in its statement that a teacher is free to discuss and consider controversial material if it pertains to and is directed toward the subject being taught.¹¹

Other statements written in the policies include the following: special attention should be given to carefully planned presentations;

⁹Sampson Technical College, "Academic Freedom and Integrity," Faculty Handbook, p. 85.

¹⁰Fayetteville Technical Institute, "Academic Freedom," Faculty Handbook.

¹¹Wilkes Community College, "Academic Freedom," Faculty Handbook, p. 32.

discussions and assignments should relate to the material designated by the course outline; and teaching activities should be in accordance with the goals of the institution. These statements are extensions to the controversial material issue and attempt to balance the teacher's freedom with responsibility.

Indoctrination and objectivity are other concerns contained in the policies. Such phrases as "fairness and clarity," "as a forum for the inculcation of said belief," "no semblance of thought control imposed," "to promote religious doctrine," "to treat viewpoints with objectivity," "without due persuasion," and "by creating attitudes of open-mindedness" are woven throughout these policies. Gaston College, in its statement on the role of the instructor, points out that the instructor should explore different points of view and should avoid the imposition of his/her views by using the "pressure of authority" in the classroom.¹²

Some colleges address teacher competency. These policies point out that instructors are held responsible for academic competency in performing their duties. Southwestern Technical College also addresses evaluation, stating that it should not be inhibited by academic freedom.¹³

¹²Gaston College, "Philosophy of Open Discussion," Board of Trustees Policy No. VB, p. 1 of 2.

¹³Southwestern Technical College, "Academic and Personal Freedom," Policy Manual, p. 301.

Research

Sixteen colleges address research directly in their statements concerning academic freedom (Table 8). Most of these policies simply state that the faculty member has the freedom to engage in research so long as it does not interfere with teaching. Rockingham Community College addresses research and publishing in its statement: "These rights and responsibilities include (a) obligation to respect the freedom to teach, to learn, and to conduct research and publish findings in the spirit of free inquiry."¹⁴

Guilford Technical Community College is explicit in the procedures to be followed by its staff who are interested in participating in research:

1. A staff member who decides to perform academic research during the established work schedule must inform his/her immediate supervisor in writing. The notice should precede the beginning of the research.
2. The notification should include: (a) name of staff member; (b) summary of proposed project; and (c) expected length of the project.
3. In oral or written public expression, the employee must indicate in a definite manner that one is speaking/writing as a private citizen.¹⁵

¹⁴Rockingham Community College, "A Bill of Rights and Responsibilities for Members of Rockingham Community College: Faculty, Students, Administrators, Staff, and Trustees," Faculty Handbook, Chapter 2, 2.1.1.

¹⁵Guilford Technical Community College, "Academic Freedom and Responsibility Procedures," Faculty Handbook, p. 1.01.

Table 8
Principles Addressed in Academic
Freedom Policies

College	Major Principles Addressed		
	Teaching	Research	Citizen
Anson T.C.			
Asheville-Buncombe T.C.			
Beaufort County C.C.	X	X	X
Bladen T.C.	X		
Blue Ridge T.D.	X		X
Brunswick T.C.	X		X
Cape Fear T.I.			
Carteret T.C.	X	X	X
Catawba Valley T.C.			
Central Carolina T.C.	X		X
Central Piedmont C.C.	X		X
Cleveland T.C.	X		
Coastal Carolina C.C.	X	X	X
College of the Albemarle	X		X
Craven C.C.	X		X
Davidson County C.C.	X	X	
Edgecombe T.C.			
Fayetteville T.I.	X		X
Forsyth T.C.	X	X	
Gaston College	X		X
Guilford T.C.C.	X	X	X
Halifax C.C.	X		X
Haywood T.C.	X		X
Isothermal C.C.			
James Sprunt T.C.			
Johnston T.C.	X		X
Lenoir C.C.	X	X	
Martin C.C.			
Mayland T.C.	X	X	
McDowell T.C.			
Mitchell C.C.	X	X	X
Montgomery T.C.			
Nash T.C.	X		
Pamlico T.C.	X	X	
Piedmont T.C.	X		X
Pitt C. C.	X		X
Richmond T.C.	X		X
Roanoke-Chowan T.C.	X	X	X
Robeson T.C.	X		X

College	Major Principles Addressed		
	Teaching	Research	Citizen
Rockingham C.C.	X	X	X
Rowan T.C.	X		X
Sampson T.C.	X	X	X
Sandhills C.C.	X		
Southeastern C.C.	X		
Southwestern T.C.	X	X	
Surry C.C.	X	X	X
Technical College of the Alamance	X		X
TriCounty C.C.			
Vance-Granville C.C.			
Wake T.C.	X	X	X
Wayne C.C.	X		
Western Piedmont C.C.	X		X
Wilkes C.C.	X	X	X
Wilson County T.I.	X	X	

The Faculty Member as a Citizen and as a
Member of a Learned Profession

Thirty-one of the forty-two colleges that responded by sending policies address the area of the faculty member as a citizen. The Technical College of Alamance points out that the instructor is free from institutional censorship.¹⁶ This is a common principle found throughout the policies. Roanoke-Chowan Technical College adds a note of responsibility: ". . . he should remember that the public may judge his profession and his institution by his utterances."¹⁷ Also, a

¹⁶The Technical College of Alamance, "Academic Freedom," Faculty Handbook, 2.7.

¹⁷Roanoke-Chowan Technical College, "Academic Freedom and Responsibility," Policies of the Board of Trustees, No. 2.2, p. 1 of 1.

common principle that runs throughout the policies is the idea that the faculty member should be accurate, restrained, and respectful to others. Other policies indicate that an instructor should make it known that he/she is not a spokesperson for the college when he is stating personal points of view (Appendix C).

Piedmont Technical College and Pitt Community College have the same written policies concerning the instructor as citizen (policies 21-22, Appendix C). These are the only colleges in this study that have policies which state that the instructor, because of his position, may or must abide by rules and regulations not applicable to other citizens. Piedmont uses the words, "may have to conform,"¹⁸ and Pitt utilizes the phrase, "one must conform."¹⁹ Wake Technical College stresses that its employees enjoy the same basic rights and are bound by the same responsibilities as all citizens.²⁰

Several institutions spell out required conduct of the teacher as a member of a learned profession. Halifax Community College addresses coordination and cooperation :

Teachers must understand that the special nature of the community college student requires special attention to carefully planned presentations, coordination of instructional effort between courses, departments, and divisions. In addition, a special degree of coordination and cooperation

¹⁸Piedmont Technical College, "Academic Freedom," Employees Handbook, 3.14.

¹⁹Pitt Community College, "Academic Freedom," Faculty Handbook, pp. 4-8.

²⁰Wake Technical College, "Academic Freedom," Faculty Handbook, pp. 1-4.

between different departments of the college (examples - Instructional, Student Services, etc.) is necessary.²¹

Western Piedmont Community College states that faculty members have the right to disagree or criticize policy, but rather than violating such policy, it is better to communicate dissatisfaction through the proper channels.²² Rockingham Community College's statement reveals that members of the college have the right to recourse if another member is negligent or irresponsible. Also, this latter policy states that members are not to interfere with other members of the college community as they pursue their normal activities.²³

Other Areas Addressed

Other topics briefly mentioned in the academic freedom policies include the following: (1) freedom of speech; (2) freedom of press; (3) freedom of political beliefs; (4) freedom from force and violence; (5) freedom to hold public meetings; (6) freedom to learn; (7) lewd and obscene language; (8) inciting unrest; and (9) visits from outside speakers.

²¹Halifax Community College, "Academic Freedom," Faculty Handbook, p. 39.

²²Western Piedmont Community College, "Academic Freedom," Western Piedmont Community College Policy Manual, pp. 2-19.

²³Rockingham Community College, "A Bill of Rights and Responsibilities for Members of Rockingham Community College: Faculty, Students, Administrators, Staff, and Trustees."

Summary

After an examination of the fifty state statutes regarding community colleges and technical institutes, it was found that academic freedom is addressed by only four states. However, this study found that forty-two of the community colleges and technical institutes in North Carolina address academic freedom through statements of principles located mainly in policy manuals.

A review of these statements indicated that a part or all of the AAUP's 1940 statement on academic freedom has been incorporated in them. This statement includes the areas of teaching, research, and the responsibility of the teacher as a member of a learned profession. Eleven colleges in this study include all three of these areas in their statements. Each of the forty-two statements address teaching and thirty-one of these statements incorporate the principle of the teacher as a citizen and as a member of a learned society. It is also important to note that in each of these statements an attempt has been made to balance the faculty member's right to academic freedom with its correlative duties and responsibilities. Furthermore, it is evident that these statements have been communicated through (1) board or trustee policy, (2) administrative policy, (3) faculty handbook, (4) student handbook, or (5) a combination of these methods depending upon the institution. Even though academic freedom is addressed by a majority of the responding North Carolina institutions in this study, only three of these institutions provide tenure for their teachers.

CHAPTER IV
HISTORICAL DEVELOPMENT OF ACADEMIC FREEDOM

Introduction

The First Amendment states:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

University faculty should enjoy rights to academic freedom which mirror the rights of citizens to free expression.¹ Malin and Ladenson compared and contrasted the justification for academic freedom and the philosophical justification of a right to free expression. They state that they are alike in this manner: "The various modes of repression, such as censorship and prior restraints, undermine the search for truth whether imposed on all society by government or within an institution of higher learning by school officials."² Joan Eagle notes the following: "Since 1968 public employees' first amendment rights have begun to receive greater protection."³ However, in the 1970s the courts

¹Martin H. Malin and Robert Ladenson, "University Faculty Members' Right to Dissent: Toward A Unified theory of contractual and constitutional Protection," 16 University of California-Davis Law Review (Summer 1983):973.

²Ibid.

³Joan M. Eagle, "First Amendment Protection for Teachers who Criticize Academic Policy: Biting the Hand that Feeds You," 60 Chicago-Kent Law Review (Spring 1984):229-230.

began to use the balancing test—the competing interests of the teacher and the interests of a state, as an employer, in promoting efficiency.⁴ In the 1980s courts have come to establish that free speech rights of teachers will not be abridged when they speak on subjects of public concern.⁵

"Tenured faculty members enjoy the assurance of continued employment which can be terminated only by means of procedural due process and for reasons of extreme misconduct or program curtailment,"⁶ but most cases charging retaliation for expressive activity are brought by teachers who do not possess tenure.⁷ Since the majority of the teachers employed by the community colleges and technical institutes in North Carolina do not enjoy tenure, they will be able to benefit from decisions of landmark cases as well as lesser ones dealing with nontenured teacher's claims of First Amendment violations, especially those involving freedom of speech. The cases examined in this chapter deal with public school teachers, as well as state-supported college and university professors. Since both are public employees, both are

⁴Ibid.

⁵Samuel Santistevan, "School District's Restraint on Public Comment by Employees: A First Amendment Infringement," 15 Golden Gate University Law Review (Spring 1985):211-215.

⁶Alan A. Matheson, "Judicial Enforcement of Academic Tenure," 50 Washington Law Review (June 1975):597.

⁷Katheryn D. Katz, "The First Amendment's Protection of Expressive Activity in the University Classroom: A Constitutional Myth," 16 University of California-Davis Law Review (Summer 1983):859.

subject to similar constraints and have similar interests at stake. However, emphasis will be placed on guidance for the faculty member in the community colleges and technical institutes in North Carolina.

Historical Development of Academic Freedom
as a First Amendment Right

Historically, public employment was seen as a condition based upon a relinquishment of constitutional rights.⁸ It was seen as a privilege, and the seminal statement on the doctrine of privilege in public employment was made by Justice Holmes: "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."⁹ Prior to the 1960s, the courts were reluctant to intervene in school affairs and, in most cases, deferred to the controlling body of the institution.¹⁰

Statutes requiring dismissal of teachers belonging to subversive groups and prohibiting membership in certain organizations that advocated the overthrow of the government were upheld by the government.¹¹ Justice Douglas's dissent was the first specific recognition of the

⁸Comment, "Development in the Law-Academic Freedom," Harvard Law Review 81 (1968):1045, 1065.

⁹McAuliffe v. Mayor, etc., of City of New Bedford, 29 N.E. 517, 518 (1892).

¹⁰Floyd G. Delon, "Coping Legally with Teachers' Criticisms," Nolpe School Law Journal 9 (Winter 1981):99.

¹¹Adler v. Board of Education, 342 US 485 (1952).

concept of academic freedom by a Supreme Court Justice.¹² He said:

What happens under this law is typical of what happens in a police state. Teachers are under constant surveillance; their pasts are combed for signs of disloyalty; their utterances are watched for clues to dangerous thoughts. A pall is cast over the classrooms. There can be no real academic freedom in that environment.¹³

Justice Douglas did not recognize academic freedom as a substantive right but as a First Amendment right. He believed everyone was entitled to the rights guaranteed by the First Amendment, especially teachers, and that it was important to protect these rights.¹⁴

Later in 1952, in Wieman v. Updegraff,¹⁵ Justice Frankfurter echoed Justice Douglas's concern for academic freedom: "To regard teachers . . . as the priests of our democracy is . . . not to indulge in hyperbole."¹⁶ In 1957, Justice Warner announced in Sweezy v. New Hampshire:

The essentiality of freedom in the community of American universities is almost self-evident To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.¹⁷

¹²Richard P. Tisdale, "Academic Freedom: Its Constitutional Context," University of Colorado Law Review 40 (1968):609.

¹³Adler v. Board of Education, p. 510.

¹⁴Tisdal, "Academic Freedom: Its Constitutional Context," p. 609.

¹⁵Wieman v. Updegraff 344 US 194-98 (1952).

¹⁶Ibid., p. 196.

¹⁷Sweezy v. New Hampshire 354 US 234 (1957).

In 1967 teachers were dismissed for refusing to sign a certificate denying membership in any organization which advocated overthrow of the government.¹⁸ The Supreme Court reversed the lower court stating that the statute was unconstitutional being vague and overbroad, and reinstated the teachers. Further, the court expanded a new ruling to protect teachers, and academic freedom was characterized as a "transcendent value" of "special concern" to the First Amendment.¹⁹ Koltes mentioned that Keyishian moved from the right-privilege analysis, but the court did not recognize state interests to be weighed in the decision-making process.²⁰

The Balancing Test

A faculty member's claim of retaliatory discharge, denial of tenure, or transfer for engaging in activity protected by the First Amendment is generally brought in a federal court suit under the First and Fourteenth Amendments.²¹ In deciding whether a faculty member's rights of free speech have been violated, the courts have gradually moved toward a balancing test balancing the interests of the state with that of the teacher's.²²

¹⁸Keyishian v. Board of Regents, 385 U.S. 605-06 (1967).

¹⁹Ibid., p. 603.

²⁰John A. Koltes, "Public Employees First Amendment Freedoms," Western New England Law Review 3 (1980):295.

²¹Joan M. Eagle, p. 231.

²²Debra K. Hodges, p. 93.

First, the teacher must show that he or she engaged in a constitutionally protected activity. In a 1968 landmark decision, a tenured teacher was fired after writing a letter to a newspaper criticizing the board of education's allocation of school funds to the academic and athletic programs and the board's method of informing local tax payers of additional revenue requests.²³ The court pointed out that the problem inherent in such a case was to "arrive at a balance between the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees."²⁴ It was decided by the court that Pickering's letter was protected by the First Amendment, and Pickering was reinstated. The court further acknowledged that comments on matters of legitimate public concern by public school teachers are ordinarily protected activity.²⁵

The Pickering court described the interests of the state and of the teacher. The interests of the state included:
(1) the need to maintain discipline and harmony among superiors and co-workers; (2) the need for confidentiality;²⁶ (3) the need to maintain an effective working relationship among those who are working

²³Pickering v. Board of Education, 391 U.S. 574 (1968).

²⁴Ibid., p. 568.

²⁵Ibid., pp. 570, 574-575.

²⁶Ibid., p. 570.

closely together; (4) the need to curtail the conduct which impedes the teacher in the "proper performance of his daily duties in the classroom;"²⁷ and (5) the need to maintain freedom from interference in the regular operations of the schools in general.²⁸

The interests of the teacher included: (1) "the public interest in having free and unhindered debate on matters of public importance;"²⁹ and (2) the teacher's expertise in school matters which make it essential that he be able to speak out freely on such matters without fear of reprisal.³⁰

Implicit in the court's opinion was the belief that the above list of guidelines was not exhaustive and that other factors may be considered in the evaluation of the balance of interests between the employer and the employee.³¹ For a teacher to prevail in cases that immediately followed Pickering, it was only necessary for him or her to show that the speech was protected by the First Amendment, and that the speech was one of the factors that led to the negative action against him.³²

²⁷Ibid., pp. 572-573.

²⁸Ibid.

²⁹Ibid.

³⁰Ibid., p. 572.

³¹Douglas S. Punger, "Teacher Speech and the First Amendment," School Law Bulletin 14 (1983):9.

³²Joan M. Eagle, p. 233.

In 1977, the court added a second step to the balancing test.³³ Doyle, a nontenured teacher with a controversial record, telephoned a local radio station, reporting the contents of an administrative memorandum about a teacher dress code. The radio station read the dress code as part of the news, and subsequently, the school board cited Doyle for his lack of tact and further stated that he would not be rehired. The court found that Doyle's phone call was protected by the First Amendment as was the teacher for his letter in Pickering.³⁴ But the two cases were different. The Pickering test would have required reinstatement if the protected speech played a substantial part in the decision not to rehire, even though the teacher may not have been hired on other grounds; however, in the Doyle case, the Supreme Court wanted to avoid putting a teacher in a better position simply because he had exercised a constitutional right.³⁵ Here, the court utilized an additional test--once a teacher proved that his protected speech was constitutionally protected and was a substantial or motivating factor in the decision not to rehire, the burden was to shift to the administration to prove by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct.³⁶ Since Doyle met his burden of proof, the court vacated the circuit

³³Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977).

³⁴Ibid., pp. 283, 287.

³⁵Ibid., p. 286.

³⁶Ibid., pp. 285-287.

court's decision reinstating him and remanded for a determination as to whether the board could meet its burden of proof.³⁷ On remand the City School District of Education presented other reasons beyond the First Amendment reasons for not rehiring Doyle, and the Board's decision not to renew Doyle's contract was affirmed.³⁸

In Givhan v. Western Line Consolidated School District,³⁹ the court broadened the scope of the Pickering/Mt. Healthy test relating to public criticism. A nontenured black teacher was transferred to an all-white school because of a court-ordered desegregation decree. In several instances Givhan privately requested changes in the white school's practices which she believed to be racially discriminatory.⁴⁰ The principal of the school viewed the requests to be "petty and unreasonable"⁴¹ and made in a manner described as "insulting," "hostile," "loud," and "arrogant."⁴² Givhan was told that she would not be rehired at the end of the school year. The court held that, having opened his office door to Givhan, the principal could not then be heard to complain that he was an "unwilling recipient" of her views.⁴³

³⁷ Ibid.

³⁸ Doyle v. Mt. Healthy City School District, 670 F. 2d. 59 (6th Cir. 1982).

³⁹ Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979).

⁴⁰ Ibid., p. 413.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid., p. 412

Justice Rehnquist held that Givhan's private speech was protected, and the decision was vacated and remanded for a Mt. Healthy analysis as to whether the board would have reached the same conclusions, not to rehire Givhan "but for her criticism."⁴⁴

In Givhan it was made manifest that content, time, place, and manner in which speech takes place are additional factors to weigh in the Pickering balance when private speech is an issue.⁴⁵ Furthermore, these added restrictions affect a court's decision concerning particular speech and whether it is protected by the First Amendment, and they can preclude reinstatement considerations provided under Doyle.⁴⁶ Public speech is less likely to contain heated words; therefore, it is subject to content assessment.⁴⁷ "Courts are more likely to find speech protected when only its content, rather than time, place, and manner of its delivery is appraised."⁴⁸

The courts compare the importance of the employee's speech with the problems it could cause in the work place. Here is how they strike a balance. If the matter spoken of is of public concern, the balance will be weighed in the favor of the teacher; however, if it impedes his

⁴⁴Ayers v. Westline, 691 F. 2d 766 (5th Cir. 1982).

⁴⁵John A. Koltes, "Historical Development of Public Employees' First Amendment Rights," p. 305.

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸Ibid.

ability or that of others to complete their tasks, the balance will be struck in favor of the employer.⁴⁹

An example of this is found in Connick v. Myers.⁵⁰ In this case an assistant district attorney was to be transferred to a different court. After being told of the transfer, the assistant circulated a questionnaire within the office protesting the rotation system used for transfer. She was subsequently fired. The court stated that its problem was to find a balance as it did in Pickering, and it further cited that Myers' speech concerned matters on internal affairs which are not matters of public concern as used in Pickering.⁵¹ The court stated:

The repeated emphasis in Pickering on the right of a public employee "as a citizen, in commenting upon matters of public concern" was not accidental. The language, reiterated in all of Pickering's progeny, reflects both the historical evolvement of the rights of public employees and the common-sense realization that government offices could not function if every employment decision became a constitutional matter.⁵²

The court held that the questionnaire disturbed close working relationships, and it cautioned that a stronger showing on the employee's behalf must be taken if the speech is proven to be of public concern.⁵³ The decision not to rehire Myers was 5 to 4, and the

⁴⁹Robert P. Joyce, "Constitutional Protections of Teachers," School Law Bulletin (1983):7.

