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The North Carolina Speaker Ban Law episode: Its history and implications for higher education

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The University of North Carolina at Greensboro, 1988

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THE NORTH CAROLINA SPEAKER BAN LAW EPISODE: ITS HISTORY AND IMPLICATIONS FOR HIGHER EDUCATION

by

William Albert Stewart III

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

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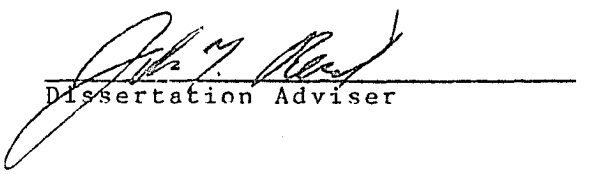

Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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The primary purpose of this study was to examine in detail the North Carolina Speaker Ban Law, from its enactment until its being declared unconstitutional. A secondary purpose was to determine the long term implications of the law.

A combination of historical and oral history methods was used. Primary sources were utilized extensively, and personal interviews were conducted with key participants connected with the speaker ban episode.

The following major conclusions are evident in this study:

1. The North Carolina Speaker Ban Law was passed because of the effects of the residue of communism and the cold war, the Civil Rights Movement, and the belief of many North Carolinians that the University of North Carolina at Chapel Hill was a hotbed of liberalism.
2. Consolidated University of North Carolina President William Friday and the student plaintiffs in Dickson v. Sitterson (1968) were mainly responsible for the law's amendment and eventual repeal.
3. The law lowered faculty morale and threatened to damage the university's ability to retain and attract the best faculty members.

There are three major, long-term implications which can be drawn from this study. First, the Speaker Ban Law's being declared unconstitutional was a significant victory for academic freedom in higher education. Second, had the law stayed in effect, there would have been great damage to the reputation of the Consolidated University of North Carolina. Third, the law would have had a considerable, adverse impact on the recruitment of industry and businesses to the state.

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THE NORTH CAROLINA SPEAKER BAN LAW EPISODE: ITS HISTORY AND IMPLICATIONS FOR HIGHER EDUCATION

INTRODUCTION

Purpose and Significance of the Study

The primary purpose of this study is to examine in detail the North Carolina Speaker Ban Law, from its enactment until its being declared unconstitutional. The study of the law is significant because it is a landmark case in academic freedom which has enduring implications for higher education. A secondary purpose therefore, is to determine the long-term implications of the Speaker Ban Law episode. The examination of the law and the controversy surrounding the law will be based, to a large extent, on the testimony of major participants, in particular Consolidated University of North Carolina President William C. Friday. By way of background, I will attempt to present the political and social context existing during the period that the law was passed, debated, amended, and eventually ruled unconstitutional.

Definitions

Academic Freedom: The rights of the professor, teacher, or speaker and the rights of the learner or

listener to pursue knowledge without external restrictions that would inhibit free inquiry (Dejnozka and Kapel, 1982, p. 4).

Civil Rights/Civil Rights Movement: Those rights guaranteed to an individual as a member of society; most often applied to the movement for black equality (Safire, 1978, p. 121).

Communism/Communist: A social and political doctrine or movement based upon revolutionary Marxian socialism that interprets history as a relentless class war eventually to result everywhere in the victory of the proletariat and the social ownership of the means of production with relative social and economic equality for all and ultimately to lead to a classless society. Also, it refers to a strong left wing activity or inclination that is subversive or revolutionary (Gove, Ed., 1971, p. 460).

McCarthyism: A habit of branding all except extreme right wing ideas as communistic, of indiscriminately leveling false charges of treason, of making new charges

> instead of furnishing facts, and of attacking the motives of those who questioned the authenticity of statements. The term arose from the specious charges of Senator Joseph R. McCarthy of Wisconsin, who undermined public confidence in many public officials and private persons until finally censored by the Senate, Dec. 2, 1954 (Smith and Zurcher, 1968, p. 228).

Subject and Context

On June 26, 1963, the North Carolina General Assembly enacted House Bill 1395, the North Carolina Speaker Ban Law. It prohibited known members of the Communist Party or those known to have pleaded the Fifth Amendment to the United States Constitution in loyalty investigations from speaking on campuses of North Carolina tax supported institutions of higher education. Many North Carolinians, including Consolidated University of North Carolina President William C. Friday, found the speaker ban law repugnant because it interfered with the free expression of ideas. President Friday, himself, spent six years trying to have the law amended or repealed (Friends of the University, 1965, p. 1).

Although rooted in the state's and country's history, the speaker ban controversy in fact began on June 25, the last scheduled day of the 1963 session of the North Carolina

General Assembly. Representative Phil Godwin of Gates County introduced House Bill 1395, the Speaker Ban Law, under suspension of the rules. House Speaker Clifton Blue declared the bill passed by a voice vote, and he then sent the bill to the senate. There, President Clarence Stone, in a similar procedure, suspended the rules, had a voice vote, and declared the bill passed. Those in the senate galleries said the voice vote sounded close, but President Stone did not allow a hand vote, although several senators protested. In remembering the events in both the house and senate, witnesses suggest that the process was clearly politically motivated, although there is no documentation of this belief (Bondurant et al., 1967, p. 228).

The next day, Senator Luther Hamilton of Carteret County attempted to have the resolution recalled; however, the motion to recall was defeated by a roll call vote of twenty-five to nineteen. The bill became law, even though Governor Terry Sanford was strongly opposed to it because in North Carolina the governor does not have a veto (Bondurant et al., 1967, p. 228).

Representative Godwin said that he introduced the bill in the interest of national security (Bondurant et al., 1967, p. 229). If, indeed, the motivation for this bill was national security, one wonders what the atmosphere in the country was that would generate such legislation. Further, it is important to understand how the general atmosphere in

the country and such specific pieces of legislation as the Speaker Ban Law would affect higher education.

In 1959, five years after the United States Senate censured Joseph McCarthy, the Supreme Court, in Barenblatt v. United States of America cited the "Cold War" as an excuse for depriving American communists and suspected communists of their constitutional rights. In such decisions, the court echoed the anti-communist fervor that had consumed America in the late 1940's and 1950's. Most Americans understandably viewed the Communist Party as a serious threat to the security of the United States. The communist coup in Czechoslovakia in 1948 and the Berlin Blockade a few months later touched off a war scare. The next year, the Soviets detonated an atomic bomb, and China fell to the communists (Schrecker, 1986, p. 3). To many Americans the "Cold War" was as real as the Korean War.

At home, America was being rocked by change. In Brown v. Topeka Board of Education (1954), the Supreme Court ruled that separate educational facilities were inherently unequal and that racial segregation in public schools violated the "due process" clause of the Fourteenth Amendment (Karier, 1975, p. 347). Black Americans, tired of second class citizenship and buoyed by the social and political consciousness of many Americans, expanded the civil rights movement. Black leaders, such as the Reverend Martin Luther King, adopted and used to advantage Ghandi's strategy of

passive resistance. In this context of a perceived communist threat and the perceived disruption that would follow advances in civil rights, the North Carolina Speaker Ban Law was enacted. However, it is important to understand that the Speaker Ban Law had clear antecedents in academe.

One educator who led the battle to define the necessary limits of academic freedom was Sidney Hook. Hook studied in Berlin, Munich, and Moscow after receiving his doctorate at the University of Chicago. He joined the Communist Party in 1932 but was expelled after attempting to reconcile the work of John Dewey and Karl Marx. Hook subsequently became a leading anti-communist. In 1939, he, John Dewey, and George S. Counts formed the Committee For Cultural Freedom. The committee became more effective than the reactionary right in opposition to communist involvement in the schools. Hook believed that the threat of a communist conspiracy could be dealt with by exposing its members. He argued that communists behave dogmatically in the classroom and, therefore, violate the basic canon of academic freedom, the disinterested pursuit of truth. The academician Hook, then, had established the logic of guilt by association long before Joseph McCarthy (Karier, 1975, p. 80).

By 1950, Hook and other educators had convinced the National Education Association, the American Federation of Teachers, and the Association of American University Professors that membership in the Communist Party was enough

evidence for one to be dismissed from a teaching position. Professor Hook believed that a communist was not a free, objective scholar and thus should not be allowed to teach (Karier, 1975, p. 82).

Alexander Meiklejohn, a former president of Amherst, took issue with Hook's arguments. Meiklejohn believed that a man was innocent until proven guilty. He believed that only a lack of faith in democracy and freedom led men to advocate suppression of freedom in the name of freedom (Karier, 1975, p. 82).

The denial of students and faculty members of the opportunity to hear certain outside speakers was not itself new when the North Carolina Speaker Ban Law was enacted. In the 1940's, the writer Howard Fast was denied permission to speak at New York University because he had a contempt of Congress charge pending against him. Ohio State University, in 1951, denied speaking permission to a Quaker pacifist. The University of Washington refused to allow Robert Oppenheimer, the father of the atomic bomb, to address a conference of scientists on its campus (Karier, 1975, p. 2). In 1954, Paul Sweezy refused to answer questions about a speech he made to a humanities class at the University of New Hampshire on the grounds that the questions violated academic freedom and First Amendment privileges. The New Hampshire Courts ruled against Sweezy, but the United States Supreme Court reversed the decision. Chief Justice Earl

Warren said the whole process constituted an abridgement of Sweezy's liberties. He added that teachers and students should remain free to inquire, study, evaluate, and gain new understanding, or our civilization would stagnate and die (Karier, 1975, p. 12).

The North Carolina Legislature for over twenty years had been concerned with those who spoke on state university campuses. In 1941, the North Carolina legislature passed a law prohibiting any public building supported by state funds from being used by persons supporting or teaching a doctrine advocating the overthrow of Federal or North Carolina governments. The 1963 speaker ban law was consistent with the 1941 statute in prohibiting speeches by communists, regardless of the subject matter of the planned speech. The prohibition included all known members of the Communist Party, as well as those who had pleaded the Fifth Amendment in refusing to answer questions with respect to communist or subversive activities, or to possible communist connections. Many, including UNC-CH Law Professor Daniel Pollitt, believed that the 1963 law raised serious constitutional questions in terms of the guarantees of free speech and the protection from self incrimination, and in terms of its vague terms regarding the due process clause of the United States Constitution (Pollitt, 1963, p. 1).

In the 1963 session of the North Carolina General Assembly, the concern for campus speakers, which could be

traced back to 1941, clearly seemed connected to the period's national fear of communism and the spectre of a growing civil rights movement. The session was long, trying, and controversial, with many national and domestic problems confronting the legislators. The problems tended to divide North Carolina's and national politicians into adamant conservative and liberal camps.

Some North Carolinians saw President Kennedy as a liberal whose social policies would cause undetermined calamities. Many conservative North Carolina legislators feared that President Kennedy's announcement of a far reaching civil rights program would lead to a summer of racial conflicts. Not only were many North Carolinians afraid of Kennedy's policies, but they were also disturbed by United States Supreme Court decisions requiring legislative reapportionment and prohibiting Bible readings in the schools (Bondurant et al., 1967, pp. 226-227).

Though feelings in the North Carolina General Assembly ran high in both conservative and liberal quarters on the Bible issue, reapportionment was the major issue throughout the session. At the same time, Governor Terry Sanford, a friend and supporter of President Kennedy, requested aid from the state legislature for higher education, improvements in the secondary schools, and increases in the minimum wage. To add to the confusion of purposes and priorities, in the same session in which he engineered

passage of the speaker ban law, Senate President Stone had unsuccessfully attempted to pass a bill petitioning Congress to call a constitutional convention to establish a super Supreme Court of the United States. This court would be composed of all state chief justices and would be able to review all decisions of the United States Supreme Court (Bondurant et al., 1967, pp. 226-227).

In addition to the many controversial issues facing the state legislators, North Carolina had zealots stirring fears of communism and civil rights. One such man was Jesse Helms. Ernest B. Furgurson, in his Hard Right: The Rise of Jesse Helms, states that Helms can be compared to the ardent anti-communist Joseph R. McCarthy (Furgurson, 1986, p. 25). A reading of Helms' voluminous editorials confirms the conclusion that he consistently played on the fears and prejudices of his audience. Helms was greatly angered by the civil rights movement, which he believed was part of a communist master plan to divide and conquer America by instigating racial violence. Helms also thought that North Carolina's university community had more in common with New Yorkers and Washingtonians than with the farmers and textile workers of North Carolina (Furgurson, 1986, pp. 25-26).

In 1960, Helms joined WRAL-TV in Raleigh, North Carolina as a commentator. Five days a week, his provocative editorials were aired at the conclusion of the evening news and rebroadcast the next morning. They were

also transmitted by FM radio to the Tobacco Network, and free copies were sent to newspapers, which used them as signed columns. In his editorials, Helms would often criticize the liberal press, the civil rights movement, and the liberal leanings of the University of North Carolina.

In an editorial subsequent to the passage of the bill, Helms praised the North Carolina legislature for enacting the Speaker Ban Law (Viewpoint Editorial 642, 1963). He attacked the liberal press, especially the Raleigh News and Observer, for its display of ill temper. However, Helms did not refer to any specific News and Observer article or editorial. Helms stated that "no citizen need be concerned about any imaginary restriction on freedom of speech. This is a mere smoke screen being thrown up to obscure the basic issues involved" (Viewpoint Editorial 642, 1963). Furthermore, he maintained that everyone had the right to speak, but not the right to be heard. Comparing communists to thieves and murderers, Helms said they should not be heard on North Carolina college campuses (Viewpoint Editorial 642, 1963).

A number of North Carolinians who would not be considered zealots also shared Helms' views of the Speaker Ban Law. Another prominent North Carolinian who supported the Speaker Ban Law was State Senator Robert Morgan. He noted that the Communist Party was not an ordinary political party, but one whose goal was to seize the power of

government by and for a minority rather than gaining it through a free election. Morgan did not believe that the Speaker Ban Law infringed on academic freedom because the law only said that communists could not speak on state property; it did not say that they could not speak anywhere at all (Hearing Before Speaker Ban Study Commission, Aug. 12, 1965, 2:00 p.m., pp. 13-28).

In contrast with such support many other North Carolina citizens were unhappy with the North Carolina Speaker Ban Law. President Friday, who was totally opposed to the law, believed that many of the law's supporters were wrapping themselves in the flag and misleading and misinforming the people of North Carolina (Friday Interview, Feb. 23, 1987).* There were those who joined Friday in condemning the law. For example, the faculty council of the University of North Carolina at Chapel Hill unanimously adopted a statement of opposition. The statement said that a political body should not regulate matters of educational policies. The council statement said that the regulation of speakers along with other educational policies should rest with the trustees, the administration, and the faculty (UNC-CH Faculty Council, 1963, p. 1).

*The tapes of this interview, and other taped interviews referred to later in this paper, will be housed in the archives of UNCG.

According to President Friday, all of the UNC system chancellors were opposed to the Speaker Ban Law. UNC-Chapel Hill Chancellor William B. Aycock, a renowned lawyer, led the public attack on the law. Aycock said that the legislature had passed a law to meet an evil which was never proved to exist (Aycock, 1963, p. 1).

For some six years supporters and opponents of the law would be joined in a struggle of principles and politics. The history of the struggle and the implications for higher education constitute the basis of this research.

Method of Study

I will use a combination of historical and oral history methods of inquiry. The use of oral history methodology is appropriate particularly because many of the major figures are still alive and are willing to discuss various aspects of the controversy.

Historical study provides insights into what people have thought and done, and reveals peoples' successes and failures. Historical research is useful in helping one comprehend the staggering amounts of information accumulated in a complex society. Lucey writes that the historical method involves the systematic knowledge of principles and rules designed to aid in the gathering of materials, the critical judging of them, and the presenting of a synthesis of the results achieved (1984, p. 3). Barzun and Graff state that the important questions are: "Is the account

true, reliable, complete? Is it clear, orderly, easy to grasp and remember?" (1977, p. 15).

Historians themselves, should approach evidence skeptically and should use as much primary material as possible. Lichtman and French maintain that primary sources consist only of evidence that was actually produced by the event the historian is studying, while secondary sources consist of other evidence pertaining to and produced soon after the fact. Finally, tertiary sources are historical accounts written afterward to reconstruct the event (1978, p. 18).

Oral history provides data that does not duplicate that of traditional historical research, Oral history involves the creation of historical documentation through the use of the personal interview.

> The Oral History Association recognizes oral history as a method of gathering and preserving historical information in spoken form and encourages those who produce and use oral history to recognize certain principles, rights, and obligations for the creation of source material that is authentic, useful and reliable. (Wingspread Conference, 1979, p. 8)

Thus the central purpose of oral history is to find through personal interviews information which is not available elsewhere.

Arthur M. Schlesinger, Jr. states that oral history is not new. Thucydides, in his History of the Peloponnesian War, verified facts through interviews (Banfield, 1980, p. 462). Tape recorders and increasingly efficient methods of

transcription are making oral history much more effective and useful. The value of oral history is that it gives one access to large amounts of material not available through other historical methods. Schlesinger adds that:

> The preservation of any form of historical evidence is important; the preservation of the testimony of eye witnesses is peculiarly important. One has only to imagine how much our knowledge of the past would be enriched had there been oral history projects on the fall of the Roman Republic, for example, or the Peloponnesian Wars, or the impact of William Shakespeare on the London theatre. There is absolutely no question about it. It's of immense value. (Banfield, 1980, p. 465)

A difficulty with oral history is, of course, that the limitations of human memory are considerable. Schlesinger said that "Memory shapes things to make the past more attractive to us, or more dramatic or a better story" (Banfield, 1980, p. 465). Thus oral history was used in this study to provide evidence which complements evidence gathered through traditional historical research. James Hoopes writes that oral history is most beneficial when written records are available, since checking one source of information against another is a good verification method. One advantage that oral history has over written documents is that the historian actively participates in creating the oral document and thus can attempt to get the information he or she needs (1979, p. 10). Hoopes states that "although oral history cannot fully compensate for the loss of intimate written documents, it can sometimes supply

information that might otherwise never have been saved" (1979, p. 12). Paul Thompson says that oral history puts life into history, thereby broadening its scope (1978, p. 18). A major advantage of this approach is that oral evidence comes from a living source. Thompson adds that "if it seems misleading, it is possible to ask more. And an informant can also correct a historian who has misunderstood. Documents cannot answer back, but oral history is a two way process" (1978, p. 137).

A review of the law, the amended law, the record of testimony before the Speaker Ban Commission, and the federal district court documents in Dickson v. Sitterson will be the initial phase of this research. I also will study secondary sources which contain information pertaining to and produced soon after the events. Personal interviews with key participants, a third data source, should produce information and insights not available in other sources. Finally, I will cross check the various sources--documents, letters, newspaper accounts, journal articles, books, and personal interviews--and attempt to reconcile differences and contradictions.

Delimitations and Limitations

In selecting participants to be interviewed and in selecting documents to be studied, I will necessarily delimit the research. Further, this research has been confined to a detailed examination of the North Carolina

Speaker Ban Law, from its enactment until its being declared unconstitutional with consideration of its implications for higher education.

I will examine the major North Carolina newspaper accounts of the North Carolina Speaker Ban Law and subsequent controversy, especially those in the Durham Morning Herald, Raleigh News and Observer, Charlotte Observer, Greensboro Daily News and Chapel Hill Weekly. Other traditional sources, such as documents, letters, journal articles and books also will be read. Finally, personal interviews with major participants affected by the law's enactment will complement and supplement the traditional historical sources.

The limitations of the study will involve the sources. First, a number of the major participants, witnesses, and observers are dead; and in some cases their letters, writings, and other materials leave questions unanswered. Second, there will be limited access to a number of key participants, both in terms of their availability for personal interviews and in terms of access to their papers or notes.

Summary

The primary purpose of this study is to examine the North Carolina Speaker Ban Law, from its enactment until its being ruled unconstitutional. The study of the law is significant because it is a landmark case in academic

freedom in higher education which has enduring implications for higher education. A secondary purpose therefore, is to determine the long-term implication of the Speaker Ban Law episode. The testimony of key participants involved in the Speaker Ban Law will be studied closely. To establish a context for the Speaker Ban Law, I will describe the political and social context which existed during the period the law was passed, debated, amended, and eventually ruled unconstitutional.

A combination of traditional and oral history methods of inquiry will be employed. The North Carolina Speaker Ban Law, amended North Carolina Speaker Ban Law, Speaker Ban Commission Testimony, and federal district court documents in Dickson v. Sitterson will be studied. The latter is significant because this case was the key to the law being declared unconstitutional. In addition, secondary sources including documents, letters, newspaper accounts, journal articles, and books will be examined. I will conduct personal interviews with key participants, in particular former Consolidated University of North Carolina President William C. Friday. The various sources will be cross checked for verification. The limitations in the study relate to access to major participants and their papers. A number of the major participants, witnesses, and observers are dead; and there will be limited access to some of the key surviving participants, both in terms of availability for personal interviews and access to their papers or notes.

CHAPTER II

REVIEW OF LITERATURE

Three categories of literature inform this research:

1. Methods literature.
2. Literature specific to the North Carolina Speaker Ban Law.
3. Literature pertaining to the cultural context of the speaker ban episode.

