Lessons from the Past:  
A Brief History of Academic Freedom and Due Process at California State University, Fresno

Introduction

The following remarks are an edited version of a document I prepared at the request of the Madden Library’s archive librarian. It is entitled “Biographical Statement Pertaining to the Career of Paul D. Bush at California State University, Fresno, and dated January 29, 2010.” The purpose of this document is to provide an overview for the materials contained in thirteen bankers boxes of materials I contributed to the university archives. As an autobiographical statement, it is written in the first person, for which I apologize.

The Formation of the University Structure and the Adoption of Its Consultative Procedures

In the mid-1960s Dr. Frederick W. Ness, a Ph.D. in English, became president of Fresno State College. During his tenure as president progressive elements of the faculty pressed for a reorganization of the institution into a university structure. Dr. Ness supported these efforts. The structure that emerged replaced “divisions” with “schools,” created an academic senate to replace the essentially ceremonial “faculty council,” and adopted a set of “consultative procedures” that effectively created a system for the democratic governance of the campus. The consultative procedures document, along with the Constitution of the Academic Senate, established the Academic Senate as the appropriate consultative body in the formation and execution of university policies. I was deeply involved in all phases of these developments: I was one of the authors of the consultative procedures document; I assisted in the drafting of the Constitution of the Academic Senate; and I served as a charter member of the Academic Senate.

The School of Arts and Sciences

The School of Arts and Sciences was the academic center of the new university structure. It encompassed the arts and humanities, the social sciences, and the physical sciences. I served on the Deanship Selection Committee for the School of Arts and Sciences. When the Deanship Selection Committee met with President Ness to present its nomination for the deanship, a prophetic discussion took place. The members of the committee stressed the importance of the president’s support of the new dean and the mission of the school. In response, President Ness argued that in the era of the multiversity, every academic program on the campus had to find its vocational relevance and emphasize it. I responded that the arts and sciences, unlike Schools of Agriculture or Engineering, or even the School of Education, do not have vocational constituencies in the community that can put pressure on the university administration to serve their needs. With the exception of the pre-med program and the fact that arts and sciences majors pursue advanced degrees in fields, which offer career opportunities, the arts and sciences do not have any particular vocational relevance as such. Nevertheless, they provide the intellectual foundations for all the vocationally oriented programs in the university.
There can be no agriculture without biology; nor engineering without math, physics, and chemistry; nor business administration without economics; nor the fields of design, public relations, and advertising, without the fine arts and English. Thus, the only constituency the School of Arts and Sciences has, I argued, is the university itself. In consequence, while the Dean of the School of Business might argue the case for the interests of his constituency, it is the president of the university who must argue the case for the needs of the School of Arts and Sciences. This discussion revealed the dilemma of the modern university in its effort to justify its existence in a world that values short term gains over long-term development, vested interests over intellectual progress.

Dean Dale C. Burtner

The person our committee nominated for the Deanship of the School of Arts and Sciences was Dr. Dale C. Burtner, a professor of chemistry at CSU, Fresno. Dr. Burtner was a highly qualified candidate; he was a scientist with a deep understanding of the arts, humanities, and social sciences. Of equal importance was his commitment to the democratic governance of the university. These fine qualities, which, during his relatively short tenure as dean, redounded to the benefit of the faculty and students of the university, were ultimately a factor in the disastrous series of events that led to President Ness’s abrupt resignation in October 1969.

The Mezey Case

It should be remembered that the late 1960s was a period of student protests in countries across the world. In the US, protests against the war in Vietnam, the draft, and the continued flagrant denial of civil rights to racial and ethnic minorities found a natural venue on university campuses. It was also the era of the “counter-culture,” the common symbol of which was the “hippie.” The popular image of the hippie was that of a bearded, foul-mouthed, guitar strumming, sandal-wearing pot smoker given to an unsanitary lifestyle. In Fresno, the white, middle class revulsion to these images came to a frenzy in the infamous “Mezey Case” which erupted on the CSU, Fresno campus in 1967.

Robert Mezey, an award winning poet, was one of a remarkable group of poets teaching in the Department of English. In response to an invitation from the CSU, Fresno Student Senate, Mezey agreed to participate in what came to be known as the “Panel on Pot.” This was a public forum organized by the Student Senate to discuss the pros and cons of the marijuana laws that existed at the time in California. In addition to Mezey, the panel included the Fresno County District Attorney, the Fresno County Public Defender, a member of the faculty of the Department of Psychology, and a student. During the panel discussion, Mezey argued that the marijuana laws were unjust, and that, among other things, they discriminated in particular against Blacks. He said that while he did not encourage the smoking of marijuana, he took a “Thoreau-like” position that the marijuana laws should be broken until they were taken off the books.