⁵⁰Connick v. Myers, 461 U.S. 138 (1983).

⁵¹Ibid., pp. 142-143.

⁵²Ibid., p. 143.

⁵³Ibid., pp. 151-152.

dissenting opinions in this case are important. Justices Brennan, Marshall, Blackman, and Stevens dissented.⁵⁴ These judges concurred that the Court's decision was flawed in three respects: (1) it misrepresented the Pickering analysis; (2) the activity engaged in was not of public concern and narrowed the class of subjects on which public employees may safely speak; and (3) the Court again misapplied the Pickering test stating that Myers could be constitutionally dismissed for a questionnaire addressed to at least one subject of interest to the community.⁵⁵

The dissenting opinion by Justice Marshall indicated that the Connick opinion was very narrow for fear that a broader interpretation would result in every criticism becoming a constitutional case.⁵⁶ He added that deciding whether a matter is of public concern is a sensitive one and that this court "ignored that precept."⁵⁷

The Teacher's Performance in the Classroom

Although academic freedom is not one of the enumerated rights of the First Amendment, the supreme court has emphasized that the right to teach, to inquire, to evaluate, and to study is basic to a democratic society.⁵⁸ "A teacher works in a sensitive area in a classroom. There

⁵⁴Ibid., p. 157.

⁵⁵Ibid., pp. 158-159.

⁵⁶Ibid., pp. 163-164.

⁵⁷Ibid., p. 165.

⁵⁸Sweezy v. New Hampshire.

he shapes the attitudes of young minds towards the society in which they live. In this, the state has a vital concern."⁵⁹ In the area of teaching, a balancing test is struck also and the assignment of weight will depend upon the particular facts. In a complaint brought before the court in April 1970, a teacher complained that her First Amendment right and her Fourteenth Amendment right were violated when she was dismissed.⁶⁰ She assigned as outside reading a story entitled "Welcome to the Monkey House"; the purpose of the assigned reading was to give the students a better understanding of the short story.⁶¹

The principal, along with the associate superintendent, expressed to the teacher their disagreement of the contents of the story, stating that the story condoned the murder of old people and "free sex."⁶² Ms. Parducci verbally disagreed with them. The associate superintendent warned the plaintiff that she could be dismissed by the superintendent, and, in response, the teacher resigned.⁶³

The first question to be answered was the appropriateness of the reading material for high school students. The court found nothing obscene in the story nor did it find anything in it that would interfere with discipline in the school.⁶⁴ The court referred to another case,

⁵⁹Shelton v. Tucker, 364 US 479 (1960).

⁶⁰Parducci v. Rutland, 316 F. Supp. 352 (1970).

⁶¹Ibid.

⁶²Ibid., p. 353.

⁶⁴Ibid., p. 355.

Keefe v. Geanokos,⁶⁵ where a teacher was suspended for assigning and discussing an article that contained highly offensive words. Here the court said that the parents' sensibilities are not the full measure of what is proper education and ruled for the plaintiff.⁶⁶ In the former case, the court concluded that the "plaintiff's dismissal constituted an unwarranted invasion of her First Amendment right to academic freedom."⁶⁷

Using the classroom to criticize the administration of a university was not protected under the First Amendment in Clark v. Holmes.⁶⁸ Clark had emphasized sex education in his health class despite the administration's admonitions to the contrary.⁶⁹ In Clark, the court addressed the use of a classroom as a forum for airing academic grievances and to a lesser degree, the problems that arise when a teacher's own philosophy runs counter with administrative policy. The court concluded that a faculty member does not have the right to impose his general philosophic view as to curricular content.⁷⁰

⁶⁵Keefe v. Geanokos, 418 F. 2d 359.

⁶⁶Ibid., pp. 361-362.

⁶⁷Parducci v. Rutland, Supra Note 25.

⁶⁸Clark v. Holmes, 474 F. 2d 929 (1972).

⁶⁹Ibid., p. 970.

⁷⁰Ibid., p. 971.

Inadequate performance in the classroom outweighs any alleged First Amendment speech protection. For example, an untenured professor, McGill, brought suit claiming that non-renewal was based upon a series of events relating to his speech on matters of public concern to the university.⁷¹ The Board of Regents took into their tenure consideration the fact that McGill combined a philosophy course he was teaching with an identical course being taught in the political science department. Further, he did not adequately supervise the course and had given an inordinate number of "As" and "Bs."⁷² The court found that when balancing the conduct of the teacher against the First Amendment claim, the deficiencies of the teacher and his boisterous, inaccurate public statements warranted his non-renewal.⁷³

In Mayberry v. Dees, the department chairman noted that Mayberry, a nontenured professor of Spanish, did not follow "my views concerning the use of the language [Spanish] in class."⁷⁴ There was further evidence that Mayberry insisted on "Mayberry's way."⁷⁵

A court stated in 1982 that "a teacher has the right to voice her concerns about matters which affect the education of her students, so

⁷¹McGill v. Board of Regents of State of Florida, 541 F. 2d 1073 (1976).

⁷²Ibid., p. 1082.

⁷³Ibid., p. 1085.

⁷⁴Mayberry v. Dees, p. 505.

⁷⁵Ibid.

we cannot condemn Daulton's anxiety about preparing a curriculum outline when she felt ill-equipped to do so."⁷⁶ The court struck a balance when it held that any disruption caused by these statements is overshadowed by the public interest in these subjects.⁷⁷

In 1979 Olson, a teacher and faculty advisor of the student newspaper at Pikes Peak Community College, along with three students filed a complaint that the student senate declined to fund the News because of its content and editorial policies.⁷⁸ The plaintiffs further stated that their rights to freedom of the press, speech, and association were violated when the funds were cut.⁷⁹ This case is significant to First Amendment rights concerning teaching because the teacher maintained that the News was a teaching vehicle for students in the Journalism Department.⁸⁰ The court held that Olson had no constitutional right to use the News as a teaching tool.⁸¹ On appeal the court of appeals reversed and remanded stating that Olson did have a constitutional right to use the newspaper as a chosen teaching method.⁸² However, the federal court reversed the appeals court and held that the publication of the News

⁷⁶Daulton v. Affeldt, 678 F. 2d 491 (1982).

⁷⁷Ibid.

⁷⁸The State Board for Community Colleges and Occupational Education v. Olson, 687 p. 2d 433, (1984).

⁷⁹Ibid.

⁸⁰Ibid.

⁸¹Ibid.

⁸²Ibid., p. 434.

was not a part of the official curriculum at Pikes Peak Community College.⁸³ The court further maintained that Olson's freedom to choose an appropriate method for classroom presentation "remains unfettered."⁸⁴ The court also noted that government interest in limiting choices of teachers as to course content and methodology increases as the age of the student decreases.⁸⁵

On April 23, 1979 at a local school board meeting, a cry was called to tar and feather a teacher who was teaching a life-science course approved earlier by the principal.⁸⁶ A private citizen who brought the complaint had protection by right to petition under the First Amendment.⁸⁷ After the board meeting, the plaintiff, Stachura, was suspended from the classroom. The court found that the teacher's First Amendment rights had been violated even though he had followed his superior's policies.⁸⁸

Research

Although research at present is not a major concern of community colleges and technical institutes, it is one of the important issues of the future. Freedom of research has been curtailed in recent years.

⁸³Ibid., p. 438.

⁸⁴Ibid.

⁸⁵Ibid., n. 7.

⁸⁶Stachura v. Truszkowski, 763 F. 2d 214 (1985).

⁸⁷Ibid., p. 211.

⁸⁸Ibid., p. 215.

Federal funding agencies have begun to use more regulation in research projects such as requiring colleges to establish review boards to evaluate methodologies.⁸⁹

Steven G. Olswang and Barbara A. Lee conclude that "despite the heightened regulation of scientific inquiry, strong protection exists for those researchers who comply with the policies of their institutions and their funding agencies."⁹⁰

Academic freedom of inquiry still exists as evidenced by Dow Chemical Company v. Allen.⁹¹ Two University of Wisconsin researchers' records were subpoenaed by Dow Chemical. Dow Chemical was interested in challenging the Environmental Protection Agency's curtailment of some of its herbicides even though the research was not completed on the monkeys and their dietary ingestion of TCDD.⁹² The court held that the researchers' interest in academic freedom was a definite part of the legal calculation of whether forced disclosure would be reasonable.⁹³ The court in this case cited academic freedom and referred to several cases such as University of California v. Bakke: "Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment."⁹⁴ The court

⁸⁹Steven G. Olswang and Barbara A. Lee, p. 14.

⁹⁰Ibid.

⁹¹Dow Chemical Company v. Allen, 672 F. 2d 1262 (1982).

⁹²Ibid.

⁹³Ibid. pp. 1262-1263.

⁹⁴University of California v. Bakke, 438 U.S. 265, 312, 98 S. Ct. 2733, 2759, 57 L. Ed 2d 750 (1978).

further concluded that academic freedom extended to the researcher as well as to the teacher in the classroom, and the enforcement of the subpoenas would have a chilling effect on this freedom.⁹⁵ A balance of interests was struck when this court recognized that academic freedom was not absolute and that it must be balanced against competing interests.⁹⁶

The Teacher As a Member of a Learned Profession

Discipline and Harmony Among Supervisors and Co-Workers

In 1975, the court held that Roseman, a college teacher, made statements toward a dean that had the effect of interfering with the harmonious relationships of her superiors and co-workers.⁹⁷ Further, the court noted that the speech in this case and in Pickering were different in two respects: (1) Roseman made utterances that were private while Pickering's was public, and (2) Roseman's speech was disruptive while Pickering's was not.⁹⁸

In the public schools, Bernasconi, an untenured teacher, was transferred when she complained about children being placed in classes

⁹⁵Ibid., pp. 1275-1277.

⁹⁶Ibid., p. 1275.

⁹⁷Roseman v. Indiana University of Pennsylvania, 520 F. 2d 1368 (1975).

⁹⁸Ibid.

for the mentally retarded. After unsuccessful attempts to correct the situation, she advised the parents of the children to seek help through a local aid society.⁹⁹ The ninth circuit held that Bernasconi's comments were directed toward certain practices rather than toward particular individuals.¹⁰⁰

In McGill¹⁰¹ a teacher in a private session with her principal disagreed with his decisions. Subsequently, she was transferred to another school; she charged that this occurred because of her complaints about school procedures.¹⁰² The court noted that the teacher's critical statements in no way impeded her classroom duties or interfered with the general operations of the school, and the court also considered whether she caused friction or was uncooperative. Colleagues stated that such tension did not exist and also stated that the teacher in question was a respected and valued colleague.¹⁰³

Noting in Pickering that a teacher's right to free speech is limited only when the speech is "so disruptive" as to impede the teacher's performance or interfere with the operations of the school,¹⁰⁴ the court maintained that since McGill had established that the speech

⁹⁹Bernasconi v. Tempe Elementary School District, No. 3. 548 F. 2d 857 (1977).

¹⁰⁰Ibid.

¹⁰¹McGill v. Board of Education of Pekin Elementary School, 602 F. 2d 114 (1979).

¹⁰²Ibid., p. 777.

¹⁰³Ibid.

¹⁰⁴Ibid.

was not unduly disruptive, the balancing test in Pickering did not weigh in the board's favor.¹⁰⁵ The court found further that retaliation can take the form of transfer as well as discharge, and ordered her reinstated to her teaching position.¹⁰⁶

In 1980, Swilley, a teacher and president of a teacher's union, informed a school board about an unnamed principal who allegedly exposed students to serious harm by sending them outdoors for tornado drills during lightning storms and by sending small children home alone without notifying their parents. He also sent a press release to the news media stating his allegations at the meeting of the board. When the board made note that Swilley would not be allowed to attend executive conferences on personnel and placed a letter of reprimand in his file, Swilley brought action against the school board. The court referred to the language in Pickering regarding the need for superior-subordinate discipline and harmony.¹⁰⁷

The court held for the plaintiff, finding that his actions were protected by the First Amendment and that the physical safety of students may be more a matter of public concern than Pickering's allocation of funds. The court used the balancing test once more holding that the teacher's conduct was more of a public nature than a private one.¹⁰⁸

¹⁰⁵Ibid.

¹⁰⁶Ibid., p. 780.

¹⁰⁷Swilley v. Alexander, 629 F. 2d 1018-1019 (1980).

¹⁰⁸Ibid., p. 1019.

The Fourth Circuit Court in 1981 did not accept the appellant's claim that Mayberry's remarks were merely that of bickering, but instead were entitled to First Amendment protection. The court cited Givhan, stating: "even had the evidence sufficed to support a finding that, if Mayberry's criticisms had not been made, Fernandez demonstrably was prepared to recommend him favorably for tenure, still Mayberry could not have recovered."¹⁰⁹

In a 1980 case,¹¹⁰ the court used Givhan, stating that the plaintiff's private speech was not protected and, then applied the Pickering balancing test, finding that the librarian's criticisms were threatening to the University Libraries' efficiency. The content of his speech, the manner, time, and place in which it was delivered served to produce a threatening situation.¹¹¹

Another case involved an untenured teacher, Daulton, who taught at a North Carolina community college. She alleged that the officials had violated her constitutional rights when they refused to renew her contract.¹¹² The court stated that even though the North Carolina community college system had no provision for tenure and the Board of Trustees was free to terminate her employment at the end of any contract

¹⁰⁹Mayberry v. Dees, 663 F. 2d 519 (1981).

¹¹⁰Press v. Board of Regents of the University System of Georgia, 499 F. Supp. 156 (1980).

¹¹¹Ibid., n. 3, p. 490.

¹¹²Daulton v. Affeldt, p. 487.

year,¹¹³ Daulton could establish claim based on her exercise of protected First Amendment freedoms.¹¹⁴ The jury found that the plaintiff's speech did not disrupt college operations and stated that the employee's First Amendment right to speak out on matters of public interest outweighs the school's interest in regulating the conduct of its employees.¹¹⁵

Furthermore, the court noted that to claim a violation of protected speech, a plaintiff must prove that the speech was a "substantial or motivating factor" in the decision not to rehire her. The court found that it was.¹¹⁶ Using the Mt. Healthy "but for" test, the court said that the district court should have determined if the board would have rehired her in the absence of the protected speech.¹¹⁷

In another case, Landrum v. Kentucky,¹¹⁸ a teacher stated that he was denied tenure when he criticised the administration. His evaluator gave him high marks for his teaching but low marks in the ability to cooperate.¹¹⁹ The court used Connick in its analysis stating that "there is a balance between First Amendment interests and the right of the government as employer to conduct its work without

¹¹³ Ibid., p. 490.

¹¹⁴ Ibid., p. 491.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Landrum v. Kentucky, 578 F. Supp. 241 (1984).

¹¹⁹ Ibid., p. 243.

constant disruption from troublemakers."¹²⁰ The court stated further that even though some of the teacher's criticisms were "matters of legitimate public concern, the extensive period over which his verbal assaults were leveled at university administration and the intense hostility he displayed" more than outweighed any First Amendment activity.¹²¹

In still another case, Ferrara v. Mills,¹²² the court cited the narrower interpretation of First Amendment speech in Connick: "In frankness, the court must state that it reads Connick to narrow the scope of [Perry, Mt. Healthy, and Givhan] . . ."¹²³ The plaintiff's claim of constitutional infringement was dismissed.¹²⁴ The court ruled that in analyzing an employee's claims that his right to free speech has been violated, a three step process must take place: (1) plaintiff has the burden of proving that he spoke on matters of public concern, (2) the court must decide if the protected activity was a substantial or motivating factor in actions against the plaintiff, and (3) the defendant must show that the same action would have been taken in the absence of the protected activity.¹²⁵

¹²⁰Ibid., p. 246.

¹²¹Ibid., p. 246.

¹²²Ferrara v. Mills, 596 F. Supp. 1069 (1984).

¹²³Ibid., p. 1073.

¹²⁴Ibid., p. 1075.

¹²⁵Ibid., p. 1071.

Other cases that illustrate the narrower interpretation of Connick are Renfro v. Kirkpatrick¹²⁶ and Mahaffey v. Kansas Board of Regents.¹²⁷ Renfro, the court cited, did not raise the student welfare claim in her written grievance concerning job sharing, but did raise the issue in her oral report before the board. The court of appeals ruled that airing claims of "arguable public interest" for the first time before a review panel is not enough to be a matter of public concern.¹²⁸ The plaintiff in Mahaffey, a university faculty member, complained about policies on salaries, organization, and identity of the supervisors. The court held that the plaintiff's speech concerned items of an individual nature rather than public concern.¹²⁹ The United States District Court for the Northern District of Georgia held that a professor's speech was not protected when he complained about salaries, assignments, hiring, practices, and content, and administrative procedures used to review syllabi. The court did not classify the complaints as matters of public concern.¹³⁰

In Ballard v. Blount the court noted that almost all speech concerned with the employment setting is of some public importance.¹³¹ At what point do the utterances of public concern no longer deserve absolute

¹²⁶Renfro v. Kirkpatrick, 722 F. 2d 714 (1984).

¹²⁷Mahaffey v. Kansas Board of Regents, 562 F. Supp. 887 (1983).

¹²⁸Renfro v. Kirkpatrick, p. 715.

¹²⁹Mahaffey v. Kansas Board of Regents, p. 890.

¹³⁰Ballard v. Blount, 581 F. Supp. 160 (1983).

¹³¹Ibid., p. 164.

First Amendment protection? Connick implies that the relationship of the employee's position and the content of his speech should be examined and several questions should be asked including the following: should the employee's grievance be more properly channeled to review panels or arbitrators; would the employee have complained if he had been working in another position; to what degree are the complaints of general public importance; and has the subject of the employee's complaint become a public issue because of attention from the various media, politicians, and political groups.¹³² The Bowman court held that the comments of several teachers concerning corporal punishment did not deserve involuntary transfer; the transfer violated the teacher's freedom of speech since their complaints drew press coverage and were matters of public concern.¹³³ On the other hand, the plaintiff in Ferrara could not give substantial evidence to prove that his comments were of public concern; he could provide only one news clipping which was concerned with his discharge and not with the issues in the case.¹³⁴

The nature and the timing of comments are important, and McGee v. South Pemiscot School District¹³⁵ gives perspective. The school decided to drop junior high school track. Subsequently, this decision became a campaign issue for the board. The only newspaper in the area

¹³²Ferrara v. Mills, p. 1074.

¹³³Bowman v. Pulaski County Special School District, 723 F. 2d 640 (1983).

¹³⁴Ferrara v. Mills, p. 1074.

¹³⁵McGee v. South Pemiscot School District, 712 F. 2d 339 (1983).

published the board member's justifications on the decision. The board members also said that John McGee, track coach, supported it. However, the paper later published a letter by McGee renouncing the decision. After the election, the board terminated Mr. McGee's contract. But, the Court of Appeals held that McGee's speech concerned public matters and was deserving of First Amendment protection.¹³⁶

In the spring of 1980, Mavis Day, an untenured teacher, was evaluated by her principal, and it was indicated that she had performed unsatisfactorily in six of twenty-four categories. The areas of dissatisfaction were lack of control in working with peers and lack of cooperation in teamwork effort. Day was recommended to be transferred.¹³⁷

Ms. Day wrote a letter to the principal expressing her dissatisfaction, but there was no response. She then began grievance procedures, utilizing the proper channels. Again the principal did not respond. Subsequently, the superintendent was contacted through a formal written statement, but the grievance was denied.¹³⁸ Ms. Day, under the grievance procedure, was permitted to contact an arbitrator. The board denied her request. The superintendent did not renew her contract for the 1980-81 school year.¹³⁹ She then filed suit with the

¹³⁶Ibid.

¹³⁷Day v. South Park Independent School District, 768 F. 2d 696 (1985).

¹³⁸Ibid.

¹³⁹Ibid.

district court, but the district court held for the defendants; the court of appeals affirmed the district court's decision, stating that she did not speak as a citizen but as an individual who had a grievance concerning the contents of an evaluation.¹⁴⁰ In contrast to Bowman and McGee, statements made by plaintiffs in Mahaffey, Ferrara, and Day were of a more personal nature and did not deserve First Amendment protection.