METHODS LITERATURE

A particularly useful book which addresses historical methods is Lichtman and French's Historians and the Living Past. In their preface, they state that

> History provides a glimpse of what people have thought and felt in times and places very different from our own. It reveals their successes and their failures, loves and hates. History discloses the arrogance and greatness of rulers, the passions and audacity of revolutionaries and the day to day lives of ordinary people. (1978, p. xv)

Lichtman and French argue that historical research is useful in helping people comprehend the staggering amounts of information accumulated in our complex society (1978, p. 18). They add that "Historical knowledge enables us to place our perceptions of the contemporary world into a meaningful context" (1978, p. 1).

Lichtman and French describe the primary, secondary and tertiary sources used by historians:

> Primary sources consist only of evidence that was actually part of or produced by the event the historian is studying. Secondary sources consist of other evidence pertaining to and produced soon after the event. Tertiary sources are "historical" accounts written afterward to reconstruct the event. (1978 p. 18)

Another of their main points is the connection between the past, present and future. They write, "Our attempt to explain the past cannot be separated from efforts to explain events of contemporary life and from expectations for the future" (1978, p. 119).

Toynbee in Civilization on Trial makes a related point in suggesting that history repeats itself. He states that

> The conclusion seems to be that human history does turn out, on occasions, to have repeated itself up to date in a significant sense even in spheres of human activity in which the human will is at its nearest to being master of the situation and is least under the domination of cycles in physical nature. (1948, p. 43)

In addition to writing about the cyclical nature of history, Toynbee poetically describes the subjectivity of historians:

> Evidently his nationality, his social milieu, and his age, between them, will in large measure determine the standpoint from which he views the world panorama. In fact, like each and all of us, he is more or less the slave of historical relativity. The only personal advantage that he can claim is that he happens also to be a historian, and is at least aware that he himself is a piece of sentient flotsam on the eddying surface of the stream of time. Realizing this he knows that his fleeting and fragmentary vision of the passing scene is no more than a caricature of

> the surveyor's chart. God alone knows the true picture. Our individual human apercus are shots in the dark. (1948, p. 16)

John Dewey in Logic: The Theory of Inquiry, discussed the subjective nature of the historian as follows:

> The slightest reflection shows that the conceptual material employed in writing history is that of the period in which a history is rewritten. There is no material available for leading principles and hypothesis save that of the historic present. As a culture changes, the conceptions that are dominant in a culture change. Of necessity new standpoints for viewing, appraising, and ordering data arise. History is then rewritten. (1938, p. 253)

In The Individual, Society and Education: A History of American Educational Ideas, Karier also speaks of the subjective nature of the historical process. He states that

> History is not the story of man's past but rather that which certain men have come to think of as their past. Historians, as human beings, can neither live in the past, which is dead, nor divorce themselves from their own subjective values acquired in the present. (1986, p. xviii)

Karier was not casting shadows on the value of historical inquiry; instead, he was sharpening our awareness of the subjective factors.

A definition of the historical method is provided by Lucey in History: Methods and Interpretations. He writes,

> The historical method, used by all the social sciences - the systematic knowledge of principles and rules designed to aid effectively in gathering the source materials of past actuality, appraising them critically and presenting a synthesis of the results achieved - is really a practical application of the principles of logic. (1984, p. 3)

Not only does Lucey define the historical method, but he also describes the function of criticism. He says criticism "establishes the authenticity and integrity of sources, the true sense of the testimony, and the credibility of the witnesses" (1984, p. 23).

Another book which helps one understand historical methodology is Barzun and Graff's The Modern Researcher. In this book, they argue convincingly that historians should approach evidence skeptically:

> No historian can hope to unravel every mystery and contradiction or uncover every untruth, or downright deception that lurks in the raw materials with which he must deal. But his unceasing demand for accuracy must make him put to the test all the material he uses. There is no substitute for well placed skepticism. (1977, p. 110)

These writers also refer to the difficulty of the task facing historians when they state,

> Historians work under the same necessity of giving shape to the events that they have found and verified. Only the historian has no scale with which to measure the facts, and few symbols other than words with which to express their relation. (1977, p. 148)

In Historian's Fallacies: Toward a Logic of Historical Thought Fischer concludes that historical methodology is important and useful, "Not merely for what it contributes to present understanding, but also for what it suggests about the future" (1970, p. 315).

Hoopes, in Oral History claims

> that too often we forget that history is, among other things, an exercise of the imagination.

> History, like life, is a test of our ability imaginatively to place ourselves in the positions of other people, so that we can understand the reasons for their actions. Through research and study we learn facts about those other people.

Also, he maintains,

> The historical record is always incomplete. Imagination must fill in the gaps in our knowledge, though of course our imaginings must derive from facts and be consistent with them. (1979, p. 3)

Hoopes suggests that "oral history is most useful when written records are available" (1979, p. 10). He also believes that sometimes oral history is more accurate than written history and that cross-checking written and oral history is a good method of verification (1979, pp. 10-12). However, he concludes that the major advantage of oral history "is that the historian actively participates, as interviewer, in creating the oral document [sic], and, therefore, he can try to get the information he needs" (1979, p. 12).

Arthur Schlesinger, Jr.'s views on oral history are expressed in an interview by Lynn Bonfield, "Conversation with Arthur M. Schlesinger, Jr.: The Use of Oral History," in the Fall 1980 issue of The American Archivist. Schlesinger states that oral history is not new. He points out that Thucydides in his History of the Peloponnesian War verified facts through interviews. Schlesinger adds that historians, especially historians writing about contemporary events, have often used interviews as a technique (Bonfield, 1980, p. 462).

Schlesinger suggests that tape recorders and increasingly efficient methods of transcription have made oral history much more effective and useful: "Now the tape recorder gives the interview fidelity and permanence" (Bonfield, 1980, p. 462).

Schlesinger maintains the value of oral history is that it gives one access to large amounts of material not available through other historical methods:

> I think the value is self-evident; that is, that you rescue a great mass of material that would not otherwise be available to historians. The preservation of any form of historical evidence is important; the preservation of the testimony of eye witnesses is peculiarly important. One has only to imagine how much our knowledge of the past would be enriched had there been oral history projects on the fall of the Roman Republic, for example, or the Peloponnesian Wards, or the impact of William Shakespeare on the London theatre. There is absolutely no question about it. It's of immense value. (Bonfield, 1980, p. 465).

About the limitations of oral history, Schlesinger says, "The limitations of oral history are limitations of human memory; those are very considerable limitations. Memory shapes things to make the past more attractive to us, or more dramatic, or a better story" (Bonfield, 1980, p. 466).

In "Oral History Evaluation Guidelines: The Wingspread Conference," the Oral History Association provides a useful definition of oral history, which also speaks to some of the method's ethical considerations. It says oral history is

> a method of gathering and preserving historical information in spoken form and encourages those

> who produce and use oral history to recognize certain principles, rights, and obligations for the creation of source material that is authentic, useful and reliable. (1980, p. 8)

Thompson in The Voice of the Past Oral History makes this compelling argument for oral history:

> Oral evidence can achieve something more pervasive and more fundamental to history. While historians study the actors of history from a distance, their characterizations of their lives, views, and actions will always risk being misdescriptions; projections of the historian's own experiences and imagination; a scholarly form of fiction. Oral evidence, by transforming the "objects" of study into "subjects," makes for a history which is not just richer, more vivid and heartrending, but truer. (1978, p. 90)

Thompson's greatest contribution to the literature concerns the two way nature of oral history:

> Above all, in contrast to any other historical document, oral evidence comes from a living source. If it seems misleading, it is possible to ask more. And an informant can also correct a historian who has misunderstood. Documents cannot answer back, but oral history is a two way process. (1978, p. 137)

Literature Specific to the North Carolina Speaker Ban Law

A review of literature specific to the North Carolina Speaker Ban Law is best begun by studying the law; the amended law; and other primary documents, including faculty council and trustee statements and committee reports, North Carolina Attorney General's legal opinion on the law, Britt Commission testimony, UNC procedures regarding invitations to speakers affected by the amended law, and federal middle district of North Carolina court documents pertaining to Dickson et al. v. Sitterson et al. The review of literature

also included newspapers, journals, television editorials, and letters which reported or recorded reactions to the North Carolina Speaker Ban Law, from its enactment until its being declared unconstitutional.

On June 26, 1963, the North Carolina General Assembly enacted House Bill 1395, popularly known as the North Carolina Speaker Ban Law. The bill, introduced by Representatives Phil Godwin and Ned Delamar, and others, was designated A BILL TO BE ENTITLED AN ACT TO REGULATE VISITING SPEAKERS AT STATE SUPPORTED COLLEGES AND UNIVERSITIES. The Bill reads as follows:

The General Assembly of North Carolina do enact:

> Section 1.No college or university, which receives any state funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who:
>
> (A) Is a known member of the Communist Party;
> (B) Is known to advocate the overthrow of the constitution of the United States or the state of North Carolina;
> (C) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state.
>
> Section 2.This Act shall be enforced by the Board of Trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the Board of Trustees or other governing authority of such college or university.
>
> Section 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

> Section 4. This Act shall become effective upon its ratification. (Faculty Council Minutes, 1963, p. 256-D)

The law was amended in 1965; and the amended law reads as follows:

> 116-199. Use of facilities for speaking purposes. The board of trustees of each college or university which receives any state funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purposes by any person who:
>
> (1) Is a known member of the Communist party;
> (2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;
> (3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, c. 1207, s. 1; 1965, Ex. Sess., c. 1, s. 1.)
>
> 116-200. Enforcement of article - Any such regulations shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c. 1207, s. 2; 1965, Ex. Sess., c. 1, s. 2.)

A review of consolidated UNC board of trustees and UNC-CH faculty council statements indicated both organizations' opposition to the North Carolina Speaker Ban Law. On July 8, 1963, the Executive Committee of the Board of Trustees of the Consolidated University of North Carolina adopted a resolution stating the following:

> Whereas, the General Assembly of North Carolina recently enacted a law imposing unnecessary

> restrictions considered inimical to academic freedom and contrary to the traditions of the consolidated University of North Carolina and other state educational institutions;
>
> We, The Members of the Executive Committee of the Board of the University of North Carolina,
>
> Do Recommend that the Board of Trustees take appropriate steps to endeavor to eliminate this restriction upon academic freedom. (Faculty Council Minutes, 1963, p. 256E)

A special committee of the UNC Board of Trustees, the Medford Committee, was appointed on October 21, 1964 by Governor Sanford, with the mission of determining and implementing measures to remove the Speaker Ban Law. The report of this committee stated,

> Despite a clear preference for outright repeal, the Committee concluded (January 8, 1965) that amendment of the Act was a more practical objective to pursue. The desired amendment would uphold the authority of the Board of Trustees in this area of their responsibility. (Faculty Council Minutes, UNC-CH, May 7, 1965)

Thus, two years after the passage of the Speaker Ban Law, this committee of trustees was willing to take steps to amend the law instead of moving for outright repeal. This report further indicates that the committee believed quick action should be taken: "failure to act promptly will result in deterioration of faculty and student morale and loss of respect for and standing of the University in American higher education" (Faculty Council Minutes, UNC-CH, May 7, 1965).

On October 22, 1963, the Faculty Council of the University of North Carolina at Chapel Hill unanimously

adopted a statement on the North Carolina Speaker Ban Law. While pointing out that the faculty, like the General Assembly members were opposed to communism, they registered their strongest objections to the statute. While the statement indicated the probable unconstitutionality of the law under both the North Carolina and federal constitutions, the main point was that

> The statute is a step toward substitution of politically controlled indoctrination for reasonable objective educating. Regulation of speakers on campus is best left, along with other matters of educational policy, to the trustees, the administration and the faculty.

They concluded their statement as follows:

> In summary, by this statute the General Assembly while attempting to protect our liberties, has unwisely interfered with educational policies, curtailed legitimate freedom on our campuses, and created serious barriers to the maintenance of higher educational institutions of a quality which, in light of the Assembly's more constructive efforts to improve higher education, the State has a right to expect. (Faculty Council, UNC-CH, Oct. 22, 1963, pp. 1-3)

A reading of North Carolina Deputy Attorney General Moody's review of the constitutionality of the Speaker Ban Law, titled a Legal Opinion of the Constitutionality of North Carolina's Speaker Ban Law, is helpful in understanding many North Carolina governmental leaders' beliefs about the law. Moody's report, which was approved on August 2, 1963, by North Carolina Attorney General Bruton, said that the North Carolina Speaker Ban Law

> does not in any manner prohibit, limit, or restrain valid and legitimate "Academic Freedom."

> The statute does not prohibit or restrain any investigation or pursuit of learning as to the philosophy and doctrines of that facet of Socialism which is referred to as Communism. The statute does not prohibit or in any manner restrain or prevent any professor from giving any instruction about Communism which he may desire and think proper. The statute does not prohibit the sale or acquisition of any books, pamphlets, papers or magazines about Communism whether the same be published by the Communist Press or not. In other words, all legitimate, valid and legal avenues are open to any person who wishes to know about Communism in all of its features and details. It does not limit freedom of the press. (Legal Opinion of the Constitutionality of North Carolina Speaker Ban Law, 2 August 1963, pp. 35-36, North Carolina Collection UNC-CH)

Moody concluded that the law was constitutional and valid in terms of the constitution of North Carolina and the Constitution of the United States.

Of particular importance to this research is the report of the Speaker Ban Study Commission, also known as the Britt Commission. The report contained two recommendations: First, that the law be amended to give the trustees of each institution the authorized responsibility for adopting and publishing rules and precautionary measures for the invitations to and regulations of visiting speakers; second, that this amendment to the law would be made only if the trustees adopted the following statement of policy contained in the commission report (Speaker Ban Study Commission Report, November 5, 1965). The policy statement reads as follows:

> The Trustees recognize that this Institution, and every part thereof, is owned by the people of North Carolina; that it is operated by duly

selected representatives and personnel for the benefit of the people of our state.

The Trustees of this Institution are unalterably opposed to communism and any other ideology or form of government which has as its goal the destruction of our basic democratic institutions.

We recognize that the total program of a college or university is committed to an orderly process of inquiry and discussion, ethical and moral excellence, objective instruction, and respect for law. An essential part of the education of each student at this Institution is the opportunity to hear diverse viewpoints expressed by speakers properly invited to the campus. It is highly desirable that students have the opportunity to question, review and discuss the opinions of speakers representing a wide range of view points.

It is vital to our success in supporting our free society against all forms of totalitarianism that institutions remain free to examine these ideologies to any extent that will serve the educational purposes of our institutions and not the purposes of the enemies of our free society.

We feel that the appearance as a visiting speaker on our campus of one who was prohibited under Chapter 1207 of the 1963 Session Laws (The Speaker Ban Law) or who advocates any ideology or form of government which is wholly alien to our basic democratic institutions should be infrequent and then only when it would clearly serve the advantage of education; and on such rare occasions reasonable and proper care should be exercised by the institution. The campuses shall not be exploited as convenient outlets of discord and strife.

We therefore provide that we the Trustees together with the administration of this Institution shall be held responsible and accountable for visiting speakers on our campuses. And to that end the administration will adopt rules and precautionary measures consistent with the policy herein set forth regarding the invitations to and appearances of visiting speakers. These rules and precautionary measures shall be subject to the approval of the Trustees. (N.C. Speaker Ban Study Commission, Speaker Policy, Nov. 5, 1965, pp. 1-2)

Equally important is the sworn testimony of proponents and opponents of the Speaker Ban Law. This testimony provides an excellent representation of the arguments for and against the law. Those supporting the law maintained that the legislature had the right to determine which speakers could appear on state property and an obligation to the citizens of North Carolina to ban anyone associated with the Communist Party from campus. The opponents of the law portrayed it as unconstitutional because it infringed on academic freedom and First Amendment rights.

The procedures formulated by the Consolidated University of North Carolina administration regarding invitations to speakers and appearances of visiting speakers affected by North Carolina General Statute 116-199 and 200 are significant, since they demonstrate the university's compliance with the amended Speaker Ban Law. These procedures were as follows:

> Procedures Regarding Invitations to Speakers Affected by G.S. 116-199 and 200
>
> In order to provide the Chancellors with an opportunity to exercise the responsibilities imposed upon them by trustee regulations respecting visiting speakers, the following procedures shall be observed prior to extending an invitation to any visiting speaker covered by G.S. 116-199 and 200.
>
> 1. The officers of a recognized student club or society desiring to use University facilities for a visiting speaker shall consult with the club's faculty advisor concerning the proposed speaker.
> 2. The head of the student organization shall submit to the Chancellor a request for

reservation of a meeting place along with the following information:

a. Name of the sponsoring organization and the proposed speaker's topic.
b. Biographical information about the proposed speaker.
c. Request for a date and place of meeting.

3. Upon receipt of the above information, the Chancellor shall refer the proposed invitation to a joint student faculty standing committee on visiting speakers for advice. He may consult such others as he deems advisable.
4. The Chancellor shall then determine whether or not the invitation is approved.

Once a speaker affected by G.S. 116-199 and 200 has been invited and his acceptance received, his appearance on the campus shall be governed by these regulations:

Regulations Regarding the Appearance of Visiting Speakers Affected by G.S. 116-199 and 200

1. All statutes of the State relating to speakers and the use of facilities for speaking purposes are to be obeyed.
2. Student attendance at campuswide occasions is not compulsory.
3. The appearance of speakers on the campus does not imply either approval or disapproval of the speakers or what is said to them.
4. As a further precaution and to assure free and open discussion as essential to the safeguarding of free institutions, each Chancellor, when he considers it appropriate, will require any or all of the following:
   a. That a meeting be chaired by an officer of the University or a ranking member of the faculty;
   b. That speakers at the meeting be subject to questions from the audience;
   c. That the opportunity be provided at the meeting or later to present speakers of different points of view.

(North Carolina Collection, Clipping File Through 1975, UNC Library, p. 247)

Other important primary documents include those filed with the United States District Court For the Middle

District of North Carolina Greensboro Division. Civil Action No. C-59-G-66 Paul Dickson, II, et al. v. J. Carlyle Sitterson, et al. is of particular significance for the purposes of this study. The plaintiffs, through their attorney McNeil Smith of Greensboro, sought to declare unconstitutional and to enjoin the enforcement of Section 116-199 and Section 116-200, General Statutes of North Carolina, which regulate the appearance of visiting speakers at state-supported colleges and universities. They sought relief under 28 U.S.C. Section 2201 and injunctive relief under 42 U.S.C. Section 1983 and 23 U.S.C. Sections 1343 and 2281. The three judge federal district court ruled thusly:

1. The Court has jurisdiction of the parties and of the subject matter.
2. The plaintiffs are entitled to an order declaring Section 116-199 and Section 116-200, General Statutes of North carolina, and the procedures and regulations adopted by the Board of Trustees of the University of North Carolina pursuant thereto, to be unconstitutional and null and void.
3. The plaintiffs are further entitled to an order enjoining the defendants from further acting under said statutes, procedures and regulations.

(Civil Action No. C-59-G-66 Dickson et al. v. Sitterson et al. University of North Carolina, Greensboro, Archives, Edwin M. Stanley, District Judge, p. 23)

While there is a relative wealth of primary material, other than newspaper accounts there is a scarcity of secondary material on the North Carolina Speaker Ban Law. For example, there are no monographs or books on this subject. However, there are journal articles by Bondurant et al., and Joyce which discuss aspects of the Speaker Ban Law episode. Also, several of Jesse Helms' television editorials vividly illustrate the views of supporters of the law. A letter from attorney McNeil Smith to a friend sheds light on the plaintiffs' role in having the law declared unconstitutional. Finally, there are many newspaper articles which tell the story of the North Carolina Speaker Ban Law, albeit through the eyes of newspaper reporters and editors.

"The North Carolina Speaker Ban Law: A Study in Context" is a particularly useful article found in the Kentucky Law Journal. In it Bondurant et al. provide background material on the North Carolina political scene especially during the years 1963-1965 (1967, pp. 232-233). While this article is not an in-depth review of the speaker ban episode, it does provide a helpful overview, from the passage of the law through the filing of the law suit Dickson et al. v. Sitterson et al. on March 31, 1966. Bondurant et al., conclude,

> The Speaker Ban Law, even in its amended form, constitutes a serious threat to the academic integrity of both the state-supported colleges and universities in North Carolina.