Newspaper reports of Mezey’s remarks provoked an outcry both on the campus and in the community. Prominent community leaders called on President Ness to fire Mezey from the faculty. Mezey was, in the public mind, the embodiment of the despised
“hippie” image. And, indeed, when Mezey was up for rehiring for the following year, President Ness overruled the strong recommendations of the Department of English and Dean Burtner that Mezey be rehired. President Ness declined to rehire him and refused to give his reasons for doing so. His refusal to give reasons for his decision was a violation of the principle set down by the American Association of University Professors (AAUP) which states that the administration shall normally accept faculty recommendations in personnel matters “except in rare instances and for compelling reasons which should be stated in detail.” The AAUP “Statement on Governance,” in which this language is contained, had been adopted by the California State College Board of Trustees as policy for the CSU system. [There were a number of complicating factors in the case which I am passing over here in the interest of brevity. A fairly detailed narrative account of the case can be found in Kenneth A. Seib, The Slow Death of Fresno State: A California Campus under Reagan and Brown, Palo Alto: Ramparts Press, 1979. This book is in the Madden Library.]

It was obvious to both his detractors and supporters that Mezey was fired for his public utterances during the “Panel on Pot.” This, of course, was a violation of both his academic freedom and his freedom of speech. In view of these obvious violations of his rights as an academic and as a citizen, I offered to represent Mezey and the Department of English in the effort to get him reinstated. This involved filing a grievance on his behalf and serving as his faculty advocate during the hearings. The grievance panel was composed of members of the faculty. After a lengthy hearing, the grievance panel ruled in Mezey’s favor and recommended to President Ness that Mezey be rehired for the following year. Once again, President Ness refused to rehire Mezey, and, once again, he refused to give his reason for doing so. This final decision by President Ness cleared the way for Mezey to take his case to court.

The case was heard without a jury in Fresno Superior Court before a judge who had to be brought in from another jurisdiction (on the Coast). All of the sitting Fresno Superior Court Judges recused themselves from hearing the case. At least one member of the Fresno Superior Court bench had joined the public outcry for Mezey’s firing. This provided grounds for his colleagues on the bench to recuse themselves so as to avoid appearance of bias. But the fact of the matter was that the political climate was such that Superior Court judges, who must stand for reelection to the bench, would not touch the case with a ten-foot pole. The judge found that President Ness’s refusal to rehire Mezey was perfectly legal. His decision was appealed, but it was upheld.

The Fresno Free College Foundation

Mezey and his family were rendered destitute by his firing. In order to raise money to assist the family until Mezey could find another job, several professors founded the Fresno Free College Foundation (FFCF). They were Russ Leavenworth, Professor of English and Chair of the English department, Jack Pitt, Professor of Philosophy, Seymour Mack, Professor of Geology, and me. After one or two years during which Mezey held temporary teaching positions in other states, he was hired for a tenure track position at Pomona College in Claremont, California, where he taught until his retirement. During his distinguished career at Pomona, Mezey’s poetry was published regularly in leading publications, and he received numerous awards, including two Guggenheim grants.
The Fresno Free College Foundation became a bastion for the defense of academic freedom and civil rights over the years. It figured prominently in all of the cases discussed below. Early on it became clear to the FFCF Board of Directors that, in addition to fighting academic freedom and free speech cases, it had to have a long-term strategy for educating the community to the values of a free society and the role of higher learning in a democracy. To this end the Foundation expanded its activities on a wide variety of fronts. At this writing (in 2010), the Foundation has existed for 42 years, during which time it has supported dozens of worthy causes, filed amicus briefs with the US Supreme Court in civil rights and free speech cases, founded and supported many cultural programs, such as Keyboard Concerts, and established (and continues to operate) KFCF-FM, the Central Valley’s first listener-sponsored (and only commercial free) radio station. Much of the Foundation’s success in these endeavors was the result of the inspired leadership of Dr. Alex Vavoulis (now Professor Emeritus of Chemistry, California State University, Fresno), its longtime president.

