

***ACADEMIC FREEDOM:  
A Delicate Balance in the Academic Climate***

**William C. Kling, JD**  
**wkling@uic.edu**

“We have to keep developing new technology that helps us use less energy. We’ve got to keep relying on American know-how and ingenuity that comes from places like community college[s].” *President Barack Obama*



“I have been an educator for 28 years, and I have taught in the community college system for more than 16 of them. I don't have to look any further than my classroom to see the power of community colleges to change lives.” *Dr. Jill Biden*



“We quite happily lock people up at \$30,000, \$40,000, \$50,000 a pop.... Budgets reflect our values. What’s more important? Are we going to lock people up or educate them on the front end? It’s eight times more expensive to lock people up than to send them to college.” *Secretary Arne Duncan*



“It's no secret that President Obama and I are huge fans of community colleges... Community colleges are central to building a vibrant economy and resilient work force. And they are absolutely critical to meeting President Obama's goal of America once again having the highest percentage of college graduates in the world by 2020.” Secretary *Arne Duncan*



# The Academic Environment

- “America's colleges and universities are, in theory, indispensable institutions in the development of critical minds and the furthering of individual rights, honest inquiry, and the core values of liberty, legal equality, and dignity.

## The Academic Environment (con't)

- Instead, they often are the enemies of those qualities and pursuits, denying students and faculty their voices, their fundamental rights, and even their individual humanity.” *Foundation for Individual Rights in Education, [www.thefire.org](http://www.thefire.org)*

## The Academic Environment (con't)

- “The college/student relationship is certainly unique. While its primary function is to foster intellectual development through an academic curriculum, the institution is involved in all aspects of student life.

## The Academic Environment (con't)

- “Through its providing of food, housing, security, and a range of extracurricular activities, the modern college provides a setting in which every aspect of student life is, to some degree, college guided.

## The Academic Environment (con't)

- “This attempt at control, however, is directed toward a group whose members are adults in the contemplation of law and thus free agents in many aspects of their lives and life styles.

## The Academic Environment (con't)

- “Despite the recognition of adulthood, colleges continue to make an effort to regulate student life and the courts have utilized diverse theories in attempting to fix the extent of the college’s duty to protect students.”  
*McClure v. Fairfield University.*

## The Academic Environment (con't)

- “When an educational institution issues a diploma to one of its students, it is, in effect, certifying to society that the student possesses all of the knowledge and skills that are required by his chosen discipline.

## The Academic Environment (con't)

- In order for society to be able to have complete confidence in the credentials dispensed by academic institutions, however, it is essential that the decisions surrounding the issuance of these credentials be left to the sound judgment of the professional educators who monitor the progress of their students on a regular basis.” *Olsson v. Board of Higher Ed. (New York, 1980).*

# Quality Management

“There has been some reluctance to apply quality practices to education, yet central to Deming’s methods and management philosophy is an insistence that anything can be made or done better.

## Quality Management (con't)

- Americans have steadfastly held the belief that education is the fortification against poverty and social unrest. There exists, however, a subtle pessimistic attitude that people are doing the best they can with what they have.” *Goldberg & Cole, “Quality Management in Education: Building Excellence and Equity in Student Performance”*

## Quality Management (con't)

“This nexus between freedom and quality is deeply embedded at the core of academic ethos. Whether academic excellence (quality) or not, it sits increasingly at odds with the utilitarian community service role universities are required to play.” *“Developing Alternative Perspectives for Quality in Higher Education”, Srikanthan & Dalrymple.*

# First Amendment Issues

- FIRST AMENDMENT
  - “Congress shall make no law...abridging the freedom of speech”, 1st Amendment, United States Constitution.

# First Amendment

- “To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Sweezy v. New Hampshire*

## Balance of Rights and Responsibilities

- While the concept of academic freedom exists, "a university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon use of its campus and facilities." *Widmar v. Vincent*

# Interpretation and Application

- In *Pickering v. Board of Education* the United States Supreme Court found that comments by a teacher that district was spending too much money on athletics was matter of “public concern”, and not detrimental to the educational mission. The comments were protected speech under first amendment.

## Interpretation and Application

- In *Crue v. Aiken*, court found that professor and student contacts to prospective athletic recruits about Chief Illiniwek were constitutionally protected. The administration's attempt to apply policy to prospective speech violated first amendment.

# Interpretation and Application

- Plaintiffs' generalized, conclusory allegations that the class was “taught in a constitutionally impermissible manner” and that the purpose of the class was “solely to indoctrinate” students with a “Christian worldview” failed to provide any factually specific examples of how the Course was taught from a “Christian worldview” that violated the “First and Fourteenth Amendments.” *Smith v. Arizona* (2012)

# Interpretation and Application

- The textbook for the Course was *Philosophical Foundation: A Critical Analysis of Basic Beliefs*. The Plaintiff alleged that the textbook and the sections taught from it are “totally inappropriate ... for any course in the philosophy department, and in particular for the [Course] as described in the Course Description.” *Smith v. Arizona (2012)*

## Interpretation and Application

- Plaintiff alleged that the faculty member abused this policy because her religious instruction in the Course was not relevant or related to community college's prescribed course competencies as laid out in the Course Description. *Smith v. Arizona (2012)*

## Interpretation and Application

- In *Olguin v. Santa Barbara Community College Dist.* A psychology professor at a community college distributed a memo to his colleagues highly critical of the psychology department chairperson. The court concluded the memo falls within the zone of protected speech and was not actionable.

