

The Rise and Fall of the North Carolina Speaker Ban Law

by

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Let me set the scene for how North Carolina got a Speaker Ban Law restricting free speech at public universities. No one can understand those events without knowing what Chapel Hill and North Carolina were like in the early 1960s.

1960s North Carolina

In 1960 no African-American had served in the North Carolina legislature since the turn of the century. Henry Frye was to be the first in the State House, but he was not elected until 1968. And the state Senate had no blacks until Jonathan Winters in 1974. Public schools were still almost completely segregated. In 1960 just over 200 blacks attended public schools with whites. Public schools for blacks were not well funded and were clearly inferior. I remember that Merrit's filling station on the Pittsboro Road in 1960 had its restrooms divided not only by gender but also by race; so there were four restrooms, two for "colored" people and two for whites.

Political battles between left and right were waged within the Democratic Party. And after primary battles resulted in a winner, the result was tantamount to winning the November general election.

Terry Sanford had won a hard race—in a runoff—defeating arch-segregationist Beverly Lake for Governor in spring 1960. Lake had run a campaign threatening to drive the NAACP across the state lines. Sanford won the fall election with about 55% of the vote, despite having broken ranks and endorsed JFK over the "Southerners' candidate," Lyndon Baines Johnson.

There were almost no black students in my class when I began college at Chapel Hill in fall 1961. I remember that some of us successfully promoted a black friend, Kellis Parker, as a delegate to the National Student Association annual meeting, by the unusual tactic of plastering the campus with posters for him that had no picture of the candidate.

As Judge Dickson Phillips described the state's racial history prior to 1960 in a court decision he authored many years later:

At the start of this century, *de jure* segregation of the races in practically all areas of their common life existed in North Carolina. This condition continued essentially unbroken for another sixty-odd years, . . . In addition to prohibiting inter-racial marriages, state statutes provided for segregation of the races in fraternal orders and societies; the seating and waiting rooms of railroads and other common carriers; cemeteries; prisons, jails and juvenile detention centers; institutions for the blind, deaf and mentally ill; public and some private toilets; schools and school districts; orphanages; colleges; and library reading rooms....

From the Reconstruction era to the present time, appeals to racial prejudice against black citizens have been effectively used . . . as a means of influencing voters in state political campaigns. The appeals have been overt and blatant at some times, more subtle and furtive at others. They have tended to be most overt and blatant . . . when blacks were openly asserting political and civil rights—during the Reconstruction Fusion era and during the era of the major civil rights movement in the 1950's and 1960's....

In addition to crude cartoons and pamphlets of the outright white supremacy campaigning of the 1890s, later examples include campaign materials, unmistakably appealing to the same racial fears and prejudices, that were disseminated during some of the most hotly contested statewide campaigns of the state's recent history: the 1950 campaign for the United States Senate; the 1954 campaign for the United States Senate; the 1960 campaign for Governor....

About three months before the 1960 Democratic primary, several young black men from North Carolina A&T had walked into a Woolworth's in Greensboro, sat down at a lunch counter and asked to be served. This act ultimately reverberated through the South.

On April 30, 1963, Angie Brooks, the Liberian ambassador to the U.N., a Raleigh native who had attended Shaw University, went downtown in Raleigh with two N.C. State College students, a student from Shaw and a faculty member from State, Al Lowenstein. They sought service at the Sir Walter coffee shop and S&W Cafeteria and were turned away at both. The manager of the coffee shop asked Brooks:

"Would you like a job as a waitress?"

There had been a few demonstrations against segregation in public accommodations before, but the Brooks episode was the beginning of a massive protest against segregation—bringing the issue to the State's capital. In early May 1963, 92 blacks were arrested for trespassing when they sought service at the Sir Walter coffee shop and some of them had tried to be served at the State House cafeteria under the eyes of legislators.

Virtually every night demonstrators marched down Fayetteville Street past the Sir Walter hotel where many legislators stayed when the General Assembly was in

session. Demonstrators sang freedom songs at establishments where they were not admitted.

Some legislators found out that a number of University personnel including Lowenstein, Al Amons from Chapel Hill and Nancy Adams from the Dean of Women's staff at UNC, were involved in the protests. That word was spread among other representatives and senators.