The Teacher's Activities Beyond the Classroom

Beyond the Campus

In a case that involved a terminal contract, the assistant professor charged that the non-renewal came about because of his participation in demonstrations protesting American involvement in Indochina and the student deaths at Kent State University.¹⁴¹ He stated that his dismissal constituted "impermissible retribution for his exercise of rights protected by the First and Fourteenth Amendments."¹⁴²

The defendants moved to have the action dismissed since there was no cause for action, but Judge Teitebaum, referring to teachers' constitutional rights¹⁴³ said: "I think, however, that it is well settled that the employment of a public school professor, instructor, or teacher may not be terminated for his exercise of constitutionally

¹⁴⁰Ibid.

¹⁴¹Shields v. Watrel, 333 F. Supp. 262 (1971).

¹⁴²Ibid.

¹⁴³Ibid.

protected rights."¹⁴⁴ He also continued by pointing out that this constitutional right is in affect regardless of the teacher's status concerning tenure.¹⁴⁵ The burden of proving that his constitutional rights had been violated was placed on the teacher.¹⁴⁶ However, the teacher was unable to sustain a burden of proof and the court found that "the interest of the state outweighs that of the plaintiff, and concludes that procedural due process does not require an administrative hearing."¹⁴⁷

In another case in 1976, McGill, a nontenured professor, had the burden of proving that non-renewal was based on the exercise of constitutionally protected rights.¹⁴⁸ In this case McGill was denied a contract and, therefore, was denied tenure.¹⁴⁹ The court further pointed out the fact that states had unfettered discretion in a tenure appointment and

as far as the federal court is concerned, the state could deny tenure to the plaintiff for no reason, a reason based on erroneous facts, or for any reason it chose, except for

¹⁴⁴Ibid.

¹⁴⁵Ibid. For more information concerning the issue of tenure and constitutional rights see Johnson v. Branch, 364 F. 2d 177 (4th Cir. 1966), Cert. denied 385 U.S. 1003 [787 S. Ct. 706, 17 L. Ed. 2d 542].

¹⁴⁶Ibid., p. 262.

¹⁴⁷Ibid., p. 263.

¹⁴⁸McGill v. Board of Regents of the State of Florida, p. 1074.

¹⁴⁹Ibid., p. 1077.

a reason that violated the plaintiff's constitutional rights.¹⁵⁰

This court referred to Thaw v. Board of Public Instruction¹⁵¹ and stated that a school board is required to give prior notice and hearing in dismissal cases in two instances: the first occurs when a teacher has tenure or reasonable expectation of employment. The second occurs when a nontenured teacher insists that he has been dismissed because of a constitutional impermissible reason.¹⁵² The court further held that the district court should have balanced the right of a teacher to speak against the right of the board to control the efficiency of the institution.¹⁵³

The court of appeals found that any balancing of McGill's First Amendment interests against the interests of the Board of Regents weighed in favor of the Board.¹⁵⁴ When McGill made public remarks, he knew his statements were false or he knew that he could have investigated them for accuracy.¹⁵⁵

Courts have found that belonging to political associations is a legitimate First Amendment activity. In 1972, Goss, an untenured public junior college instructor, was advised in writing that her

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid., p. 1078.

¹⁵³ Ibid., p. 1081.

¹⁵⁴ Ibid., p. 1085.

¹⁵⁵ Ibid.

contract would not be renewed.¹⁵⁶ She brought suit against the college claiming that her First Amendment rights had been violated.¹⁵⁷ The jury found that Mrs. Goss had not been rehired "because of her political and/or professional activities" and that matters other than the above were not the cause for her non-renewal.¹⁵⁸

Also Dr. Lehr's evaluation of Goss was inconsistent with the ratings relied on in making recommendations to the Board of Regents, and she was given eighty points rather than the eighty-five she was due. With these points she would have been ranked in the middle of the instructors rather than with the bottom three.¹⁵⁹ The jury found in favor of Mrs. Goss, and she was awarded \$23,400 in damages for loss of employment.¹⁶⁰

In a case decided in 1980, the teacher-president of a teachers' union alleged that the school board violated his constitutional and civil rights.¹⁶¹ In his office as president of the Mobile Federation of Teachers, AFL-CIO Local 777, Swilley informed the school board in closed session that a school principal was making questionable decisions that were potentially dangerous to the school children.¹⁶² As one of

¹⁵⁶Goss v. San Jacinto Junior College, 588 F. 2d 97 (1979).

¹⁵⁷Ibid., p. 96.

¹⁵⁸Ibid., p. 97.

¹⁵⁹Ibid., p. 100.

¹⁶⁰Supra note C.

¹⁶¹Swilley v. Alexander, pp. 1018-1019.

¹⁶²Ibid., p. 1019.

of his complaints alleging violation of First Amendment rights, the plaintiff claimed that the school board conspired to inhibit his right to free speech and association as a union representative and teacher by publicly humiliating him and damaging his reputation.¹⁶³

Although the court did not specifically address his association in the teacher union, it did state that teachers are members of the community that are most likely to have informed and definite observations about the administering of the schools, and it further recognized the importance of speaking out on public issues.¹⁶⁴ The appeals court held that the district court erred in its decision that Swilley's due process rights had not been violated; the decision was reversed and remanded.¹⁶⁵

In Allaire v. Rogers,¹⁶⁶ eight politically active teachers were denied full salary increases; they brought suit stating that salary action was in retaliation of the professors' exercise of freedom of speech.¹⁶⁷ The district court found for the defendants, but the court of appeals found the district court to have erred in its findings concerning one teacher. The court held that the teacher, because of his political activities, was subjected to stricter scrutiny by the

¹⁶³Ibid.

¹⁶⁴Ibid., p. 1021.

¹⁶⁵Ibid., p. 1022.

¹⁶⁶Allaire v. Rogers, 658 F. 2d 1055 (1981).

¹⁶⁷Ibid.

president during salary recommendations.¹⁶⁸ Rogers, the university president, after realizing that White's political activities made it "probable that his name would attract attention," gave a closer examination and decided that White might not receive a \$2,300 raise.¹⁶⁹ Using the Mt. Healthy test, the appeals court found that even though White was ranked at the top of his department, he would not receive the recommended raise; White's activities were a "substantial" or "motivating" factor in the president's decision not to grant the salary increase.¹⁷⁰

The appeals court decided not to disturb the district court's decision concerning two other professors who brought suit.¹⁷¹ The evidence was too inconclusive to form a "definite and firm conviction" that the district court's decision was erroneous.¹⁷² Both Shepley and Cavenda were at the bottom of the chairman's list when recommendations for salary increases were given.¹⁷³ Further reason for not reversing the lower court's decision was the fact that Shepley used the campus mail system in his capacity as president of the local AAUP (American Association of University Professors) to write letters of complaint to

¹⁶⁸Ibid.

¹⁶⁹Ibid., p. 1064.

¹⁷⁰Ibid.

¹⁷¹Ibid., p. 1061.

¹⁷²Ibid.

¹⁷³Ibid.

the University of Texas at Austin, his employer.¹⁷⁴ The court noted that it is not required that a university subsidize a person's freedom of speech.¹⁷⁵

In a North Carolina case in 1984, a teacher was reprimanded for a First Amendment speech activity in which she criticized a superintendent.¹⁷⁶ Although this case does not involve dismissal, it is instructive since the findings of the court do provide guidance for those teachers interested in free speech. One of the two teachers involved in this case, Toggerson, wrote an article that appeared in the newsletter of the Durham County ACT Chalk Talk.¹⁷⁷ The article criticized the superintendent and the alliance to which he belonged as anti-teacher. In response, Superintendent Yeager sent a letter to the teacher stating that the article included false statements and that the teacher did not make an effort to check the facts. The response invited the teacher to explain her accusations; she did not respond. The superintendent sent copies of his letter to members of the board of education, and a copy was also placed in the teacher's personnel file.¹⁷⁸ Toggerson brought suit stating that the placement of a letter in her personnel file

¹⁷⁴Ibid., p. 1062.

¹⁷⁵Ibid.

¹⁷⁶Gregory v. Durham County Board of Education, 591 F. Suppl 145 (1984).

¹⁷⁷Ibid., p. 150.

¹⁷⁸Ibid., pp. 150-151.

violated her First Amendment right.¹⁷⁹ The court held that Toggerson's free speech claims are controlled by the principles in Pickering and its progeny.¹⁸⁰ The court stated that the principle here was as follows:

Weighing of the public interest in the expression by Toggerson against the degree to which her conduct was justifiably viewed by Superintendent Yeager as an actual or potential disruption for which the board is responsible.

The court found that the letter was disruptive and that it threatened Yeager's relationship with teachers since it stated that the superintendent was against salary increases and tenure; these charges were presented as facts, not as opinions.¹⁸¹

Toggerson further charged that Yeager's letter had a chilling effect on her; the court found that it did, but the effect was minimal. The superintendent, in placing the letter in the file, believed it to be a requirement of the law applicable to every teacher. Furthermore, the court found that the contents of the letter were restrained and consisted mainly of simple denials to Toggerson's accusations. The court held that this teacher's First Amendment rights were not violated.¹⁸²

¹⁷⁹Ibid., p. 145.

¹⁸⁰Ibid., p. 152.

¹⁸¹Ibid., p. 154.

¹⁸²Ibid., p. 155.

Summary

In the fall 1975 issue of Educational Horizons, Joseph E. Bryson made the following statement: "Academic freedom and the First Amendment are synonymous."¹⁸³ Indeed, academic freedom has gradually moved toward a First Amendment right, and it is usually defined in terms of those elements included in the constitutional guarantees of free speech and communication; in this sense it has been recognized explicitly by the Supreme Court.¹⁸⁴ The court has ruled that no public educational institution can properly discharge a teacher (tenured or nontenured) who has participated in a protected speech activity. However, it has moved from a balancing test, weighing in favor of the teacher to one that balances the interests of the teacher with that of the employer. This latter position has been viewed by many courts as being narrower in scope. However, as Bryson contends in his article: "Academic freedom is not absolute. Public school teacher's academic freedom must be balanced against the compelling state and societal interests."¹⁸⁵

In Pickering, the teacher had only to prove that his/her First Amendment rights were violated, but in Mt. Healthy the court gave the employer an opportunity to decide if the teacher would have been dismissed without the protected activity. It was also noted in this case

¹⁸³ Joseph E. Bryson, "Academic Freedom and Due Process for Public School Teachers," Educational Horizons 54 (1975):48.

¹⁸⁴ William P. Murphy, "Academic Freedom: An Emerging Constitutional Right," p. 461.

¹⁸⁵ Joseph E. Bryson, p. 49.

that the nontenured teacher could have been dismissed without any provided reason. This clearly moved the balance of the scales toward the employer's end. Givhan and Connick examine other factors involved in speech conduct including the contents, time, manner, and the forum in which it was spoken.

The chapter was divided into major areas addressed by academic freedom statements found in North Carolina public two-year college policy manuals. These areas include teaching, research, and the teacher as a member of a learned society.

Teaching

In the area of teaching the courts have held that a teacher has the right to teach, to study, to inquire, and to evaluate. Here, the courts have struck a balance also; they have read and evaluated material to determine its appropriateness, and they have also examined policy concerning materials and book lists. Furthermore, courts have examined college catalogs to determine course selection and description, and they have also considered the evaluations of superiors and colleagues in determining the effectiveness of teachers. In other words, the classroom activity of teachers has been scrutinized when there has been concern over First Amendment violations. Teachers will enjoy First Amendment protection when they follow guidelines set by institutions, even in the absence of protection by their employers.

Research

Teachers will generally have First Amendment protection in research when they follow the guidelines and policies set forth by their institutions. A court has recognized that a scholar or researcher has academic freedom as well as the classroom teacher.

The Teacher's Activities Beyond the Classroom and Campus

In deciding cases concerning public speech by untenured teachers, courts have made it clear that teachers regardless of their tenure status, enjoy First Amendment protection. They have also concluded that prior notice of dismissal must be given when a teacher has tenure or reasonable expectation of employment or when a nontenured teacher insists that he has been dismissed because of a violation of his freedom of speech. The courts have also ruled that states have wide discretion in renewal decisions that concern nontenured teachers.

In deciding cases of this nature, the courts have put the burden of proof on the nontenured teacher to establish that his/her conduct was a protected activity. Once established, the next step is to determine whether the speech is public or private. This is determined by weighing the content of the speech.

The Teacher as a Member of a Learned Society

For cases of this category, the courts apply a similar analysis to that applied in cases involving speech away from the campus. The

courts examine the extent of disruption and disharmony that was caused by the alleged First Amendment activity; the time, manner, and content of the speech is examined to determine if the efficiency of the workplace was disrupted. If there was sufficient disruption, the dismissal or action taken by the controlling body is not in violation of a teacher's First Amendment rights.

CHAPTER V
REVIEW OF COURT DECISIONS

Introduction

This chapter presents a review of landmark decisions and other significant court decisions as outlined in Chapter IV. The academic freedom statements found in North Carolina public two-year college policy manuals provide four of the six categories. The categories and cases are listed below:

Historical Development of Academic Freedom

as a First Amendment Right

Adler et al. v. Board of Education of the City of New York (1952).

Sweezy v. New Hampshire (1957).

Keyishian v. Board of Regents of the State of New York (1967).

The Balancing Test

Pickering v. Board of Education of Township High School District 205, Will County, Illinois (1968).

Mt. Healthy City School District Board of Education v. Doyle (1977).

Givhan v. Western Line Consolidated School District et al. (1979).

Connick v. Myers (1983).

The Teacher's Performance in the Classroom

Parducci v. Rutland (1970).

McGill v. Board of Regents of the State of Florida (1976).

The State Board for Community Colleges and Occupational Education v. Judith Olson (1984).

Stachura v. Memphis Community School District (1985).

Research

Dow Chemical Company v. Allen (1982).

The Teacher as a Member of a LearnedProfession

Roseman v. Indiana University of Pennsylvania , at Indiana et al. (1975).

Mayberry v. Dees (1981).

Daulton v. Affeldt (1982).

Ballard v. Blount (1983).

MeGee v. South Pemiscot School District R-V (1983).

The Teacher's Activities Beyond theClassroom

Shields v. Watrel (1971).

McGill v. Board of Regents of the State of Florida (1976).

Goss v. San Jacinto Junior College (1979).

Landrum v. Kentucky (1984).

Historical Development of Academic Freedom
as a First Amendment Right

Overview

Court cases historically have revealed that the profession of teaching has moved from a privilege to a right. The decisions in Adler, Sweezy, and Keyishian show this progression. This First Amendment right has given teachers protection in cases concerning dismissal or non-renewal.

Adler et al. v. Board of Education of the City of New York, 342 U.S. 485 (1952).

Facts. The case of Adler et al. v. Board of Education of the City of New York offers a Supreme Court opinion on academic freedom. About forty plaintiffs brought action initially; however, the trial courts finally dismissed all except that of the teachers, Adler, Spencer, and George and Mark Friedlander. These teachers did not allege that they had engaged in proscribed conduct or that they had any intention to do so. They did not suggest that they had been deterred from supporting causes or joining organizations for fear of the Feinberg Law's interdic. Rather, they stated generally that the system complained about would have this effect on teachers as a group. They alleged that the Statutes and Rules permit such action against some teachers.

Decision. On March 3, 1952 the court upheld the constitutionality of a section of the New York Civil Service law, implemented by the Feinberg Law. These sections together provided for disqualification and removal from our public school system any employee who advocated

the unlawful overthrow of the government or who belonged to organizations which had such purposes. While the law allows disqualification for employment in the public schools, it does not deny members of such organizations due process of law. The constitutionality of 3021 of the Education Law was not questioned in proceedings in the lower court and was not passed upon at this time.

Discussion. Justice Menton concluded:

A teacher works in a sensitive area in the schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society cannot be doubted.¹

Justice Douglas, concurring with Justice Black, wrote a dissenting opinion:

The constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher The very threat of such a procedure is certain to raise havoc with academic freedom There can be no real academic freedom in that environment. Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect We forget these teachings of the First Amendment when we sustain this law.²

¹Adler v. Board of Education, p. 493.

²Ibid., pp. 508-509.

Sweezy v. New Hampshire , 354 U.S. 234 (1957).

Facts. The case of Sweezy v. New Hampshire raises the question of constitutional limits of legislative inquiry. The investigation, conducted under the aegis of a state legislature, concerns the deprivation of Sweezy's due process of law under the Fourteenth Amendment. The New Hampshire legislature in 1951 passed a statute to regulate subversive activities with one section defining criminal conduct in the nature of sedition. In 1953, the legislature adopted a further Joint Resolution which related to investigation of subversive activities. This was construed to constitute the Attorney General as a one-man legislative committee.

Sweezy appeared before the Attorney General on two occasions. On January 5, 1954, he testified at length on his past conduct and associations and denied ever being a member of the Communist Party or of any party to overthrow the government by force or violence. The petitioner declined to answer several questions, citing his reasons for refusal in a statement read to the committee at the onset of the hearing. Sweezy refused to answer questions which to him were not pertinent to the inquiry or which transgressed the limitations of the First Amendment. He further refused to disclose his knowledge of the Progressive Party of New Hampshire.

On June 3, 1954, Sweezy was again interrogated about his prior contacts with Communists. Much stress was placed on an article deploring violence by the United States in an attempt to preserve social order which Sweezy had co-authored. He again refused to answer questions concerning the Progressive Party. Attention was also directed at

a lecture given to a humanities class of 100 students at the University of New Hampshire. Two previous lectures of this nature were questioned also in relation to their Socialistic content. Sweezy maintained that these questions were not pertinent to the matter under inquiry.

Following these hearings, the Superior Court of Merrimack County, New Hampshire, ruled that the questions were pertinent. The petitioner refused to answer the court for constitutional reasons at which time he was judged in contempt of court and ordered committed to the county jail.

Decision. The New Hampshire Supreme Court affirmed. The case was granted certiorari by the Supreme Court, and on June 17, 1957 the decision was reversed. It was held on the record that the plaintiff's rights under the Due Process Clause of the Fourteenth Amendment were violated. There was no majority opinion; however, six justices concurred in the result.

Discussion. This case upholds the rights safeguarded by the Bill of Rights and the Fourteenth Amendment, and represents an invasion of a petitioner's liberties in the areas of academic freedom and political expression. The essentiality of freedom in American Universities is evident. To impose strict limits upon college leaders would lead to stagnation of our civilization's growth and understanding. Our government was established on the rights of a citizen to engage in political expression and association. Any interference with this freedom becomes unconstitutional. Chief Justice Warren concluded:

No one should underestimate the vital role in a democracy that is played by those who guide and train our youth.

To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation.³

Keyishian v. Board of Regents of the State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

Facts. The University of Buffalo, a publicly supported member of the State University of New York system required faculty members to sign an affidavit disavowing Communist membership to have continued employment. Known as the Feinberg Certificate, this exercise prevented the appointment and/or retention of "subversive" staff. A library employee, a nonfaculty position, refused to answer under oath the same question. This library employee, along with two faculty members who refused to sign the affidavit, were dismissed and filed litigation insisting that this oath violated the United States Constitution. The Feinberg Certificate was eventually rescinded; however, the court hearing continued as if the oath was still mandated.

Decision. In a 5 to 4 decision, Associate Justice Brennan stated:

1. Rescinding the Feinberg Certificate did not alter the constitutional questions raised.
2. Academic freedom is threatened by use of the words "sedition" and "treasonable."
3. New York's protective interests were legitimate, but stifling to constitutional liberties.
4. Laws must not stifle academic freedom.

³Sweezy v. New Hampshire, p. 250.

5. Vagueness in statutes stifles individual freedom and First Amendment rights.
6. Due to the First Amendment violation, this statute was declared unconstitutional.

Discussion. The Feinberg Law, protected since the Adler decision of 1952, was nullified in this landmark decision. Keyishian offers strong support by the Supreme Court for academic freedom for public school teachers. This decision has set a precedent for other public school cases. Justice Brennan concluded:

Our nation is deeply committed to safeguarding academic freedom which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.⁴

The Balancing Test

Overview

The concern of the 1960s and 1970s as to what kind of expression constituted free speech has moved toward a balancing of interests. Four United States Supreme Court decisions, Pickering, Mt. Healthy, Givhan, and Connick provide standards for resolving disputes that involve employee speech. These standards and the lower court's application of them suggest the guidelines for coping legally with speech rights in educational settings.

⁴Keyishian v. Board of Regents, p. 603.

Pickering v. Board of Education of Township High School District 205, Will County, Illinois, 88 S. Ct. 1731 (1968).

Facts. The United States Supreme Court received this case on appeal from the Illinois Supreme Court. It involved a teacher's right to speak on matters of public concern.

In February 1961, a bond issue to raise \$4,875,000 was proposed and subsequently defeated. A second proposal was submitted in December of the same year. Both of these proposals were for the building of two new schools. The second proposal passed. Subsequently tax rate increases were proposed in May and September of 1964; both were defeated. Prior to the second tax proposal, several articles attributed to a teacher's organization appeared in the local newspaper. These articles were persuasive in nature, urging the voters to vote for the tax increase in order to enhance education.