# Intepreation and Application

- “In the collision of opposing opinions in heated academic debates on important issues, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Olguin v. Santa Barbara Community College Dist.* (2011)

# Copyright Definitions

*“Traditional work or non-directed work”* i.e., textbooks, manuscripts, scholarly works, fixed lecture notes, some distance learning, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator.

## Copyright Definitions (con't)

"*Directed works*" include works that are specifically funded by or created at the direction of the University (including, but not limited to, works for hire by faculty or other non faculty employees).

## Copyright Definitions (con't)

A "*sponsored or externally contracted work*" is any type of work developed using funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements.

## Copyright Definitions (con't)

A "*work for hire*" is either: (a) a work prepared by an employee within the scope of his or her employment; or (b) a work specially ordered or commissioned by an independent contractor for use as a contribution to a collective work.

# Copyright /Work for Hire

- Contribution to a larger work, such as a magazine
- A part of a motion picture or audiovisual work
- A compilation of existing works
- Instructional texts or graphic works
- A translation of an existing work
- A test
- Answers for a test
- Supplementary works, such as a graph for a book
- An atlas

## Copyright Definitions (con't)

- “*Student works*”. Papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students.

# Copyright General Rules

*Traditional work or non-directed work*

*Ownership: Faculty.*

Colleges traditionally do not claim copyright although they do under certain occasions pursue ownership under work-for-hire.

## Copyright General Rules (con't)

### *Directed Works*

*Ownership:* College.

The work's creator, where practical, is granted a “Shop Right”. The college may release or transfer its copyrights to the work's creator under a written agreement negotiated between the creator and the University.

## Copyright General Rules (con't)

*Traditional Works or Non-Directed Works Involving Exceptional Use of Institutional Resources*

*Ownership: College.*

However, the University finds that in most cases it is to the benefit of the University to waive its claim to ownership of such works subject only to retention of a Shop Right

## Copyright General Rules (con't)

*Sponsored or Externally Contracted Works*

*Ownership:* College or Creator, depending upon the contractual agreement with the sponsor.

# Copyright General Rules (con't)

## *Student Work*

### *Ownership: Student*

Students generally own their own creative work- including original research and papers prepared for class.

## Copyright Case Law

- Discharged employee, who had worked as a staff photographer for a community college, brought action against former employer, alleging that, based on copyright policy included in college's policy manual, he owned all right, title, and interest in the photographs he took during his employment.

## Copyright Case Law

- Court held that discharged employee failed to show an express agreement signed by both parties which stated, on its face, that he had the copyright in the photographs, and so he failed to rebut the statutory presumption that former employer retained the copyright in the photographs. *Manning v. Board of Trustees of Community College Dist. No. 505 (2000)*

# Fair Use

- “Fair use” is a judicial doctrine that refers to a use of copyrighted material that does not infringe or violate the exclusive rights of the copyright holder.

## Fair Use (con't)

- It is usually considered fair use of an authored work to take small quotations or excerpts and to include them in another work, as when quotations are taken from a book and inserted into a book review. However, courts have found that such quotation is not fair use when material is taken from unpublished sources, as happened in the 1985 case *Harper & Row v. Nation Enterprises*, 471 U.S. 539, 105 S. Ct. 2218, 85 L. Ed. 2d 588.

## Fair Use (Con't)

- Examples of fair use typically involve, according to the Copyright Act of 1976, the reproduction of authored works for the purpose of "criticism, comment, news reporting, teaching ..., scholarship, or research" (17 U.S.C.A. § 107)

## Fair Use (Con't)

- The same act also establishes a four-part test to determine fair use according to the following factors: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for, or value of, the copyrighted work (17 U.S.C.A. § 107)

# KCC Policy

- Kankakee Community College shall make every effort to comply with the intellectual property, copyright, and fair use guidelines set forth in the Copyright Act of 1976 and its amendments, the Digital Millennium Copyright Act (DMCA), the Technology, Education, and Copyright Harmonization (TEACH) Act, and any new acts or additional amendments related to copyright.

## KCC Policy (con't)

- It is the policy of Kankakee Community College that its faculty, staff, and students carry out their work in an open and free atmosphere, and that consistent with applicable laws and policy they publish the results of such work without restraint.

## KCC Policy (con't)

- As an institution devoted to the creation, discovery and dissemination of knowledge, the college supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 U.S.C. § 107, by faculty, staff and students in teaching, research, and service activities.

## KCC Policy (con't)

- Except as allowed by law, it is a violation of this Policy and law for college faculty, staff, or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

## KCC Policy (con't)

An individual educator may make single copies of:

- a chapter of a book
- an article from a magazine or newspaper
- a short story, short essay, or short poem, or
- a chart, graph, diagram, drawing, cartoon or a picture from a book, magazine or newspaper

## KCC Policy (con't)

Multiple copies for classroom use (not to exceed one copy per student per course):

- a complete poem of less than 250 words,
- an excerpt, not to exceed 250 words, from a longer poem,
- a complete article, story or essay of less than 2,500 words,
- .

## KCC Policy (con't)

- an excerpt from a larger printed work not to exceed ten percent of the whole or 1,000 words,
- one chart, graph, diagram, cartoon or picture per book or magazine issue if the individual item is not separately copyrighted, or
- two pages or ten percent of the words from children's picture books or comic books

# CONCLUSION

- Balancing Classroom Management and Free Speech
- Narrowly Tailored Policies
- Link Content to Learning Objectives
- Copyright issues. Read policy. Negotiate