Many legislators came from eastern North Carolina where rigid segregation was still maintained. The state's protest movement previously had centered in places such as Mecklenburg and Guilford. The rural eastern North Carolina legislators were especially upset at the strange sight of Negroes—and a few whites—marching in the streets.

Another protest took place on the evening of June 10, 1963 when blacks—many of them students from Shaw—again gathered by the Sir Walter, chanting, "Tell the Legislature we will not be moved."

Legislators, including Senate President Clarence Stone, complained that university personnel were participating with and encouraging the demonstrators. Orange County Representative Luther Phipps arrived at the Sir Walter about 10 o'clock that night just as Sen. Stone was walking around berating demonstrators and saying, "If I had not signed the University appropriations bill I'd be holding back my pen." Phipps tried but failed to reach UNC President Bill Friday by phone but reached UNC Vice President Fred Weaver. Weaver told Phipps the University would not lay down any dictum against participation in the demonstrations.

As the demonstrations continued, other legislators reached Bill Friday demanding the university personnel be told to get off the streets or be fired. Friday's reaction was he would not enforce such restrictions on faculty or on students. On June 20 the State House passed a bill to increase the penalty for trespassing from 30 days to two years and the Senate shouted its approval of it as well.

The Speaker Ban

There is no real question but that the majority of the legislators who were most irate at the demonstrators—including Sen. Stone, Woodard of Northampton, Phil Godwin of Gates, and Tom White of Lenoir—came to be among the strongest supporters of the Speaker Ban.

Sen. Stone said in a speech during the winter of 1963—*after* the law's passage—"I notice we are not seeing nearly so many demonstrations now that the speaker ban has been passed." Thus Stone characterized the Speaker Ban against *communists* as a blow against *racial demonstrations*.

And North Carolina Secretary of State Thad Eure described the linkage very simply: "The demonstrations were the spark that touched off the speaker ban." Other issues contributed to hostility toward the Sanford administration and toward UNC. In many ways Sanford was perceived—correctly—to be a liberal among North Carolina governors, partly because he had beaten Lake and supported John Kennedy.

Sanford's aides pointed out that during his term the Governor appointed more blacks to State positions than had all previous Tar Heel governors combined. The higher education bill, which Sanford promoted, had no provision for segregated schools.

There was also a brouhaha concerning the proper name to use for NC State—it was proposed the school be renamed the University of North Carolina at Raleigh.

When he spoke about the name change Sen. LeRoy Simmons of Duplin County, attacking "foreigners," stated that the Governor's Commission on Education beyond High School "went clear out to the Pacific Ocean to ask us to adopt something out there when they had all the states in between ... they went to a state with more foreigners than any others to follow their system."

As June came along there was great interest in a proposed federal Constitutional amendment to create a "Super Court" consisting of the 50 state Chief Justices, whose powers were to supersede those of the U.S. Supreme Court. One story about this involved Sanford's personal efforts to lobby a Piedmont senator who asked the Governor, "Terry, is this a John Birch bill or is this just a good old conservative American bill?" Sanford said, "Oh, this is **absolutely** a John Birch bill." The legislator responded: "Well, I'm against anything that is a John Birch bill, so I'm against this." The Super Court proposal was defeated by a vote of 28 to 12. And every one of those 12 was to support the Speaker Ban just a few days later.

Many conservative legislators resented Bill Friday's refusal to "get the demonstrators off the street" and felt that Sanford and Friday symbolized powerful unsettling forces that were fomenting rapid social change they strongly opposed. The Super Court amendment was a way to slow such hostile forces; and it was a heavy personal blow to Stone, to White and to Godwin when that effort failed, so they had a certain sense of bitterness, and a feeling of frustration lingered as the General Assembly drew close to adjournment.

Quickly

Given this scene, how did North Carolina adopt a speaker ban on June 25, 1963? The short answer is... quickly.

Legislators wanted to go home—they were waiting for a committee report on reapportionment of the Senate and were considering local bills. That morning Representative Ned Delamar from Pamlico County went to see Phil Godwin from Gates and showed him a bill prepared by Secretary of State Thad Eure, North Carolina Attorney General Wade Bruton and his assistant Harry McGalliard. It was closely modeled on an Ohio bill banning known communists and other suspected subversives from speaking on state-supported campuses. Delamar had asked Thad Eure to obtain a copy for him after Jesse Helms had promoted the bill on his evening WRAL TV show the prior Friday, June 21, saying that in Ohio the legislature did not "pussy foot" with issues.