Marvin L. Pickering wrote a letter in response to the defeat of the tax proposal and the letters in the newspaper. Essentially the letter was an attack on the school board's handling of the bond issues and its financial allocations between the school's educational and athletic programs. The letter also charged the superintendent with attempting to prevent teachers from criticizing the bond issue.

Pickering was dismissed and the board held a hearing as required by Illinois law. The board charged that statements in the letter were false and that these false statements damaged the reputation of its members and school administrators.

The Illinois courts reviewed the board's proceedings to determine solely if the findings were supported by evidence and if the letter was

detrimental to the interests of the school. Pickering's claim to First Amendment protection was rejected due to the fact that as a teacher he should not make statements about the schools "which in the absence of such position he would have an undoubted right to engage in."⁵

Decision. Mr. Justice Marshall delivered the opinion. His summary statement was as follows:

In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, 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. Since no such showing has been made in this case regarding appellant's letter, his dismissal for writing it cannot be upheld, and the judgment of the Illinois Supreme Court must, accordingly, be reversed and the case remanded for further proceedings, not inconsistent with this opinion. It is so ordered.⁶

Discussion. The major legal principles involved in this case are as follows:⁷

1. Teachers may not relinquish their First Amendment rights as citizens to comment on matters of public interest in connection with the workings of the public schools in which they work.
2. Justice Marshall stated that due to the variety and type of factual situations where critical statements by teachers and other public employees may furnish grounds for dismissal, "it is not appropriate or feasible to attempt to lay down a general standard against which all statements may be judged.
3. Statements may be critical of a public employer as long as they do not harm the close working relationships that

⁵Pickering v. Board of Education of Township High School District 205, Will County, Illinois, 391 U.S. 568 (1968).

⁶Ibid., p. 575.

⁷Ibid., p. 568.

are necessary for the efficient operation of the school system and as long as the statements pertain to a legitimate public concern.

4. Because he is like any other citizen, a teacher will be protected even though he may utter statements of public concern that may be untrue.
5. A state cannot recover damages for defamatory statements by a public employee unless the statements have been made with a prior knowledge of their falsity or with reckless disregard of their truth or falsity.
6. Statements on matters of public concern are given First Amendment protection despite the fact that they may be vented toward superiors.

A balance was struck "between the interests of the teacher, as a citizen, in commenting on matters of public concern and the interests of the state, as an employer, in promoting the efficiency of the public services it performs through its employees."⁸

Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977).

Facts. An untenured teacher who had previously had troubles with another teacher, cafeteria employees, and students called a radio station about the contents of a dress code that the school principal had circulated to different teachers. The radio station announced the dress code as a news item. Citing his lack of tact in professional matters concerning the above incidents, the school board under the advisement of the superintendent informed Doyle that he would not be rehired. Doyle charged that because he was not rehired his rights under the First and Fourteenth Amendments were violated. After a bench trial, the district court held that the teacher was entitled to

⁸Ibid., p. 568.

reinstatement with back pay. The sixth circuit court affirmed the decision, and the Supreme Court granted the board's petition for certiorari.⁹

Decision. Mr. Justice Rehnquist, writing the court's opinion, stated that Doyle's claims under the First and Fourteenth Amendments are not defeated even though he does not have tenure. In referring to the Board of Regents v. Roth case,¹⁰ Justice Rehnquist stated that Doyle could have been discharged for no reason whatsoever.¹¹ However, Rehnquist continued referring to Perry v. Sindermann,¹² the nontenured teacher may establish a claim to reinstatement if the dismissal decision was made because of his exercise of constitutionally protected First Amendment freedoms.¹³ The court agreed that the communication was protected, but it was not entirely in agreement with the district court's manner of reasoning. The court held that the district court did find that the board and the superintendent "were faced with a situation in which there did exist in fact reason . . . independent of any First Amendment rights or exercise thereof, to not extend tenure."¹⁴ The court was interested in knowing whether the district court or court of

⁹Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 276 (1977).

¹⁰Board of Regents v. Roth, 408 U.S. 564 (1972).

¹¹Mt. Healthy City School District v. Doyle, 429 U.S. 283.

¹²Perry v. Sindermann, 408 U.S. 593 (1972).

¹³Mt. Healthy City School District v. Doyle.

¹⁴Ibid., p. 285.

appeals would have dismissed Doyle for reasons other than the First Amendment activity; therefore, the judgment of the court of appeals was vacated and remanded for further proceedings.¹⁵

Discussion. The court in making its decision did clearly point out that a nontenured teacher could be dismissed without reason, but could not be dismissed for a constitutionally protected activity. However, the court was concerned that an employee should not be placed in a favorable position if there were other reasons for dismissal. As Justice Rehnquist pointed out:

. . . that same candidate ought not to be able, by engaging in such conduct, to prevent his employer from assessing his performance record and reaching a decision not to rehire on the basis of that record, simply because the protected conduct makes the employer more certain of its decision.¹⁶

The burden was properly placed on the teacher to prove that his conduct was constitutionally protected, and that the conduct was a "substantial factor" or "motivating factor" in the board's decision to dismiss him. But the district court should have determined whether the board showed a preponderance of the evidence that it would have dismissed the teacher in the absence of the protected conduct."¹⁷

Givhan v. Western Line Consolidated School District et al., 439 U.S. 410 (1979).

Facts. After the plaintiff was dismissed as a teacher at the end of the 1970-1971 school year, she intervened in a desegregation action

¹⁵Ibid., p. 286.

¹⁶Ibid.

¹⁷Ibid., p. 287.

against the respondent school district seeking reinstatement for violation of her right to free speech under the First and Fourteenth Amendments. The school district attempted to justify the dismissal by introducing evidence that concerned private sessions between the principal and the teacher.¹⁸ Allegedly, the teacher made "petty and unreasonable demands" in a manner variously described by the principal as "insulting," "hostile," "loud," and "arrogant."¹⁹ The district court held that the dismissal violated the teacher's rights to the First Amendment and ordered her reinstated, but the court of appeals reversed holding that, under Pickering v. Board of Education, Perry v. Sindermann, and Mt Healthy City Board of Education v. Doyle, petitioner's complaints and opinions were not protected by the First Amendment because they were expressed privately to the principal and because there is no right to "press even 'good' ideas on an unwilling recipient."²⁰

Decision. The United States Supreme Court with Justice Rehnquist delivering the opinion, held that a public employee does not forfeit his First Amendment rights when they are expressed privately to a principal, rather than publicly. The judgment of the court of appeals was vacated and remanded for further proceedings.

¹⁸Givhan v. Western Line Consolidated School District et al. (1979).

¹⁹Ibid.

²⁰Ibid.

Discussion. The Supreme Court in making its decision came to three major conclusions. First it noted that the conclusion of the court of appeals that private speech is not protected by the First Amendment is not supported by the decisions in Pickering, Perry, and Mt. Healthy. Further, the court noted that each of these cases, being involved with public speech, is not critical to this decision. The court stated that private expression required a different Pickering balance than public expression.²¹ Public expression dealt with content while private expression may bring additional factors to the Pickering calculus.²² In a personal encounter between employee and employer, the efficiency of the workplace may be threatened "not only by the content but also by the manner, time, and place in which it is delivered."²³ The court held that the "captive audience" argument was inaccurate and ". . . the principal was hardly in a position to argue that he was the unwilling recipient" of her views.²⁴

In a concurring opinion, Mr. Justice Stevens pointed out that the Supreme Court's opinion in Mt. Healthy had not been announced; therefore, the district court did not find that respondents would have rehired petitioner if she had not engaged in constitutionally protected conduct.²⁵ The district court did find that the protected conduct was

²¹Ibid.

²²Ibid., Note 4.

²³Ibid.

²⁴Ibid.

²⁵Ibid., p. 417.

the reason for the dismissal. According to Mr. Justice Stevens the court of appeals made the following conclusion: "The district court would have made an appropriate finding on the issue if it had had access to our Mt. Healthy decision."²⁶ Justice Stevens further stated that the district court should have the opportunity to decide on further proceedings.

Connick v. Myers, 461 U.S. 138, 75 L. Ed. 2d 708 (1983).

Facts. Sheila Myers was an Assistant District Attorney in New Orleans, supervised by Harry Connick the District Attorney. Myers was informed in 1980 that she would be transferred to another section of the criminal court. She was opposed to the transfer and expressed her opposition to several others, including Connick, but she gained no relief. She then prepared a questionnaire concerning office transfer policy, morale, need for a grievance committee, confidence in supervisors, and pressure to work in political campaigns. The next day she met with Connick who encouraged her to transfer. She said she would consider the proposal. Next, the questionnaire was given to fifteen assistant district attorneys; Connick learned of the questionnaire stating that its distribution was an act of insubordination. Myers was told that she would be terminated. Connick did not particularly like the questions concerning confidence and political campaigns.²⁷ Myers filed suit, stating that she had been dismissed for exercising her

²⁶ Ibid., p. 417.

²⁷ Connick v. Myers, 461 U.S. 141-143 (1983).

protected right of free speech; the district court agreed and ordered her reinstated, finding that the questionnaire was the real reason for her dismissal. It was then appealed to the fifth circuit court of appeals and affirmed. The Supreme Court granted review by way of certiorari.

Decision. Justice White delivered the opinion of the court. In making its decision, the court referred to several cases dealing with First Amendment rights to free speech. The court held in this instance that Myers' speech was not a matter of public concern but was rather a personal grievance of a dissatisfied employee that interfered with working relationships. Justice White made further notation:

The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment.²⁸

Justice White concluded his decision by saying:

Although today the balance is struck for the government, this is no defeat for the First Amendment. For it would indeed be a Pyrrhic victory for the great principles of free expression if the Amendment's safeguarding of a public employee's right, as a citizen, to participate in discussions concerning public affairs were confused with the attempt to constitutionalize the employee grievance that we see here. The judgment of the court of appeals is reversed.²⁹

²⁸ Ibid., p. 155.

²⁹ Ibid., p. 155.

Discussion. In making its decision the court referred to several landmark cases: Pickering v. Board of Education, Keyishian v. Board of Regents, Perry v. Sindermann, Mt. Healthy City Board of Education v. Doyle, and Givhan v. Western Line Consolidated School District. The court reiterated in several instances the importance of speech of public concern, and it stated that the district court erred in finding that the issues in the questionnaire were a matter of public concern.

Justice White concluded as he made reference to Pickering and its antecedents: ". . . if Myers' questionnaire cannot be fairly characterized as constituting speech on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge."³⁰

In this case the court also declared that even speech not of public concern is not totally beyond First Amendment protection. It was further designated that private speech did not fall under the "narrow and well defined classes of expression . . .,"³¹ such as obscenity. The court was explicit in stating that a federal court was not a forum for reviewing the "wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior."³²

The court set a standard for deciding if an employee's speech addresses a matter of public concern. The content, form, and context of a given statement determines whether the speech is public or

³⁰Ibid., p. 147.

³¹Ibid., p. 147.

³²Ibid., p. 148.

private.³³ The court examined the questionnaire and found that only one question fell under public speech. Question 11 that dealt with political campaigns was found to "touch upon a matter of public concern."³⁴ The court then sought to determine if one question contributed to her discharge. It held that the district court made a mistake in imposing an onerous burden "on the state to justify Myers' discharge."³⁵ Pickering was quoted again: "the state's burden in justifying a particular discharge varies depending upon the nature of the employee's expression."³⁶ The court agreed that specific balancing such as this was difficult and that courts must reach the most appropriate balance of the competing interests.

Stating the importance of the government's interest, White quoted Justice Powell's separate opinion:³⁷

To this end, the government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs. This includes the prerogative to remove employees whose conduct hinders efficient operation and to do so with dispatch. Prolonged retention of a disruptive or otherwise unsatisfactory employee can adversely affect discipline and morale in the workplace, foster disharmony, and ultimately impair the efficiency of an office or agency.³⁸

³³Ibid.

³⁴Ibid., p. 149.

³⁵Ibid., p. 150.

³⁶Ibid., p. 151.

³⁷Ibid., p. 151.

³⁸Arnett v. Kennedy, 416 U.S. 134, 168 (1974).

As noted in Givhan, the time, manner, and place in which the questionnaire was administered was an issue. As the court concluded, the activity occurred at the office, and, unlike Pickering, it supports the employer's fears that the efficiency of the office was endangered.³⁹

Myers' opposition to the transfer alone was not a sufficient cause for dismissal, but the emergence of a questionnaire after the dispute was.⁴⁰

Justice Brennan, Justice Marshall, Justice Blackman, and Justice White dissented and held that the questionnaire was a matter of public concern. In their opinion, the court adopted a very narrow conception of what constitutes public speech,⁴¹ and this decision will deter public employees from speaking out on issues of public importance. Thus, the public will not have access to information that will evaluate performances of public officials. Dissemination of information such as the questionnaire in Connick is a protection of the First Amendment.⁴²

In several cases the courts have held that the federal court is not the forum for scrutinizing personnel decisions.

³⁹Ibid., p. 154.

⁴⁰Ibid.

⁴¹Ibid., p. 163.

⁴²Ibid., p. 170.

The Teacher's Performance in the Classroom

Overview

Prior to the 1960s the courts were reluctant to intervene in school affairs and, in most cases, deferred to the controlling body of the institution. But dramatic changes began to occur in the last half of that decade when the court examined the policies and procedures of the internal workings of the institution. The following cases are excellent examples of the court's intervention.

Parducci v. Rutland, 316 F. Supp. 352 (1970).

Facts. Marilyn Parducci, upon graduation from Troy State University, entered into a one-year contract to teach English and Spanish at Jefferson Davis High School in Montgomery, Alabama. On April 21, 1970, she assigned "Welcome to the Monkey House" as an outside reading. The story was selected to give the students a better understanding of the short story.⁴³

In his office the next morning, Rutland, the principal, with the associate superintendent informed Ms. Parducci that the story was "literary garbage," condoning "free sex" and the killing of elderly people. They expressed concern about three students who asked to be excused from the assignment and about parents who complained to the school. Parducci was told to refrain from teaching the story in class. She responded by saying that the story was a good literary work and that she felt an obligation to teach it. The associate superintendent

⁴³Parducci v. Rutland, 316 F. Supp. 353 (1970).

warned the plaintiff that he would report this incident to the superintendent who could dismiss her. Ms. Parducci resigned.⁴⁴ A hearing was held by the Montgomery County Board of Education even though probationary teachers in Alabama were not entitled to one.⁴⁵ The school board notified Ms. Parducci that she had been dismissed because her assignment created disruption within the school setting, because she refused counseling from her principal, and because she was insubordinate. The plaintiff in her subsequent complaint stated that her dismissal violated her First Amendment right to academic freedom.

Decision. Johnson, the Chief Judge of the District Court, held for the plaintiff, stating that the reading assignment "Welcome to the Monkey House" was not inappropriate material for eleventh grade English classes nor was it substantially disruptive to the educational process. The court found that the dismissal of Ms. Parducci was an unwarranted invasion of her First Amendment right to academic freedom.

Discussion. From Tinker v. Des Moines Independent Community School District,⁴⁶ the court stated that students and teachers do not shed their rights to freedom of speech or expression at the school-house gate, but the court pointed out that students who cause disruption, disorder, or invade the rights of others will not be constitutionally protected; this disruption applies to teachers as well.

⁴⁴Ibid., pp. 353-354.

⁴⁵Ibid., p. 354, Note 2.

⁴⁶Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1968).

In addressing academic freedom, the court used several prior cases. From Sweezy,⁴⁷ the court emphasized that academic freedom is not one of the enumerated rights of the First Amendment, but to teach, to write, to inquire, to evaluate, and to study are fundamental to a democratic society.⁴⁸ From Keyishian,⁴⁹ it was noted that the nation is committed to protecting academic freedom,⁵⁰ and from Wieman,⁵¹ the court stated that the First Amendment will be "brought into play to protect academic freedom."⁵² The court further pointed out that academic freedom is not absolute.

The court judged "Welcome to the Monkey House" and compared the material to Pope's "Rape of the Lock" and Salinger's Catcher in the Rye. It was ruled that the material was no more offensive than the language of the latter two. Furthermore, the court found the students to be apathetic toward the material.⁵³

Also discovered was the fact that no written policy governing the selection and assignment of material for reading was made; one of the defendants at the hearing of the school board stated that outside

⁴⁷Sweezy v. New Hampshire, 354 U.S. 234 (1957).

⁴⁸Ibid.

⁴⁹Keyishian v. Board of Regents, 385 U.S. 589 (1967).

⁵⁰Ibid.

⁵¹Wieman v. Updegraff, 344 U.S. 183 (1952).

⁵²Ibid.

⁵³Parducci v. Rutland, p. 355-356.

reading was based on the taste and judgment of the teacher.⁵⁴ The court commented further: "Our laws in this country have long recognized that no person should be punished for conduct unless such conduct has been proscribed in clear and precise terms." First Amendment rights will involve a strict application of standards for judging permissible vagueness. In this case, the court was concerned with the absence of standards which would cause the teacher to speculate on what conduct was permissible. This speculation, in turn, would cause reluctance on the part of the teacher to investigate and experiment, and this reluctance was anathema to the concept of academic freedom.⁵⁵

This case pointed out that wide discretion should be given to school officials without interference from the courts, but this discretion does not give them the right to be arbitrary when depriving teachers of their First Amendment rights.⁵⁶ The court found that the recommended reading lists for teachers and students contained readings that were far more controversial and offensive than "Welcome to the Monkey House"; therefore, it held that the school officials were inconsistent in their discretion.⁵⁷

In this decision the assigned reading, other lists of recommended readings by the school, and school policy concerning such readings were examined.

⁵⁴Ibid., p. 356.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Ibid., p. 357.

MeGill v. Board of Regents of the State of Florida, 541 F. 2d 1073 (1976).

Facts. Dr. McGill was an Assistant Professor of Philosophy at the University of Florida, where he was hired in 1966 on a year-to-year contract basis. In 1972 he was informed that he would not be recommended for tenure. The plaintiff took his case to the Board of Regents, who denied him tenure on the basis of six reasons: (1) McGill and another professor without approval combined a philosophy course with a political science course. Students could receive credit for both courses while doing the requirements of only one. It was found that these courses lacked supervision and were a mockery because all of the 257 students except eight received "As" or "Bs." (2) At a Jacksonville, Florida legislative meeting, McGill called a press conference and declared President O'Connell to be authoritarian when O'Connell had just previously defended McGill's right to free speech and academic freedom. McGill further stated that faculty and students were powerless under a politically appointed president. (3) McGill referred to O'Connell as dangerous because Marshall Jones, a former faculty member, had been denied tenure and academic freedom. (4) In a meeting in 1969 concerning student dissent, McGill stood and began speaking; he used profane language. As a result, the meeting was disrupted and was adjourned before completion. (5) In an open meeting, McGill called Biggs, an attorney for the college, and another staff member administrative spies. McGill also stated that Biggs opposed him in a litigation matter concerning loyalty oaths in Florida. (6) He appeared before the Board of Regents in 1969 as president of the local chapter of the American

Federation of Teachers, opposing the proposal of annual evaluations of teachers. McGill also stated that the faculty members had not been consulted.

These six incidents comprise the basis for the decision of the board. The decision and discussion of this aspect of the case will examine only the category of teaching.

Decision. In its review, the board found that the plaintiff had violated the course catalog when he taught Philosophy 365 and Political Science 465 as a combination course. The courses were found to lack supervision by McGill, and there was found to be no appropriate way to evaluate a student's work in either course. It was found that McGill's academic freedom was not infringed upon.

Discussion. In deciding the case, the court made it clear that it is necessary for an academic review board to examine the employee's conduct both in and outside the classroom. This type of examination will often come in contact with freedom of speech where conflicting interests must be balanced, and as noted by the courts, relationships between the employer and the employee are highly subjective.⁵⁸ Finally the court emphasized the point that the preservation of academic freedom was not threatened by this case.⁵⁹ The court concluded as follows: ". . . the state's strong interest in a quality university system and effective teacher contribution to the educational process prevailed."⁶⁰

⁵⁸McGill v. Board of Regents of the State of Florida, p. 1085.

⁵⁹Ibid.

⁶⁰Ibid., p. 1086.

Again, the court examined internal policy within an educational system and made conclusions relative to teacher effectiveness.

The State Board for Community Colleges and Occupational Education v. Judith Olson, 687 p. 2d 429 (1984).

Facts. Judith Olson, a journalism instructor at Pikes Peak Community College, was also a faculty advisor to the student newspaper which was funded from mandatory student activity fees. Other campus activities were also funded in the same manner, and the student senate, under the auspices of the college administration, was responsible for the allocation of funds. In 1979 funding for the News was cut, but during the summer the newspaper was offered a subsidy of \$5,000 which was less than the original allocation of \$12,456. The newspaper staff refused the offer and, subsequently, the News was discontinued. An alternate publication, the Fuse, was published during the school year, 1979-80. In August 1979, Olson and three other students filed a complaint against the college for violation of the federal civil rights statute. They claimed that the funding cutoff violated their rights to freedom of the press, speech, and association as guaranteed by the First and Fourteenth Amendments to the United States Constitution. Other civil rights violations were claimed, but for the purposes of this study only Olson's freedom in the classroom is examined. The district court held that the teacher had no constitutional right to use the News as a teaching tool; therefore, the refusal of funds did not violate freedom of speech. Olson appealed.