They add that

> an atmosphere of anti-intellectualism has been fostered which affects the privately supported as well as the state-supported schools and indeed, every citizen of North Carolina. An atmosphere favorable to real freedom of discussion and inquiry cannot be maintained in North Carolina while the Speaker Ban Law stands. (1967, pp. 248-249)

Joyce, in an article "Reds on Campus: The Speaker Ban Controversy," demonstrated the university's point of view utilizing quotes from various participants. For instance, former Chancellor Sitterson's remarks are helpful in understanding the cultural context:

> I believe it was a reaction to a fundamental change that was going on in the South at the time. The ban on Communist speakers was tied up not so much to campus unrest that was to become so prevalent later, as it was tied to social changes, especially race relations. This was a time, remember, of sit-ins and street demonstrations in Chapel Hill and Raleigh and elsewhere. Many people saw this change as a threat to the prevailing order and believed that it was all tied up somehow to Communism. It was a society not receptive to change. (Joyce, "Reds on Campus: The Speaker Ban Controversy," Carolina Alumni Review, Spring, 1984, p. 6)

Joyce clearly chronicles the complicated set of events connected to the Students For A Democratic Society's speaking invitations to Herbert Aptheker and Frank Wilkinson that eventually led to a student law suit against the university. Also, he discusses the ironic situation that Chancellor Sitterson found himself in. He personally was opposed to the Speaker Ban Law but was directed by board action to deny the invitations to Aptheker and Wilkinson (Spring 1984, p. 11).

A reading of the volumes of Jesse Helms' WRAL-TV Viewpoint editorials reveals that editorials 636, 642, 1178, and 1792 dealt directly or indirectly with the North Carolina Speaker Ban Law and were reflective of what one could assume were many North Carolinian's views on the law. In "Viewpoint 636," Helms congratulates Ohio State University President Noah Fawcett for stating that "The tax-paid facilities of Ohio State University were not going to be used, he said flatly, as a forum for Communists as long as he is president" (June 21, 1963, p. 1). This editorial was aired just four days before the North Carolina Speaker Ban Law was enacted.

In "Viewpoint 642," Helms praised the North Carolina legislature for passing the Speaker Ban Law and lambasted the liberal press for their negative reactions to it. About the freedom of speech issue, Helms said,

> Nobody's freedom to speak has been affected by this law. There is a vast difference between the right to speak, and the right to be heard. Everybody has the right to speak in this country, even the communists who are set upon destroying us. But nobody has an absolute right to be heard. Those worthy of being heard will be heard. But it is a fixation of a twisted mind that for freedom's sake, the tax-supported college campuses ought to yield up their facilities and lend respectability to the vultures of humanity. (July 1, 1963, p. 2)

In addition to editorials, personal letters can provide useful information by revealing individual beliefs. One such letter from McNeil Smith, the attorney for the plaintiffs in Dickson et al. v. Sitterson et al. to a friend

Albert Coates is enlightening in regards to the Dickson lawsuit. Smith indicates that when he took the Paul Dickson case, he expected to get help from lawyers around the state, but other lawyers did not want to be identified with a suit against the university. Many of his legal friends could not understand what Smith would get out of this case. Smith said that "As in most constitutional issues, unpopular causes and unpopular parties are the only ones who can make the test case" (Smith, 1975). Also, Smith said that the bringing of the suit itself took everyone off the hook because no one had to discuss it since the case was still in court.

The unanimous, strongly worded decision invalidating the statute came down in February 1968, and the governor and others decided not to appeal. Smith suggests that the court was the only agency that could remove the Speaker Ban Law. As to who or what was responsible for the removal of the law, Smith concludes,

> I still hear from many of the student plaintiffs. They were and are brave young men. They and I learned a lot in the case. Perhaps others did too. It was a civics lesson for all. Bringing the suit was no attack on the University or the state: it was an act of loyalty to both. They had been ensnarled by the action of one General Assembly and two subsequent sessions of the General Assembly had been unable to free them. The suit did it. (Excerpt From a Letter to Albert Coates, 1975, Southern Historical Collection, UNC-CH)

The Speaker Ban Law and episode were covered extensively in North Carolina newspapers, in particular the

Raleigh News and Observer, Charlotte Observer, Durham Morning Herald, Greensboro Daily News, and the university student newspaper, the Daily Tarheel. From the time of the law's enactment until the federal district court ruled the law unconstitutional, the North Carolina press, in hundreds of articles, kept the law, amended law, and activities connected to the Speaker Ban Law in the public forum.

A Raleigh News and Observer article titled "Aycock Makes Blistering Attack on Speaker Ban" is one example of these accounts. The article said that Aycock

> termed the law "an insult" and called it "the sloppiest bit of legislation I have ever witnessed" and said it is "so full of ambiguities that even the author couldn't possibly explain what it means." (Raleigh News and Observer, Nov. 11, 1963)

A Charlotte Observer article "Halted by UNC Policeman Aptheker Speaks Over Wall" details Aptheker's aborted attempt to speak on the campus of UNC-CH:

> A policeman stopped Communist Herbert Aptheker from speaking Wednesday on the University of North Carolina campus. Aptheker then made his speech just off campus to the applause of 2,000 students. (Charlotte Observer, March 10, 1966)

In addition, this article briefly summarized the Speaker Ban Law and amended law, and it described Aptheker's speech, which called for the United States to get out of Vietnam (Charlotte Observer, March 10, 1966).

Literature Pertaining to the Cultural Context

For the purposes of this research, academic freedom in higher education, McCarthyism, communism, and the Civil

Rights Movement are aspects of the culture which are synthesized to help in understanding the context in which the North Carolina Speaker Ban Law was enacted. The selection of these four aspects of the cultural milieu was based on extensive reading about the historical period of the Speaker Ban episode. These elements appeared consistently in the literature as the major cultural topics of the time.

In the review of the literature pertaining to the cultural context, I found secondary sources particularly useful because they provided an excellent overview and synthesis of various elements of the cultural milieu. In contrast, primary sources, with narrow focuses, did not address issues of the cultural context in ways as useful for this research.

A particularly instructive book is Karier's The Individual, Society and Education: A History of American Education Ideas, in which he details the affects of communism and the Civil Rights Movement on American culture. Karier states the following in his preface:

> The effects of the cold war on American education and society in the second half of this century have been profound in every respect. The fear of communism, both without and within, has affected liberal and conservative alike.

He continues,

> Americans sacrificed much in their forty-year anti-communist crusade. The inescapable fact is that liberals more so than conservatives, were the architects of that era. Sidney Hook, student,

> follower, and heir apparent to John Dewey, spent much of his life in the service of that cause. The cold war is, no doubt, a major reason why American liberals, social and educational philosophy has never been reconstructed in any meaningful sense in the postwar period. (1986, p. xi)

Karier notes that President Truman's Executive Order 9838 of March 12, 1947, embraced the principle of guilt by association so often connected with Senator Joseph McCarthy. He maintains that one could be dismissed from a federal job if he were affiliated in any way with a group or movement designated by the Attorney General as subversive. Karier vividly describes the red paranoia sweeping America at that time:

> Thus the full weight of the executive branch of government while embracing the principle of guilty by association and disregarding the individual's Fifth and Sixth Amendment rights, was used to jeopardize the lives of its citizens in the interests of national security. (1986, p. 310)

Karier also provides an illuminating synthesis of the post World War II Civil Rights Movement. He maintains that from the 1940's through the 1960's the elimination of de jure segregation was the goal of anti-racists. Although there was progress made through the executive branch of government, the major change came in Brown v. Topeka Board of Education (1954).

In that landmark case, the Supreme Court ruled that separate educational facilities were inherently unequal and that racial segregation in public schools violated the due process clause of the Fourteenth Amendment, thereby making

segregation unconstitutional. Karier reports that Eisenhower tried avoiding the segregation issue: "Deeply involved with the cold war, Eisenhower saw the civil rights movement as reflecting an image that was damaging to America's security interests around the world" (1986, p. 329). Eisenhower even suspected that the civil rights movement was connected in some way with the Communist Party, and, therefore, he ordered increased FBI surveillance of the leadership and organizations of the civil rights movement, including Martin Luther King and the Southern Christian Leadership Conference (1986, p 329).

In terms of the affect that racism had on America's culture in the 1960's, Karier says that "The problems of unemployment and racism hung heavy on the American social conscience of the 1960's" (Karier, 1986, p. 332).

Karier, in another book, provides useful information about academic freedom in American universities. In Shaping the American Educational State, he presents John Dewey's classic definition of academic freedom:

> To investigate truth; critically to verify facts; to reach conclusions by means of the best methods at command, untrammeled by external fear or fervor, to communicate this truth to the student; to interpret - to hear its bearing on the questions he will have to face in life - this is precisely the aim and object of the university. To aim a blow at any one of these operations is to deal a vital wound to the university itself. The one thing that is inherent and essential is the idea of truth. (Karier, ed., 1975, pp. 53-54)

In addition to providing a definition of academic freedom, Karier notes the distinction between what academic freedom meant in nineteenth century Germany and what it came to mean in the twentieth century American university. Karier says that "American social theorists have confused the struggle for academic freedom and the quest for scientific truth with the struggle of people to gain economic, political and social freedoms" (1975, p. 12). In other words, while the nineteenth century German professor was free to search for new knowledge within his field, he was not free to criticize the government or social structure. However, in American universities, twentieth century professors interpreted the principle of academic freedom to mean that they should use knowledge to make economic, political and social changes in society.

Another important book detailing the cultural milieu of the years leading up to the enactment of the North Carolina Speaker Ban Law is Schrecker's No Ivory Tower: McCarthyism and the Universities. Schrecker illustrates the difficulty that those in academe had in defining academic freedom. She cites two meetings in 1953 in which higher education leaders could not agree on a definition of academic freedom. Schrecker concludes that the possibility existed in early 1953, at the zenith of the McCarthy era, that there was not an agreed upon definition of academic freedom (1986, pp. 12-13).

Schrecker maintains that the definition of academic freedom would change periodically, in relation to the cultural climate of the day and usually as a reaction to a perceived crisis. During crisis situations in the society, there tended to be increased pressures to purge universities of disloyal elements. To appease the outside community and to keep those outside the university from interfering in matters of hiring and firing, administrators often would demonstrate to their critics their ability to police themselves by internally restricting the concept of academic freedom. (1986, p. 13).

According to Schrecker, one such time of crisis was the McCarthy period. Schrecker says,

> The American historian and present Librarian of Congress Daniel Boorstin named names for HUAC; Lionel Trilling, perhaps the leading literary critic of the day, chaired a Columbia committee that developed guidelines for congressional witnesses; and Talcott Parsons, whose formal paradigms shaped much of American sociology, participated in the AAUP's special survey of the Cold War academic freedom cases. (1986, pp. 339-340)

Schrecker concludes that

> The academy's enforcement of McCarthyism had silenced an entire generation of radical intellectuals and snuffed out all meaningful opposition to the official version of the Cold War. When by the late fifties, the hearings and dismissals tapered off, it was not because they encountered resistance, but because they were no longer necessary. All was quite on the academic front. (1986, p. 341)

In this book, Schrecker connects academic freedom to McCarthyism. She writes, as does Karier, that an act of the

Truman adminstration was especially instrumental in the success of McCarthyism. Executive Order 9835 barred communists and fascists from the federal payroll and excluded anyone guilty of sympathetic association with such people or organizations. Schrecker states that "No other event, no political trial or congressional hearing, was to shape the internal Cold War decisively as the Truman administration's loyalty-security program. It authorized the economic sanctions that were crucial to the success of McCarthyism" (1986, p. 5). Schrecker adds that the real function of the order was to protect the Democratic administration from the potential criticism of the Republican Party that the administration was soft on communism; however, it instead established anti-communism as the nation's official ideology (1986, p. 4).

Schrecker says that "Five years after the United States Senate censured Joseph McCarthy, the Supreme Court was citing the Cold War as an excuse for depriving American Communists and suspected Communists of their constitutional rights" (1986, p. 2). The court echoed the anti-communist fervor that had consumed America in the late 1940's and 1950's. Most Americans understandably viewed the Communist Party as a serious threat to the security of the United States. The communist coup in Czechoslovakia in 1948 and the Berlin Blockade a few months later touched off a war scare. The next year, the Soviets detonated the atomic bomb, and China fell to the communists (1986, p. 3).

Two other books were especially useful in my review of academic freedom. Metzger's Academic Freedom In The Age of The University is considered by a consensus of scholars of academic freedom to be the best book on academic freedom in American higher education. Metzger states that "Between the years 1865 and 1890 a revolution in American higher education took place" (1955, p. 3). He maintains that the major change was the shift from conserving knowledge to searching for knowledge. Metzger concludes that until the search for new knowledge forever disturbed the "certainties" of Western civilization--broke apart the epistemological foundations--academic freedom was not a volatile issue (1955, pp. 43-44).

Metzger refers to Charles W. Eliot as a leader who understood the quest for academic freedom. Eliot in his inaugural address at Harvard University in 1869 said,

> A university must be indigenous; it must be rich; and above all, it must be free. The winnowing breeze of freedom must blow through all its chambers. It takes a hurricane to blow wheat away. An atmosphere of intellectual freedom is the native air of literature and science. The university aspires to serve the nature by training man to intellectual honesty and independence of mind. The corporation demands of all its teachers that they be grave, reverent and high minded; but it leaves them, like their pupils, free. (Metzger, 1955, p. 116)

Although Brubacher and Rudy's Higher Education in Transition is a textbook history of American higher education, their review of academic freedom in higher education is very helpful. They suggest "it was not until

the introduction of German graduate methods of research into American campuses in the late nineteenth century that academic freedom became a cause celebre" (1976, p. 308). They go on to say that

> even as late as the twentieth century the professional right to academic freedom had received an altogether secure lodgment in the pattern of American thinking. Recurrent social crises of war, economic depression, and international tension periodically threatened its very existence. (1976, p. 308)

Brubacher and Rudy also provide a brief but good review of some of the important issues concerning academic freedom since World War I. These issues were related to the question: May it sometimes be necessary to curtail freedom in order to preserve it? They cite instances during World War I, the great depression, and post World War II in which individual freedoms were curtailed for the protection of society. Brubacher and Rudy write that the pro-German Professor Schaper at the University of Minnesota and pacifist professors Cattell of Columbia and Whipple of the University of Virginia were forced to leave their positions during World War I because of their personal beliefs and statements.

During the great depression of the 1930's, many states passed teacher oath statutes requiring an affirmation of loyalty to state and federal constitutions. Brubacher and Rudy write that after World War II, these oaths became a clumsy way for some states to persecute communists. During

the cold war, academic freedom and professors were, in Brubacher and Rudy's phrase, "on the defensive" (1976, pp. 322-326).

There is a useful article on academic freedom by Daniel Pollitt titled "Campus Censorship: The North Carolina Visiting Speakers Law," in which Pollitt provides helpful but sketchy information on the control of professors and outside speakers. Pollitt writes that since 1896, professors have been dismissed because of their personally held beliefs:

> In 1896 professors were discharged because they voted for William Jennings Bryan and in 1900 Professor Edward A. Ross was dismissed from Stanford University for having advocated free silver. In 1948 Olivet College discharged a professor and the college librarian because of their "ultra-liberal" views, and over half the faculty resigned in protest. (Pollitt, 1963, p. 1)

Pollitt, points out that "An additional form of censorship is to deny students and faculty the opportunity to hear certain types of 'outside speakers'" (1963, p. 2). He cites numerous examples of this type of censorship, including the case of Howard Fast, who was denied permission to speak at New York University because he had been cited by Congress for contempt. Also, in 1951 Ohio State University denied speaking permission to a Quaker pacifist, and the University of Washington refused to allow Robert Oppenheimer, the father of the atomic bomb, to speak to a conference of scientists on campus. Pollitt added that in

1962 and 1963, Malcom X and the Reverend Martin Luther King, Jr. were denied permission to speak at the University of California and Washington and Lee, respectively.

However, Pollitt's major contribution in this article is his brief description of the 1941 North Carolina Law, which

> made it unlawful for any public building in the state, including campus buildings at colleges supported in whole or part by State funds, "to be used by any persons for the purpose of advocating, advising or teaching a doctrine that the Government of the United States, the State of North Carolina or any political subdivision there of should be overthrown by force, violence or any other unlawful means." (1963, p. 3)

Pollitt states,

> This 1941 statute would run afoul of the constitutionally guaranteed freedom of speech if applied to "penalize the utterance or publication of abstract 'doctrine' or academic discussion having no quality of incitement to any concrete action.

He concludes in this way:

> In short, the free speech provisions of the Constitution prevent North Carolina from applying this 1941 statute so as to penalize a campus speaker who does nothing more than present an academic discussion on the inevitability of violent revolution. If however, the campus speaker exhorts the audience to organize into secret cells, and prepare for the signal to strike, there is nothing in the Constitution which prevents North Carolina from enforcing the 1941 statute. (1963, p. 3)

Pollitt makes the case that the 1963 law was much broader than the 1941 law because it prohibited the use of campus facilities by certain speakers, regardless of the subject matter of the speech. The 1941 law, on the other

hand, prohibited the use of campus facilities by speakers whose purpose was to advocate the overthrow by force of the national and state government. Pollitt concludes that

> This statute raises serious problems under the constitutional guarantee of free speech, under the constitutional guarantee against self-incrimination and, because of its vague and nebulous terms, under the due process clauses of the Constitution. (1963, p. 4)

Two books about McCarthyism are particularly useful in understanding the cultural milieu. In Without Precedent: The Story of the Death of McCarthyism, Adams demonstrates how McCarthyism worked:

> McCarthy never proved that anyone was a communist; however, the ingredients of McCarthyism quickly emerged. It began with a senator's privilege to make accusations without fear of libel actions. This would then be spread through the medium of the bold-faced headline, where it would reach a huge and receptive audience drawing strength from a deep well of suspicion, fear and hate. (Adams, 1983, pp. 24-25)

He continues,

> The most powerful and destructive weapon McCarthy had came right out of the U. S. Constitution. With his extraordinary capacity to twist good into bad McCarthy managed to pervert one of the most basic elements of the Bill of Rights. The Fifth Amendment to the Constitution guarantees the right against self incrimination. But when involved before Joe McCarthy, it somehow became an admission of guilt. Anyone who "took the Fifth" in response to a McCarthy question was immediately branded a Fifth Amendment Communist. (1983, p. 48)

In The Communist Controversy in Washington: From the New Deal to McCarthy, Latham offers this helpful description of the McCarthy period:

> For five years, beginning early in 1950, Washington officials and professional and intellectual circles throughout the country were in an uproar over communism, with fresh sensations every week. The temper of the time was suspicious, excited, emotional pathetic and hard. There was rage and outrage, accusation and defiance, a Babel of shouting anger in those tense years. (1966, p. 1)

Finally, an important book on the Civil Rights Movement is Meier's, Rudwick's, and Broderick's Black Protest Thought In the Twentieth Century. Meier, Rudwick, and Broderick provide useful insights into the affects of World War II on black-white relationships:

> The changes in white attitudes that began with the New Deal accelerated during and after World War II. Thoughtful whites had been painfully aware of the contradiction in opposing Nazi racial philosophy while doing nothing about race at home. Negroes benefited from the Cold War, since the Russians raised the issue of American racism to embarrass the country in the eyes of the World. (1978, pp. xxxv-xxxvi)

The literature which informs this research has been reviewed in three categories:

1. Methods literature.
2. Literature specific to the North Carolina Speaker Ban Law.
3. Literature pertaining to the cultural context of the speaker ban episode.

The review of methods literature has provided the basis for the framework necessary to fulfill the purposes of this research. Primary sources specific to the North Carolina Speaker Ban Law have been extensively reviewed. Important

secondary sources, such as newspapers, journals, television editorials, and letters have also been studied. Finally, secondary sources were particularly useful in providing a synthesis of the key elements of the cultural milieu and in establishing the context within which the Speaker Ban episode occurred.

CHAPTER III

METHODS OF STUDY

In conducting this research, I have used a combination of historical and oral history methods of inquiry. These methods permitted the systematic gathering of materials, the detailed checking and cross-checking of information, the critical analysis of information, and the formation of a synthesis. In short, these were the best methods for achieving the primary and secondary purposes of this study. The primary purpose was to examine in detail the North Carolina Speaker Ban Law, from its enactment until its being declared unconstitutional, and the secondary purpose was to determine the long-term implications of the Speaker Ban Law episode.

Most historians agree that primary materials should be used as much as possible. Therefore, I studied the following primary sources pertaining to the North Carolina Speaker Ban Law: North Carolina House Bill 1395, G.S. 116-199 and 200; University of North Carolina at Chapel Hill Faculty Council minutes; UNC Board of Trustee statements including the Medford Report, the testimony of speakers before the North Carolina Speaker Ban Commission, also known as the Britt Commission; federal middle district court of North Carolina documents pertaining to Dickson et al. v.

Sitterson et al.; and University of North Carolina regulations regarding the appearances and invitations to speakers affected by G. S. 116-199 and 200.

I then conducted a comprehensive examination of secondary sources related directly or indirectly to the North Carolina Speaker Ban Law. These materials included newspaper accounts, periodicals, books, and the personal letters of major participants.

I read literature pertaining to the cultural context of the Speaker Ban Law episode. These works covered academic freedom, communism, McCarthyism, and the Civil Rights Movement of the 1950's and 1960's.

After studying pertinent print sources, I conducted personal interviews with key participants connected with the North Carolina Speaker Ban episode. A number of the major participants, witnesses, and observers are dead, and I had limited access to a number of others and to their papers or notes. However, the interviews elicited valuable information that could not have been obtained from other, "traditional" sources. The interviews with former Consolidated University of North Carolina President William Friday and former Consolidated University of North Carolina Vice President A. K. King were especially helpful in terms of the purposes of this study. I interviewed some persons twice, as part of the process of cross-checking responses and elaborating key points.