On June 25, Godwin quickly agreed to cosponsor the bill. Senate President Clarence Stone warmly endorsed the bill and said he would help get it through the Senate. Delmar and Godwin recruited six other representatives that morning as co-sponsors. When House Speaker Cliff Blue called for the introduction of bills that afternoon, Godwin moved the rules be suspended and the speaker ban be considered for an immediate vote. The House adopted the motion even though copies of the bill were not available for House members. Martha Evans of Charlotte objected that no one had copies, but Blue overruled her. Godwin said that the bill was noncontroversial, and they just did not want to let communists "ply their trade" on state campuses. Discussion and the final vote in the House took a grand total of four minutes.

The bill was sent by special messenger to the Senate where Clarence Stone called for a vote on first reading with no opportunity for debate.

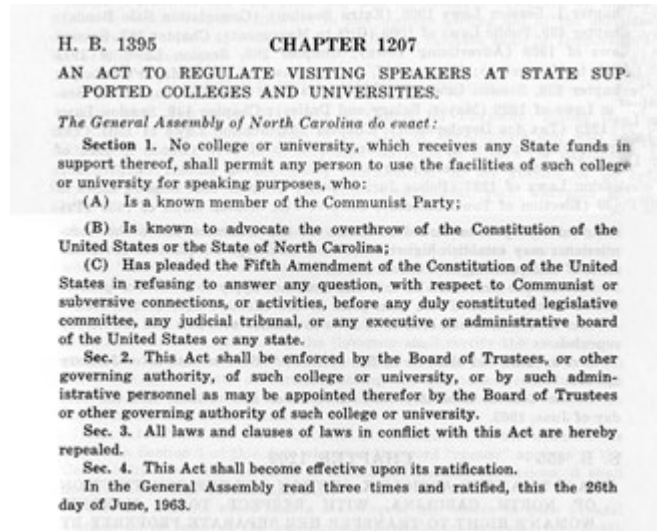
Few senators had copies of the bill and when one argued it had legal implications many members did not understand, Stone interjected from the rostrum, "It sounds like a good 'un to me."

One senator spoke substantively in opposition to the bill but when other senators rose to second his remarks, Stone called for the ayes and nays and ruled the ayes had it. The entire process in the Senate took 20 minutes. The Senate then adjourned for the day.

The reaction

Shortly thereafter Bill Friday and Fred Weaver arrived in Raleigh. They had learned about the bill from Chancellor Bill Aycock's wife who heard a radio report that the bill had passed the House and told the University administrators. But by the time they arrived both houses had recessed, so they went down to the Sir Walter Hotel where many members were staying. There Clarence Stone told Friday to "get out of here" and "go back over there and run the University." The bill's opponents tried to recall it from the enrolling office to the Senate floor the next morning, June 26, after

both sides had lobbied well into the evening. The motion to recall failed by 25 to 19 on a Senate vote.



Immediately afterward 14 senators entered a statement saying that they believed the ban law abridged freedom of speech. Bill Friday and the University chancellors signed a statement that the law was unnecessary and would hurt the University. Aycock and Friday led the first phase of opposition and they tried to persuade opinion makers and citizens that the law was a bad mistake. Aycock worked with John Sanders, an attorney and long-time UNC administrator, and law school dean Henry Brandis, developing a critique of the hastily passed legislation.

At University trustee meetings that summer and fall Aycock made a compelling case. He asked, who is a "known" communist? Did that mean a member of the Soviet Communist Party? Did it include members of the French or the Italian Communist Parties? What did the law mean in providing that it applied to known members of the Communist Party? Known, he asked, by whom?

When the law was passed I was serving as student body vice president and was working during the summer in a Congressional internship. By the fall, we were passing resolutions against the law and organizing students to speak at civic clubs, joining Friday's and Aycock's efforts to convince people that the law was dumb, unnecessary and would harm the University. We organized opposition to the law on public and private campuses.