Decision. The court of appeals reversed the summary judgment of the district court, stating that the teacher's right to use the newspaper as a chosen method for teaching newspaper design had been violated. The Supreme Court of Colorado reversed and held that the funding cut by the student senate did not violate a constitutionally protected interest of Olson. The judgment of the court of appeals was reversed and remanded for further action on the claim involving First Amendment rights for the students.

Discussion. In discussing Olson's right to teach, the court stated that although the United States Constitution is silent on the right to teach, the First Amendment's freedom of speech is linked to the principle of academic freedom. The court continued by pointing out that academic freedom "finds its source in the belief that teachers should be free to engage in the exchange of diverse ideas on controversial subjects, both within and outside the classroom, without risking the imposition of sanctions as a result of their ideological expressions. The court also addressed teaching techniques pointing out that a teacher has the right to choose a particular method for presentation of content in a course as long as the course is a part of the educational program of the institution.⁶² In this case, the court maintained that the administration of a school has wide discretion in the selection of courses in an educational institution. In Note 7 of this case, it

⁶¹The State Board for Community Colleges and Occupational Education v. Olson, p. 437.

⁶²Ibid.

was pointed out that governmental interest in course content and methodology becomes stronger as the ages of the students decrease.⁶³ But any decisions made in this area, as the court noted, should include consideration of the First Amendment.⁶⁴ The court reasoned that since the newspaper itself was not a part of the curriculum, the decision to stop funding the newspaper did not abridge the teacher's right to teach. According to the court Olson continued to have the freedom to choose an appropriate method for presentation of content that would enrich the experiences of her students, but she did not have the right to require a college to fund a newspaper to further her pedagogical goals when it was not a part of the established curriculum.

Stachura v. Memphis Community School District,
763 F. 2d 211 (1985).

Facts. Truskowski, a parent, began the sequence of events which led to the dismissal of a teacher, Stachura, by the school board. She and other parents complained to the board that Stachura used improper teaching methods in teaching a Life Science class. On April 23, 1979, the school board met after the teacher showed two films in his class. These films had previously been shown to seventh grade classes and had been provided by the County Health Department. They were shown pursuant to the direction of the school principal and were viewed separately by boys and girls. The protests made by the parents led the school

⁶³Ibid.

⁶⁴Ibid.

superintendent to inform Stachura that he was in trouble and that he should not come to the above meeting.

One member of the board described the school board meeting as one totally out of control. He continued his discription stating that the people were shouting and hollering that the school would be picketed if Stachura returned to school, and, at this point, the superintendent, in order to maintain peace, stated that the teacher would be dismissed. On April 24, 1979, Superintendent Russell suspended Edward Stachura from the classroom, stating that he would never see "the inside of a Memphis classroom again."⁶⁵ The board confirmed the suspension pending "administrative evaluation."⁶⁶ Also, the superintendent gave Stachura a "letter of reprimand" based on the citizens' allegations.

Decision. Stachura brought suit against the school district, the school board, several members of the board of education, and two private citizens. He alleged that a conspiracy to violate his First Amendment rights was undertaken by the defendants. Writing the opinion for the court of appeals, George Edwards, Circuit Judge, held that the private citizens' complaints were protected by the First Amendment's right to petition, that the defendants violated the teacher's First and Fourteenth Amendment rights, and that \$321,000 was to be awarded to the plaintiff.

Discussion. The court found that when public opinion arose against the teacher, neither the officials of the school nor the school

⁶⁵Stachura v. Memphis Community School District, p. 214.

⁶⁶Ibid.

board came to his defense, and they did not publicly assume responsibility for their decisions. The events leading up to litigation are excellent examples of threats to a faculty member's academic freedom, and even though the court found that the appellant's exercise of academic freedom had followed his superior's instructions, a stigma was put upon him that would affect his future employment.

As stated in Chapter II, community colleges are similar in nature to that of public schools, and the likelihood of a local uprising similar to that mentioned in the instant case is not entirely out of the question.

Research

Overview

As stated earlier in Chapter II, community colleges and technical institute's primary purpose is teaching, and any research that is undertaken usually deals with students or instruction. However, several community colleges (16) have recognized research to be a part of their academic freedom statements, and although there is only one case, it does reflect a courts recognition of the importance of research.

Dow Chemical Company v. Allen,
672 F. 2d 1262 (1982).

Facts. Dow Chemical Company in an attempt to challenge a possible cancellation of certain herbicides by the Environmental Protection Agency subpoenaed the records of two academic researchers from the University of Wisconsin. The research involved the dietary ingestion

of TCDD by monkeys. The records were to be used as evidence in a cancellation hearing. Even though the research was incomplete, the administrative law judge issued the subpoenas.

Decision. The United States District Court for the Western District of Wisconsin denied enforcement of the subpoena. Dow Chemical appealed, and the court of appeals affirmed the lower court's decision.

Discussion. Judge Fairchild of the Senior Circuit delivered the opinion, and the comments concerning academic freedom are important. This case, as concluded by the court, touched directly upon the interests of academic freedom. The court reasoned that scholarly research was at the heart of higher education and that it fell within the confines of the First Amendment's protection of academic freedom.⁶⁷ Here, the court struck a balance by stating that academic freedom was not absolute and that to prevail the interests of government must be strong and intrusion carefully limited.⁶⁸ The court concluded that the subpoenas would cause a chilling effect on academic freedom and found that if the subpoenas were enforced, the researchers would be scrutinized by a biased party. The court ruled that disclosure of the records could jeopardize the careers of the researchers.

⁶⁷ Ibid., p. 1274.

⁶⁸ Ibid., p. 1275.

The Teacher as a Member of a Learned Profession

Overview

When deciding cases that may come under this category, the courts examine the content, form, and context of the speech to determine if it is public or private. The potential disruption to the workplace and close working relationships are also major concerns of the court.

Roseman v. Indiana University of Pennsylvania, at Indiana et al., 520 F. 2d 1364 (3rd Cir. 1975)

Facts. On March 20, 1970, a committee on merit and tenure met to evaluate the performance of Roseman, a nontenured teacher. The committee apprised the teacher of several shortcomings and mentioned that there would be another meeting concerning nontenured staff. Shortly thereafter, Roseman contended that Faust, the acting chairman of the Foreign Language Department, had suppressed an application for chairmanship of the department; Ms. Roseman complained to the Dean of the College of Arts and Sciences of the University concerning the matter. Later the plaintiff also took her complaint to a meeting of the teaching staff of the department, but the staff gave Faust a vote of confidence. On May 12, 1970 the committee on merit and tenure did not renew the plaintiff's contract, and the decision was ratified by university officials.⁶⁹

On December 20, 1973 the plaintiff filed suit, alleging that the nonrenewal violated her right to a pretermination hearing, violated

⁶⁹Roseman v. Indiana University of Pennsylvania, 520 F. 2d 1366 (1975).

her right to free speech, and penalized her for her religious beliefs.⁷⁰

Decision. The district court found for the defendants and the plaintiff appealed. Van Dusen, Circuit Judge, held that Pennsylvania contract law and the University's tenure regulations provided no "property interest in continued employment sufficient to require a pre-termination hearing under Board of Regents v. Roth and Perry v. Sinderman." It was further held that the non-renewal decision was not made in retaliation for exercising free speech, that Ms. Roseman had only to prove that her discharge was due in part to an exercise of a constitutional right, and that the plaintiff's complaints to the college dean and teaching staff were not protected by the First Amendment. The court of appeals affirmed the district court's decision.

Discussion. Van Dusen, in writing the opinion for the court of appeals, referred to Roth and Sinderman when discussing tenure regulations and property interest for the plaintiff. But the court held that the plaintiff's freedom of speech claim deserved more attention than was given by the district court.⁷¹ The appeals court stated that the district court misunderstood "the proper standard of review where a public employee alleges that his employment has been terminated in retaliation for the exercise of protected speech."⁷² Judge Van Dusen

⁷⁰Ibid., p. 1365.

⁷¹Roseman v. Indiana University, 520 F. 2d 1366 (1975).

⁷²Ibid., p. 1367.

continued by stating:

It is not enough merely to find that other grounds were adequate for the discharge, or that retaliation did not constitute a substantial part of the reason for the discharge. Instead the plaintiff need only prove that the discharge was "predicated even in part on his exercise of First Amendment rights."⁷³

The court would have remanded had it not been for a second analysis--the district court's finding that Roseman's complaints were a permissible cause for non-renewal. Using the Pickering analysis, the appeals court pointed out that the instant speech activity was different than Pickering's. Pickering's speech was a "classical example of public communication" concerning a tax proposal; Roseman's speech was of interest only to her immediate department. The second major difference involved the disruptive impact of the two cases. Pickering's statements were directed toward individuals with whom he would not be in direct contact during a normal day of work; whereas Roseman's complaints were directed toward her department chairman, and the court reasoned that they would disrupt daily activities.⁷⁴

It is interesting to note that even though Connick v. Myers was yet to be decided, this court saw fit to examine the contents of the speech and to declare it of private interest.

Mayberry v. Dees, 663 F. 2d 502 (1981).

Facts. Dr. Mayberry was employed by East Carolina University in the fall of 1967. He was on probationary status with contracts being

⁷³Ibid.

⁷⁴Ibid., p. 1368.

on a one-year basis unless notified of termination. During his fifth year Mayberry was not granted tenure. He sued in 1973 stating that his termination was made in retaliation for his exercise of his First Amendment rights.

Mayberry's employment had progressed without many problems. In the 1970 annual evaluation, Fernandez, the department chairman, said that Mayberry was a complainer and insisted on doing things his way. Mayberry stated that it was his right to academic freedom to teach the classes as he saw fit.⁷⁵ Other evaluations saw Mayberry as lazy and unenthusiastic. The department chairman, in 1971, stated that he would hesitate in giving Mayberry tenure if there was a reduction in staff. According to the university faculty manual the department chairman had the responsibility for deciding termination.⁷⁶

In the fall of 1971, the department chairman appointed himself as chairman of a committee to study the Department of Romance Languages. This committee was established because of the upcoming reaccreditation of the University. Mayberry felt that this self-appointment was stifling, and he went door-to-door to his colleagues, complaining about the composition of the committee. According to Mayberry this committee would inhibit their freedom of speech. He requested that Fernandez, the department chairman, should be removed from the committee.⁷⁷ Mayberry put these complaints in a letter written by his wife and sent

⁷⁵ Mayberry v. Dees, Note 13, p. 505.

⁷⁶ Ibid., Note 15, p. 506.

⁷⁷ Ibid., p. 507.

it to the University Self-Study Steering Committee unsigned. In 1972, Mayberry completed a questionnaire highly critical of Fernandez and sent it to the above committee.⁷⁸

Decision. With Circuit Judge Munnaghan presiding, the court of appeals held that the plaintiff had the burden of proof as an untenured teacher. The professor failed to establish that he was denied tenure because of his exercise of First Amendment activities. The court further held that one may dismiss a teacher because of the content of the remarks that diminish collegiality of the department even though they have First Amendment protection.

Discussion. This case is significant because Mayberry, the plaintiff, could not prove that his First Amendment freedoms were violated. The court pointed out that there was not enough evidence to show that Fernandez knew about Mayberry's criticisms. Also, the evidence proved that Fernandez had decided not to renew the plaintiff's contract before criticisms were given. It is important to note that the university had given the department chairman full responsibility in making tenure recommendations. This has implication for future studies concerning community colleges and the department chairman's scope of responsibility. Furthermore, this pre-Connick decision is different from Connick because the department chairman was not cognizant of Mayberry's speech, and, therefore, the speech was not a substantial factor in the dismissal. In Connick, the speech-questionnaire was explicitly addressed.

⁷⁸Ibid., pp. 507-508.

Daulton v. Affeldt, 678 F. 2d 487 (1982).

Facts. Judy Daulton, a business and accounting instructor at a North Carolina technical institute, was a highly regarded teacher by her students and by the administration. However, after her divorce in April of 1975 the administration became increasingly disapproving of her behavior. Being tardy for class, being inaccessible to her students, and being overly affectionate with her recent husband at school were examples of Daulton's conduct that met with disapproval. When she complained, the behavior was seen as an example of a hostile and negative attitude and was labeled as unprofessional and uncooperative by her supervisors.⁷⁹

In January of 1976, Marvin Allen, Daulton's supervisor, told her in a memorandum that she would need to make certain improvements to retain her position. Improvements in Daulton's behavior were noted by Allen as a result of the memorandum. In early February, teachers at Forsyth Tech were requested to complete a faculty data sheet concerning the strengths and weaknesses of the school. In it Daulton stated that she was not happy with the administration for several reasons: (1) their unwillingness to reschedule classes for students who wanted additional sections due to large classes and (2) their unwillingness to offer classes needed by students for graduation. She continued by stating that the school needed to respond to the needs of the people and that the school needed to become aware of the low morale of the teachers and the students. Also, during this time there was a misunderstanding

⁷⁹Daulton v. Affeldt, 678 F. 2d 489 (1982).

concerning the plaintiff's request for maternity leave, and she also complained about having to prepare an outline for a course which she was not teaching. Allen, in his evaluation, stated that Daulton's comments on the faculty data sheet and other disagreements manifested a "hostile and uncooperative attitude."⁸⁰ She was recommended for dismissal, and it met with approval by the dean, the president, and the board. Daulton claimed that her First and Fourteenth Amendment rights were violated when she was dismissed. The jury held for the plaintiff, and the college appealed.⁸¹

Decision. Judge K. K. Hall of the Court of Appeals, Fourth Circuit, held that the college's interest in avoiding disruption was outweighed by Daulton's First Amendment rights to speech. Daulton proved that her speech was the substantial or motivating factor in her dismissal, and the evidence proved that the teacher lost her job solely because of her exercise of free speech.⁸² The court affirmed the district court's decision.

The court did concede that the strife between the plaintiff and the defendants could be classified as internal disputes, but there was no more disruption than would be expected when a subordinate criticized her superiors on any subject. The court reasoned as evidenced in Note 5, that since the complaints were made only to the administration, they

⁸⁰Ibid.

⁸¹Ibid., p. 490.

⁸²Ibid., pp. 487-488.

did not publicly embarrass the college.⁸³ Also noted by the court was the point that a teacher has the right to voice concerns about matters which affect her students' education, and Daulton had the right to express doubt about completing an outline on a course that she was not teaching at the time. Any disruption caused by these incidents was outweighed by the public interest in these subjects.⁸⁴

Discussion. The court pointed out in Note 4 that "the North Carolina Community College System has no provision for tenure,"⁸⁵ and that the board of trustees could terminate employment at the end of any contract year. However, a claim may be established if the non-renewal was because of a First Amendment activity. The court stated further that it must be decided whether the First Amendment protects the expression involved.

The jury was instructed that speech which undermined discipline, indicated uncooperative or hostile attitude, jeopardized the close working relationship between the employee and the supervisor, or created disharmony among peers was not protected. But it was found that Daulton's speech caused no disruption.⁸⁶

As outlined in Mt. Healthy, the plaintiff had the burden to prove that the speech activity was a "motivating or substantial factor" in the

⁸³Ibid.

⁸⁴Ibid.

⁸⁵Ibid., p. 490.

⁸⁶Ibid. p. 491.

dismissal. The appellants argued that Daulton did not prove this finding, but the court disagreed.⁸⁷

Would the appellants have reached the same decision even in the absence of the protected conduct? The court used the "but-for" test in Mt. Healthy and disagreed with the appellants who claimed that Daulton would not have been rehired anyway. The court analyzed that Allen noted improvement after the memorandum, and as noted "since the impact of prior incidents had waned, a logical conclusion is that Judy Daulton lost her job solely because of her exercise of free speech."⁸⁸

W.L. Ballard v. Paul Blount, 581 F. Supp. 160 (1983).

Facts. Dr. Ballard was a professor at Georgia State University in the English Department where he taught mainly linguistic courses in a program that he developed in 1969. The linguistics program was dissolved in 1980; Dr. Ballard began teaching freshman-level English classes in 1979. In 1981 the plaintiff was transferred to another department, and he subsequently filed suit, claiming that his rights to the First and Fourteenth Amendments were violated. The defendants contended that there was no violation because Ballard's speech did not pertain to matters of public interest.

Decision. Dr. Ballard claimed that there were four incidents in which his speech rights were violated. First, he wrote a letter

⁸⁷Ibid.

⁸⁸Ibid., p. 492.

objecting to the tenure denial of a college. Secondly, he challenged the method used in assigning him and other professors to teach English classes. Next, he claimed that he was retaliated against for challenging the decision to give him less-than-average salary increases. (He used the proper channel for filing grievances.) Finally, Dr. Ballard challenged an English syllabus that limited teacher discretion in teaching the course. The district court held that the plaintiff's speech in the above areas was not violated because matters of public concern were not involved. He did not have a property or a liberty interest in salary increases.

Discussion. Even though this case involves a tenured teacher, it is significant because it addresses public and private speech. The court stressed that the threshold question in this case was whether the speech involved was public or private in nature. To determine if the speech is concerned with public matters, the court examined the content, form, and context of a given statement to find the reasons why the employee was reprimanded.⁸⁹

Relying on Connick, the court looked at the subject matter of the plaintiff's grievance. His salary was one of personal concern, according to the court. Similarly, the court ruled that the courses taught by the teacher are simply not matters of public concern. The other two areas addressed by the plaintiff--the English syllabus and a colleague's denial of tenure--were not of social or political concern. They,

⁸⁹Ballard v. Blount, p. 162.

concluded the court, were college matters.⁹⁰ The court granted summary judgment for the defendants.

The elements of this case are quite different from Daulton. In Daulton, the plaintiff addressed concern for students; this concern is a matter of public interest.

MeGee v. South Pemiscot School District
R-V, 712 F. 2d 339 (1983).

Facts. MeGee began teaching in 1977 in South Pemiscot and became a track coach in the following year. In March of 1980, the plaintiff was evaluated and given satisfactory marks; he was also recommended for renewal. He was strongly liked by several board members, evidenced by public statements and letters to the newspaper. In 1980, junior high track that MeGee coached was discontinued due to a decision by a divided school board. Parents' petitions to retain the track program were denied, and this became a campaign issue for the school board. A letter to the editor justifying the cancellation of the track program was sent to the only newspaper in town and signed by three board members. They claimed that the cancelled track program was supported by MeGee. Shortly afterwards, the plaintiff wrote a letter to the newspaper denying that he supported the discontinuation of the track program. After the board election, MeGee was denied renewal. The letter was the main reason for denial, and the superintendent subsequently informed other coaches not to talk about school problems in public.

⁹⁰Ibid., p. 164.

Decision. The court in this case believed the jury's decision that McGee was dismissed because of his letter was correct and that the district court's rejection of the jury's verdict and its ordering of a new trial was an abuse of discretion. Therefore, the district court's judgment was reversed and remanded with instructions to make judgment on the decision of the jury.⁹¹

Discussion. In this case, the court looked closely at the content and timing of the letter. The school board claimed that the letter contained errors, but relying on Pickering, the court pointed out that falsehoods required recklessness for a First Amendment claim to be denied.⁹² The court in contrasting the instant case with Connick contended that the questionnaire concerned matters of a private nature. The letter in McGee was written after the issues had been aired publicly.⁹³ Furthermore, the letter was directed toward board members who did not work closely with the plaintiff. Finally, the board members tried to prove that McGee was not a good teacher, but this was not the case. McGee was dismissed in retaliation for writing his letter not for his inadequacy as a teacher.

This case is also interesting because of the board members' retaliation. Prior to the letter, they supported the teacher; after the letter, they accused him of poor teaching. This case is a good

⁹¹ McGee v. South Pemiscot School District, p. 345.

⁹² Ibid., p. 342.

⁹³ Ibid.

example of how a teacher's academic freedom can be threatened and how a court was able to protect it.

The Teacher's Activities Beyond the Classroom

Overview

The courts have recognized that teachers are free to belong to political organizations. In deciding cases of this nature, the courts have used the same criteria as they have in cases involving the teachers' activities on campus.

Shields v. Watrel, 333 F. Supp. 260 (1971).

Facts. Jerry A. Shields was an Assistant Professor of English at Slippery Rock State College. The college reduced the number of openings in its English Department, and basic courses, such as English 101, being taught by Shields, was substantially discontinued because of a policy change. In August 1970, he was rehired for the school year 1970-71, but he was notified that he would not be rehired for the next school year.