Although several participants were unable or unwilling to submit to personal interviews, some were willing to respond to written questions.

All through the study, I approached the evidence skeptically. The various sources - documents, letters, newspaper accounts, journal articles, books and interviews- were cross-checked against one another in an attempt to reconcile differences and contradictions. For example, in determining President Friday's actions and statements, from the day that the North Carolina Speaker Ban Law was passed until the Britt Commission hearing, I checked and cross-checked the following sources: UNC faculty council minutes; newspaper accounts of Friday's statements and actions; books; journal articles; Sanford's and Helms'written responses to my questions; the records of Friday's testimony before the Britt Commission, and finally, personal interviews with Friday, King, Sitterson and Morgan. Thus, I was able to verify key points by cross-checking these materials against one another. For instance, in a personal interview Friday said that he was opposed to the law and that from the start he publically made known his dislike of the law. This statement was substantiated by King and Sitterson in personal interviews, by records of Friday's testimony before the Britt commission, by many newspaper accounts including articles in the Chapel Hill Weekly and Friends of the University, as well as by Bondurant et al, in their 1967 article on the North Carolina Speaker Ban Law.

However, it was not always possible to substantiate by other means information found in one source. This was the case when, in a personal interview, President Friday indicated that he met secretly with UNC-CH student body president Paul Dickson and that, among other things, he discussed Dickson's potential options relating to the law suit Dickson and others had brought against the university, Sitterson, and Friday. While I had no reason to doubt Friday's sincerity and truthfulness in regard to these meetings I, nonetheless, was unable to find any corroborating information. Since Dickson is deceased and his papers do not mention such meetings, and because Friday's close friends and colleagues King and Sitterson, knew nothing about these meetings and said in fact that they would be surprised by such an occurrence, I decided I could not base any conclusion about this aspect of the episode on Friday's memory alone.

Such a decision is supported by Lichtman and French's contention that "Historians should approach their evidence skeptically and be prepared to go beyond the intuition or common sense to advance arguments that justify the conclusions drawn from inspection of source material" (1978, p. 16).

Throughout the search for and examination of sources, the historian is constantly involved in a process of criticism. Lucey writes that

> Criticism, then establishes the authenticity and integrity of the sources, the true sense of the testimony, and the credibility of the witnesses; these four facts must be firmly determined if we are to derive reliable historical knowledge from the testimony found in any source. (1984, p. 23)

Every historian's efforts are directed toward achieving what Barzun and Graff call methodical common sense. In this regard, the historian

> takes in both what is known by the well educated and any special information relevant to the historical question being studied, and to these bodies of fact and ideas brings the habit of comparing and judging with detached deliberation. (1977, p. 129)

Oral history methods of inquiry, based on the personal interview, are used to complement traditional historical methods. As suggested above, the purposes of interviews, were in this case, to find information that was not available elsewhere and to verify and cross-check data from other sources. Thompson writes that

> Above all, in contrast to any other historical document, oral evidence comes from a living source. If it seems misleading, it is possible to ask more. And an informant can also correct a historian who has misunderstood. Documents cannot answer back, but oral history is a two way process. (1978, p. 137)

Not only does the combination of history and oral methods provide unique insights into the history of the North Carolina Speaker Ban Law episode, but it also enables one to better judge the implications of such an episode inasmuch as one has access to the retrospective understanding of major participants. With the "wisdom of

hindsight" over the last quarter century, various knowledgeable key informants can help one create a credible synthesis of the major short and long range implications of the episode. Fischer addresses the key relationship between historical knowledge and present understanding in saying "Historical inquiry can also be useful not merely for what it contributes to present understanding but also for what it suggests about the future" (1970, p. 315).

The initial phase of this research involved study of the Speaker Ban Law, the amended law, the record of testimony before the Speaker Ban Commission, UNC-CH faculty council minutes, UNC trustee statements and committee reports, and federal middle district of North Carolina court documents in Dickson et al. v. Sitterson et al. This was followed by a comprehensive study of secondary sources pertaining to and produced soon after the events. Personal interviews with key participants were conducted. These produced information and insights not available in other sources, while also substantiating data collected from traditional historical sources. The information on important points found in the various sources - documents, letters, newspaper accounts, television editorials, journal articles, books, and personal interviews - was cross checked in an attempt to reconcile differences and contradictions. Judgments about and evaluations of key points and issues were the result of a synthesis of the information from these different sources.

Finally the Speaker Ban Episode was described in a chronologically arranged narrative.

CHAPTER IV

THE NORTH CAROLINA SPEAKER BAN LAW EPISODE

On June 26, 1963, the North Carolina General Assembly enacted the North Carolina Speaker Ban Law, House Bill 1395. It prohibited known members of the Communist Party and those known to have pleaded the Fifth Amendment of the United States Constitution in loyalty investigations from speaking on campuses of tax supported North Carolina institutions of higher education. The bill entitled An Act to Regulate Visiting Speakers at State Supported Colleges and Universities reads as follows:

The General Assembly of North Carolina do enact:

> Section 1. No college or university, which receives any state funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who:
> (A) Is a known member of the Communist Party;
> (B) Is known to advocate the overthrow of the constitution of the United States or the state of North Carolina;
> (C) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state.
>
> Section 2. This act shall be enforced by the Board of Trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the Board of Trustees

> or other governing authority of such college or university.
>
> Section 3. All laws and clauses of laws in conflict with this Act are hereby repealed.
>
> Section 4. This Act shall become effective upon its ratification (Faculty Council Minutes, 1963, p. 256-D).

Many North Carolinians, including Consolidated University of North Carolina President William C. Friday, found this bill repugnant because it interfered with the free expression of ideas. Friday and others believed that universities were effective only when they were free from unwarranted political control. Friday, himself, spent six years trying to have the law amended or repealed (Friends of the University, 1965, p. 1).

Although rooted in the state's and country's history, the speaker ban controversy really began on June 25, the last scheduled day of the 1963 session of the North Carolina General Assembly. On that occasion, representative Phil Godwin of Gates County introduced House Bill 1395, the Speaker Ban Law, under suspension of the rules. House Speaker Clifton Blue declared it passed by a voice vote, and he then sent the bill to the senate. There, President Clarence Stone, in a similar procedure, suspended the rules, held a voice vote and declared the law passed. Bondurant et al. (1967) suggest that those in the senate galleries said the voice vote sounded close, but President Stone did not allow a hand vote, although several senators protested. In remembering the events in both the house and senate,

witnesses suggested that the process was clearly politically motivated, although there is no documentation of this belief (p. 228).

The next day, Senator Luther Hamilton of Carteret County attempted to have the resolution recalled; however, the motion to recall was defeated by a roll call vote of twenty-five to nineteen. The bill became law, even though Governor Terry Sanford was strongly opposed, because in North Carolina the governor does not have a veto (Bondurant et at., 1967, p. 228).

In explaining his motives, representative Godwin said that he introduced the bill in the interest of national security (Bondurant et al., 1967, p. 229). If, indeed, the motivation for this bill was national security, it is important to have some understanding of the extent to which the law was a reaction to the social and political climate of the times, a climate marked by a great residue of McCarthyism and anticommunism, as well as the civil rights movement that was sweeping the country. Further, it is important to understand how such a climate and such specific pieces of legislation would affect higher education.

In 1959, five years after the United States Senate censured Joseph McCarthy, the Supreme Court, in Barenblatt v United States of America cited the "Cold War" as an excuse for depriving American communists and suspected communists of their constitutional rights. In this and other such

decisions, the court echoed the anti-communist fervor that had consumed America in the late 1940's and 1950's. Most Americans understandably viewed the communist party as a serious threat to the security of the United States. The communist coup in Czechoslovakia in 1948, followed a few months later by the Berlin Blockade, touched off a war scare. The next year, the Soviets detonated an atomic bomb, and China fell to the communists (Schrecker, 1986, p. 3). To many Americans, the "Cold War" was as real as the Korean War.

Karier, in The Individual, Society and Education: A History of American Education Ideas, (1986) details the effects of the cold war on American society:

> The effects of the cold war on American education and society in the second half of this century have been profound in every respect. The fear of communism, both without and within, has affected liberal and conservative alike. Americans sacrificed much in their forty-year anti-communist crusade. The inescapable fact is that liberals more so than conservatives, were the architects. Sidney Hook, student, follower, and heir apparent to John Dewey, spent much of his life in the service of that cause. The cold war is, no doubt, a major reason why American liberal, social and educational philosophy has never been reconstructed in any meaningful sense in the postwar period. (p. xi)

Closely connected to the cold war and communism was McCarthyism. Smith and Zurcher, (1968) in the Dictionary of American Politics, characterize McCarthyism as

> A habit of branding all except extreme right wing ideas as communistic, of indiscriminately leveling false charges of treason, of making new charges instead of furnishing facts and of attacking the

> motives of those who questioned the authenticity of statements. The term arose from the specious charges of Senator Joseph R. McCarthy of Wisconsin, who undermined public confidence in many public officials and private persons until finally censored by the Senate, December 2, 1954. (1968, p. 228)

In Without Precedent: The Story of the Death of McCarthyism, Adams (1983) maintains that McCarthy perverted the Fifth Amendment of the Bill of Rights:

> The most powerful and destructive weapon McCarthy had came right out of the United States Constitution. With his extraordinary capacity to twist good into bad McCarthy managed to pervert one of the most basic elements of the Bill of Rights. The Fifth Amendment to the Constitution guarantees the right against self incrimination. But when invoked before Joe McCarthy, it somehow became an admission of guilt. Anyone who "took the Fifth" in response to a McCarthy question was immediately branded a Fifth Amendment Communist. (p. 48)

A useful characterization of the McCarthy period is provided by Latham (1966) in The Communist Controversy in Washington: From the New Deal to McCarthy.

> For five years, beginning early in 1950 Washington officials and professional and intellectual circles throughout the country were in an uproar over communism, with fresh sensations every week. The temper of the time was suspicious, excited, emotional, pathetic and hard. There was rage and outrage, accusation and defiance, a babel of shouting anger in those years. (p. 1)

At home, America was being rocked by change. Meier, Rudwick, and Broderick, (1978) in Black Protest Thought In The Twentieth Century, describe the affects of World War II and the Cold War on black-white relationships. They maintain that

> The changes in white attitudes began with the New Deal accelerated during and after World War II. Thoughtful whites had been painfully aware of the contradiction in opposing Nazi racial philosophy while doing nothing about race at home. Negroes benefited from the Cold War, since the Russians raised the issue of American racism to embarrass the country in the eyes of the world. (pp. xxxv-xxxvi)

In Brown v Topeka Board of Education (1954), the Supreme Court ruled that separate educational facilities were inherently unequal and that racial segregation in the public schools violated the "due process" clause of the Fourteenth Amendment (Karier, 1975, p. 347). Black Americans, tired of second class citizenship and buoyed by the social and political consciousness of many Americans, extended the civil rights movement. Black leaders, like the Reverend Martin Luther King, Jr., adopted and used to advantage Ghandi's strategy of passive resistance.

Karier notes that President Eisenhower suspected the Civil Rights Movement of being connected in some way with the Communist Party and, therefore, he ordered increased Federal Bureau of Investigation surveillance of the leadership and organizations of the Civil Rights Movement, including Martin Luther King, Jr. and the Southern Christian Leadership Conference (1986, p. 329).

As far as the effect that racism had on America's culture in the 1960's Karier says, "The problems of unemployment and racism hung heavy on the American social conscience of the 1960's" (Karier, 1986, p. 332).

In this context of a perceived communist threat and the perceived disruption that would follow advances in civil rights, the North Carolina Speaker Ban Law was enacted. However, it is important to understand that the Speaker Ban Law had clear antecedents in academe.

One educator who led the battle to define the necessary limits of freedom was Sidney Hook. Hook studied at Berlin, Munich, and Moscow, after receiving his doctorate at the University of Chicago. He joined the Communist Party in 1932 but was expelled after attempting to reconcile the work of John Dewey and Karl Marx. Hook subsequently became a leading anti-communist. In 1939 he, John Dewey, and George S. Counts formed the Committee For Cultural Freedom. The committee became more effective than the reactionary right in opposing communist involvement in higher education. Hook believed that the threat of a communist conspiracy could be dealt with by exposing its members. He argued that communists behave dogmatically in the classroom and, therefore, violate the basic canon of academic freedom, the disinterested pursuit of truth. Hook, therefore, had established the logic of guilt by association in the realm of ideas long before Joseph McCarthy had established the same logic in the political sphere (Karier, 1975, p. 80).

By 1950, Hook and other educators had convinced the National Education Association, the American Federation of Teachers, and the Association of American University

Presidents that membership in the Communist Party was enough evidence for one to be dismissed from a teaching position. Professor Hook believed that a communist was not a free, objective scholar and thus should not be allowed to teach (Karier, 1975, p. 82).

Alexander Meiklejohn, a former President of Amherst, took issue with Hook's arguments. Meiklejohn held that a man was innocent until proven guilty. He believed that only a lack of faith in democracy and freedom led men to advocate suppression of freedom in the name of freedom (Karier, 1975, p. 82).

The specific denial of students and faculty members of the opportunity to hear certain outside speakers was not itself new when the North Carolina Speaker Ban Law was enacted. Pollitt (1963), in "Campus Censorship: The North Carolina Visiting Speakers Law," concludes that "An additional form of censorship is to deny students and faculty the opportunity to hear certain types of outside speakers" (p. 2). He cites numerous examples of this type of censorship, including the case of Howard Fast, who was denied permission to speak at New York University in the mid 1940's because he had been cited by Congress for contempt. Ohio State University, in 1951, denied speaking permission to a Quaker pacifist, and the University of Washington refused to allow Robert Oppenheimer, the father of the atomic bomb, to speak to a conference of scientists on its

campus (Pollitt, 1963, p. 2). In 1954, Paul Sweezy refused to answer questions about a speech he made to a humanities class at the University of New Hampshire on the grounds that the questions violated academic freedom and first amendment privileges. The New Hampshire Courts ruled against Sweezy, but the United States Supreme Court reversed the decision. Chief Justice Earl Warren maintained that the whole process constituted an abridgement of Sweezy's liberties. He added that teachers and students should remain free to inquire, study, evaluate, and gain new understanding, or our civilization would stagnate and die (Pollitt, 1963, p. 12).

The North Carolina Legislature for over twenty years had been concerned about certain persons who spoke on state university campuses. In 1941, the legislature passed a law prohibiting any public building supported by state funds from being used by persons who supported or taught a doctrine advocating the overthrow of the federal or North Carolina governments (Pollitt, 1963, p. 4). The 1963 Speaker Ban Law was consistent with the 1941 statute in prohibiting speeches by communists, regardless of the subject matter of the planned speech. The prohibition included all known members of the Communist Party, as well as those who had pleaded the Fifth Amendment in refusing to answer questions with respect to communist or subversive activities, or connections. Many, including UNC-CH Law Professor Daniel Pollitt, believed that the 1963 law raised

serious constitutional questions with respect to the guarantees of free speech and self incrimination, and with respect to its vague terms regarding the due process clause of the United States Constitution (1963, p. 4).

In the 1963 session of the North Carolina General Assembly, the concern for campus speakers, which could be traced back to 1941, clearly was connected with the then current national fear of communism and the spectre of a growing civil rights movement.

The 1963 session was long, trying, and controversial, with many national and domestic problems confronting the legislators. The problems tended to divide state and national politicians into adamant conservative and liberal camps. Nationally, some saw President Kennedy as a liberal whose social policies would cause unknown calamities. This was especially true among a number of groups in North Carolina, many of whose members also viewed Governor Sanford as a person with unfortunately liberal inclinations. Many North Carolinians were worried not only by liberal political leadership in the persons of Kennedy and Sanford, but they were also concerned about what were perceived to be two liberal Supreme Court decisions.

The United States Supreme Court had handed down separate decisions requiring legislative reapportionment and prohibiting Bible readings in the schools. Though feelings ran high in both conservative and liberal quarters on the

latter issue, reapportionment was the major issue throughout the session due to the potential shift in the country's political base and, therefore, the change in the relative political strength of blacks and whites. This related directly to the fear that many conservative legislators had that President Kennedy's announcement of a far reaching civil rights program would lead to a summer of racial conflicts. At the same time, Governor Terry Sanford, a friend and supporter of President Kennedy, was requesting aid from the state legislature for higher education and improvements in the secondary schools, as well as money for increases in the minimum wage. To add to the confusion of purposes, in the same session in which he engineered passage of the Speaker Ban Law, Senate President Stone had unsuccessfully attempted to pass a bill petitioning Congress to call a constitutional convention to establish a Super Supreme Court of the United States, which would be composed of all state chief justices and which would be able to review all decisions of the United States Supreme Court (Bondurant et al., 1967, pp. 225-2
27).

In addition to the many controversial issues facing the state legislators, North Carolina had zealots stirring fears of communism and civil rights. One such man was Jesse Helms. Ernest B. Furgurson, in his Hard Right: The Rise of Jesse Helms, states that Helms can be compared to the ardent

anti-communist Joseph R. McCarthy (1986, p. 25). A reading of Helms' voluminous editorials confirms the conclusion that he consistently played on the fears and prejudices of his audience. Helms knew his audience, and his style was direct, sarcastic, and folksy. He worked best in opposition, when he was full of righteous anger.

In 1960, Helms joined WRAL-TV in Raleigh, N.C. as a commentator. Five days a week, his provocative editorials were aired at the conclusion of the evening news and rebroadcast the next morning. They were also transmitted by FM radio to the Tobacco Network, and free copies were sent to newspapers which used them as signed columns (Furgurson, 1986, pp. 26-27, 70-72).

Helms was greatly angered by the civil rights movement, which he believed was part of a communist master plan to divide and conquer America by instigating racial violence. Helms also thought that the university community had more in common with New Yorkers and Washingtonians than with the farmers and textile workers of North Carolina (Furgurson, 1986, p. 68). In his editorials, he would often criticize the university for its liberal leanings.

In a WRAL-TV editorial delivered just four days before the Speaker Ban Law was introduced in the North Carolina State Legislature, Helms spoke with admiration about the President of Ohio State University, N.G. Fawcett, for refusing to allow communist speakers on campus. Fawcett had

stated that as long as he was president no communists were going to use the tax supported facilities of Ohio State as a forum. Helms lauded the Ohio House of Representatives for voting, by a four to one margin, to forbid communists from speaking at any state supported college or university. He went on to say that the Ohio Senate was sure to approve the bill and that Governor John Rhodes would sign it (Viewpoint Editorial 636, 1963, pp. 1-2).

Apparently, the fact that his editorial was aired just four days before House Bill 1395 was introduced was coincidental. Representative Phil Godwin stated that he knew of the Ohio legislation but had not heard Helms' editorial, nor had he heard from Helms or any of his friends and supporters (Godwin Interview, 1987).

In an editorial subsequent to the passage of the bill, Helms praised the North Carolina Legislature for enacting the Speaker Ban Law. He attacked the liberal press, especially the Raleigh News and Observer, for its display of ill temper in reaction to the law's passage. Helms stated that "no citizen need be concerned about any imaginary restriction on freedom of speech. This is a mere smoke screen being thrown up to obscure the basic issues involved" (Viewpoint Editorial 642, 1963, p. 2). Furthermore, he maintained that everyone had the right to speak, but not the right to be heard. Comparing the communists to thieves and murderers, Helms said they should not be heard on North

Carolina college campuses (Viewpoint Editorial 642, 1963, p. 2).

Another prominent North Carolinian who supported the Speaker Ban Law was State Senator Robert Morgan. Speaking for himself and on behalf of the North Carolina Department of the American Legion, Morgan said that while they had high regard for the University of North Carolina, American Legion members felt that in some areas, the university administration was in error. Morgan stated that the American Legion supported the Speaker Ban Law (Hearing Before the Speaker Ban Study Commission, 12 Aug. 1965, 2:00 p.m., pp. 13-14).

Morgan did not believe that the Speaker Ban Law infringed on academic freedom because the law only said that communists could not speak on state property; it did not say that they could not speak anywhere. As to freedom of speech, he thought that the Constitution and the First Amendment did not apply to a doctrine which would advocate the overthrow of the government (Hearing Before the Speaker Ban Commission, 2:00 p.m., Aug. 12, 1965, pp. 25-29).

Secretary of State Thad Eure joined Helms and Morgan in support of the Speaker Ban Law. In fact, he claimed that he wrote every word in the bill, at the urging of members of the General Assembly (Raleigh News and Observer, November 9, 1963). However, Representative Godwin claims that Thad Eure did not help him with the writing of the bill (Godwin Interview, 1987).