We argued that students needed to be exposed to clashing viewpoints as part of their education. And to us, the idea that students would be somehow "snookered" by communists was, frankly, laughable. But the attempt to bring about any dramatic change in the views of legislators failed, though it was joined in by faculty, administrators and students.

In September 1963 the law had an initial casualty when British biologist J. B. S. Haldane, who had chaired the editorial board of the communist *Daily Worker* of London in the 1930s, refused to say whether he was a communist in 1963, and he was not permitted to speak on the Chapel Hill campus.

In the first Democratic primary in the spring of 1964, the most progressive candidate, Richardson Preyer, ran first, the more moderate Dan Moore was second, and Beverly Lake, Sanford's opponent from 1960, came in third. Only Lake had campaigned as a strong supporter of the Speaker Ban Law, though many of Moore's statements on the law had been vague and Moore was supported both by Speaker Ban sponsor Ned Delamar and by Senate President Clarence Stone.

Preyer lost to Moore in the second primary and this dashed the hopes of our anti-ban people who fervently desired the law repealed. Moore was elected governor in November 1964. I remember at my graduation in May 1965 many in my class were displeased when he said in a speech that as far as the Speaker Ban was concerned people just had to recognize that "the fault, dear Brutus, lay not in our stars but in ourselves."

We took this as a churlish comment aimed at students, faculty and the administrators at Chapel Hill—all of whom wanted the ban repealed.

Pressure

In the spring of 1965 Governor Moore heard rumors the Southern Association of Colleges and Schools was investigating the University, and might take action threatening its accreditation. The Association required that "a governing board of trustees should not be subject to pressure from state officials or other outside political or religious groups." The Association stated its standards might well be violated by the Speaker Ban Law.

At this point Governor Moore was also feeling pressure from University trustees, including members of the trustees' Medford committee that had been set up due to the concerns about the Ban voiced by Friday and Aycock. When Governor Moore publicly stated that the accreditation of UNC might be threatened by action of the Association, many faculty members were horrified. Scores threatened to resign. And over 300 faculty members signed statements saying they might be forced to depart in the interests of their own professional standing if accreditation were lost.

Speaker Ban proponents, especially the American Legion, were outraged at the Southern Association's threats, and some said it was bluffing. Beverly Lake said the state should adopt *even stronger* speaker ban legislation. J. Edgar Hoover wrote to a Dunn, North Carolina newspaper in strong support of the law.

The legislature, on Governor Moore's recommendation, established a nine-member commission to study the speaker ban. It was named for its chairman, David Britt of Fairmont, who had voted in favor of the law in the June 1963 session. But David Britt was, in fact, a relative moderate who had supported Moore against Preyer, on his left, and Lake, on his right, in the 1964 Democratic primaries.

A Southern Association representative testified at the Britt Commission hearings in the summer of 1965 that the Association's full assembly would meet in the fall to decide whether it would deny accreditation to UNC. Speaker Ban sponsor Phil Godwin also testified, stating he opposed Communist *scientists* speaking because one could just never know when they would stop talking about science and "get into politics." Godwin's comments called to mind Thad Eure, whose rationale for prohibiting the Moscow Symphony from appearing at Chapel Hill was, he said, the musicians might start by playing violins, but just when they had the students enthralled, they would reach out and "pour the poison in their ears."

In the summer of 1965 President Lyndon Johnson ordered another hundred thousand troops to Vietnam to deal with communist aggression. Speaker Ban proponents pointed to the Vietnam conflict as further reason for the ban, arguing, "Why should parents of sons who died by communist bullets in Vietnam have to pay for facilities in which left wing speakers in North Carolina promoted Communism."

Change in tactics

By the summer of 1965, my term as student body president had ended and I was about to leave Chapel Hill for graduate school. Paul Dickson had succeeded me in that office. Paul had served in Vietnam in the Air Force. He had been my opponent when I was elected in 1964 and he had been elected in the spring of 1965. By summer of 1965, a number of students were talking about whether a court case might be ultimately required to rid the University of the Speaker Ban.

A meeting was held involving Hank Patterson, Jane Patterson, Paul Dickson, me and a few others. Concern was expressed whether the Britt Commission could develop a recommendation the legislature would adopt to give powers back to the trustees they could exercise in good conscience and let students listen to any speaker they wanted to hear.