The plaintiff charged that he was terminated because of his participation in demonstrations protesting the American involvement in Indochina and the student deaths at Kent State University. He also stated that his termination represented impermissible retribution of conduct protected by the First and Fourteenth Amendments.

Decision. District Judge Teitelbaum held that the evidence presented by the plaintiff failed to establish that his termination violated his rights under the First Amendment. Furthermore, because the

plaintiff was a nontenured assistant professor and because he was given one-year notice, procedural due process did not require an administrative hearing prior to dismissal.

Discussion. The court began its discourse by noting that it had been well established that a public school teacher's employment cannot be terminated because of First Amendment activities. Continuing, the court stated that regardless of tenure status, this protection holds. In his attempt to establish First Amendment claims, the plaintiff stated that two other English professors who had demonstrated with him were also terminated. Shields introduced the fact that only seven of the twenty-eight professors in the English Department have more seniority. However, both of these theories were refuted when the defendants testified that, at the time of termination, they were unaware of the plaintiff's First Amendment activities.

In discussing the plaintiff's right to due process, the court pointed out that circuit courts are at odds about this, and stated that the Fifth and Seventh Circuits have held that procedural due process entitles a nontenured teacher to an administrative hearing. But the court continued by stating that the Supreme Court denied a writ of certiorari from the above circuits.⁹⁴

The court held that Shields, because of his nontenured status, is considered a probationary teacher. In addressing this issue, the

⁹⁴Shields v. Watrel, p. 262.

court made a significant statement:

. . . To infringe upon the discretion of the state higher education officials in deciding which of its nontenured professors or instructors should be retained and which should be released by requiring an administrative hearing for every release would be to unnecessarily burden the administration of the state higher education system.⁹⁵

The court found the balance to weigh in favor of the employee.

McGill v. Board of Regents of the State of Florida, 541 F. 2d 1073 (1976).

This case was cited in Chapter IV and in this chapter under the category of teaching, but this case can also be instructive to teachers who are concerned about activities beyond the campus. The facts for this case can be found on page 153.

Decision. The court of appeals held that the Board of Regents could dismiss the nontenured teacher for any reason except one that violated his First Amendment rights. Professor McGill was given adequate notice of the board meeting. The court held that the plaintiff's dismissal did not violate his First Amendment rights.⁹⁶

Discussion. The court in rendering its decision made it clear that its only concern was to examine the plaintiff's claim to First Amendment violations. It further explained that a nontenured teacher has the burden of proof. It was also made clear, by quoting Bishop v. Wood,⁹⁷ that the federal court was not the proper place to review personnel

⁹⁵Ibid., p. 264.

⁹⁶McGill v. Board of Regents of the State of Florida, pp. 1083-84.

⁹⁷Bishop v. Wood, 96 S. Ct. 2074 (1976).

decisions made daily. The federal court must assume that daily decisions which are incorrect can be handled in other ways. Furthermore, the Due Process clause of the Fourteenth Amendment was not a guarantee against incorrect decisions.⁹⁸ The court reviewed each incident used as evidence against the plaintiff to determine if his free speech was violated. This discussion will not include McGill's activity in the classroom.

The statements by McGill at each of the meetings he attended were found to be either false, misleading, disruptive, or profane.⁹⁹ In a review of the incidents of each meeting, the board made it clear that it was sensitive to a teacher's right to freedom of speech. The board's concern was with the abusive context of the speech, and it was believed that his conduct lacked maturity and responsibility needed as a professor.

Goss v. San Jacinto Junior College,
588 F. 2d 96 (1979).

Facts. Patsy Goss became a history instructor at San Jacinto Junior College in 1966. Her contract was renewed annually for six years. During this time, the plaintiff was involved in the formation of a local chapter of the National Faculty Association and the college division affiliate of the National Education Association; she also endeavored to organize a chapter of the Texas Junior College Teachers Association. Dr. Allen Goss, the plaintiff's husband, was bidding for

⁹⁸McGill V. Board of Regents of the State of Florida, p. 1077.

⁹⁹Ibid., pp. 1082-1085.

a seat on the San Jacinto Junior College Board of Regents. Mrs. Goss helped him in his campaign. President Dr. Spencer informed Mrs. Goss in April 1972 that the board voted to terminate her contract due to declining enrollment and the poor evaluation of her work. A hearing was held at the plaintiff's request, and the decision was affirmed. Mrs. Goss filed a complaint in 1972 pointing to the fact that her non-renewal was in retaliation for her exercise of First Amendment rights.¹⁰⁰

Decision. The United States District Court for the Southern District of Texas held for the plaintiff; the case was appealed. The court of appeals affirmed the lower court's decision which found that the plaintiff had been dismissed for exercising her First Amendment rights.

Discussion. In this case the district court did not have the benefit of Mt. Healthy; however, the questions faced by the jury in the instant case met the requirements of Mt. Healthy. The two questions were as follows: Was Mrs. Goss's contract not renewed because of her political and/or professional activities and was the non-renewal caused by activities other than Mrs. Goss's political and/or professional activities. Drs. Spencer, Barney, and Marcom at different times voiced disapproval of the plaintiff's political activities, and Dr. Spencer stated that he had suggested dismissal as punishment for trying to create adversity with the administration. This was ample evidence to

¹⁰⁰Goss v. San Jacinto Junior College, p. 97.

show that Mrs. Goss's dismissal was not for reasons other than political.¹⁰¹

Landrum v. Kentucky, 578 F. Supp. 241 (1984).

Facts. Dr. Landrum had been employed by Eastern Kentucky University for three nine-month terms as a professor in the College of Business. In his beginning year of 1974, he worked on developing a real estate program for the College of Business. In May of 1975, he applied for its chairmanship and was awarded the chair; however, when he found that an outside expert was to be brought in as professor of real estate, he declined the chairmanship. In the fall of 1975, the curriculum committee to which Landrum belonged was asked to submit its proposal of courses concerning the real estate program as soon as possible so that there would be ample time for its examination before the next semester. The proposal was approved with certain reservations, and Dr. Mullin, Dean of the Department of Business, called a meeting to discuss them. Dr. Landrum resigned from the committee because he had doubts about the program. Other members said that he wanted to block its passage. It was also reported that Landrum openly criticized the management of the real estate program, and he stated that credit was not being given him or the realtor who helped establish the program.

Dr. Mullin evaluated Landrum in December of 1975; he was given high marks in teaching and administrative skills, but low marks in cooperativeness. After this evaluation, Landrum's relationship with the

¹⁰¹ Ibid., p. 99.

dean and the department chairman deteriorated. Landrum became highly critical, and was meeting with other faculty members to criticize the department. On February 6, 1976 the dean met with Landrum and advised him to resign. Landrum responded by writing a letter that described the meeting and aired some of his grievances. Landrum was given a terminal contract.

Decision. The district court held that the First Amendment in the employment context is to be narrowly interpreted to give wider scope to governmental bodies as employers. It also held that the professor's discharge did not violate his First Amendment rights. The court further held that the case would stand for trial as scheduled on the due process issue only.

Discussion. One of the important factors in this case was the court's reliance on the narrow interpretation of Connick, and the court was very precise in its description of the events that led to litigation so that the reader would understand the "flavor" of the situation.

The court pointed out that there was a three-step approach in such cases as this: (1) the plaintiff's conduct must be deserving of constitutional protection, (2) if the conduct was protected, the employee's protected conduct must be a major factor in the employee's decision, and (3) if the employee meets his burden, the burden shifts to the employer to prove that the decision would have been made even in the absence of the protected conduct.

This court recognized that a university must have room for divergent views, and also pointed out that the working relationships between

a university and its faculty may not be as close as the one in Connick, but, the court stressed verbal abuse over a long period of time in this case as being a factor in its decision. Referring to Connick, the court also pointed out the aspects of "constant disruptions due to factionalism and the machinations of troublemakers"¹⁰² as weighing against the plaintiff even though some of his remarks may have related to matters of public concern.

The court further pointed out that the plaintiff relied heavily on Perry, Mt. Healthy, and Givhan, and the court stated that it was difficult to reconcile the cases especially the liberal interpretation given to First Amendment protection in Mt. Healthy and Givhan. In stressing the narrower interpretation of Connick, the court referred to its reasoning in Reichert v. Draud:

The cost to the school system of defending the instant action must have exceeded \$10,000 at a conservative estimate, not counting the cost of the administrators and teachers being absent from school, and other indirect costs. The primary task of administrators and teachers is to teach, not spend their time in court. Conscientious administrators, teachers, and board members can be deterred from public service by the threat of lawsuits Further, the concept of chilling effect can cut two ways, since effective decision-making can easily be inhibited if suits can be too freely brought by disgruntled employees.¹⁰³

This case provides a victory for the state. The court emphasized that employers need room to make decisions without being hampered by employees who feel their freedom of speech has been violated.

¹⁰²Landrum v. Kentucky, p. 246.

¹⁰³Reichert v. Draud, 511 F. Supp. 685-6 (1983).

CHAPTER VI
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Throughout history people have spoken out on issues that were deemed to be of public importance, and academic freedom has been linked to this idea. Based on the research in this study, it is apparent that academic freedom will continue to be of concern to those who are interested in teaching and espousing their ideas.

As noted in Chapter II, academic freedom can be traced to Socrates, but it becomes more easily defined with the development of the university. Academic freedom became more delineated when the American Association of University Professors published its statement of principles. Incorporated into these principles was the idea that the interests of the state must be balanced against the interests of the employee. This concept has been the essential ingredient in this study, and the information gained may assist educators in the community colleges and technical institutes in North Carolina as they make decisions concerning the First Amendment academic freedom rights of teachers.

Summary

Chapter I indicated that academic freedom is a continuing problem, and, as found in Chapter II, teachers and others speak out on issues when they feel them to be unreasonable or unfair. Also indicated in Chapter II was the fact that community colleges and technical institutes are more similar in nature to public high schools than to

universities. This makes them easy targets for conservative groups who might organize to threaten academic freedom. This gives further significance to the study. Also noted in Chapter II was the difficulty in pinpointing the roots of academic freedom in public two-year colleges. There are implications that those two-year institutions which have direct links with a university will tend to embrace those principles accepted by the senior institutions.

In a review of the fifty state statutes it was found that only four require their respective community colleges and technical institutes to address academic freedom. In this study it was found that public two-year institutions in North Carolina address academic freedom even though its state statutes do not. It is further evident that the cases in Chapters IV and V directly address the principles that are contained in these academic freedom statements. Of these participating institutions, only three provide tenure for their faculty.

Several questions were listed in Chapter I to give guidance for educational and legal research. The review of the literature, the academic freedom statements in Chapter III, and the legal research contained in Chapters IV and V provided the answers to these questions. Educators can refer to the answers to these questions when making decisions that affect the academic freedom of their faculty.

Question 1: Who or what are the assailants of academic freedom?

The threats to academic freedom are numerous and, in many cases, difficult to identify. The political, social, and economic atmosphere of the age provides the climate that may or may not lead to suppression of academic freedom. Each age has its own distinct culprit that will

usually emerge in some form of pressure group that will exert force on the educational institution.

Currently, a back-to-basics idea has emerged which has resulted in the formation of numerous nonpublic schools. Too, anti-abortionist groups and anti-pornographic groups have emerged usually in the form of or coupled with religious organizations, and political conservatism has enhanced the activities of these groups. One group, Accuracy in Academia, mentioned in Chapter I, has already begun to make its mark. Moreover, educational funding has been curtailed in many areas, resulting in state government' exerting pressure on local institutions to make decisions concerning numbers. Thus, classes that do not contain a sufficient predetermined number are subject to cancellation.

All of these groups have concerns that are believed to be in the best interests of the institutions. Capable administration can effectively respond to the pressures exerted by these forces. Recognizing these individuals and groups in the first step in engaging public support and protection of academic freedom.

Question 2: What are the legal issues involved in academic freedom for faculty?

- A. Teacher dismissal or non-renewal,
- B. Teacher transfer to other departments or schools,
- C. Salary,
- D. Teaching methods,
- E. Teaching assignments, and
- F. Research.

Question 3: When faced with a problem involving academic freedom, what are the constitutional rights of those involved?

- A. Civil rights including liberty and property interests,
- B. The rights of a citizen to petition, and
- C. First Amendment rights to associate and to freedom of speech which is the major concern of this study.

Question 4: What control can a community college or technical institute exercise over the conduct of faculty?

Question 5: What conduct of faculty may not be limited by a community college or technical institute?

In answering these questions, reliance is placed on the categories and litigation outlined in Chapters III, IV, and V. Academic freedom has been recognized as an inseparable part of the First Amendment, and a major portion of North Carolina community colleges and technical institutes in this study address academic freedom in their policy manuals. Courts have recognized institutional policy, and in the Stachura case, it was pointed out that the teacher's exercise of academic freedom had followed his superior's instructions.

The court's utilization of the balancing test--employer interest in efficiency with the teacher's right to academic freedom--is reflected throughout the academic freedom statements of these North Carolina institutions. In analyzing academic freedom First Amendment cases, courts, when deciding if the faculty member's rights have been violated, will scrutinize other reasons given for dismissal. These reasons or areas include the following: (1) instruction, (2) research, (3) the teacher as a member of a learned profession, and (4) the teacher's activities beyond the classroom.

In the area of teaching, the faculty member does have a right to teach, but the college has the right to choose the courses to be offered. The teacher is obligated to teach the content of the course and should not use the classroom as a forum for indoctrination or criticism of the institution. The teacher may also choose a methodology of instruction that is appropriate for the particular subject being taught.

A teacher may be evaluated by those appointed by the institution, and these evaluations can be used in salary determination and dismissal. If the program in which a faculty member is currently teaching does not contain a sufficient amount of student enrollment as determined by institutional policy, the professor's contract may be shortened, or he/she may be transferred to a different department.

The Dow Chemical case was a victory for educational researchers' academic freedom, and the balance of interests of the state and of the researcher was recognized. Although research is not considered to be part of the employment contract of faculty members in North Carolina community colleges and technical institutes, sixteen of these colleges addressed research, and the literature suggests that policies concerning research can protect instructors who adhere to them.

In analyzing cases involving teachers' actions outside of class and on campus, the courts' decisions have fallen mainly into the area of criticism. If a teacher's criticism is of public concern, the institution cannot prevail in a court case. Topics of public concern include student welfare and institutional policy that becomes of public interest

to the community and the newspapers. If a teacher's critical statements concern private matters such as salary or the types of courses he/she teaches, the decision of the college will generally stand. Disruptive aspects are also considered, and when a faculty member's criticisms are disruptive to the workplace and to the working relationships of the people involved, disciplinary action can occur. Critical remarks that are profane or abusive can also be considered disruptive. If an administrator solicits criticism from the teacher personally or through a questionnaire, he should listen to the opinions of the faculty members.

Disruption, public or private speech, and working relationships are also concerns of institutions when they attempt to regulate the conduct of their faculty beyond the campus. A teacher is a citizen and can make statements as a citizen, but if he/she makes false statements knowingly and recklessly, he/she will be subject to institutional action. A teacher may also engage in political activities and belong to political organizations if these practices do not interfere with his performance in the classroom.

Before deciding to use disciplinary action, institutions should be careful to consider the rights of the teacher. If an institution's action is in retaliation of a teacher's right to freedom of speech, the teacher will prevail.

Question 6. What legal guidelines may be used to assist North Carolina community colleges and technical institutes implement policy?

In answering this question, it is important to draw some general conclusions based upon the review of the literature, the academic statements, and the analysis of court decisions.

Conclusions

The answers to question six provide conclusions for this study, and can give educators in community colleges and technical institutes guidance when establishing policy. These conclusions include:

1. Courts have recognized that teaching is a right and that academic freedom is synonymous with the First Amendment.
2. An institution's right to establish the curriculum has been recognized.
3. A teacher may use his/her own discretion in making assignments or in using a particular instructional method that pertains to the subject being taught.
4. In personnel decisions concerning teacher evaluation and course selection, courts have differed to the institution.
5. Courts have shown a concern for the working relationship of employees.
6. Courts have recognized a teacher's right to speak on matters of public interest if the workplace is not disturbed.
7. Courts are concerned with speech content.
8. The courts have defined salary concerns and teacher schedules as "private speech" which is not protected.

9. The welfare of students is considered to be a subject under "public speech" and is protected.
10. A teacher who adheres to institutional policy concerning research is protected.
11. Nontenured teachers can be dismissed without any given reason; a North Carolina court has said that the community college system in that state has no provision for tenure.
12. Tenured teachers, where tenure has been authorized by law, are to be afforded full protection of due process as outlined in the tenure policy itself.¹
13. Courts have recognized a college's non-renewal policy for nontenured teachers which gives the teacher one year's notice prior to dismissal.
14. In determining a First Amendment violation, courts have established that a nontenured teacher has the burden of proof.
15. Courts will intervene when a teacher's First Amendment rights have been violated regardless of tenure status.

Recommendations

One of the purposes of this study was to provide educational leaders in North Carolina community colleges and technical institutes with information concerning academic freedom to assure that their

¹Paul R. Berrier, "Legal Aspects of Faculty Employment: Tenure Contracts, and Dismissal in the Community Colleges and Technical Institutes of North Carolina (Ed.D. dissertation, University of North Carolina at Greensboro, 1978).

educational decisions would be legally sound. The legal cases and the review of the literature in this study has shown the important of academic freedom in institutions of learning. But this freedom is not absolute, and a proper balance between the interests of the employer and the interests of the teacher should be maintained to prevent low morale and legal action.

Educational leaders in North Carolina public two-year colleges need to realize that tenure is a continual issue, that their teachers, regardless of their tenure status, have the right to be heard, and that First Amendment rights to freedom of speech are protected.

Academic freedom statements are important components of policy manuals and should contain the following areas: (1) research, (2) freedom from outside threats, (3) classroom teaching, and (4) the faculty member as a citizen. A section including the academic responsibility of faculty members should be included, and faculty dismissal policy should be incorporated into the policy manual. Since most of the public two-year colleges in North Carolina do not provide tenure, it would be important to include a section concerning the non-renewal of nontenured faculty. A portion of a policy position published by the Texas College and University System coordinating board that may serve as an example can be found in Appendix E.

Courts have distinguished between public and private speech. A knowledge of these differences would be helpful to administrators and faculty members, and these differences can be delineated in policy manuals.

Finally, Guilford Technical Community College's procedure concerning research serves as an example for those colleges who are interested in this principle of academic freedom:

Academic research conducted by a staff member during the established work schedule must not impose upon teaching, student or institutional obligations.

Such research must be related to the staff member's responsibilities as specified by the job description.

All instructional faculty must maintain the relevance of lecture content and course requirements as specified by the course outline. Supplementary learning resources must be directly related to the course as a whole.²

Recommendations for Further Study

In Chapter II, several implications were found that may warrant further study.

1. Most scholars agree that the political, intellectual, and social climate of an age has a profound effect on academic freedom. An in-depth study of the characteristics of one particular era and its direct impact on academic freedom would be worthwhile.
2. Also in the literature there is evidence that the area of liberal arts has recently been declining due to the emphasis

² Guilford Technical Community College, "Academic Freedom and Responsibility Procedure," Faculty Handbook, p. 1.01.

on technology. What implications are included here? A study involving courses of study and their impact on academic freedom could be noteworthy.

3. In this study it was shown that several important scholars visited Germany around the turn of the century to gain more knowledge concerning German universities. Some of these scholars led in the establishment of public two-year colleges, and their ideas concerning academic freedom may have been used in the first public two-year colleges. A biographical study of one or more of these educational leaders might lead to the exact roots of academic freedom in the community colleges and technical institutes in America.
4. It has been established in this study that the public two-year colleges in North Carolina address academic freedom in their policy manuals. It would be of interest to note the extent to which similar institutions across America address academic freedom.
5. Do faculty members and the administrative staff have different views concerning the definition of academic freedom? A study comparing the two views could add to the literature.
6. Scholars have noted that an atmosphere or a feeling that academic freedom is present is important. A descriptive study that included an attitudinal survey could provide insight into this area.

7. Courts have also been concerned with a faculty member's liberty interests--the stigma that might result in dismissal or non-renewal. A study concerning liberty interests would be significant.
8. Several cases since Brown have dealt with minority groups and discrimination. What impact do these cases have on academic freedom? Further study on these issues would be important.

Concluding Statement

A democracy is different from a totalitarian state, and a person's right to freedom of speech constitutes the basic framework that exemplifies the difference. America's college and university system is the "marketplace" that can allow freedom of expression to exist. If a faculty member's First Amendment academic freedom is violated, this democracy will cease to exist. But the faculty member as a public employee and as a citizen of the United States must realize that with freedom comes responsibility; without this responsibility a democracy will become an anarchy.

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APPENDIX A
STATUTES THAT ADDRESS ACADEMIC FREEDOM

California Administrative Code

51023. Faculty

The governing board of a community college district shall:

(a) Adopt a policy statement on academic freedom, which shall be made available to faculty and filed with the Chancellor.