Jesse Helms, Robert Morgan, and Thad Eure's views were supported by an opinion issued by North Carolina Deputy Attorney General Moody. Moody's report, designated Legal Opinion of the Constitutionality of the North Carolina Speaker Ban Law, was approved on August 2, 1963 by North Carolina Attorney General Bruton. Moody concluded that the law was constitutional and valid in so far as the Constitution of the United States and the Constitution of North Carolina were concerned. He stated that the North Carolina Speaker Ban Law

> does not in any manner prohibit, limit, or restrain valid and legitimate "Academic Freedom." The statute does not prohibit or restrain any investigation or pursuit of learning as to the philosophy and doctrines of that facet of Socialism, which is referred to as Communism. The statute does not prohibit or in any manner restrain or prevent any professor from giving any instruction about Communism which he may desire and thinks proper. The statute does not prohibit the sale or acquisition of any books, pamphlets, papers or magazines about Communism whether the same be published by the communist press or not. In other words, all legitimate, valid and legal avenues are open to any person who wishes to know about communism in all of its features and details. It does not limit the freedom of the press. (Legal Opinion of the Constitutionality of N.C. Speaker Ban Law, August 2, 1963, pp. 35-36)

Not all North Carolinians were happy with the North Carolina Speaker Ban Law. President Friday, who was totally opposed to the law, believed that many of the law's supporters were wrapping themselves in the flag and misleading and misinforming the people of North Carolina. Friday recalled that Thomas Jefferson and the other founding

fathers "were just as concerned about freedom of expression as they were about patriotism because one sustains the other. That is why you have the first ten amendments" (Friday Interview, Feb. 23, 1987). Friday realized, however, that there was very little hope to get the legislature to reverse itself in three or four months. Rather, he thought the best place to win the battle was within the board of trustees of the university. Friday began a process of redefining and restating university policy and of slowly reasserting academic freedom (Friday Interview, Feb. 23, 1987).

A. K. King, a former administrative vice president of the university and a close associate of Friday described him as cool, calm, deliberate, intelligent, and politically masterful. King suggested that Friday was known for his ability to bring warring factors together and for his behind the scenes tact. However, he said the president's greatest attribute was his personal honesty and integrity. King said that Friday was totally honest in his dealings with people, regardless of their status. In dealing with most issues, he would listen to all sides, decide the best approach, and form a consensus. Friday was never dogmatic; instead, he was a marvelous persuader, who often convinced people by the sincerity of his ideas. King believed that Friday's ability to gain people's trust served him well with all constituencies with which he worked. In this regard, he was

successful at preventing students from going to extremes because he was able to give them alternatives. King stated that Friday's generally good relations with the press also were based on trust. He was careful to give them exact information and seldom forced newspaper writers to discover anything about the university; instead, he told them what was occurring (King Interview, March 12, 1987). Friday needed all these qualities and abilities in his efforts to repeal the Speaker Ban Law.

It was a surprised President Friday who first learned of the passage of the Speaker Ban Law. He received a telephone call concerning House Bill 1395 at 3:00 p.m. on June 25, 1963. After hearing the text of the law, he and Fred Weaver, a university associate, went to Raleigh. The General Assembly had adjourned for the day, so they went to the Sir Walter Hotel, which then was the headquarters for lawmakers. Friday lobbied lawmakers all night to repeal the law, and by the next day, he had nineteen senate votes. Unfortunately, this was not enough to recall the bill. Friday realized then that it would probably take years to reverse popular misunderstanding about the expression of ideas. He believed that many people did not understand that by trying to prevent the expression of ideas they did not agree with, they were often playing into the hands of the very people they could not tolerate. Friday believed people provided more publicity and a bigger audience for those they

opposed when they attempted to limit free speech. He was also angry that this law had not been debated openly and said that the law would never have passed without the suspension of rules (Friday Interview, Feb. 23, 1987).

Others joined Friday in condemning the law. The Faculty Council of the University of North Carolina at Chapel Hill, on October 22, 1963, unanimously adopted a statement of opposition. The statement said that although legislators voting for the statute believed it was in the state's best interest and although they, the faculty, were "opposed to communism," they found it necessary to register "the strongest objection to this statute" ("Statement on N. C. Law to Regulate Visiting Speakers at State Supported Colleges and Universities," Faculty Council UNC-CH, 1963, N. C. Collection UNC-CH, p. 1).

The Faculty council maintained that

> The statute is a step toward substitution of politically controlled indoctrination for reasonable objective educating. Regulation of speakers on campus is best left, along with matters of educational policy, to the trustees, the administration and the faculty.

They concluded their statement as follows:

> In summary, by this statute the General Assembly while attempting to protect our liberties, has unwisely interfered with educational policies, curtailed legitimate freedom on our campuses, and created serious barriers to the maintenance of higher educational institutions of a quality, which, in light of the Assembly's more constructive efforts to improve higher education the state has a right to expect (Faculty Council Minutes, UNC-CH, 1963, pp. 1-3)

Not only were UNC faculty members incensed, but so also were faculty members at private colleges, even though their institutions were not covered by the Speaker Ban Law. Davidson College professors, by a vote of fifty-six to seven, urged the General Assembly to repeal the law because it imposed unnecessary and inappropriate restrictions upon officers of institutions of higher education and would be detrimental to the cause of higher education (Durham Morning Herald, Jan. 20, 1965).

According to President Friday, all of the university chancellors were opposed to the Speaker Ban Law, and he decided that UNC-Chapel Hill Chancellor William B. Aycock, a renowned lawyer, should lead the public attack. Accordingly, Friday and Aycock conferred on the general tactics they would use in trying to get the bill repealed. They followed a process whereby Aycock would write statements, share them with Friday, and then deliver a written or oral address. This procedure was suited perfectly to Friday's leadership style, which involved using the talents of his colleagues, while maintaining control (Friday Interview, Feb. 23, 1987).

Chancellor Aycock, at the 1963 annual meeting of the UNC Board of Directors, said the law was both an insult to the entire university community and a piece of sloppy legislation, one which was full of ambiguities. Aycock stated that the legislature had passed a law to meet an evil

which was never proved to exist (Raleigh News and Observer, Nov. 11, 1963). During a subsequent address to the Greensboro Bar Association, Aycock said, "We have made the first step toward emulating the narrow dogmas of the enemy we all abhor. This is not intended but nevertheless it is true" ("The Law and the University," Nov. 21, 1963).

President Friday's continuing efforts to have the legislature modify or repeal the law were given a boost by State Senator Ralph Scott of Alamance County, who called passage of the bill "The most outrageous abuse of the legislative process I have ever seen" (Raleigh News and Observer, Sept. 27, 1963). He stated that the law showed a lack of faith in the system and was a last ditch effort of fearful people afraid to argue with their enemies (Raleigh News and Observer, Sept. 27, 1963).

Despite Friday's initial efforts and vehement opposition, progress in having the law modified or repealed would be slow because the General Assembly met only every other year. In the interim, Friday sought the support of the Consolidated University Board of Trustees, which in the first months following the passage of the Speaker Ban Law favored repeal of the law (Friday Interview, Feb. 23, 1987).

On July 8, 1963, the Executive Committee of the Board of Trustees of the Consolidated University of North Carolina adopted a resolution stating the following:

> Whereas, the General Assembly of North Carolina recently enacted a law imposing unnecessary

> restrictions considered inimical to academic freedom and contrary to the traditions of the consolidated University of North Carolina and other state educational institutions;
>
> We, The Members of the Executive Committee of the Board of the University of North Carolina,
>
> Do Recommend that the Board of Trustees take appropriate steps to endeavor to eliminate this restriction upon academic freedom. (Faculty Council Minutes, UNC-CH, July, 1963, p. 256E)

The trustees subsequently adopted a resolution on October 28, 1963, denouncing the hastily enacted measure and asking the 1965 General Assembly to modify or repeal it. They attacked the law as a threat to academic freedom and an embarrassment to those who must enforce it. The board asked Governor Sanford, in his capacity as board chairman, to appoint a fifteen member trustee committee to determine and implement measures to modify the law (Chapel Hill Weekly, Oct. 30, 1963). However, Sanford procrastinated and did not appoint a speaker ban committee until a year later, perhaps because of a desire to keep the issue out of the 1964 gubernatorial election (King Interview, March 12, 1987).

The special fifteen member trustee committee that was finally appointed by Sanford shortly before he left office was called the Medford Committee, in honor of its chairman William Medford. This committee met four times between November, 1964 and April, 1965. The consolidated University of North Carolina administration advised the committee of the actions the Faculty Council, the Student Government and the administrative officers of the university had taken up

until that time to comply with the Speaker Ban Law. Also, the committee was made aware of the discussior and actions of the Southern Association of Colleges and Schools regarding the possible effect of the Speaker Ban Law on accreditation. On April 24, 1965, the Medford Committee issued its report, which said that

> Despite a clear preference for outright repeal, the Committee concluded that amendment of the Act was a more practical objective to pursue. The desired amendment would uphold the authority of the Board of Trustees in this area of their responsibility. (Faculty Council Minutes, UNC-CH, May 7, 1965, Medford Committee Report, p. 2)

Thus, two years after the passage of the Speaker Ban Law, this trustee committee was willing to see the law amended by giving trustees the power to enforce the law, instead of moving for outright repeal. A further reading of the report indicates that the committee believed quick action should be taken: "In the Committees considered judgement, failure to act promptly will result in deterioration of faculty and student moral and loss of respect for and standing of the University in American higher education" (Faculty Council Minutes, UNC-CH, May 7, 1965).

Between the 1963 and 1965 North Carolina General Assembly sessions, there had been a bitter struggle for the Democratic party gubernatorial nomination. At that time, the winner of the Democratic nomination was expected to win the governor's seat. The leading candidates were a liberal

former federal judge, L. Richardson Preyer; a conservative former state superior court judge, Dan K. Moore; and an ultra conservative attorney and former law professor, I. Beverly Lake. The Speaker Ban Law was not the main campaign issue, but it was an important one. Moore cautiously supported the law; Lake strongly advocated it; and Preyer equivocated on the issue. However, most who knew Preyer's record believed that he was opposed to the measure. Preyer led Moore in the first primary, but Lake threw his support to Moore, and Preyer was soundly defeated in the second primary. Many saw Moore's victory as a popular endorsement of the Speaker Ban Law (Bondurant, et al, 1967, pp. 232-233).

Moore, who had supported the law as a candidate, automatically became chairman of the board of trustees when he assumed the position of governor. Besides the change in the chairmanship, there was, at the same time, an important shift of attitude among many board members. Some who had previously opposed the Speaker Ban Law, at least to a degree, now realized that they might be branded soft on communism and found themselves tending to support the law. The resolve of most members of the trustees was weakened, and they were willing now to have the law amended rather than repealed. President Friday persevered in his striving for repeal and asked Governor Moore to appoint a legislative commission on the Speaker Ban Law (King Interview, March 12, 1987).

President Friday's attempts to persuade Governor Moore to appoint a commission to study the law got a boost from the Southern Association of Colleges and Schools. The association, the principal accrediting agency for the region, sent a telegram on May 1, 1965, in which it said that the Speaker Ban Law might adversely affect the accreditation of the state supported universities and colleges (Bondurant et al., 1967, pp. 232-233).

There would be numerous ramifications if accreditation was lost. They ranged from students' losing National Defense Education Act Loans, to state institutions' participation in sports events sponsored by the National Collegiate Athletic Association being adversely affected. Bondurant et al. (1967) maintained that even the threat of such loss of accreditation effects had serious consequences:

> Many graduate and undergraduate students became apprehensive about the status of their academic credits and degrees if accreditation were withdrawn, and some had begun considering transferring while it was still possible. Enrollment pressures throughout the nation were such that it was likely that only the better students would be able to transfer to comparable institutions. In addition, beliefs were voiced that applications for admission to both undergraduate and graduate schools from superior students would decline substantially. (p. 232)

Not only was there a potential problem with the Southern Association, there was clearly a problem with UNC faculty members. On May 28, 1965, one hundred and seventy-five UNC-CH faculty members issued a statement criticizing unwarranted political interference in university affairs and

threatened to resign. Then, on June 3, one hundred and thirteen UNC-G faculty members issued a statement saying they would resign if the university lost its accreditation (Bondurant et al., 1967, pp. 232-233).

Because of the North Carolina Speaker Ban Law, several individuals and organizations decided not to speak on North Carolina campuses until the law was repealed or suitably amended. The British scientist J. B. S. Haldane intended to lecture on the application of mathematics and statistics to research in genetics at North Carolina State College and the University of North Carolina at Chapel Hill; however, he declined the universities' invitation to speak because it meant he would have to reveal his Communist Party membership status, which he refused to do. The law also prevented Russian embassy secretary Victor Karpov from speaking at N.C. State and UNC-CH in the fall of 1963. The chancellor of N. C. State College advised a science faculty member not to apply for a grant awarded by the National Academy of Sciences of the National Research Council to participate in the U.S. - U.S.S.R. inter-academy exchange program for the 1964-65 academic year because N.C. State, under, provisions of the Speaker Ban Law, could not reciprocate by allowing a Soviet scientist to study and/or speak at the university ("North Carolina's Gag Law," Christian Century, Oct. 28, 1964, p. 1336).

On June 1, 1965, after stating that he did not believe it would be in the best interest of higher education for the General Assembly, as a body, to consider repeal of the law, Governor Moore nevertheless recommended that the General Assembly create a nine member commission to study the Speaker Ban Law and to formulate recommendations. These seemingly contradictory statements illustrate both Moore's support for the law and his fundamentally cautious nature. The General Assembly, before adjourning later in June, did establish a commission, which was composed of five persons appointed by the governor and two each appointed by the leaders of the house and senate, respectively (Bondurant et al., 1967, pp. 232-233).

The commission was headed by Representative David M. Britt of Fairmont, who was appointed by Governor Moore. Moore also appointed W. T. Joyner, a Raleigh attorney; Charles Myers of Greensboro, the president of Burlington Industries; Mrs. Elizabeth Swindell, a Wilson newspaper publisher; and the Reverend Ben C. Fisher of Wake Forest, the chairman of the Baptist State Convention on Higher Education. Lt.Governor Bob Scott selected Senator Gordon Hanes, president of Hanes Hosiery in Winston Salem; and Senator Russell Kirby, a Wilson attorney. House Speaker Pat Taylor chose Representative A. A. Zollicoffer, a Henderson attorney; and Representative Lacy Thornburg, a Sylva attorney. The commission was instructed to examine the

enforcement of the statute; the relationship, if any, between the statute and the accreditation organizations and associations; the law's effect on the relationship between North Carolina institutions and other institutions of higher learning; and the impact of the statute on the administration, reputation, functioning, and future development of state-supported institutions (Clay, Raleigh News and Observer, June 25, 1965).

Hearings were held by the Speaker Ban Study Commission, also called the Britt Commission, on August 11-12 and September 8-9, 1965. Representative Phil Godwin, who had co-sponsored the bill in the house, and Senator Tom White, who had supported it in the senate, spoke in favor of the law. Also speaking in support of the Speaker Ban Law were representatives of the American Legion, including State Senator Robert Morgan. Among those speaking against the law were Watts Hill, Jr., Chairman of the North Carolina Board of Higher Education; John P. Dawson, First Vice President of the American Association of University Professors; and Emmett B. Fields, chairman of the Commission on Colleges of the Southern Association of Colleges and Schools. Representatives of the Alumni Association of State Institutions, the league of Women Voters, and Phi Beta Kappa also spoke against the law (Bondurant, et al., 1967, pp. 234-235). However, it was the University of North Carolina administrators, especially President Friday and UNC-CH

Chancellor Aycock, who most effectively argued against the law.

William C. Friday, as president of the Consolidated University of North Carolina, and the chancellors of the branches of the university described at great length the injurious effects which the law caused or would cause. These negative effects included the loss of academic freedom, damaged national reputation, and lowered faculty morale (Britt Commission Testimony, Sept. 8, 1965). In addition, Professor William Van Alstyne of the Duke University Law School presented a statement in which he questioned the constitutionality of the law (Bondurant, et al., 1967, pp. 234-235).

The libraries at The University of North Carolina at Chapel Hill and The University of North Carolina at Greensboro house volumes of testimony presented by both proponents and opponents of the law. Those in favor maintained that the legislature had the right to decide which persons could speak on state property and an obligation to the citizens of North Carolina to ban anyone associated with the Communist Party from speaking on campus. The opponents of the law portrayed it as unconstitutional because it infringed on academic freedom and First Amendment rights.

Of those supporting the law and speaking before the Britt Commission, Representative Phil Godwin and State

Senator Robert Morgan's testimony best demonstrated proponents' reasons for supporting the law in its original version. Godwin said that "at the time of the introduction of House Bill 1395, I had no idea that it would have caused the controversy which it has" (Aug. 11, 1965, 2:00 p.m., p. 2). He maintained that the bill was very straight forward and that it was intended to prevent from speaking known Communist Party members, those who advocated the overthrow of the United States Constitution or the North Carolina Constitution, and those who pleaded the Fifth Amendment and refused to answer questions with respect to communist or subversive activity before legislative or judicial committees. He continued, saying, "The enforcement of this legislative intent is delegated to the board of trustees or other governing authority of such college or university" (Aug. 11, 1965, 2:00 p.m., p. 3). Godwin concluded his testimony by quoting from Deputy Attorney General Ralph Moody's official opinion regarding the constitutionality of the law, in which Moody maintained that the law was legitimate, valid, and constitutional and that it did not prohibit or restrain legitimate academic freedom (Aug. 11, 1965, 2:00 p.m., pp. 6-7).

However, it was Morgan who made the strongest statement in support of the North Carolina Speaker Ban Law. He noted that the Communist Party was not an ordinary political party, but one whose goal was to seize the power of

government by and for a minority rather than gaining it through a free election. Morgan stated,

> There has never been a time when the threat to our country both from within and from without is greater than today. Today we are fighting the communists not only for the minds of men but on the battlefields for our survival and the survival of the free world. (Aug. 12, 1965, 2:00 p.m., p. 17)

Morgan connected the communist threat to attempts by the Communist Party to organize at the University of North Carolina in the 1930's. He maintained that the Young Communist League brought speakers to the university, including the editor of The Daily Worker. Morgan proposed,

> To demonstrate more vividly the need for the law at the time of its adoption in 1963, I invite your attention to the fifties when Junius Scales, while at the University of North Carolina, was an active communist. He was the director of the Carolinas in the Communist Party. He graduated there in '46, and continued his work at the University as a graduate student in the Department of History. (August 12, 1965, 2:00 p.m., p. 18)

Further, Morgan addressed the questions of academic freedom and freedom of speech and maintained that the law did not infringe on academic freedom or freedom of speech. He concludes,

> The guarantees made to us by the Constitution and especially the First Amendment do not apply, our courts have held, to the advocacy of a doctrine which would overthrow the very government which guarantees those principles. (p. 29)

Opponents of the law were well represented at the Britt Commission hearings. Testimony by Watts Hill, Jr., John P. Dawson, Emmett B. Fields, William Van Alstyne, William

Friday, and former Chapel Hill Chancellor William Aycock best detail the views of those opposing the law.

Hill, speaking for the North Carolina Board of Higher Education, read on August 13, 1965, this resolution:

> Resolved that the North Carolina Board of Higher Education affirms the principle of resistance to subversive communist influences on the campuses of State-supported institutions, but believes and has full confidence that this resistance can best be achieved by returning to the trustees the authority and responsibility for managing and directing the internal affairs of their respective institutions. (Friends of the University, Fall, 1965, pp. 1 and 11)

Hill maintained the board was concerned with these major questions:

1. Would the Southern Association of Colleges and Schools withdraw accreditation?
2. What would be the impact on higher education in the state if state-supported institutions were placed on probation or lost their accreditation?
3. What impact had the controversy caused to date for the institutions and students?

Hill said that the board had concluded that the Southern Association of Colleges and Schools would withdraw accreditation. Further, the loss of accreditation would damage the ability of state universities to attract competent new faculty members and to keep present faculty members, especially the best and brightest, who were highly sought after by universities across the nation. The board also believed that students would suffer as the quality of

their instruction decreased. Finally, the board had concluded that the impact to date had been substantial and, at the same time, difficult to prove, since it was often impossible to determine why a prospective faculty member chose not to join the University of North Carolina faculty (Fall, 1965, p. 11). Hill pointed out that

> The impact will not be noticed overnight. There has been no flight of faculty. Institutions, as with the quality of their instruction, do not fall apart overnight. But as with a cancer, the symptoms often do not permit diagnosis until the disease is in the final stages. (Fall, 1965, p. 11)

Hill also emphasized that "the damage done to date is not due to a possible loss of accreditation but rather directly from the Speaker Ban Law" (Fall, 1965, p. 11).

Dawson reiterated the AAUP's concern about the Speaker Ban Law. He pointed out that in 1963 the AAUP had sent a telegram, at President Friday's urging, indicating its opposition to the law. In addition, he said that the organization had since communicated its opposition several times to North Carolina legislative and executive offices. Dawson said that

> It is not necessary to remind you that advocating the overthrow of the government, by force, violence or other unlawful means, is already a crime under the North Carolina statute passed in 1941. The coverage of the 1941 statute is wide. It includes advocacy in any public building or through any institution supported in whole or in part with public funds. Surely no more than this is needed. (Hearing Before Speaker Ban Speaker Commission, Aug. 12, 1965, 10:00 a.m., p. 5).

