Academic Freedom "Safeguarded" by American Courts

The person who might be most responsible for affording the concept of academic freedom its legal foundation was himself an academic, as well as a prominent jurist.

Felix Frankfurter first gained notoriety as a law professor at Harvard. For years, he had been an architect of President Franklin Roosevelt's New Deal until FDR appointed him to the US Supreme Court.

In large part, though, it was Frankfurter's words (in a concurring opinion he authored for a case before the high court) which provided academic freedom a basis in constitutional law.

In the 1950's, the state of New Hampshire--as well as many other states--enacted measures designed to curb what it termed "subversive activities." The New Hampshire legislature in 1953 authorized the state's attorney general to investigate persons suspected of engaging in such activities. An investigation could be based on an individual's public statements, or associations in various organizations.

The following year, the state attorney investigated Paul M. Sweezy, a New Hampshire resident, regarding alleged membership in the communist party. Sweezy's statements to a University of New Hampshire class, to which he had presented a guest lecture, were the principal focus of the investigation.

Citing the First Amendment to the US Constitution, Sweezy refused to answer several of the attorney general's questions, including inquiries over whether he had told the university students that "socialism was inevitable in this country." Based on his refusal, New Hampshire held Sweezy in contempt and incarcerated him.

The US Supreme Court subsequently invalidated Sweezy's contempt finding. According to the opinion by Chief Justice Earl Warren, "[t]he essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation."

Academic freedom was even more the linchpin, however, of Justice Frankfurter's concurring opinion.

Unlike Warren, Frankfurter quoted extensively from scholarly works and reports from various institutions of higher education, and gave judicial credence to the "'four essential freedoms of a university--to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'"

Frankfurter's opinion further provided the intellectual underpinning for academic freedom. "The problems," he wrote, "that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society's good--if understanding be an essential need of society--inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered

as possible.

"No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

"Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling."

Twenty years after Sweezy v. New Hampshire, the high court again addressed academic freedom, once more in the context of state legislation aimed at prosecuting political activity.

In Keyishian v. Board of Regents, the court ruled in favor of State University of New York faculty who had challenged such laws. More important, however, the court expressly linked the notion of academic freedom to the guarantee of free speech under the First Amendment to the US Constitution.

Writing for the majority, Justice Brennan stated: "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.

"That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

Typically, courts hold to the opinion (like that expressed by a federal appellate court in *Bishop v. Aronov*) that academic freedom is not "an independent First Amendment right," but rather "an adjunct of the free speech rights of the First Amendment."

The Bishop decision, though, highlights a recurring theme in modern cases where academic freedom is an issue: the tension between an instructor's rights and those of the university.

In that case, a university physical education instructor challenged the school's authority to prohibit him from making frequent references to his religious beliefs in teaching exercise physiology.

Rejecting the instructor's claim that the Keyishian ruling supported his challenge, the Bishop court held that Keyishian "cannot be extrapolated to deny schools command of their own courses."

"Federal judges," the court opined, "should not be ersatz deans or educators. In this regard, we trust that the University will serve its own interests as well as those of its professors in pursuit of academic freedom."

Cases where academic freedom is asserted--typically, in disputes over faculty discipline--invariably cite Chief Justice Warren's acknowledgment of the "essentiality of freedom in the community of American universities," as well as Justice Brennan's commitment "to safeguarding academic freedom."

Perhaps even more frequently, however, courts are inclined to rely upon the words of Justice Frankfurter, whose own experience in academe serves to underscore his sentiments.<O:P</O:P

Return to:
Civil Rights
Department Publications
Legal Services