(b) Adopt procedures which are consistent with the provisions of Sections 53200-53205 of this part, regarding the role of academic senates and faculty councils. Such procedures shall be filed with the Chancellor.

(c) Substantially comply with district adopted policy and procedures adopted pursuant to subsections (a) and (b).

Connecticut General Statutes

10a-81(c) (1)

Subject to statewide policy and guidelines established by the board of governors of higher education, the board of trustees shall:
. . . establish policies which protect academic freedom and the content of courses and degree programs.

New Jersey Statutes Annotated

9:1-5.9 Academic Freedom of Faculty Members

(a) The institution shall promulgate a statement concerning the academic freedom of faculty members which should include statements supporting the following principles:

1. Freedom in research and publication where these activities do not interfere with adequate performance of academic duties;
2. Freedom in the classroom to discuss controversial issues pertinent to the discipline;
3. Retention of all rights as a citizen to free speech and publication. Such rights are not, as such, subject to institutional censorship or discipline.

Texas Codes Annotated

61.057 (e) Promotion of Teaching Excellence

The coordinating Board is charged to ". . . develop and recommend minimum standards for academic freedom, academic responsibility, and tenure for the public colleges and universities in the state. The governing boards of the institutions are individually responsible for the adoption and enforcement of the policies for their institutions.

APPENDIX B
QUESTIONNAIRE

SURRY
COMMUNITY COLLEGE

209

P. O. BOX 304
DOBSON, NORTH CAROLINA 27017
TELEPHONE 386-8121

Dear Sir:

Presently, I am in the dissertation phase of the Doctoral Degree in administration at UNCG. My topic is faculty academic freedom.

I would be interested in knowing if you address academic freedom at your college.

Please answer the following short questionnaire, and return it as soon as possible.

1. Do you address academic freedom at your college? (circle one) yes no

2. Do you have a tenure policy? (circle one) yes no

3. How do you address academic freedom? Check one.

Board or trustee policy

Administrative policy

Faculty Handbook

Other (please specify) _____

4. If you have a policy, please send a copy.

Thank you for your time and consideration.

Sincerely,

Thurman W. Hollar

Thurman Hollar

APPENDIX C
STATEMENTS THAT ADDRESS ACADEMIC FREEDOM IN
NORTH CAROLINA COMMUNITY COLLEGES AND
TECHNICAL INSTITUTES

Southeastern Community College

. . . Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the large community.

Wayne Community College

Instructors have unlimited freedom to interpret their course material within the bounds of sound academic practice.

Nash Technical College

The instructor is entitled to freedom in the classroom in discussing his subject, but he should refrain from introducing into his teaching controversial matter which has no relation to his subject.

Bladen Technical College

Instructors should not deviate from the subject to introduce controversial matter, nor should they use class time to promote political candidates, religious doctrine, or circumvention of the law. Conformation with sound professional ethics is expected of all employees.

Cleveland Technical College

The administration makes no effort to dictate how an instructor is to teach. They do feel that he should teach toward planned objectives and avoid controversial matters which have no relation to the objective.

Beaufort County Community College

The instructor is held responsible for academic competence in the performance of all professional duties. This responsibility in no way restricts the academic freedom of our instructors--academic freedom meaning security to teach and investigate--nor does this responsibility restrict the instructor's freedom to participate as a responsible citizen in community activities.

Mitchell Community College

It is the policy of the college to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the college staff. Members of the faculty are expected to recognize that accuracy to the rightness and dignity befit their association with the college and their position as men and women of learning. They should not represent themselves without authorization as spokesmen for Mitchell.

Faculty and students of the college shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

Wilson County Technical Institute

The Board is dedicated to free rational investigation, instruction, and publication by the faculty of the Institute in the accomplishment of the purpose and objectives of the Institute. Students are assured by the Board of the right of free inquiry and learning at the Institute. The Board shall protect the academic freedom of the Institute from political and other hindrances. The Board expects integrity and responsible judgment in the exercise of academic freedom at the Institute.

Fayetteville Technical Institute

Instructors are entitled to freedom in the classroom in discussing their subjects, but they should be careful not to introduce into their teaching controversial matter which has no relation to the subject.

The instructors are citizens, members of a learned profession, and officers of the institution. When they speak or write as citizens, they should be free from institutional censorship, but their special position in the community imposes special obligations. As persons of learning and as educational officers, they should make every effort to indicate that they are not institutional spokespersons.

Blue Ridge Technical College; Brunswick Technical College; Central Carolina Technical College; College of the Albemarle; Craven Community College; Forsyth Technical College; Haywood Technical Institute; Johnson Technical College; Mayland Technical Institute; Richmond Technical College; Rowan Technical College

The following policy concerning academic freedom and responsibility was enacted by the Board of Trustees of the college and is listed in the Bylaws of the Board of Trustees.

The college is dedicated to the dissemination of knowledge, the engendering and development of skills, competencies and understandings, and to the nurture of those personal and intellectual habits and attitudes which are peculiar to responsible individuals in a free, open, democratic society. The Board of Trustees, therefore, shall guarantee and protect academic freedom in the Institute. The Board shall likewise require the exercise of responsible judgment on the part of personnel of the Institute as they exercise academic freedom in accomplishing the objectives

Piedmont Technical College; Pitt Community College

Each person employed by the College is entitled, as a citizen, to the constitutional freedoms guaranteed to him by the Federal and State Constitutions. Each employee of the College, within lawful limits, is free from institutional censure or discipline; however, it is expected that instructors must exercise all rights and privileges with discretion and with due consideration of the effect upon others. By virtue of the position as an instructor, performing a governmental function, one may have to conform to rules and regulations not applicable to citizens outside the teaching profession. Administrative policy regarding academic freedom will not contain arbitrary or unreasonable provisions and will not be in conflict with constitutional guarantees and statutory provisions.

Lenoir Community College

The Board of Trustees is dedicated to free rational investigation, instruction, and publication by the faculty of the college in the accomplishment of the purpose and objectives of the College. Students are assured by the Board of Trustees of the right of free inquiry and learning in the College. The Board of Trustees shall protect the academic freedom of the College from political and other hinderances.

Carteret Technical College

An instructor should be aware that at all times he is a representative of this College and should remember that the public may judge his institution and his profession by his actions. It should be understood that the instructor will be held responsible for academic efficiency and competence in the performance of his duties at all times. This responsibility in no way restricts the academic freedom of a teacher--academic freedom meaning the right to teach, to investigate, and to publish freely. The Board of Trustees guarantees and protects academic freedom at the College. The Board likewise requires responsible judgment on the part of personnel of College.

Robeson Technical College

As representatives of the College, instructors should exercise sound judgment in the interpretation and presentation of instructional materials.

The instructor will have the freedom to interpret and teach his subject within sound academic principles and practices without undue institutional censorship. However, each instructor should be mindful that controversial materials which have no relation to the course should be avoided. Personal behavior within the classroom and without will reflect upon the college.

Therefore, each instructor has the obligation and responsibility to the College for his/her own professional behavior.

Technical College of Alamance

The instructor is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matters which have no relation to this subject.

The instructor is a citizen, a member of a learned profession, and an officer of the institution. When he speaks or writes as a citizen, he should be free from institutional censorship, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence, he should at all times be accurate, should exercise appropriate restraint, should know respect for the opinion of others, and should make every effort to indicate that he is not a college spokesman.

Pamlico Technical College

Freedom is a necessary element in education. This freedom must be accorded both to the instructor and to the student. Pamlico Technical College makes every effort to see that this situation exists. Hence, no semblance of thought control is imposed upon any faculty member. Each individual is free to investigate, to speculate, to revolutionize, and to express his or her academic convictions. However, it is the policy of the Board that no instructor of the College shall teach or recommend that students disobey the law, whether it be local, county, or federal. As the instructor is free, so is the student. A minimum of rules and regulations exist in relation to his personal conduct. Respecting the student as an individual, the College assures him the right to the self-expression essential in intellectual and educational growth.

Sandhills Community College

The administration of the College recognizes that the most important function of the institution is that of teaching. It is the aim of the administration to maintain an environment which is conducive to good teaching and in which faculty members are able to pursue the search for truth in an atmosphere of academic freedom. It is the responsibility of administration and faculty to guard that freedom against abuse. The very nature of the open door policy of Sandhills demands that academic freedom be exercised in a highly responsible manner, that innovative teaching methodology be developed and used, and that the welfare of the student be foremost.

Surry Community College

Surry Community College assures every faculty member freedom of research and freedom of expression. This assurance is based on the premise that the faculty will live up to the highest standards of scholarship.

Every faculty member is at liberty to expound in teaching any theory or thought provided that it is applicable to the course under study. The college feels that the purposes of a liberal education are attained by creating in students an attitude of open-mindedness and a critical approach to subjects under study.

Each faculty member is free to express himself as a citizen in the community. He should remember, however, that the profession and the college may be judged by his statements. He should, therefore, be mindful that in his extra-mural utterances he has an obligation to indicate that he is not an institutional spokesman.

Davidson County Community College

The purpose of this statement is to promote academic freedom at the college. Institutions of higher education are conducted for the common good which depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the instructor in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time instructor but also to all others who exercise teaching responsibilities.

Southwestern Technical College

Instructors are to educate young people in the democratic tradition, to foster a recognition of individual freedom and social responsibility, to inspire a meaningful awareness of the respect for the Constitution of the United States and of the State of North Carolina, and to instill appreciation of values of individual personality. It is recognized that these democratic values can best be transmitted in an atmosphere which is free from censorship and artificial restraints upon free inquiry and learning and in which academic freedom for instructor and student is encouraged.

Unreasonable limitations shall not be imposed by the Board of Trustees upon the study, investigation, presentation, and interpretation of facts and ideas concerning man, human society, the physical and biological world, and other branches of learning.

Nothing in this statement of principles is intended to protect an incompetent or negligent faculty member or to prevent the institution from making proper efforts to evaluate the work of each instructor.

Central Piedmont Community College

The College supports the right of a staff member to hold a controversial or unpopular belief so long as he/she does not use his/her position as a forum for the inculcation of said belief among students or other persons on the premises or under the auspices of the College.

The College supports the right of a staff member to engage in political or religious activities (or refrain partially or wholly from such participation) as a phase of his/her private life so long as he/she does not attempt to indoctrinate students or does not practice these activities at the College or under the auspices of the College.

The College supports the right of a teacher to present facts about controversial issues to his/her students so long as both sides of the issue are equally considered, and indoctrination is avoided.

Coastal Carolina Community College

The faculty member is entitled to freedom in the classroom in discussing his/her subject, but he/she should not introduce into his/her teaching controversial matters that have no relation to his/her subject.

Each member of the faculty, in writing or speaking, has the same rights and duties as any other citizen. However, Coastal Carolina Community College believes that each of its members, in exercising his/her rights of free speech, should realize that in the minds of many citizens he/she occupies a representative position and that, in consequence, the reputation of the College lies partly in his/her hands. Therefore, he/she at all times should be accurate, should exercise appropriate restraint, should show respect for the opinions of others and for the established policy of the College. He/she should also

properly identify himself/herself to outside audiences as associated with the College and should clearly indicate that he/she is not an institutional spokesman unless specifically commissioned to serve in such a capacity.

Western Piedmont Community College

A faculty member's basic objective should be the acquisition and transmission of knowledge in his or her particular field or fields. The faculty member is free to pursue such activity unhampered by arbitrary limitations on the right of free inquiry into, and discussion of, any and all ideas and concepts relevant to the faculty member's instructional and professional duties. These same rights and privileges also extend to students.

A recognized corollary to this concept is the faculty member's obligation to support the mission and policies of the College, and to refrain from activity which would violate such policies and/or would tend to hamper the achievement of those goals. While the right to disagree with or criticize any policy remains inviolate, faculty members are expected to understand that objectives or policies perceived by them as improper should be altered not by violating such policies, but should be discussed by normal administrative procedures, through appropriate channels, to bring such policies under review.

The College does not impose censorship or arbitrary limitation of the activities of faculty members outside the institution. However, in such private activities, the faculty member must make it clear that he or she is not acting or speaking for, or on behalf of, the College, and that statements made, or positions expounded, are those of the individual faculty member. Faculty members should also be aware that because of their College affiliation, their actions and statements may mistakenly be attributed to the College. They are expected, therefore, to be judicious in their non-college activities and statements, so as to avoid any misrepresentation of the College and its policies.

Halifax Community College

The resolution of the conflict between two rights--the right of the controlling body, and the right of teachers as members of a learned profession to have the right to teach within the limits set by their professional code of ethics and conscience, has probably always existed. The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter, or techniques of instruction, which have no relation to his subject. Teachers must understand that the special nature of the community college student requires special attention to carefully planned presentations, coordination of instructional effort between courses, departments, and divisions. In addition, a special degree of coordination and cooperation between different departments of the college (examples, instructional, student services, etc.) is necessary.

The teacher is a citizen, a member of a learned profession, and a representative of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but a teacher's special position in the community imposes special obligations. The teacher must remember that the public may judge his profession and his institution by his statements and behavior. Therefore, the teacher should always be accurate, should exercise appropriate restraint, and should show respect for the opinion of others, even though it may not be a shared opinion. When the teacher gives personal views, he has the moral obligation to distinguish between personal views and the views of others.

Guilford Technical Community College

Guilford Technical Community College is committed to the objective of educating its students. Since academic freedom is essential to the pursuit of this goal, the College encourages, supports and protects all staff members (teaching and nonteaching) in their academic pursuits--teaching, performing academic research, discussion and publication. Academic freedom carries with its duties correlative with that freedom. Each staff member is free from restraints and penalties that would restrict responsible academic endeavors.

It is the staff member's responsibility to present material objectively. Within a course, discussions and assignments should relate to the material designated by the course outline. Under other conditions, discussion and assignments should be in accordance with the College's mission, philosophy and goals.

Each staff member has the right to perform research and to publish the results of this research. This right is subject to restraint only if it imposes upon the first priority of each member at Guilford Technical Community College, which is to maintain excellence in job performance.

As a citizen of the community, the staff member is free from institutional censorship and discipline in the exercise of the freedom to speak and write as a private citizen. The staff member must recognize that as an employee of Guilford Technical Community College, the public may assume that one speaks for the College; therefore, each employee is responsible for alerting the public that he/she is not serving as a college spokesperson.

Further, Guilford Technical Community College provides books and other learning resources which reflect the needs of its educational programs and includes materials with all points of view for the information, interest and enlightenment of the community the Learning Resource Center serves. Materials are selected using the best knowledge and criteria of the staff members of the College.

Sampson Technical College

Sampson Technical College, as an institution dedicated to free investigation, assures all faculty that their right to free inquiry will be protected. With this freedom, however, a certain amount of responsibility is incumbent upon the individual faculty member. He should recognize the intricate relationship between freedom and responsibility. The instructor as a citizen should be free from institutional discipline, but his special position as a person of learning imposes certain obligations. He should remember that the public may judge his college and his profession by his actions. He should be accurate, restrained, and respectful toward others and should clearly establish that he is not speaking for the college. (In the classroom, he should not introduce into his teaching, controversial material which shows no relation to the subject at hand.) However, the instructor's right to teach his subject will be protected at all times from administrative and political interference (just as the instructor is expected to respect the rights of his students). Each member of the faculty may carry out research which is in keeping with the purpose of the college and which is related to instructional improvement. Any research carried out on institution time for pecuniary return should have the approval of the administration.

The Board of Trustees expects professional integrity and responsible judgment in the exercise of all instructional or administrative duties at Sampson Technical College. No individual shall initiate any action which undermines the proper faculty-student relation or violates the code of ethics.

Wilkes Community College

The Wilkes Community College staff understands the need for academic freedom, for excellence and for innovation. The College has now arrived at that time to pursue excellence and reform . . . and by means of its own choice.

Faculty/staff are responsible for its performance, and it is in its interest, as well as in the interests of the students, that the faculty/staff be held accountable.

The North Carolina System of Community Colleges and Technical Institutes, under the authority of the statutes of the State of North Carolina, the policies and regulations as issued by the State Board of Community Colleges and the authority of member institutions; Boards of Trustees, are operated for the common good, and within reason, the interests of individuals and institutions and subordinate to that purpose. The common good is dependent upon a free and unbiased search for truth and its free expression. Academic freedom in its teaching aspects is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom of learning. The rights and privileges of this freedom carries with it the responsibility and accountability to avoid the lewd and obscene, the libelous, and those words tending to incite a breach of the peace of the community which the institution serves.

The institution is obligated to provide a climate in which the student may arrive at a fair judgment; therefore, the teacher is entitled to freedom of discussion, including the consideration of controversial material, provided that it is pertinent to the philosophy and objectives to the subject taught. However, in presenting such controversial material, the teacher is under obligation to treat various viewpoints with as much truth and objectivity as possible, and to promote the learning process in an atmosphere of free and unhampered inquiry. Moreover, as he enjoys the benefits of a society which permits this free and unhampered inquiry, the teacher must realize that he has a further responsibility not to subvert the security and well-being of this body politic. The teacher, therefore, has an obligation to entertain all relevant questions within the time limits involved, and to ensure students that all honest expressions of opinions about subject matter may be made without fear of reprisal.

Bringing to fruition, effective learning involves selection of materials for study. The objectives of the particular teacher can be achieved only with materials that are pertinent to course philosophy and objectives. Hence, it follows that the teacher should have the privilege of selecting such material, subject to the limitations of relevance, acceptable taste, and the continued well-being of a free society. These matters are difficult to determine. The decision regarding them should be left to that portion of the College community possessing competence in the area to ensure freedom of inquiry and avoidance of undue restriction.

Roanoke-Chowan Technical College

The Board of Trustees of Roanoke-Chowan Technical College has adopted the following principles of academic freedom:

The first obligation of every instructor is to do the best job of teaching of which he is capable. However, he has freedom to engage in research and development; and is encouraged to publish the results of such endeavors, provided these activities do not in any way interfere with his teaching duties.

The instructor is entitled to freedom in the classroom in discussing his subject, but should be careful not to introduce into his teaching controversial matter which has no relation to his subject.

The instructor is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a person of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence, he should at all times be accurate, should exercise restraint, and should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

Gaston College

The Board believes that in a world of rapid change, a College best serves its community, not as a stronghold of rigid tradition, but as an open, intellectual forum where varying shades of opinion may be freely expressed and fairly debated.

The Board believes that a free society functions efficiently only if its citizens have a right to discuss, debate, and agree or disagree constructively.

The Board believes that an educated citizenry, fully aware of all the evidence, is best able to preserve the valuable heritage of American democratic institutions.

The Board believes that the community college has an obligation to its community to promote healthy discussion as an educative force.

The Board seeks to enlist a faculty whose members subscribe to high standards of professional conduct, who are specialists in the various subject matter areas, and who are fair and constructive in presenting ideas and issues to the students.

The Board desires to foster in students a respect for differing points of view, the ability to discriminate between fact and fiction, and the capacity to think intelligently.

The Board encourages the College to invite visits from outside speakers representing diverse points of view. In return, it reserves the right to impose specific conditions insuring that opportunity be provided for students to hear opposing sides of a question.

The instructor has a primary role in the implementation of the College's educational philosophy. In such a role, he/she occupies a position of trust in relation to both his/her students and the community, and his/her freedom to teach must be exercised responsibly. The role of the instructor includes: (a) The presentation of issues openly with fairness and clarity. (b) The discussion of arguments from various points of view, avoiding the imposing of his/her own opinions by the pressure of his/her authority in the classroom. (c) Encouraging students to analyze issues impersonally, to think critically and to draw independent conclusions. (d) The duty to present in the classroom issues related to the course of study and to the general educational programs of the College. (3) the awareness that, although he/she speaks outside the classroom as a private citizen, the public may judge his/her profession and the institution by his/her speech. Accordingly, except on those occasions when the instructor has been specifically designated as a representative of the College he/she should make every effort to indicate that he/she is not an institutional spokesperson when he/she publicly presents a particular point of view.

Rockingham Community College

Faculty, students, administrators, staff, and trustees are all members of Rockingham Community College and have an obligation to fulfill

the responsibilities incumbent upon all citizens, as well as the responsibilities of their particular roles within the College Community. All members share the obligation to respect: (1) The fundamental rights of others as citizens. (2) The rights of others based upon the nature of the educational process. (3) The rights of the Institution. (4) The rights of members to fair and equitable procedures for establishing and disseminating campus regulations and for determining when and upon whom penalties for violations of campus regulations should be imposed.

Members of the College Community enjoy the same basic rights and are bound by the same responsibilities to respect the rights of others, as are all citizens.

Among the basic rights are freedom of speech; freedom of press; freedom of peaceful assembly and association; freedom of political beliefs; and freedom from force and violence, threats of force and violence, and personal abuse.