Dawson continued, saying,

> Our main objection to the ban is that it invades an area which has been the central concern of this Association in the half century of its existence: The Speaker Ban violates academic freedom. What we urge upon you is a conception of a university in a free society. For university students to be educated and for university faculties to learn and to teach, freedom to examine all shades of opinion must be present. Scholars in a free society, must have the right not only to read about all points of view in printed form but to meet with the holders of opposing views, to see and hear them, to question them and to argue with them. Once we admit that speakers can be banned, no matter how peaceable, lawful and politically neutral may be the themes that they discuss, we have taken a long step toward the thought control of which we hope to rid the world. (Aug. 12, 1965, 10:00 a.m., pp. 5-6)

Emmett Fields, speaking for the Executive Council of the Commission on Colleges of the Southern Association of Colleges and Schools, said that the Executive Council had not questioned and did not question the right of the North Carolina Assembly to pass, amend, or repeal any law it wished. Fields asserted that "The authority of the Southern Association extends only to its member institutions with respect to the conditions for membership and accreditation as set forth in the Standards for Colleges" (Hearing Before Speaker Ban Study Commission,Aug. 11, 1965, 10:00 a.m., p. 19).

With these principles established, Fields summarized the May 19, 1965, action of the Executive Council. On that occasion, the council made clear that it found that the North Carolina Speaker Ban Law interfered with the authority

of the University of North Carolina Board and that this interference had a detrimental effect on the state supported institutions of higher learning in North Carolina. He indicated that the council would present its findings to the full commission at its next meeting. The findings would be instrumental in determining the status of these institutions with regards to continued accreditation (Aug. 11, 1965, 10:00 a.m., p. 18). Fields concluded this way:

> The resolutions of the North Carolina governing and coordinating boards earlier cited make it clear that the boards find it extremely difficult, if not impossible, to protect intellectual freedom on the campuses under the strictures of the Speaker Ban Law. Thus far the pleas of the governing boards for redress have gone unresolved and have been met by opposition which reflects on the integrity of the boards and causes injury to the morale of many persons who are directly responsible for the conduct of higher education in North Carolina. The Executive Council has concluded that higher education cannot function most effectively in the midst of this bitter spectacle and that detrimental effects have ensued. (Aug. 11, 1965, 10:00 a.m., pp. 21-22)

While Hill, Dawson, and Fields spoke about the loss of academic freedom, damage to the university, and the potential loss of accreditation, Duke University law professor William Van Alstyne testified about the critical constitutional defects of the Speaker Ban Law. He also provided a brief history of attempts to ban speakers on university campuses. Van Alstyne began by citing two major differences between the North Carolina law and the one which had been proposed in Ohio. First, the Ohio statute did not prohibit any persons from speaking on state-supported

campus; second, the Ohio statute did not require the university's trustees to ban particular speakers. Instead, the Ohio bill simply restated the authority trustees already had to regulate the appearance of guest speakers. He emphasized that the Ohio bill, which had been defeated in the legislature, did not ban anyone or require that trustees ban anyone. This was in stark contrast to the North Carolina law, which did both (Hearing Before Speaker Ban Study Commission, Aug. 12, 1965, 10:00 a.m., pp. 66-67).

Van Alstyne also quoted Arizona Senator Barry Goldwater, who during an appearance at Ohio State University, spoke in opposition to the then pending bill:

> I think that schools make a mistake when they deny their students the right to hear all sides. I even go so far as to say that if a man is a communist and he wants to be invited to speak, let the students hear these people. The listening to these gentlemen will only broaden their knowledge and strengthen their convictions in one way or the other. (Aug. 12, 1965, 10:00 a.m., p. 68)

Further, Van Alstyne detailed the unsuccessful efforts in other states to pass legislation similar to the North Carolina Speaker Ban Law. He indicated that in the last year, similar bills were defeated in New Hampshire, South Carolina, and Virginia. He recalled that the 1953 speaker ban in effect at the University of California had been repealed by the university board of regents and that since 1963 known communists had spoken without censorship on the campus of the University of California. Van Alstyne pointed out that the universities of Minnesota and Oregon had even

allowed on-campus appearances of self-avowed communist party members (Aug. 12, 1965, 10 a.m., pp. 68-69).

Van Alstyne made the important observation that state speaker bans applicable to educational facilities, and similar to the North Carolina statute, had been tested on constitutional grounds three times. In 1946, a California statute forbidding school auditoriums to be used by subversive elements had been held unconstitutional under the equal protection clause of the Fourteenth Amendment. A Hunter College regulation which restricted the use of the college auditorium by speakers whose presence the administration deemed incompatible with the interests of Hunter College had been held "unconstitutional under the Fourteenth Amendment as a denial of equal protection as applied and as void on its face for vagueness" (Aug. 12, 1965, 10:00 a.m., p. 69). Finally, a New York appellate court had overturned an inferior state court injunction which prohibited Herbert Aptheker, an acknowledged Communist Party member, from appearing on the campus of the State University of New York at Buffalo. The appellate court maintained that universities, in the name of academic freedom, should be able to explore and expose students to controversial issues without government interference (Aug. 12, 1965, 10:00 a.m., p. 70).

Van Alstyne insightfully pointed out,

> Now the North Carolina Speaker Ban Statute itself, of course, has not yet been tested in court.

> Should it not be repealed or substantially modified; however, it may become the subject of a test case which might be filed in an appropriate federal district court under two federal statutes which are suitable for the occasion. (Aug. 12, 1965, 10:00 a.m., p. 70)

He explained that the suit could be filed either by a person who had been invited to appear and subsequently banned or by members of the university community prevented from inviting a particular person to speak (Aug. 12, 1965, 10:00 a.m., p. 71).

In addition to detailing similar university speaker bans, the issues involved in the defeated Ohio bill, and constitutional cases or bills similar to the North Carolina Speaker Ban Law, Van Alstyne outlined the objections the courts would raise:

1. The Statute is void on its face because it is impermissively vague and excessively broad in violation of the due process clause.
2. The Statute is void on its face because it is an impermissible prior restraint on freedom of speech.
3. The Statute may be invalid as applied to any speaker with respect to whom it cannot be shown by very substantial evidence that the speaker he has invited to deliver would probably precipitate a serious violation of law and for whom it can be shown that suitable facilities are available for his appearance and that members of the university community desire to hear him.
4. The Statute may be invalid as an unconstitutional condition as applied to any speaker who is banned solely because he has previously invoked his constitutional privilege against self-incrimination, and
5. The Statute may be invalid as a denial of equal protection. (Aug. 12, 1965,10:00 a.m., pp. 71-72)

While Van Alstyne raised likely constitutional objections to the law, President Friday and former UNC-CH Chancellor Aycock spearheaded the university's attack on the Speaker Ban Law. Friday maintained that the law had injured, and would continue to injure, state-supported higher education in North Carolina. State supported universities, he maintained, could pursue higher education while enjoying academic freedom only with the law's repeal or amendment:

> To meet their responsibilities as scholars and teachers, they must live and work in an atmosphere of intellectual freedom that permits them to chart the scope and direction of their professional activities. As soon as there are limitations as to the kind of instruction given or to the expression of faculty views on controversial matters or the imposition of regulations that restrict the range of inquiry within the institution, the university loses the very qualities that make it useful and important to the society that gives it support. (Hearing Before the Speaker Ban Commission, Sept. 8, 1965, 10:00 a.m., p. 2)

Friday made it clear that the university was opposed to any political system, including communism, that prevented impartial scholarly study and freedom to seek the truth wherever it was found. In this regard, Friday stated that the university administration would not knowingly employ a faculty member, who because of his or her membership in the Communist Party, or for any other reason, could not adhere to the university standard of the unbiased search for truth. At the same time, President Friday expressed grave concern that the law threatened the university governance role of

the board of trustees, which was appointed by the General Assembly, inasmuch as the speaker ban deprived trustees of authority (Sept. 8, 1965, 10:00 a.m., p. 12). He referred to the Board of Trustees' long tradition of supporting academic freedom and quoted from a 1959 statement on academic freedom:

> Academic freedom is the right of a faculty member to be responsibly engaged in efforts to discover, speak and teach the truth. It is the policy of the university to maintain and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication and to protect any member of the academic staff against influences, from within or without the University, which would restrict him in the exercise of these freedoms in his area of scholarly interest. (Sept. 8, 1965, 10:00 a.m., p. 13)

Friday concluded his testimony before the commission by pleading for academic freedom:

> We hope that the tradition of dissent will never be absent from the University. It is this freedom to disagree, to encourage intellectual independence, to interpret facts and ideas forthrightly without regard for what happens to be popular at the moment, that has been a major force in making this country what it is today. (Sept. 8, 1965, 10:00 a.m., pp. 16-17)

Former Chancellor Aycock, who was also a law professor, criticized the law for slightly different reasons. He was concerned about the difficulty of enforcing the law, particularly because of the vagueness of its language. Aycock took issue with proponents' assertions that the law was a simple one to enforce. He suggested ". . . to one charged with the responsibility of its enforcement it is extremely vague in almost every particular. It bristles

with ambiguities" (Hearing Before the Speaker Ban Commission, Aycock Testimony, Sept. 8, 1965, 10:00 a.m., p. 5). Also, he claimed that the phrasing of the law was imprecise and that even with clearer language, it still transgressed fundamental liberties. As part of his argument, Aycock quoted from a Jesse Helms' "Viewpoint" editorial:

> Broadcasters throughout the nation have long complained that the Fairness Doctrine is vague beyond comprehension, that it imposes obligations and responsibilities,and even that the FCC exceeded its authority in the adoption of a document which, as some of our newspaper friends now note, come close to an attempt at censorship. (Sept. 8, 1965, 10:00 a.m., p. 8)

Although Helms, in that editorial, was objecting to a Federal Communications Commission investigation of station WRAL's alleged violations of the "Fairness Doctrine," the point he made and the point Aycock made were strikingly similar. Aycock punctuated the implicit irony by suggesting substituting "educators" for "broadcasters" and "Speaker Ban Law" for "Fairness Doctrine" and "General Assembly" for "FCC." He felt that Helms' quotation offered an articulate argument for opposing the Speaker Ban Law (Sept. 8, 1965, 10:00 a.m., p. 8).

Aycock used two additional quotations from Helms' FCC testimony in making his case:

1. When one is denied any part of his rightful freedom, then every man's freedom has been lessened.

> 2. In any event we do think that, as a matter of precedent, it is important to consider the possibility that an element of control over one medium of communication today might well tomorrow lead to attempts to impose such controls over all media. (Sept. 8, 1965, 10:00 a.m., pp. 8-10)

Agreeing with the former statement, Aycock rhetorically asked why the Speaker Ban Law should be restricted to college and university campuses? He compared Helms' position to that of the UNC-CH Faculty Council, which said that censorship constitutes an "invidious threat of future proscriptions, and inevitably stirs fears in the minds of both faculty and students that expression of unpopular sentiments may produce reprisals against them" (Sept. 8, 1965, 10:00 a.m., p. 10).

Aycock took to task the proponents of the law for combating the potential evil influences of the forbidden speakers only in what he called "the citadels of freedom" and not protecting the rest of society in other arenas. He concluded that "In keeping with the highest traditions of this state this law should be acknowledged to be a mistake. This mistake should be corrected by outright repeal as soon as possible" (Sept. 8, 1965, 10:00 a.m., pp. 14-15).

After the testimony had been concluded, on September 9, the Britt Commission analyzed the data and testimony before finally issuing a report on November 5, 1965. The report addressed the following: the impact of the statute, especially on accreditation and faculty recruitment and

retention; the commission's opposition to communism; the perceived radicalism at UNC-CH; trustee responsibility; and academic freedom.

The commission maintained that accreditation was important financially and otherwise and that the loss of accreditation would do substantial damage to the university. They considered both the tangible and intangible impact of the loss of accreditation on state-supported universities. Financial aid provided by a number of federal agencies and private foundations was contingent upon accreditation. The commission report pointed out that the intangible impact involved the prestige which accompanies accreditation. They suggested that the eleven institutions of higher eduction would lose many students who were concerned about the effect that the loss of accreditation would have on the value of their degree. In addition, the commission pointed out that the "loss of accreditation would make it much more difficult for our eleven institutions to recruit and maintain adequate faculties" (Nov. 5, 1965, N. C. Speaker Ban Study Commission Report, p. 4-6).

The Britt Commission's Report expressed the belief that North Carolinians were strongly opposed to communism and that the General Assembly had made a sincere attempt to defend democracy when it enacted the Speaker Ban Law. However, the commission suggested that "it is quite evident that many members of the 1963 General Assembly who voted for

the statutes did not foresee the far-reaching effects of the statutes" (Nov. 5, 1965, p. 7). In addition to offering its statement of opposition to communism, the commission addressed the perceived threat of radicals at Chapel Hill. It maintained that the evidence did not support the charges that many communists spoke at the university or were students at the university:

> A careful review of this testimony indicates that these statements and allegations were directed primarily at the University of North Carolina at Chapel Hill, covering the period from 1937-1965. This testimony discloses that in more than a quarter of a century fewer than a dozen speakers from among the thousands who have appeared during these years were specifically mentioned as extremists and not all of these were alleged to be communists. Among students, not more than five were singled out from among the more than 40,000 who have graduated from the Chapel Hill campus over this time span. (Nov. 5, 1965, pp. 7-8)

Another point made by the commission was that the trustees should take more responsibility for operating the university, including making decisions about who could speak on a state-supported campus (Nov. 5, 1965, p. 10).

Finally, while stating that they did not agree with all the educators appearing before the commission with regard to the question of academic freedom, the commission members maintained that finding a solution to the controversy was essential (Nov. 5, 1965, pp. 10-11).

By way of conclusion, the Britt Commission, on November 5, 1965, made the following three recommendations:

1. Subject to Recommendation No. 2, we recommend that Chapter 1207 of the 1963 Session Laws be

> amended so as to vest the trustees of the institutions affected by it not only with the authority but also with the responsibility of adopting and publishing rules and precautionary measures relating to visiting speakers covered by said Act on the campuses of said institutions. We submit as a part of this report a proposed legislative bill to accomplish this purpose.
>
> 2. We recommend that each of the Board of Trustees of said institutions adopt the Speaker Policy hereto attached and made a part of this report.
>
> 3. In order that this important matter might be settled forthwith, we recommend that you, The Governor of North Carolina, request the boards of trustees of the affected institutions to assemble as soon as practicable for purpose of giving consideration to the aforementioned Speaker Policy; and at such time as it has been adopted by the said boards of all of said institutions, that you cause to be called an extraordinary Session of the General Assembly for purpose of considering amendments to Chapter 1207 of the 1963 Session Laws as herein before set forth. (Nov. 5, 1965, pp. 11-12)

Governor Moore quickly responded to the commission request for a special session of the General Assembly by calling for such a session, opening on November 15, 1965. Bondurant et al. (1967) maintain that there was never any question that the legislature would approve the proposed report of the Britt Commission (pp. 236-237). Even Representative Godwin said that he felt the General Assembly "will go along with the commission's recommendations provided the Speaker Ban Policy is adopted as laid down" (Raleigh News and Observer, Nov. 9, 1965).

Consolidated University of North Carolina Trustees met in the interim between the November 5, 1965, issuance of the

commission recommendations and the November 15, 1965, special session of the General Assembly to discuss adoption of the speaker policy statement recommended by the Britt Commission. The board voted to adopt the policy statement as written by the commission, over the strong objections of trustee and State Senator Tom White. White proposed an amendment which would in effect have left the speaker policy as it presently stood, but his motion was defeated for lack of a second (Barbour, Durham Morning Herald, Nov. 13, 1965).

The speaker policy statement which was recommended by the Speaker Ban Study Commission, and adopted by the Consolidated University of North Carolina Board of Trustees reads as follows:

> The Trustees recognize that this Institution, and every part thereof, is owned by the people of North Carolina; that it is operated by duly selected representatives and personnel for the benefit of the people of our state.
>
> The Trustees of this Institution are unalterably opposed to communism and any other ideology or form of government which has as its goal the destruction of our basic democratic institutions.
>
> We recognize that the total program of a college or university is committed to an orderly process of inquiry and discussion, ethical and moral excellence, objective instruction, and respect for law. An essential part of the education of each student at this Institution is the opportunity to hear diverse viewpoints expressed by speakers properly invited to the campus. It is highly desirable that students have the opportunity to question, review and discuss the opinions of speakers representing a wide range of viewpoints.
>
> It is vital to our success in supporting our free society against all forms of totalitarianism that institutions remain free to examine these

> ideologies to any extent that will serve the educational purposes of our institutions and not the purposes of the enemies of our free society.
>
> We feel that the appearance as a visiting speaker on our campus of one who was prohibited under Chapter 1207 of the 1963 Session Laws (The Speaker Ban Law) or who advocates any ideology or form of government which is wholly alien to our basic democratic institutions should be infrequent and then only when it would clearly serve the advantage of education; and on such rare occasions reasonable and proper care should be exercised by the institution. The campuses shall not be exploited as convenient outlets of discord and strife.
>
> We therefore provide that we the Trustees together with the administration of this Institution shall be held responsible and accountable for visiting speakers on our campuses. And to that end the administration will adopt rules and precautionary measures consistent with the policy herein set forth regarding the invitations to and appearances of visiting speakers. These rules and precautionary measures shall be subject to the approval of the Trustees. (N.C. Speaker Ban Study Commission, Speaker Policy, Nov. 5, 1965, pp. 1-2)

According to A. K. King, former vice president for administration of the Consolidated University of North Carolina, the speaker policy statement was difficult for the university to accept because it was considered to be a slap in the university's face. What many found especially galling was the implication that those responsible for the governance and administration of the university might not have the best interests of the state of North Carolina at heart. King described it as "almost taking an oath not to hurt your mother" (King Interview, March. 12, 1987).

On November 16, 1965, during the second day of the special assembly called by Governor Moore, the state House

of Representatives passed the amended Speaker Ban Law by a vote of seventy-five to thirty-nine after a short but bitter fight. For example, representative George Clark of New Hanover accused the Southern Association of Colleges and Schools of being a "foreign corporation: and questioned the necessity of belonging to such an organization (/Durham Times Herald, Nov. 17, 1965). For his part, representative David Britt of Robeson, who had chaired the Speaker Ban Study Commission pointed out that "the essential difference between the speaker ban and a 1941 law prohibiting the overthrow of the constitution was that the speaker ban is directed at the person, not what he says" (Durham Times Herald, Nov. 17, 1965).

The next day the state senate, by a vote of thirty-six to thirteen, concurred with the House vote and amended the Speaker Ban Law. The only change from the recommendations of the Speaker Ban Study Commission was the deletion of the phrase "or other governing authority," so that the power to establish regulations was unquestionably in the hands of the local boards of trustees of state supported universities (Durham Times Herald, Nov. 18, 1965).

The amendments to the law were not passed without last minute attempts by state senators Tom White of Lenoir and Robert Morgan of Harnett to amend the version already passed by the house. These two legislators tried to insert a section requiring university presidents to submit monthly

reports on campus speakers. However, this amendment was defeated twenty-seven to twenty-one. Bondurant et al. (1967) maintain that amendments to the commission recommendations designed to keep the original law intact met defeat because of Governor Moore's efforts. For example, they point out that one resolution, which would have referred the Britt Commission Report to a public referendum, was defeated

> owing in no small measure to the efforts of Governor Moore who had put the power of his office behind the commission's recommendations, as was made evident in his speech before the joint session on its first day. (1967, p. 237)

The amended Speaker Ban Law read as follows:

> Visiting Speakers at State Supported Institutions 116-199. Use of facilities for speaking purposes. The Board of Trustees of each college or university which receives any state funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purpose, by any person who:
>
> 1. Is a known member of the Communist Party;
> 2. Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;
> 3. Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, C 1207, S. 1; 1965 Extra Session, C. 1., S.1.)
>
> 116-200 - Enforcement of Article. Any such regulations shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative

> personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c 1207, s. 2; 1965 Extra Session, C. 1, S. 2.)

Charles Barbour, a staff writer for the Durham Morning Herald, stated, "The General Assembly this week expelled from all state supported institutions a troublemaker which had created fiery controversy everywhere during the two years or so it was on campus." And he concluded, "All recommendations were adopted by the legislature, and the speaker ban law, for all intents and purposes, was repealed" (Durham Morning Herald, Nov. 21, 1965). The passing of an amended law, however, did not end the North Carolina Speaker Ban episode. In fact the next few months were turbulent ones for everyone affected by the amended law.