In early September the Britt Commission held another session in which President Friday, former Chancellor Aycock, and I all testified. Aycock quoted Jesse Helms as having said that "when one is denied any part of his rightful freedom, every man's freedom has been lessened." Aycock asked if someone should be censored who asserted that President Johnson wanted a socialistic dictatorship, if that assertion would undermine the morale of soldiers in Vietnam. I presented testimony that Chapel Hill was not a school where students had to be "leftists" to get good grades.

The Britt Commission recommended the statute be changed so the same categories of speakers would be regulated by the trustees, but not the legislature. Proponents of the Speaker Ban Law disliked the proposed changes. Jesse Helms condemned the commission on the air, and former Senate President Clarence Stone said that it was "a great day for the communists but a sad day for our servicemen fighting in the paddies of Vietnam . . . it's a bad day when a few egghead college professors can dictate to the legislative body of a great state. I don't think our legislators are going to stand for it." But the change was adopted by the legislature and the new version became known as the "Little Speaker Ban Law."

In December 1965 the Southern Association concluded that the amendment proposed by the Britt Commission was acceptable. It seemed that the battle against the Speaker Ban itself had ended as well. But in January 1966 the 25-member chapter of the Students for a Democratic Society at UNC invited Herbert Aptheker, a Marxist-Leninist and Frank Wilkinson, who had asserted his Fifth Amendment rights to questions about communist affiliations, to speak at the University. SDS members said they wished to test whether the Little Speaker Ban Law would still be utilized to prohibit left-wing speakers. The same day, Bill Friday presented a recommended speaker policy to the trustees executive committee. Friday and UNC Chancellor Paul Sharp approved the invitations to Wilkinson and Aptheker on the grounds that although the speakers were controversial, their appearance would serve an educational purpose. The trustees executive committee debated for hours and Governor Moore left before the meeting was completed.

In early February Paul Dickson and other student leaders joined SDS to invite Wilkinson and Aptheker to speak. Dickson said that "the best defense against Communism is a complete understanding of it . . . we must know the various shapes this philosophy takes in order to defeat it."

Following more trustees executive committee debate, it voted 8 to 3 on February 7, 1966 not to allow Aptheker and Wilkinson to speak. Friday called that the only defeat by the trustees he had faced in 30 years as University president. Governor Moore had pressured the committee to ban the speakers. Ironically, Aptheker was a historian who had published 21 books that were in UNC's library when he was banned by the trustees.

Students created a Committee for Free Inquiry that proposed that all student organizations could invite any speaker they wanted to appear at UNC. The Committee invited Wilkinson for March 2 and Aptheker for March 9. A poll conducted by *The Daily Tar Heel* about this time showed that about 80% of the student body supported allowing Wilkinson and Aptheker to speak. On the day after the trustees' executive committee decision to reject the invitations Dickson contacted Greensboro attorney McNeill Smith about bringing a lawsuit.

On March 2 Wilkinson and Dickson walked across McCorkle Place and Chief of Campus Police Arthur Beaumont told Wilkinson if he spoke he could be arrested. He

spoke instead from the far side of the wall that separated Franklin Street from the University. Students had placed a sign there proclaiming "Dan Moore's Chapel Hill Wall."



Photo montage of Frank Wilkinson speaking from Franklin Street. Photo by Jock Lauterer.

On March 9 Aptheker was also threatened with arrest if he spoke on the campus, so he spoke instead from the far side of the wall as well. And that night the scenes were broadcast to the nation on NBC television. On March 31, 1966 Acting Chancellor Carlyle Sitterson denied additional invitations to Wilkinson and to Aptheker stating that the speakers had already spoken near the campus and any new appearances would serve no additional educational purpose.



UNC Police Chief Arthur Beaumont (left, with gray sideburns) speaks with Herbert Aptheker (far right). Photo by Jock Lauterer.

About half an hour after they heard of these denials the students filed a complaint in federal court naming Chancellor Sitterson, William Friday and the trustees as defendants. Plaintiffs included Dickson, Bob Powell and George Nicholson, chairs of

the Carolina Forum, Jim Medford, chairman of the YMCA, as well as members of SDS. McNeill Smith was counsel for the students.