Freedom of press implies the right to freedom from censorship in campus newspapers and other campus media, and the concomitant obligation to adhere to the canons of responsible journalism. It should be made clear in writings or broadcasts that editorial opinions are those of the person or persons who shall be identified as assuming responsibility for the statement and are not necessarily those of the Institution or its members.

Obligation not to infringe upon the right of all members of the College Community to privacy in assigned facilities and in keeping of personal papers, confidential records and effects, subject only to the general laws and to conditions voluntarily entered into.

Obligation to ensure that College records on its members contain only information which is reasonably related to the employment or educational purposes or safety of the College, subject to the general law. Each member of the College Community has the right of access to College records pertaining to his or her.

Obligation not to interfere with any member's freedom to hear and to study unpopular and controversial views on intellectual and public issues.

Right to identify oneself as a member of the College Community and a concurrent obligation not to appear to speak or act on behalf of the Institution without authorization.

Right to hold public meetings in which members participate, to post notices, and to engage in peaceful, orderly demonstrations. Reasonable and impartially applied rules designed to reflect the educational purposes of the Institution and to protect the safety of the campus shall be established regulating times, place, and manner of such activities and allocating the use of facilities.

Right to recourse if another member of the College Community is negligent or irresponsible in performance of his or her responsibilities or if another member of the College Community represents the work of others as his or her own.

Right to be heard and considered at appropriate levels of the decision-making process and basic policy matters of direct concern.

Obligation to maintain an environment conducive to respect for the rights of others and fulfillment of academic responsibilities.

Obligation to protect the integrity of the academic process from external and internal attacks and to prevent the political or financial exploitation of the campus by any individual or group.

The College is not a sanctuary from the general law.

The College does not stand in loco parentis for its members.

So long as it does not violate the law or agreements voluntarily entered into, and does not interfere with the rights of others or the educational process, each member of the College Community has the right to organize his or her own personal life and behavior.

Admission to, employment by, and promotion within the college shall accord with the provisions against discrimination in the general law.

Members of the College Community have other responsibilities and rights based upon the nature of the educational process and the requirements of the search for truth and its free presentation. These rights and responsibilities include: (a) Obligation to respect the freedom to teach, to learn, and to conduct research and publish findings in the spirit of free inquiry.

Institutional censorship and individual or group intolerance of the opinions of others are inconsistent with this freedom.

Freedom to teach and to learn implies that the instructor has the right to determine the specific content of his or her course, within the established course description and objectives, and the responsibility not to depart significantly from his or her area of competence or to divert significant time to material extraneous to the subject matter of the course.

Freedom to learn implies the right to consider issues from many points of view without undue persuasion or coercion to a particular point of view by instructors or fellow students. (b) Obligation not to interfere with the freedom of members of the College Community to pursue normal academic and administrative activities.

Wake Technical College

The Board of Trustees has adopted no policy or official statement on academic freedom. However, the Bylaws of the Board provide that all employees, of all classifications in the College, shall be of such character, habits, philosophy and competence that their influence upon the students, each other, and upon the various publics of the College is wholesome and constructive. Through the application of these criteria an official policy on academic freedom has been unnecessary.

Wake Technical College recognizes the intricate relationship between freedom and responsibility. The employees are citizens as well as representatives of the College. When they act as citizens, they should be free from College discipline, but their special positions as persons of learning imposes special obligations. All employees should

remember that the public may judge the College and their profession by their actions. They should be accurate, restrained, and respectful towards others and should clearly establish that they are not speaking for the College. In the classroom, faculty should not introduce into their teaching controversial material which shows no relation to the subject at hand. However, the rights of the faculty to teach their subject will be protected at all times from administrative and political interference. Just as employees are expected to respect the students' rights, so the College respects the rights of employees, as well as their authority and expertise. Each member of the faculty may carry out research which is in keeping with the purpose of the College and which is related to instructional improvement. Any research carried out on College time for pecuniary return should have the approval of the administration.

APPENDIX D
POLICIES CONCERNING TENURE

Beaufort County Community College

Beaufort County Community College has no tenure system for its employees.

Craven Community College

Tenure policy is that the college has no tenure as per General Statutes of North Carolina.

Forsyth Technical College

The general statutes of North Carolina do not provide for tenure for faculty members of Community Colleges and Technical Colleges. Neither the North Carolina Community College System nor our College recognize tenure. Unless otherwise stated in writing, any employment contract is for no longer than a one year period.

Gaston College

Faculty and staff members who have been employed for five (5) consecutive calendar or academic years may, upon signing a sixth contract, expect employment for succeeding years. Such expectation of continuing employment is subject to availability of funds, college needs, employee performance, and the provisions of this manual.

Lenoir Community College

The following comprise the General Faculty: President, Deans, Directors, Librarians, Business Manager, Learning Laboratory Coordinators, Counselors and full-time teaching members.

Continuing contract. All beginning full-time faculty will be given a contract (not to exceed one year) of employment. Performance will be evaluated during the initial employment period and, if performance is completely satisfactory and an appropriate job is available, the employee may be offered annual contracts for up to two additional years. If reelected following a period of three years' service, a general faculty member shall be placed under a continuing contract for subsequent years. A general faculty member serving under a continuing contract is deemed to be reelected by the Board of Trustees upon the recommendation of the President unless notified to the contrary by the President by registered letter mailed to his college listed place of residence not later than April 15.

Tenure shall be defined as that status granted to a general faculty member to protect against dismissal except for serious misconduct, incompetence, or financial exigency. Tenure shall not be construed as a guarantee of permanent employment but only as a protection against arbitrary and capricious dismissal.

Appointment. Tenure may be granted a general faculty member by the Board of Trustees following three years of continuous service at Lenoir Community College upon reelection for a fourth year and recommendation for tenure by the President and approval by the board. An individual having tenure at another institution and newly elected to the faculty of Lenoir Community College may be granted immediate tenure by the Board of Trustees upon the recommendation of the President. Members of the general faculty attaining tenure must hold the master's degree or provide evidence of substantial annual progress toward a master's degree or provide evidence of annual and substantial improvement of knowledge and skills in the case of persons not holding master's degrees but who are exhibiting special competencies in their teaching areas.

Exceptions. General faculty members employed on a temporary (provisional) appointment for a limited time for the staffing of special projects are not eligible for continuing contracts or tenure.

Retirement. Tenure is abrogated at the end of the school year in which the faculty member reaches retirement age of 65. The faculty member may continue his employment without tenure on invitation of the President and the Board of Trustees. Such continued employment after age 65 will be subject to a satisfactory agreement between the employee and the college administration and may be on a reduced load basis or under other pro rata arrangement. Employees continued beyond age 65 will be required to furnish a physician's statement attesting to their physical status.

Limitations. The Attorney General of North Carolina has questioned the authority of community college boards of trustees to award tenure. Accordingly, the policies and procedures outlined within this section of the policies are subject to any limitations and restrictions imposed by state or other higher authorities.

Rowan Rechnical College

Whereas, the Community College System of North Carolina operates under a no tenure policy,

Whereas, Rowan Technical Institute as a unit of the state system, has not adopted a policy providing tenure,

Be it resolved therefore, that the policy of the Board of Trustees of Rowan Technical Institute in connection with personnel employment shall be one which does not provide tenure.

Surry Community College

The granting or renewal of teaching appointments without tenure is at the discretion of the trustees with the advice of the President; however, appointments will be offered or notice to the contrary will be given to instructors without tenure by March 31.

Appointments with tenure. The instructor will have 25 days in which to accept this appointment. All appointments are subject to the availability of funds. Should a position held by a tenured instructor be discontinued for any reason and then reactivated, the instructor would have the right to return to this position for a period of two years after discontinuation.

Upon the recommendation of the President, the trustees may grant tenure to any full-time instructor. If tenure has not been granted by the end of five consecutive years as a full-time instructor, the appointment will not be renewed.

Tenure may be revoked by the trustees for any of the following reasons only: (1) incompetence, (2) misconduct, (3) nonperformance of duties, and (4) discontinuation of position for which instructor is qualified.

Tenure is terminated by: (1) attainment of age 66, and (2) failure to accept the appointment offered.

The trustees may continue tenure for up to two years for instructors filling administrative duties, on leaves of absence, or in military service.

Before revocation of tenure becomes final, the instructor will be given the reason in writing, and he has the right to have his case reviewed by an Appeals Board composed of three trustees appointed by the chairman and four instructors elected by the faculty. After hearing the evidence presented by the instructor and any other evidence that it may deem pertinent, the Appeals Board shall promptly submit its recommendation in writing to the trustees with a copy to the instructor.

The decision of the trustees shall be based on the record of the previous hearing, accompanied by argument by the principals at the hearing or their representatives. The decision of the Appeals Board shall be sustained or the Appeals Board shall reconsider, taking account of the stated objections and receiving new evidence if necessary. It shall frame its decision and communicate it in the same manner as before. Only after study of the Appeals Board's reconsideration, shall the trustees make a final decision overruling the Appeals Board.

APPENDIX E
POLICY POSITION PUBLISHED BY THE TEXAS COLLEGE
AND UNIVERSITY SYSTEM COORDINATING BOARD

Institutions of higher education are conducted for the common good. The common good depends upon an uninhibited search for truth and its open expression. Hence, it is essential that each faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish individual conclusions concerning the significance of evidence that he/she considers relevant. Each faculty member must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ, may threaten his/her professional career or the material benefits accruing from it.

Each faculty member is entitled to full freedom in the classroom in discussing the subject which he/she teaches but is expected not to introduce into his/her teachings controversial matters which have no relation to the classroom subject. Each faculty member also is a citizen of the nation, state and community; and when speaking, writing or acting as such, must be free from institutional censorship or discipline, subject to academic responsibility as hereinafter set out, and the faculty member should make it clear that he/she is not speaking for the institution.

The concept of academic freedom for faculty must be accompanied by an equally demanding concept of academic responsibility of faculty. A faculty member has a responsibility to the institution, his/her profession or students, and society at large. The rights and privileges of faculty members extended by society and protected by governing boards and administrators through written policies and procedures on academic freedom and tenure, and as further protected by the courts, require reciprocally the assumption of certain responsibilities by faculty members. Some of those are: (1) The fundamental responsibilities of a faculty member as a teacher and scholar include maintenance of competence in his/her field of specialization and the exhibition of such professional competence in the classroom, studio or laboratory and in the public arena by such activities as discussion, lectures, consulting, publications or participation in professional organizations and meetings. (2) The exercise of professional integrity by a faculty member includes recognition that the public will judge his or her profession and institution by his/her statements. Therefore, the faculty member should strive to be accurate, to exercise appropriate restraint, to be willing to listen to and show respect to others expressing different opinions, and to avoid creating the impression that the faculty member speaks or acts for his or her college or university when speaking or acting as a private person. (3) The constitutionally protected right of the faculty member, as a citizen, to freedom of expression must be balanced with the interest of the state, as an employer, in promoting the

efficiency of the educational services it performs through its employees. A faculty member's comments are protected even though they may be highly critical in tone or content, or erroneous, but such statements are not protected free speech if they either substantially impede the faculty member's performance of his/her daily duties or materially and substantially interfere with the regular operation of the institution, or if they are part of a continuing pattern of expression of such nature as to destroy the harmony and morale of a division, department or college. False statements made with knowledge of their falsity or in reckless disregard of the truth are not entitled to constitutional protection, and public statements may be so without foundation as to call into question the fitness of the faculty member to perform his/her professional duties.

(4) A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his/her subject field. (5) A faculty member should be professional in his/her conduct in the classroom and in his/her relationships with students. The faculty member should maintain respect for the student and for the student's posture as a learner. The faculty member should make himself or herself appropriately available to the student for consultation on course work.

(6) A faculty member has the responsibility to provide timely and adequate notice of his or her intention to interrupt or terminate institutional services.

Tenure means the entitlement of a faculty member to continue in his/her academic position unless dismissed for good cause. A specific system of faculty tenure should undergird the integrity of each academic institution. In Texas public colleges and universities, this tenure system should have the following components: (1) Beginning with appointment to the rank of full-time instructor or higher rank, the probationary period for a faculty member shall not exceed seven years. This period may include appropriate full-time service in all institutions of higher education. This is subject to the provision that when, after a term of probationary service in one or more institutions, a faculty member is employed by another institution, it may be agreed in writing that his/her new appointment is for a probationary period of fewer than seven years (even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years). Tenure is obtained only by the affirmative action of the institution. At the conclusion of the probationary period, unless appropriately informed otherwise, the faculty member shall not obtain tenure. Prior to the beginning of the last year of the probationary period, the faculty member who has not received notice of a decision relating to receipt of tenure should make a written request

for such a decision from the administration, and the administration should promptly respond. If the decision is not to award tenure, the faculty member is entitled to serve for a full academic year of twelve months following the term or semester in which the notice is received. (2) Notice of non-reappointment, or of intention not to reappoint a faculty member, should be given in writing in accord with the following standards: (a) not later than March 1 of the first academic year of probationary service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (b) not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (c) at least twelve months before the expiration of a probationary appointment after two or more years in the institution. (3) Good cause for dismissal of a faculty member with tenure may include, but shall not be limited to, the following: (a) professional incompetence; (b) continuing or repeated substantial neglect of professional responsibilities; (c) moral turpitude adversely affecting the performance of duties or the meeting of responsibilities to the institution, or to students or associates; (d) mental or physical disablement of a continuing nature adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the institution, or to students or associates; (3) unprofessional conduct adversely affecting to a material and substantial degree the performance of duties or the meeting of responsibilities to the institution, or to students or associates; (f) bona fide financial exigency or the phasing out of institutional programs requiring reduction of faculty. When faculty dismissals are contemplated on grounds of financial exigency or program termination or reduction, there should be early, careful, and meaningful sharing of information and views with appropriate faculty representatives on the emergency of the need to terminate programs. Recommendations from such faculty representatives should be sought on alternatives available to the institution to ensure continuation of a strong academic program and to minimize the losses sustained by affected students and faculty members. (4) A faculty member with tenure shall not be dismissed until he/she has received reasonable notice of the cause for dismissal and only after an opportunity for a hearing which shall meet the established procedures of due process and in which the institution shall bear the burden of proving by a preponderance of the evidence good cause for dismissal

Institutions should establish proper procedures to apply to cases of faculty dismissal. These dismissal procedures

apply to a faculty member who has tenure or whose term appointment has not expired at the time of the dismissal. It is recommended that in the Texas public college and university system such procedures have the following components: (1) A bona fide effort by appropriate administrative officers and/or other persons or committees should be made to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion or confidential mediation. (2) Should these efforts fail to achieve a satisfactory resolution and should the difficulties be considered by the administration to be serious enough to warrant dismissal, the due process procedures should be instituted. The burden of proof is on the institution to establish by a preponderance of the evidence the existence of good cause.

If an institution establishes procedures to apply in cases of non-renewal of nontenured faculty members at the end of any term contract (other than a one-year only contract which has not been renewed), such procedures may have the following components: (1) Although an institution is not legally required to give a nontenured faculty member a reason for a decision not to make a reappointment for another contract term, or to provide a hearing, each faculty member is entitled under Texas law to see all of his/her personnel files and to obtain a copy of the information in these files at the expense of the person requesting it. (2) A decision not to reappoint a nontenured faculty member cannot be made in violation of the academic freedom of the individual or for a constitutionally impermissible reason, e.g., based on the race, creed, color or sex of the individual or made in retaliation for the faculty member's exercise of protected First Amendment rights. If a nontenured faculty member makes allegations which if proved would establish a violation of academic freedom or the existence of a constitutionally impermissible reason for the decision not to reappoint, the faculty member is entitled to the due process procedures provided in the following subsections to determine the validity of his/her allegations. These allegations should be sent to the chief executive officer of the institution by the faculty member within a reasonable time after receipt of notice of the decision not to reappoint. (3) The faculty member may request, and is entitled to, a preliminary consideration by a faculty committee of his or her allegations of a violation of academic freedom or the existence of a constitutionally impermissible reason. If the faculty committee determines after appropriate inquiry that there is no factual basis for the allegations of the faculty member, the matter should not be given further consideration and the decision not to reappoint should stand. (4) If after appropriate inquiry the faculty committee determines that there is some factual basis to support the allegations of the faculty member, the matter should be referred to a

hearing committee. In the ensuing hearing, the burden of proving the facts constituting a violation of academic freedom or a constitutionally impermissible reason shall rest with the faculty member. If the faculty member does establish by a preponderance of the evidence such a legally impermissible basis for the decision not to reappoint, the faculty member is entitled to reappointment unless the institution can meet the burden of proof of establishing the existence of other valid reasons for the decision not to reappoint.¹

Due process as set forth in this statement embodies a course of professional proceedings in line with rules and principles generally recognized in the academic community. Among these is the right of a tenured faculty member and a nontenured faculty member during the term of his or her contract to a fair hearing before a faculty hearing committee of his/her peers. The procedure which follows illustrates how the principles of due process can be adapted to individual institutions. (a) Personal conference. When reason arises to question the fitness of a faculty member, the appropriate administrative officers should discuss the matter with him/her in personal conference. The matter may be terminated by mutual consent at this point, but if an adjustment does not result, the matter should be taken up by an advisory committee. (b) Advisory committee. The advisory committee should be a standing committee elected by the faculty or an appropriate representative faculty body, appointed by the President of the Faculty Senate or other elected faculty representative body, or appointed by the chief executive officer of the institution from a faculty elected panel. The committee's proceedings may be informal and flexible. It should make such inquiry as it deems necessary, offer confidential advice to the faculty member and the administration and attempt to effect an adjustment. If none is effected, the advisory committee may recommend a hearing or other appropriate action. The chief executive officer may initiate a hearing whether or not one is recommended by the advisory committee. (c) Hearing committee. The hearing committee should be an elected standing committee, or a standing or ad hoc committee appointed as noted in (b) above, not overlapping in membership with the advisory committee. The hearing committee should include only teaching faculty members, and in institutions where there is tenure the committee members should have tenure status. Each member should be subject to challenge for cause. If a hearing is to be initiated, the chief executive officer shall send a letter to the faculty member stating with reasonable certainty

¹Coordinating Board, Texas College and University System, Academic Freedom, Tenure, and Responsibility (Austin, Texas: Author, 1979), pp. 3-10.

the charges constituting good cause for dismissal. Such letter shall state that should the faculty member so request, the hearing committee will conduct a hearing to determine whether the faculty member should be removed from his/her faculty position. The chief executive officer's letter should provide full information as to the procedural rights which will be accorded the faculty member in the hearing. If the faculty member desires a hearing rather than resigning or accepting termination, he/she should write to the institution's chief executive officer within a reasonable period, such as thirty days, indicating that decision and responding to the statements given as grounds for dismissal. This statement should be referred to the hearing committee for initiation of the hearing procedure. The hearing committee shall then set a time for the hearing which would allow the faculty member a reasonable time in which to prepare a defense to the charges made and shall notify the faculty member of the time and place. This notification shall include the names of the witnesses against the faculty member and the nature of the testimony of each. The testimony of a witness may not be used unless that witness is present at the hearing subject to cross-examination. The faculty member has the right to be represented by an advisor of his/her own choosing, to present witnesses in his/her own behalf, to question all witnesses, to have a full stenographic record or electronic recording of the proceedings, as determined by the hearing committee, and to be provided access to the record of the proceedings with the right to copy such record. Suspension of the faculty member from his/her usual duties during these proceedings is justified only if the welfare of the faculty member or that of students, colleagues or other institutional employees is threatened by his/her continuance, or, if the continued presence of the faculty member would be materially and substantially disruptive of the regular operations of the institution. Any such suspension should be with pay and with appropriate provisions for useful duties whenever possible. The hearing committee should allow oral arguments and written briefs by the chief executive officer or designated representative, and by the faculty member or designated representative. The committee should make explicit findings with respect to each of the grounds for removal presented and should recommend whether or not, in its judgment, there is good cause for dismissal. The committee's recommendation for dismissal or for such lesser action as it deems appropriate under the circumstances should be conveyed in writing to the chief executive officer and to the faculty member. (d) Governing board. If the faculty member's appointment is proposed to be terminated by the chief executive officer, such officer should transmit the full report of the hearing committee and his/her recommendation to the institution's

governing board. If the recommendation of the chief executive officer for termination conflicts with the recommendation of the hearing committee, the governing board should review the case based on the record of the hearing, with opportunity for argument by the principals or their representatives. If the recommendations of the chief executive officer and the hearing committee are in accord, the board may choose to limit such review as it may make to a review of the record of the hearing. The decision of the hearing committee should either be sustained or the proceedings be returned to the chief executive officer and to the committee with objections specified. In such case, the committee should promptly reconsider, taking into account the stated objections and receiving new evidence if directed to do so by the board. It should frame its reconsidered recommendation and communicate it in the same manner as before. After review of the hearing committee's reconsideration the governing board should render its own final written decision with a copy provided to each of the principals.

(e) The hearing. The hearing shall be closed unless the affected faculty member requests it to be open.²

²Ibid., pp. 12-16.