The university initially did receive some good news just after the Speaker Ban Law was amended. On December 1, 1965, the Commission on Colleges of the Southern Association of Colleges and Schools announced that the accreditation of North Carolina higher education institutions would be continued (Bondurant et al., 1967, p. 239). Also, immediately after passage of the amended law, President Friday and his staff began working to formulate procedures regarding invitations to speakers and the appearances of visiting speakers affected by the law. The result of this activity was that on January 14, 1966, the following regulations governing visiting speakers were adopted by the Executive Committee of the Board of Trustees of the University of North Carolina:

1. All statutes of the state relating to speakers and the use of facilities for speaking purposes are to be obeyed.
2. Only recognized student, faculty and university organizations are authorized to invite speakers.
3. Non-university organizations authorized through official channels, e.g., extension divisions, to meet on the campus are to be routinely informed that the use of facilities must conform to state laws.
4. Student attendance at campus wide occasions is not compulsory.
5. The appearance of speakers on campus does not imply approval or disapproval of them or what is said by the speaker.
6. As a further precaution and to assure free and open discussion as essential to the safeguarding of free institutions, each chancellor, when he considers it appropriate, will require any or all of the following:
   a. That a meeting be chaired by an officer of the university or a ranking member of faculty.
   b. That speakers at the meeting be subject to questions from the audience.
   c. That the opportunity be provided at the meeting or later to present speakers of different points of view. (Bondurant et al., 1967, pp. 239-240)

Friday, quietly working behind the scenes, continued to try to persuade the board to reassert academic freedom by eliminating the law altogether (Friday Interview, Feb. 23, 1987). However, the students did not share Friday's confidence in the Board of Trustees and on January 3, 1966, at a crucial time in board deliberations, the Students For a Democratic Society invited Frank Wilkinson, chairman of a national committee to abolish the United States House Un-American Activities Committee, to speak on campus. They also invited Herbert Aptheker, Director of the Institute of Marxist Studies to speak. The students simply believed that

they should be able to invite to speak on campus whomever they wanted (Medford Interview, Jan. 27, 1988). SDS issued invitations for Wilkinson and Aptheker to speak on March 2 and March 9, respectively. (Defense Statement of Proof p. 7, Dickson et al. v. Sitterson et al.). Both these men were considered subject to the speaker ban, Wilkinson because he had pleaded the Fifth Amendment before a California legislative committee investigating communist activities, and Aptheker because he was an avowed communist (Joyce, 1984, p. 10).

According to UNC-CH Faculty Council minutes, the chancellor, on January 21, 1966, received notification of the invitations to Aptheker and Wilkinson and referred the matter to the Board of Trustees. The board met on January 28 for four hours without making a decision, and they scheduled another meeting for February 7 (UNC-CH Faculty Council Minutes, Feb. 23, 1966).

Governor Moore, on February 1, 1966, issued a statement saying, in part,

> As chairman of the Board of Trustees, I realized that it is important that we measure up to the responsibilities given us as trustees by the General Assembly. I do not think the trustees should permit Wilkinson and Aptheker to speak. (Joyce, 1984, p. 10)

On February 3, 1966, the faculty of the University of North Carolina at Chapel Hill, in turn, adopted this resolution:

> The freedom to hear is a precious traditional right guaranteed to all Americans by the First Amendment to the Constitution of the United States. This freedom is fundamental to the purposes of a university, an institution dedicated to the pursuit of truth.
>
> We urge the Board of Trustees to recognize the right of all members of the academic community including authorized student groups to invite and to hear all speakers of their choice consistent with proper administrative regulations.
>
> The faculty endorses the affirmative recommendation of the Chancellor and President regarding the appearance of Mr. Herbert Aptheker as a visiting speaker on March 9. (Faculty Advisory Committee, Feb. 6, 1966, p. 2)

The faculty, by a formal vote, requested that the faculty advisory committee appear before the Consolidated University of North Carolina Board of Trustees Executive Committee to present the faculty's position. In addition to endorsing and presenting the faculty's resolution of February 3, this faculty advisory committee outlined the consequences of a cancellation by trustees of the Aptheker invitation. The committee shared their concern that faculty and student morale would be adversely affected. They maintained that the best scholars and teachers either would leave the university or would not accept invitations to join the university. In addition, they suggested that the principle of freedom of expression was at stake. Finally, they concluded,

> To a very considerable extent the future of the Research Triangle and of much industrial, commercial, agricultural, educational, medical, legal, and social progress centers in the faculties of the University. When Trustees take

> action which weakens these faculties, they do great damage to the future of North Carolina-damage no less harmful because unintended. For this, in a very real sense, Trustees taking such action must answer to their children and grandchildren and to generations yet unborn. (Faculty Advisory Committee Statement, Feb. 6, 1966, pp. 3-4)

Yet another important factor was added to the mix when student body president Paul Dickson called a special meeting of the student body for the morning of February 7. This was the same day that the Executive Committee of the board was to make a decision on Aptheker and Wilkinson. Dickson hoped to demonstrate student concerns about this issue.

The Executive Committee of the Consolidated University of North Carolina Board of Trustees voted by an eight to three vote to deny Wilkinson and Aptheker permission to appear on the Chapel Hill campus. The committee also suspended any other future invitations to controversial speakers until February 28, or until such time as the full board adopted rules and regulations governing visiting speakers (Raleigh News and Observer, Feb. 8, 1966). This action was taken despite pleas from student body president Dickson and representatives of the faculty. Dickson told the committee that "an overwhelming majority of the student body feels that Dr. Aptheker should speak" (Durham Morning Herald, Feb. 8, 1966).

The board decision went directly against the wishes of the UNC-CH student body, Faculty Council, and administration. According to President Friday, when the

board voted against his recommendation to allow these men to speak, he almost resigned because

> That was a repudiation of what I was trying to do. But being a lawyer, I figured that the only way to defeat a thing like this was to stay with it until you make it clear and make people understand why it is so important not to be that way in an academic community. (Friday Interview, Feb. 23, 1987)

Today, Friday acknowledges that it probably would have been better if the law had been tested in court right away because considerable amounts of time and energy could have been saved (Friday Interview Feb. 23, 1987).

When the board decision went against him, it was obvious to Friday that it was highly unlikely that the law was going to be changed by legislative or board action. He knew that the only way to overturn the speaker ban legislation was through a lawsuit. At this time, he was under instruction from the board not to permit Aptheker and Wilkinson to speak on the UNC campus, and he was under countervailing pressure from the students to allow them to speak (Friday Interview, Feb. 23, 1987).

President Friday was not the only one who had arrived at the conclusion that a lawsuit was needed. Governor Moore had stated that he was opposed to letting Aptheker and Wilkinson speak on campus because he believed that the invitations "were issued only for the sake of creating controversy" (Raleigh News and Observer, Feb. 8, 1966). According to student James Medford, who was president of the

campus YMCA, that is exactly why Aptheker and Wilkinson were invited. Medford maintained that "We were all trying to figure out how we were going to arrange a confrontation and how we were going to test the law" (Medford Interview, Jan. 27, 1988). Ironically Medford's father, William Medford, had chaired the Consolidated University of North Carolina trustee committee which had recommended amending the Speaker Ban Law to give trustees power to regulate the appearances of visiting speakers. However, James Medford indicated that his father was opposed to the law and that he and the majority of the board worked to amend rather than eleminate the law because that was the best that they would get from the legislature.

On February 11, 1966, Paul Dickson, Medford, and other student leaders met in Gerard Hall at UNC-CH and formed the Committee for Free Inquiry. They adopted a statement of principle and a policy for speaking which they wanted the Board of Trustees to consider. (Exhibit I, Statement of Proof, NOC-59-G-66, U.S. District Court; M.D. N.C. March 31, 1966). The statement of principles maintained that the Speaker Ban Law constituted censorship of free communication and called on the board to adopt an unrestricted speaker policy. Also, this statement of principles indicated student concerns about the loss of worthy faculty members and graduate students and the potential devaluation of degrees awarded by the university (Chancellor's Records-

Sitterson Series, Feb. 21, 1966). The proposed speaker policy was printed in the UNC-CH student newspaper The Daily Tarheel, February 12, 1966:

1. The officers of the recognized organization, desiring to use University facilities for their speaker, will inform their faculty adviser of their invitation.
2. The student head of the organization will submit the following information to the Chancellor at least a week prior to the speaker's arrival.
   a. Name of the sponsoring organization and topic.
   b. Name and brief biographical date of the invited speaker.
   c. The date and place of the speaker's presentation.
   d. The topic to be covered by the speaker.
3. Upon receipt of the above, the Chancellor may at his discretion require anyone of, or all three of the following:
   a. That a senior faculty member preside over the meeting.
   b. That the speaker answer any and all questions about his topic at the meeting.
   c. That an opposing viewpoint be presented at the same meeting.

The above provisions shall apply to all speakers regardless of their political affiliation or background. (Chancellor's Records-Sitterson Series, Feb. 22, 1966)

On February 24, the Committee for Free Inquiry sponsored a mass meeting at Memorial Hall. The meeting was attended by over 1,200 people, most of whom were students (Joyce, 1984, p. 11). The students unanimously adopted the statement of principles and speaker policy previously adopted by the committee. After the rally, the students walked to Friday's home and presented the document to President Friday and UNC-CH Acting Chancellor Sitterson, who

assured the students that they would share the statements with the university trustees at the February 28 board meeting (Durham Morning Herald, Feb. 25, 1966).

On February 28, 1966, the University of North Carolina Board of Trustees voted to give chancellors control over the appearances of controversial speakers, despite student body president Dickson's statement of opposition to the procedures:

> These procedures will do grave and irreparable damage to the University of North Carolina. They will destroy our ability to compete for excellent scholars and students with other outstanding institutions. (Durham Morning Herald, March 1, 1966)

The issue was one of principle and authority. The students did not believe that trustees should control visiting speakers any more than legislators should. They wanted to have the freedom to invite to speak on campus whomever they should choose.

The procedures and regulations adopted by the board demonstrated the university's compliance with the amended Speaker Ban Law:

> Procedures Regarding Invitations to Speakers
>
> Affected G.S. 116-199 and 200
>
> In order to provide the Chancellors with an opportunity to exercise the responsibilities imposed upon them by trustees regulations respecting visiting speakers, the following procedures shall be observed prior to extending an invitation to any visiting speaker covered by G.S. 116-199 and 200.

1. The officers of a recognized student club or society desiring to use University facilities for a visiting speaker shall consult with the club's faculty advisor concerning the proposed speaker.
2. The head of the student organization shall submit to the Chancellor a request for reservation of a meeting place along with the following information:
   a. Name of the sponsoring organization and the proposed speaker's topic.
   b. Biographical information about the proposed speaker.
   c. Request for a date and place of meeting.
3. Upon receipt of the above information, the Chancellor shall refer the proposed invitation to a joint student faculty standing committee on visiting speakers for advice. He may consult such others as he deems advisable.
4. The Chancellor shall then determine whether or not the invitation is approved.

Once a speaker affected by G.S. 116-199 and 200 had been invited and his or her acceptance received, the appearance on campus was to be governed by these regulations:

Regulations Regarding the Appearance of Visiting Speakers Affected by G.S. 116-199 and 200

1. All statutes of the State relating to speakers and the use of facilities for speaking purposes are to be obeyed.
2. Student attendance at campus-wide occasions is not compulsory.
3. The appearance of speakers on the campus does not imply either approval or disapproval of the speakers or what is said to them.
4. As a further precaution and to assure free and open discussion as essential to the safeguarding of free institutions, each Chancellor, when he considers it appropriate, will require any or all of the following:
   a. That a meeting be chaired by an officer of the University or a ranking member of the faculty;
   b. That speakers at the meeting be subject to questions from the audience;

> c. That the opportunity be provided at the meeting or later to present speakers of different points of view. (The Daily Tarheel, March 2, 1966)

On the day following the adoption of the board procedures and regulations, March 1, the students renewed their invitation to Aptheker and Wilkinson. Originally SDS had invited them, but in early February, student body president Paul Dickson, Carolina Forum chairman George Nicholson, and Daily Tarheel editor Ernest McCrary joined in extending the invitation. Then YMCA president James Medford, YWCA president Eunice Milton, Carolina Political Union president Eric Van Loon, Dialectic and Philanthropic Literary Societies president John Greenbacker, and Carolina Forum director Robert Powell all joined in the renewed invitations (Joyce, 1984, p. 11).

Since Wilkinson had been invited to speak on March 2 Chancellor Sitterson had to act quickly. Sitterson's intuitive feeling had been to let them speak; however, a member of the Faculty Advisory Committee told him that he would be overriding the board's earlier action, which prohibited Wilkinson and Aptheker the opportunity to speak on campus. Therefore, Sitterson denied the invitations, maintaining that he was bound by the initial Executive Committee ruling on Wilkinson and Aptheker (Joyce, 1984, p. 11). In a statement to the UNC-CH Faculty Council, Sitterson indicated that when his decision became known, a student member of the recently established student-faculty

advisory speaker committee told him he could not see how a historian and scholar like Sitterson could make such a decision. Sitterson indicated what was really an untenable position for him by saying this to the Faculty Council:

> He is exactly right. The decision was not a good decision; but as Acting Chancellor, it was the least bad of the two possible decisions open to me. I cannot be sure that the one I made is the better of the two decisions. I do not think it was the worst; but it was the least bad, looking at it in the perspective of the years to come. (Faculty Council Minutes, March 3, 1966)

Many years later, in 1984, Sitterson was quoted as saying,

> The irony is that I was every bit as opposed to the Speaker Ban as they were, and believed these men should be allowed to speak. Yet I ended up a defendant in their lawsuit. (Joyce, 1984, p. 11)

The next day, March 2, Wilkinson was greeted on campus by a group of students waiting to hear him speak. UNC-CH campus security chief Arthur Beaumont said he would arrest Wilkinson if he stayed on campus. Therefore, Wilkinson and the crowd moved off campus to the Hillel House, where Wilkinson spoke (Joyce, 1984, p. 11). However, it would be the next week that the university's decision to bar Aptheker and Wilkinson would be severely tested because students had decided that was when they would set up the confrontation needed to establish a case for court. The students contacted the major television networks and kept the university informed about what they were going to do, primarily through campus security chief Beaumont:

> We told Chief Beaumont exactly when we were going to have these guys and what kind of confrontation

> we were going to do. He told us exactly what he was going to do. We made sure the NBC and CBS people were there so they could see what was said and how it was said exactly, so there would be no question from a factual standpoint as to what happened. (Medford Interview, Jan. 27, 1988)

March 9, 1966, was the date that Herbert Aptheker was to have spoken on the UNC-CH campus. Paul Dickson, the Student Body President and Chairman of the Committee for Free Inquiry, tried to introduce Aptheker at the Confederate Monument next to the Student Union Building. However, campus security chief Beaumont, under instruction from UNC-CH Acting Chancellor Sitterson, told Dickson to inform Aptheker that he would be arrested if he spoke and also that Student Honor Council charges would be brought against Dickson for purposely violating the law. After dramatically pronouncing that he thought he had the rights of a U.S. citizen, Aptheker walked across a low stone wall separating the campus from the town. From that symbolical, separate position, he spoke to about two thousand students, calling for America to get out of Vietnam (Charlotte Observer, March 10, 1966). According to Friday, the day Aptheker stood on one side of the stone wall and two thousand students stood on the other was one of the saddest days in his experience at UNC. He thought it was disgraceful to see the university "humiliated" in that way (Friday Interview, Feb. 23, 1987).

The students did not let many days pass before continuing the pressure on the university. On March 14, 1966, invitations were again issued by several campus

organizations to Aptheker and Wilkinson. Paul Dickson indicated that these invitations were made at the suggestion of lawyers working with the students who wanted to see the Speaker Ban Law struck down. (Durham Morning Herald, April 1, 1966).

The key letter which stimulated the beginning of the lawsuit that was to lead to the downfall of the Speaker Ban Law was read over the telephone by Acting Chancellor Sitterson to Paul Dickson. This March 31 letter said the following:

> Dear Mr. Dickson:
>
> Under Sections 116-199 and 200 of the General Statutes and the Trustee policies adopted, the Chancellor is required to examine and evaluate proposed invitations by student organizations to certain categories of speakers. In discharging this responsibility, I have carefully considered the request in your letter of March 14, in which you propose to renew speaking invitations to Dr. Herbert Aptheker and Mr. Frank Wilkinson. Your proposal has also been carefully studied by the Student-Faculty Committee on Visiting Speakers as well as by the elected Faculty Advisory Committee. I am glad that my decision is in accord with the virtually unanimous advice of both committees, as was also the case of March 2. I am deeply grateful for the thoughtful consideration they have given to this matter.
>
> In fact, as you know, the two speakers in question have appeared and spoken in Chapel Hill this spring, although under special circumstances of which we are all aware. Nevertheless, students did have a chance to hear and, indeed, did hear these speakers. Therefore, I believe that no additional educational purpose would be served by their return during this semester.
>
> You are aware that under present policies, two speakers who would have been prevented from speaking under the Statute of 1963 are speaking

> here this spring. Already, Dr. Valdimir Alexandrov has appeared and spoken to several classes and to a student group. Dr. Hanus Papousek is scheduled to speak here in May.
>
> When I made a decision on March 2 in reference to Messrs. Aptheker and Wilkinson and for the reason then given, I had hoped that the matter was closed for this academic year. I wish to make it clear that this action does not preclude later consideration of either or both of these individuals or any other proposed invitation by any authorized student group.
>
> Sincerely yours,
> J. Carlyle Sitterson
> (Exhibit 1, Statement of Proof, No. C-59-G-66, U.S. District Court M.D. N.C. March 31, 1966)

Later that day, Dickson and eleven other students, including James Medford, Eunice Milton, and Ernest McCrary, filed suit seeking to enjoin the university trustees from enforcing the amended Speaker Ban Law, as it had been applied to Herbert Aptheker and Frank Wilkinson. Aptheker and Wilkinson joined in the suit, which named UNC-CH Acting Chancellor J. Carlyle Sitterson, Consolidated University of North Carolina President William C. Friday, and the University of North Carolina Board of Trustees as defendants (Bondurant et al., 1967, p. 241).

The complaint asked the federal U.S. Middle District Court of North Carolina to declare the amended Speaker Ban Law unconstitutional on the grounds that it violated the students' right of freedom of speech, which includes the right to hear someone else speak. The plaintiffs asked the court to accept jurisdiction of the case without requiring them to first test the law in the state's courts. They felt

that they would exhaust their bank accounts before exhausting the judicial process in North Carolina courts. This request was granted by the federal court.

The defendants unsuccessfully attempted to have the case dismissed on the grounds that the students and Aptheker and Wilkinson as plaintiffs were illegally joined because their complaints alleged different causes for action (Ross, Greensboro Daily News, May 22, 1966). Also, the university took the position that it was not restraining freedom of speech by refusing to provide a forum for speakers covered by the Speaker Ban Law (The Chapel Hill Weekly, Jan. 25, 1967).

William Van Alstyne and J. Francis Paschal, acting on behalf of the American Association of University Professors and The North Carolina Conference, filed a brief as amici curiae. In this brief, Van Alstyne and Paschal maintained the AAUP's concern for academic freedom:

> An essential attribute of that freedom involves free access to individuals and to all other sources of ideas which, by being fully considered, will best guarantee the truth of things which are taught and learned in our universities. (Amici Curiae, C A File No. 3-59-G-66 Dickson et al. v. Sitterson et al., p. 1)

They concluded that the amended law and trustee regulations were vague and unconstitutional because

> they do not uniformly apply to all guest speakers, they provide no standards to guide or to limit the discretion of the chancellor, they apply to some solely on the basis of their previous exercise of their constitutional privilege against self incrimination and without regard to the speech

> they are invited to present, to others solely on the basis of their organizational membership and equally without regard to any particular speech they are invited to present on campus and to others solely on the basis of what they may advocate elsewhere, without regard to any particular speech they are invited to present at the university. (Amici Curiae, C A File No. 3-59-G-66 Dickson et al. v. Sitterson et al., p. 11)

On February 15, 1967, plaintiff attorney McNeil Smith, in a supplemental memorandum to the court, concluded,

> These three most recent cases illustrate the unconstitutionality of the state statute and regulation, both on their face and as applied in the present case, as imposing unconstitutional conditions upon the exercise of the Fifth Amendment privilege against self-incrimination (Spevack and Garrity) and as suffering from the vice of vagueness and over-breadth in prohibiting described classes of persons from speaking or being invited to speak on the campus without special permission of the Chancellor (Keyishian). (U.S. District Court, M.D., N.C. C A No. C-59-G-66 Feb. 15, 1967, pp. 10-11)

Later, McNeil Smith, in a letter to his friend Albert Coates, indicated that he had expected to get help from lawyers around the state; but other lawyers did not want to be identified with a suit against the university. Many of his legal friends could not understand what Smith would get out of the case. Smith said that "As in most constitutional issues, unpopular causes and unpopular parties are the only ones who can make the test case" (Smith, 1975).

Plaintiff James Medford, who is now an attorney in Smith's law firm in Greensboro, reported that Smith told him that two of his law partners, Braxton Schell and Bynum Hunter, even thought about opposing him by offering their

services to the state's attorney general, who was defending the university (Medford Interview, Jan. 27, 1988).

For almost a year, the United States Middle District Court in Greensboro, North Carolina accepted written briefs of allegations of the plaintiff and answers to briefs from the defendants. On January 25, 1967, the court began hearing the oral arguments (The Chapel Hill Weekly, Jan. 25, 1967).