The case lasted for two years.

The three judges who decided it were Clement Haynsworth, a Democratic judge from the Fourth Circuit, and Republican District Court Judges Algernon Butler, and Edwin Stanley. (Thus, in the 1960s, Republicans sometimes acted to correct Democratic mistakes and enforce the First Amendment—although that does not appear to be so today, considering Republican sponsorship of resolutions asserting the right to establish a state religion.)

Judge Stanley's opinion for a unanimous court held that both the trustee action banning Wilkinson and Aptheker and the trustee regulations were "facially unconstitutional because of vagueness."

Although it did not specifically cite his writings, it identified many of the same shortcomings in the statute that Chancellor Aycock had articulated to the UNC trustees in the summer of 1963. Years later, a 1993 letter from the students' counsel McNeill Smith thanked Chancellor Aycock for articulating those issues.

The court concluded that when the statutes and regulations were tested by Supreme Court precedent on First Amendment rights "the conclusion was inescapable that they run afoul of constitutional principles." A few weeks later Governor Moore announced that the state would not appeal.

The battle was—finally—over.

Lessons of the Speaker Ban

So what lessons may be drawn from this unusual tale?

After the legislature adopted the Little Speaker Ban Law, University administrators were in an extremely difficult position. University trustees were under pressure from legislators and from Governor Moore's office to stand tough against communism and the trustees banned the speakers. The students attacked and defeated the Speaker Ban when no one else, not trustees, not University administrators, not the faculty, could effectively do so. This took courage.

I would not push the analogy too far, but the students' actions were somewhat like those of the four young black men in February 1960—the black students who went into Woolworth's from A&T in Greensboro, sat down at the lunch table and requested service—that marked the beginning of a sit-in movement that ultimately helped to bring down enforced segregation around the South.

And the Chapel Hill students used the **courts** to raise important, legitimate and ultimately winning issues at a time when other campuses, including the University of California at Berkeley, were wracked by violence.

The story also shows that the public may respond to polls with sincere protestations of fidelity to free speech principles but then shrink quickly from according such rights to dangerous people and to "communists."

But of course that's a reason why we have courts—to protect minority rights, because a democracy can function only when one has both majority rule and freedom to dissent.

An article appeared many years later in the *Carolina Alumni Review* commenting on a photographer's suggestion to Chancellor Aycock that he should pose for a picture by the wall along Franklin Street where Aptheker had spoken in 1966, Aycock responded,

"I can't go to the wall. That belongs to the students."

A year and a half ago, in celebration of University Day, a plaque was placed on that wall honoring the student plaintiffs. So Chancellor Aycock was right. The wall does belong to the students who fought—and who won—a critical battle for the University's values.

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Sources:

Principal sources for this speech are a paper that I authored on the Speaker Ban Law while an undergraduate at UNC-CH and a paper entitled "Challenges to the North Carolina Speaker Ban Law" by Wayne Grimsley. Both papers are available in the North Carolina Collection at UNC.

The quotation from Judge Phillips's opinion is from *Gingles v. Edmisten*, No. 81-803-CIV-5, (1984).

Other sources include articles on the Speech Ban controversy that were published in the *Carolina Alumni Review*

Robert Spearman delivered this talk on April 11, 2013 in UNC's Wilson Library for the Gladys Hall Coates University History Lecture series.

He entered UNC-Chapel Hill on a Morehead Scholarship in fall 1961. While at UNC he held several student government positions, including student body president from 1964 to 1965. As student body president, Spearman spoke out against the Speaker Ban. He testified before the Britt Commission, a legislative group considering changes to the law, on September 8, 1965. Spearman also was president of Phi Beta Kappa. He earned an A.B. with highest honors from UNC in 1965 and was inducted into several honorary organizations, including the Order of the Golden Fleece.

Spearman spent two years as a Rhodes Scholar at the University of Oxford in England before beginning law studies at Yale University. After graduating from Yale in 1970, he served as a clerk for U.S. Supreme Court Justice Hugo Black. Upon completion of his clerkship, Spearman returned to North Carolina to practice law. He retired as a partner with Parker Poe Adams & Bernstein in 2010.