The Marvin X Case

In the fall semester of 1969, Richard Keyes, Head of the Ethnic Studies Program in the School of Arts and Sciences, hired Marvin X, a Black Muslim, to teach in the program. Keyes had the full backing of Dean Dale C. Burtner in this hiring. In spite of the fact that this was a perfectly legitimate hire, an uproar occurred as some members of the faculty and like-minded individuals in the community vigorously opposed the presence of a Black Muslim on the faculty. In the wake of this highly publicized objection to the hiring of Marvin X, Chancellor Glenn S. Dumke called President Ness to the CSU headquarters in Long Beach for a consultation on the matter. It was later revealed that in that meeting Chancellor Dumke ordered Dr. Ness to nullify the hiring of Marvin X and expel him from the campus. Upon his return to the campus, Dr. Ness abruptly resigned his presidency at a hastily called meeting of the Academic Senate. He said that the pressures put on him “from both above and below” made his situation untenable. He immediately left Fresno to assume the presidency of the Association of American Colleges and Universities (this may not be the precise name of the organization), a post he had actively pursued and planned to assume at the end of the 1969-70 academic year. He left the campus without taking any action in the Marvin X matter.

Dr. Karl L. Falk becomes the Interim President of Fresno State College

Stating that there was “too much democracy” at Fresno State, Chancellor Dumke appointed Dr. Karl L. Falk interim president to rectify the situation. Falk did so by instituting a political purge of the campus. He began by planning the elimination of the Ethnic Studies Program and the firing its entire minority faculty. He immediately fired Dr. Burtner from the deanship of the School of Arts and Sciences, giving him less than a half-day’s notice to vacate his office. He appointed Philip Walker, a leader of the conservative faction in the faculty, to replace Dr. Burtner. Later in the year, Falk abolished the School of Arts and Sciences, replacing it with three schools: science, humanities, and social science. This, of course, contributed to an explosion of
administrative costs. While publically denying that he was doing so, Falk effectively
voided the consultative procedures of the campus. These procedures were what Dumke
had in mind when he said that there was “too much democracy” on the campus. Falk’s
purge of all the undesirable aspects that he and Dumke found on the campus is too
extensive to record here. [See Seib’s *Slow Death of Fresno State* for a more detailed
account.]

**The Black Student Union Case**

Hearing rumors that President Falk intended to eliminate the Ethnic Studies
Program and fire its entire minority faculty, leaders of the Black Student Union (BSU)
requested a meeting with Acting Dean Philip Walker to discuss the situation. Walker
granted the meeting. The leaders of the Black Student Union asked Dr. Joe Toney,
Assistant Professor of Chemistry, to attend the meeting as an observer. During the
meeting the leaders of the BSU demanded to know if the rumors they had heard were
true. Walker was evasive and refused to give them a direct answer. By all accounts the
exchanges during the meeting were quite intense.

After the meeting had adjourned, Walker claimed that he had been held in the
meeting against his will. The Falk administration immediately filed criminal charges,
including “false imprisonment,” against the BSU leaders and Dr. Toney with the Fresno
County District Attorney. The students and Dr. Toney were arrested and put in jail
overnight until charges could be formerly filed in the Fresno County Superior Court.

The charges against Dr. Toney were ultimately dropped, but the students were put
on trial. During the trial of the students, testimony was given by several members of the
faculty that Philip Walker had the reputation for being dishonest. Among other things,
they testified that he had plagiarized a speech that he gave as President of the Faculty
Council during the ceremony welcoming Dr. Ness as the new president of Fresno State
College. The students’ defense was that Walker’s claim that he was held in the meeting
against his will could not be believed because he was known to be dishonest. The all-
white jury in the case found the students innocent of the charge of “false imprisonment.”

I assisted attorney J. V. Henry in developing the students’ defense strategy. Attorney Henry and I also worked together to defend the students in campus hearings in
which the Falk administration accused the students of imprisoning Phil Walker against
his will. The faculty panel that heard the case found the students innocent of the charge.
Nevertheless, Dr. Falk suspended them for five years, thereby destroying their college
careers.

It is interesting to note that Osby Davis, one of the BSU leaders, went on to
become a highly successful attorney and was elected mayor of the city of Vallejo,
California. Lavert Lucas, another officer in the BSU, pursued a distinguished career as a
city planner in the greater Las Vegas area of Nevada. Their stories of success in later life
are typical of the careers pursued by most of the student leaders (Black, White, and
Chicano) who stood up to the Ness, Falk, and Baxter administrations and “spoke truth to
power.”
The Toney Case

Dr. Norman Baxter was appointed President of Fresno State College in 1970. When Dr. Joe Toney was nominated by the Department of Chemistry to be rehired for the next academic year, President Baxter refused to do so. He gave no reasons for his decision. I filed a grievance on Dr. Toney’s behalf to challenge President Baxter’s decision. The grievance committee recommended that Dr. Toney be rehired. Once again, President Baxter refused to follow the faculty’s recommendation. While the grievance process dragged on through delays and lengthy hearings, I contacted both the California Fair Employment Practices Commission and the US Department of Health, Education and Welfare, Contract Compliance Division, asking them to investigate whether or not Dr. Toney’s civil rights had been violated by Dr. Baxter’s failure to rehire him. Dr. Toney is Black, and the issue was one of racial discrimination. Both agencies responded positively to my requests. Finally, the Contract Compliance Division ordered Chancellor Dumke to rehire Dr. Toney stating that if he did not do so it would freeze all federal funds received by the entire California State College System. In other words, the failure to rehire Dr. Toney would put in jeopardy all federal funds received by all of the campuses in the state college system. Dr. Toney was immediately rehired. He ultimately received tenure and continued to teach at CSU, Fresno until his retirement.