Finally, a three judge federal court, on February 19, 1968, ruled North Carolina's Speaker Ban law unconstitutional on the grounds that it was excessively vague. Judge Clement F. Haynsworth, Jr. of the U.S. 4th Circuit Court of Appeals, Chief Judge Edwin M.Stanley of the U.S. Middle District Court, and Judge Algernon L. Butler of the U.S. Eastern District Court held that both the state and UNC regulations aimed at controlling speaking on the university's campuses were too vague to be enforceable. However, the judges noted that boards of trustees of universities have the right to enforce rules and regulations consistent with constitutional principles (Dickson v. Sitterson 280 F. Suppl. 486 [1968] pp. 486, 497-499).

As to the First Amendment guarantee of freedom of speech and the corollary freedom to listen, the court did not rule directly. Instead, the court invalidated the state policy on grounds that it was unconstitutionally vague in its reference to "known communists" and because it penalized

those who had invoked the constitutional protection of the Fifth Amendment (Science, 159 No. 3818, March 1, 1968, p. 964). The District Court concluded in this way:

> When the statutes and regulations in question are applied to the unbroken line of Supreme Court decisions respecting the necessity for clear, narrow and objective standards controlling the licensing of First Amendment rights,the conclusion is inescapable that they run afoul of constitutional principles. (Dickson v Sitterson, 280 F. Suppl. 486-[1986] p. 499)

Governor Dan K. Moore announced a few days after the decision that the state would not appeal the federal court decision. He stated that the special counsel to the state, William T. Joyner, and the deputy attorney general, Ralph Moody, recommended to him that the state should not appeal (Clay, Raleigh News and Observer, Feb.23, 1968). Thus, the Federal District Court ruling of February 19, 1968, concluded six years of controversy, which included an extended debate about academic freedom, freedom of speech, the perceived communist threat, and the possible implications of the Civil Rights Movement.

CHAPTER V

CONCLUSIONS AND IMPLICATIONS

Conclusions

Nine basic conclusions are evident in this study of the North Carolina Speaker Ban Law episode:

1. The law was passed because of the effects of the residue of communism and the cold war, the Civil Rights Movement, and the belief of many North Carolinians that the University of North Carolina at Chapel Hill was a hotbed of liberalism.
2. William Friday and the student plaintiffs in Dickson v. Sitterson were mainly responsible for the law's amendment and eventual repeal.
3. For the students, the issue was one of principle and authority.
4. The law was an embarrassment to the university.
5. The law represented a serious affront to academic freedom.
6. The law lowered faculty morale and threatened to change the university's ability to retain and attract the best faculty members.
7. The law was costly to the university in terms of the time and energy expended in the struggle to have it repealed.

8. The Consolidated University of North Carolina Board of Trustees were inconsistent in their actions concerning the law.

9. The law's passage united the university community.

When one tries to determine why the law was passed, it becomes clear that there was no cause and effect relationship between a specific incident and the law's passage; however, dominant aspects of the country's cultural milieu resonate through the literature and historical recordings of the episode, as well as in the thoughts and remembrances of key participants. The effects of the residue of communism and the cold war, the Civil Rights Movement, combined with the notion held by many North Carolinians that Chapel Hill was a hotbed of liberalism appear to be the causal agents in the law's passage.

Karier details the effects of the cold war on American society when he states,

> The effects of the cold war on American education and society in the second half of this century have been profound in every respect. The fear of communism, both without and within has affected liberal and conservative alike. (Karier, 1986, p. xi)

The Civil Rights Movement also greatly affected the thinking of many Americans. In Brown v. Topeka Board of Education (1954), the Supreme Court ruled that separate educational facilities were inherently unequal and that racial segregation in the public schools violated the "due process" clause of the Fourteenth Amendment (Karier, 1975,

p. 347). Black Americans, tired of second class citizenship and buoyed by the social and political consciousness of many Americans, extended the civil rights movement. Black leaders, like the Reverend Martin Luther King, Jr., adopted and used to advantage Ghandi's strategy of passive resistance.

Within the state of North Carolina, concerns about communism, the Civil Rights Movement, and the liberal leanings of the university at Chapel Hill combined to stimulate the law's passage. The Speaker Ban Bill was introduced by Representative Phil Godwin, who maintained that he introduced the bill in the interest of national security (Bondurant et al., 1967, p. 229). During his testimony before the Britt Commission, Godwin said that the bill was intended to prevent communists from speaking at North Carolina state-supported universities.

State Senator Robert Morgan most forcefully connected passage of the Speaker Ban Law to the perceived threat of communism. He noted that the Communist Party was not an ordinary political party, but one whose goal was to seize the power of government by and for a minority, rather than to gain it through a free election (Speaker Ban Study Commission Testimony, Aug. 12, 1965, 2:00 p.m., p. 17).

Morgan went so far as to connect the communist threat to attempts by the Communist Party to organize at the University of North Carolina at Chapel Hill in the 1930's.

He maintained that the Young Communist League brought speakers to the university, including the editor of The Daily Worker.

While Morgan connected passage of the law to the communist threat, Secretary of State Thad Eure suggests that civil rights sit-ins were responsible for the law. He recalled that civil rights demonstrators, including faculty members and students from UNC campuses, sat-in at the racially segregated Sir Walter Hotel, where most legislators stayed, and at the Legislative Building (Joyce, 1986, p. 6).

Former UNC-CH Chancellor J. Carlyle Sitterson agrees with Eure when he states,

> I believe it [the Speaker Ban Law] was a reaction to a fundamental change that was going on in the South at the time. The ban on communist speakers was tied up not so much to campus unrest that was to become so prevalent later, as it was tied to social changes, especially race relations. This was a time, remember, of sit-ins and street demonstrations in Chapel Hill and Raleigh and elsewhere. Many people saw this change as a threat to the prevailing order and believed it was all tied up somehow to communism. It was a society not receptive to change. (Joyce, 1986, p. 6)

Student plaintiff James Medford, for his part, recalled that the Speaker Ban Law was passed to punish the university: "I think primarily it was a way to punish Chapel Hill for leading the integration efforts in Raleigh and elsewhere." He continued, "Haven't you heard of Chapel Hill as the festering red sore?" (Medford Interview, Jan. 27, 1988). Medford maintains that there was a strong

feeling against Chapel Hill because of civil rights sit-ins in Chapel Hill and Raleigh. He suggests that legislators viewed these agitators as communists who were stirring up the students and faculty (Medford Interview, Jan. 27, 1988).

Consolidated University of North Carolina President William Friday integrates all these arguments when he suggests that the causes for the passage of the law were an accumulation of many things, including civil rights, communism, McCarthyism, and a general irritation or animosity towards Chapel Hill (Friday Interview, Nov. 9, 1987).

No one person can claim responsibility for the North Carolina Speaker Ban Law's being amended and finally ruled unconstitutional. University of North Carolina students, faculty members, and administrators; Governor Moore; Britt Commission members; the Southern Association of Colleges and Schools; the American Association of University Professors; and attorney McNeil Smith all were keys in the process that eventually freed the university from the burden of the law. However, Consolidated University of North Carolina President William Friday and the University of North Carolina students who were parties to Dickson v. Sitterson were clearly the dominant forces responsible first for the law's being amended and, subsequently, for its being declared unconstitutional.

Although students, faculty members, administrators, and other groups and individuals previously mentioned played key roles in the episode, William Friday was the driving force behind the movement to repeal the Speaker Ban Law. Fighting the law from the day of its birth until its death, he spent untold hours trying to persuade legislators, board members, and others that the law was an insult to the state. From 1963 until the amendment of the law in 1965, Friday was an outspoken and articulate advocate of outright repeal of the law. Shortly after the law was amended, the Board of Trustees directed him not to allow Herbert Aptheker and Frank Wilkinson to speak on the UNC campus. This placed him in the awkward position of being forced to support a policy with which he did not personally agree. Friday remembered,

> A lot of people wondered from time to time why I did not do this or that. They did not see it through my eyes, you see, because I was sitting here with a legislature that had passed the bill, a governing board that had reversed me [sic], and I had no other place to go. I could not get the governing board to file suit against a bill when they were sympathetic to it. (Friday Interview, Feb. 23, 1987)

Friday's courage was demonstrated by his opposition to a law which was politically popular at the time. His resolve was shown by his refusal to stop fighting the Speaker Ban Law. His political prowess was illustrated by his private drive to overturn the law, while administratively carrying out the provisions of the law as consolidated university president.

Because of the official stance that he was required to take as president, Friday's disdain for the law was difficult for many to see clearly. It was even harder to see how he was constantly working to have the law repealed. Friday said the most important accomplishment of his years as president of the University of North Carolina was "The fact that the university maintained a spirit of freedom and intellectual inquiry which allows it to do the work it was put here to do" (Friday Interview, Feb. 23, 1987). If Friday was the driving force behind the movement to amend and repeal the law, it was the plaintiffs in Dickson v. Sitterson, in particular the student plaintiffs, who were responsible for the law's being ruled unconstitutional.

Student plaintiff James Medford remembers that the students were aware that the court could not hear the case without a specific controversy that could invite litigation; therefore the UNC-CH students purposely created a confrontation (Medford Interview, Jan. 27, 1988).

Greensboro attorney McNeil Smith, who represented Paul Dickson and other plaintiffs, believes that the undergraduate students, through their litigation, killed the law. His point is well taken, since their suit did finally free the state of a law which two sessions of the legislature had not removed. Smith maintained the following:

> . . . the students "got rid" of the Speaker Ban Law. They were fully aware that these three years

> of political debate and two sessions of the legislature had failed to remove the Ban and that only they were in a position to invoke the court to uphold the constitution. They were confident the court would strike down the Speaker Ban, and they trusted and followed the law instead of defying it. This was at a time of sit-ins, burnings and physical violence elsewhere. The UNC students acted within the system. They were litigants, not militants.
>
> In 1963, Truth (the constitutional right to free speech) was hung on the scaffold. The 1965 Legislature gave her a different, perhaps gentler executioner, but her neck was still in the noose until the court invoked by the students took the rope away. (Smith, Jan. 25, 1979, Letter to the Editor, Greensboro Daily News, Feb. 5, 1979)

For the students, the issue finally was one of principle and authority. They did not believe that trustees should control visiting speakers any more than legislators should. That is why the amendment to the law in 1965 failed to satisfy them. They wanted the freedom and authority to invite to speak on campus whomever they should choose.

The court, however, asserted in Dickson v. Sitterson that the students were more concerned with sensationalism than academic freedom. Indeed, a close reading of the judges' discussion in Dickson v. Sitterson clearly indicates this belief. The judges stated,

> We are also aware that when student groups have the privilege of inviting speakers, the pressure of considerations of audience appeal may impel them to so prefer sensationalism as to neglect academic responsibility. Such apparently motivated the plaintiffs during the spring of 1966. (Dickson v Sitterson, 280 F. Suppl. 486, 1968, p. 497)

James Medford suggests that though the judges thought the students were a bunch of idiots and did not like what they were doing, they could not find a way around declaring the law unconstitutional. Medford maintained,

> They did not like what we were doing as students, but they only gradually came to learn that there was no other way around it. At least, that's what we thought then, and I think now. (Medford Interview, Jan. 27, 1988)

The Speaker Ban Law was, without question, an embarrassment to the university. Its reputation, especially among institutions of higher education, was tarnished by the law. In a 1987 interview, President Friday maintained the law

> Cast a shadow over the university and its freedom to discuss issues in a rational and reasonable way. The existence of it, therefore, was an embarrassment to people who believe in constitutional freedom and liberty.

In this regard, Friday's description of Herbert Aptheker's speech across the stonewall is worth repeating because after twenty years his passion concerning the scene is still great:

> I guess the most humiliating part of it was the day the men who had been prohibited by the Statute, stood on one side of the rock wall on Franklin Street and three or four thousand students sat on the other side of the wall, and the men lectured to the students saying what they should have been permitted to say in a university building. That photograph went all over the United States and caused massive embarrassment to the institution. (Friday Interview, Nov. 9, 1987)

The Medford Committee, a Consolidated University of North Carolina Board of Trustee committee created to study

the effects of the Speaker Ban Law, maintained in the committee's May, 1965, report that the law had already caused a loss of respect for the university in the eyes of American higher education (Faculty Council Minutes, UNC-CH, May 7, 1965). UNC-CH Chancellor Carlyle Sitterson concurred with the Medford committee and Friday when he stated,

> From the passage of that statute, the people associated with the University at Chapel Hill were well aware of the potential adverse impact that it could have in its application and consequences of the standing of the university throughout the world. (Sitterson Interview, Nov. 9, 1987)

Another effect of the law was its affront to academic freedom. President Friday, in testimony before the Britt Commission, indicated that university campuses and state supported colleges could pursue higher education while enjoying academic freedom only with the law's repeal:

> To meet their responsibilities as scholars and teachers, they must live and work in an atmosphere of intellectual freedom that permits them to chart the scope and direction of their professional activities. As soon as there are limitations as to the kind of instruction given or to the expression of faculty views on controversial matters, or the imposition of regulations that restrict the range of inquiry within the institutions, the university loses the very qualities that make it useful and important to the society that gives it support. (Sept. 8, 1965, 10:00 a.m., p. 2)

The law also adversely effected faculty morale and damaged the university's ability to retain and attract the best faculty members. On May 28, 1965, one hundred and seventy-five UNC-CH faculty members issued a statement criticizing unwarranted political interference in university

affairs and threatened to resign. This was followed by a June 3, 1965, statement of one hundred and thirteen UNC-G faculty who threatened to resign if the university lost its accreditation (Bondurant et al., 1967, pp. 232-233).

Along these same lines, Watts Hill, Jr., Chairman of the North Carolina Board of Education, in testimony before the Britt Commission, maintained that the university would lose its best faculty members if the Speaker Ban Law was not amended or repealed. He indicated that the board had concluded that the impact to date had been substantial and at the same time difficult to prove, since it was impossible to determine exactly why a prospective faculty member chose not to join the university (Friends of the University, Fall 1965, p. 11).

The law was very costly to the university in terms of the time and energy expended in the struggle to have it repealed. President Friday suggests that the law was costly because the university had to go through three years of expensive, energy consuming activities. The activities ranged from working for the repeal or amendment of the law, to attempting to formulate regulations and procedures for visiting speakers, to lengthy discussions with the Southern Association of Colleges and Schools (Friday Interview, Nov. 9, 1987). In addition, there were numerous meetings with board members, students, faculty members, administrators, legislators, and others in regard to the law. An especially

large amount of time was spent with the Wilkinson and Aptheker invitations. Chancellor Sitterson recently said that in the spring of 1966, the Speaker Ban Law episode took up most of his time (Sitterson Interview, Nov. 9, 1987).

The Consolidated University of North Carolina Board of Trustees were inconsistent at best and hypocritical at worst in their actions concerning the law. On July 8, 1963, the Executive Committee of the board adopted a resolution which maintained that the General Assembly of North Carolina had "enacted a law imposing unnecessary restrictions considered inimical to academic freedom." The Executive Committee recommended that the full board "take appropriate steps to endeavor to eliminate this restriction upon academic freedom" (Faculty Council Minutes, UNC-CH, July, 1963, p. 256E). In October, 1963, the board denounced the law and asked the 1965 General Assembly to amend or repeal it. The board was concerned enough about the law that it asked Governor Sanford to appoint a trustee committee to determine and implement measures to modify the law (Chapel Hill Weekly, Oct. 30, 1963). The Medford Committee, as it was called, reported that quick action was necessary in order to preserve the standing of the university in American higher education. However, the committee also maintained that the amendment of the law was the practical course of action (Faculty Council Minutes, UNC-CH, May 7, 1965, Medford Committee Report, p. 2). Therefore, two years after calling

for the elimination of the law, the trustees were satisfied with the law as long as they had control over visiting speakers. The board's refusal to allow Aptheker and Wilkinson to speak on campus further convinced the UNC-CH students that the board's view on academic freedom and the Speaker Ban Law contrasted with theirs.

The Speaker Ban Law did have one positive effect, and that was that its passage united the university community. Specifically, President Friday believed that the law

> . . . united the university faculty. It brought people from everywhere to the defense of the institution. It caused a rethinking of the principle of free discussion among rational and reasonable people. (Friday Interview, Nov. 9, 1987)

Implications

The implications of the North Carolina Speaker Ban Law episode naturally fall into three categories: academic freedom, the UNC system's health, and the potential economic impact of the law.

When the North Carolina Speaker Ban Law was declared unconstitutional by the federal court of the middle district of North Carolina, a legal precedent was established with respect to guest speakers on university campuses. This was a significant victory for academic freedom in higher education. Plaintiff attorney McNeil Smith said that the unanimous decision was so strongly worded that the governor and others decided not to appeal (Smith, Excerpt From A Letter to Albert Coates, 1975). However, according to

William Van Alstyne, the ruling had an effect beyond the boundaries of North Carolina. He suggests that the decision would influence state and federal judges in other states. Carter (1968) maintains that "the ruling was a signal victory for the student plaintiffs and is regarded as a significant legal precedent" ("Speaker Ban: Court Decides North Carolina Controversy" Science Vol. 159, p. 963). Conversely, one can use the same logic to conclude that if the law were still in effect, it would be detrimental to academic freedom in higher education, not only in North Carolina but elsewhere in the United States as well.

In recent years, both the Consolidated University of North Carolina system and the economy of the state have prospered. Important implications about the Speaker Ban Law can be drawn when one speculates as to what would have happened to the UNC system and to the state's economy if the law had not been ruled unconstitutional.

If the law had stayed in effect, there most likely would have been irreparable damage to the Consolidated University of North Carolina. As reported in the conclusions, in the short term, the law had lowered faculty morale and had been detrimental to faculty retention and recruitment. Also, many students had become apprehensive about the status of their academic credits and the worth of their degrees (Bondurant et al., 1967, p. 232). Obviously, the long term effects would have been even more devastating

to the university's national and international reputation. If the law had not been amended as it was in 1965 to give trustees the power to regulate the appearances of guest speakers, the university possibly would have lost its accreditation status with the Southern Association of College's and Schools. Had this occurred, many students and faculty members likely would have severed their relationship with the university. Many of the best faculty members would have left the university or elected not to come because of what they perceived to be a fundamental affront to academic freedom. Many outstanding students, and even those of lesser ability, fearful of the worth of a degree from a non-accredited university might have decided to leave or to not attend the university.

Even if the university had not lost its accreditation, some of the best students and faculty members would not have wanted to be associated with a university system which abridged one of America's basic freedoms, the freedom to speak and to listen to others speak.

Economically, the law, if still in effect, would have had an adverse impact on the recruitment of industry and businesses to the state. It would particularly have affected the creation of the Research Triangle, which is located between Raleigh, Durham, and Chapel Hill and served by three prestigious universities--N.C. State University, Duke University, and UNC-CH. Former UNC-CH Chancellor

Carlyle Sitterson, in a recent interview, connected the negative impact on the intellectual climate to the area's attempt to build the industrial Research Triangle. He stated that,

> If the Speaker Ban had been actively enforced over a period of years and if it had that adverse impact on the intellectual climate, it would be a negative factor in the state's attempt to bring that level of economic activity into this area. (Sitterson Interview, Nov. 9, 1987)

President Friday suggests, along the same lines as Sitterson, that if the Speaker Ban Law was still in effect,

> The Research Triangle would not have developed the way it did because if you talk with corporate executives today, they do not locate plants in states where their employees would be subjected to hate campaigns or to this kind of intellectual suppression. (Friday Interview, Nov. 9, 1987)

Friday maintains that a community flourishes when it allows open debate and discussion but is very unattractive when it does not allow the free confrontation of ideas. He indicates that the Research Triangle is popular today because there are good universities, as well as medical care, music, and athletics. Were the Speaker Ban Law still in effect, there would be a cloud over the community (Friday Interview, Nov. 9, 1987).

Student plaintiff James Medford offers a similar view to Friday and Sitterson's:

> Probably the effect would be not the law itself, but the fact that the disciplines of the greater university that the Research Triangle depends on would not have been as academically excellent as they are because the finest teachers would not

> have come here. (Medford Interview, Jan. 27, 1988)

Thus, Medford makes the point that if the universities were weakened academically by the law, one of the main reasons for companies choosing the Research Triangle, the presence of a trio of great universities, largely would not exist.

By way of conclusion, the North Carolina Speaker Ban Law episode clearly shows the wisdom of Luther Carter's (1968) assertion that "The history of the North Carolina Speaker Ban controversy shows that it can be far easier to pass than to repeal a bad law" ("Speaker Ban: Court Decides North Carolina Controversy" Science Vol. 159, pp. 963-964). His point is well taken because in twenty-four hours in June of 1963 the North Carolina General Assembly, under suspension of house and senate rules, passed the North Carolina Speaker Ban Law. It took five years, thousands of hours of meetings and committee time, a special hearing, a special session of the state legislature, student rallies, faculty statements, and a federal district court case which lasted two years to rid the state of this law. This law should be a reminder to all legislators that a bill should be thoughtfully discussed and debated in an open forum before being voted upon.

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