Dr. Toney filed a civil lawsuit against both Philip Walker and Dr. Baxter for the violation of his civil rights. Walker was eventually dismissed from the case in an act of compassion by Toney and his attorney Donald Thuesen. The jury brought in a verdict finding that Dr. Baxter had, indeed, violated Dr. Toney’s civil rights and awarded Dr. Toney a $10,000 judgment against Dr. Baxter.

Ironically, in the year that Dr. Baxter was found guilty of having violated Dr. Toney’s civil rights, he was one of only two state college presidents awarded raises by the CSU Board of Trustees. The Trustees had denied raises to all of the other state college presidents as punishment for their lack leadership.

The Mabey Case and the File on “Known Campus Radicals”

Rendell N. Mabey was an Assistant Professor of Philosophy when Dr. Falk took over as interim president of the college. During an Academic Senate meeting in which the Falk administration’s policies were being discussed, Dr. Mabey stood up and rendered a blistering critique of the Falk administration’s violations of the faculty’s rights to academic freedom and due process. As a consequence of these public utterances in a legitimate academic forum, Dr. Mabey was later denied rehiring by President Baxter. Dr. Baxter made this decision in spite of the fact that Dr. Mabey had been strongly recommended for retention by the Department of Philosophy. Although the basis of his decision was obvious, Dr. Baxter refused to give his reason for denying Dr. Mabey retention.

A grievance on Dr. Mabey’s behalf was filed against Dr. Baxter’s decision. I took over the representation of Dr. Mabey during the grievance hearing. Remarkably, two members of the faculty who had been in attendance at the Academic Senate meeting testified in behalf of the administration that in their opinion Dr. Mabey’s statements constituted unprofessional conduct. In another unusual occurrence during the grievance
hearings, a document entitled “Known Campus Radicals” was presented in Mabey’s support by the attorney J. V. Henry. It was a document he had discovered during a deposition in another case. The document was maintained by the Fresno State campus police department. It contained the names and photograph of students, faculty, and members of the Fresno community who in the opinion of the police held “radical” political views and were likely to disrupt the campus. Among the community members identified in this document were a number of churchmen from both Black and White congregations who had, during times of crisis on the campus, offered their good offices to mediate disputes between students, the campus police, and members of the administration. Needless to say, the existence of this document caused a considerable uproar in the community.

The faculty grievance committee found in favor of Dr. Mabey and recommended to Dr. Baxter that Mabey be retained for the following year. Baxter refused. With the financial assistance of the Fresno Free College Foundation, we filed a lawsuit in the Federal District Court of San Francisco alleging that President Baxter had violated Dr. Mabey’s First Amendment rights by his decision not to retain him. The judge in the case ruled that Dr. Baxter had violated Dr. Mabey’s first amendment rights and ordered that he be retained. Mabey returned to the campus for an additional year. As part of an out-of-the-court settlement during the CSU appeal of the decision, Mabey received back pay and lost benefits in return for his agreement to leave Fresno State. He and his family moved back east, where he took a position on (I believe) the Middlebury College faculty. He later became a dean there.

Numerous Other Cases

These are only a few of the cases I worked on during the turbulent 60s and 70s at Fresno State College. Others not mentioned include the Zumwalt case in which Gene Zumwalt, the Chair of the Department of English, was evicted from his office by campus police. The Acting Dean of the School of Humanities, Ralph Rae, believed that Zumwalt had been up to some unspecified evil deeds. When asked why he had ordered the police to evict Dr. Zumwalt from his office, the Acting Dean Rae blithely replied, “it was normal procedure.” His remark found its way into the New Yorker magazine. Several other professors who had been active in the anti-war movement were not retained by the Falk administration; a class action was filed in their behalf. Everett Frost, an Assistant Professor of English, was accused of damaging the piano in the Department of Music. He was exonerated. He finally left Fresno for New York to become a successful producer and director of a dramatic series for public radio. And the story goes on. [For more details about all of this, I refer you once again to Seib’s The Slow Death of Fresno State.]

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