Bill Aycock and the North Carolina Speaker Ban Law

Gene R. Nichol

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.unc.edu/nclr/vol79/iss6/7
The passage and eventual invalidation of the Speaker Ban Law presents one of the most fascinating, and constitutionally troubling, episodes in North Carolina history. A law purportedly aimed at Communist subversion instead worked pointedly to undermine the freedoms of inquiry and expression in North Carolina. Chancellor William B. Aycock's efforts to force repeal of the statute have gone largely unnoticed by chroniclers of the turbulent era. Aycock's spirited dissenting role teaches important lessons about leadership, courage, and the foundations of academic freedom.

"This institution was fathered by rebellion against oppression and mothered by a vision of freedom."—William Brantley Aycock

On June 25, 1963, at the end of the legislative session, with no notice to the university or the Governor, no committee hearings, no debate, with four minutes of deliberation in the House, and fifteen minutes in the Senate, the North Carolina legislature passed the now infamous Speaker Ban Law. It read
as follows:

AN ACT TO REGULATE VISITING SPEAKERS AT STATE SUPPORTED COLLEGES AND UNIVERSITIES

Section 1. No college or university, which receives any State funds in support thereof, shall permit any person to use the facilities...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...
(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....

Sec. 2. This Act shall be enforced by the Board of Trustees, or other governing authority, of such college or university....

the paper reported that...[t]he measure sailed through the House with only two dissenting votes....[In the Senate,] President Clarence Stone cut off discussion by out-shouting senators calling for the floor to oppose it. Stone interrupted the debate just as Northampton Sen. Perry Martin finished speaking against the bill on third reading. With at least three senators on their feet asking [for] recognition, Stone called loudly for the ayes and noes and ruled the ayes had it, all in a single breath....Sen. Luther Hamilton objected to Stone's tactics and then spoke against the bill on a point of personal privilege, calling it 'unworthy of the Senate of North Carolina.


We believe that it constitutes an abridgement or denial of free speech, a lack of due regard for the true purposes and meaning of the University of North Carolina and other public education institutions in the life of the State and the nation, a denial of Constitutional privileges, and that in other respects [the Speaker Ban] violates our long recognized and generally accepted political and social principles....

Twelve days earlier, William Brantley Aycock, Chancellor of the University of North Carolina at Chapel Hill, had informed President William Friday that he would step down the following summer in order to resume his teaching duties at the law school. Aycock and the university community learned of the Speaker Ban Law through radio reports on the afternoon of June 25. For the next two years, Chancellor (and then Professor) Aycock waged an immensely articulate, combative, risky, pointed, and courageous campaign against the Speaker Ban.

The story of Aycock's crusade teaches much about the protection of the freedoms of academic inquiry and expression. The best of our traditions don't simply fall, like ripe apples, from long-ago, well-planted trees. They are, too frequently, tested by fire and steel. And the rejection of orthodoxy and political dominance can require more than scholarly prowess. Aycock's lessons are, first and foremost, about courage. The Speaker Ban episode also helped to define, in somewhat ironic ways, the mission of the University of North Carolina. Having survived this dark chapter, Carolina will long regard itself as a special laboratory for the expression of controversial ideas. For an institution that knows something of censorship (and much of racial discrimination), erring in the opposite direction is more sensible. But most of all, Aycock's story is a fascinating example of true university leadership. There is little mincing of words in what follows. No "bureaucratese." Aycock chose, as Dr. Frank Porter Graham once put it, to "run the risks of taking sides." And take sides he did: beyond the university's walls, against public opinion, in the face of an angry legislature that controlled both his budget and his fate. His brand of leadership entailed changing North Carolina's mind. We're not likely, I fear, to see that kind of work again. We are all the worse for that. I won't be able to do the story justice in this brief Essay. But the outlines are both powerful and inspiring.

COMMUNISM AND CIVIL RIGHTS

The sentiment for the Speaker Ban emerged in the 1960 Beverly Lake segregationist gubernatorial campaign. Lake's campaign manager, State Sen. Robert B. Morgan, made headlines

---

4. President of the University of North Carolina from 1930–1949.
5. WARREN ASHBY, FRANK PORTER GRAHAM: A SOUTHERN LIBERAL 272 (1980).
in the spring of 1960 by claiming, in a speech to the Harnett County Democratic Convention, that, if elected, Lake would not "sit idly by ... and let the NAACP and other evil outside influences make a mockery of North Carolina tax payers [sic] in our way of life." Morgan complained most loudly of the "outrageous events" allowed to take place in recent weeks at the university in Chapel Hill. He noted that UNC-TV had broadcast a program glorifying sit-down strikes at lunch counters. A student group had invited Dr. Martin Luther King, Jr. to speak and "to declare continued war" on "[our] way of life." Worst of all, Morgan charged, "Negro poet Langston Hughes" had actually spoken at the university.

In a precursor of the fights to come, Chancellor Aycock decided to rebut publicly the Lake-Morgan sentiments. At the time, the Governor was ex-officio chairman of the University of North Carolina Board of Trustees. Political interference with academic freedom, Aycock worried, would strike at the core of the university's genius. A speech to alumni on June 6, 1960, faced the issue directly and visibly:

A true university must seek out, examine, assemble and interpret facts. It must seek new ideas, new forms of knowledge, new values and new artistic standards in order that mankind may continue to grow in understanding and wisdom. A part of this creative mission is the duty to examine the bases, the foundations, and the assumptions on which present knowledge rests.... An institution engaged in higher education cannot be a university if it undertakes to fix or freeze knowledge or doctrine merely because it is suitable to some individual or group, however highly placed. By what authority, may I ask, can a person say that he has found the final truth for the youth of our land? ... Those of us entrusted, for the time being, with the leadership of the University of the people have a duty to express forthright concern when the freedom of the University is threatened.... If a governor should attempt to dilute freedom in the University, it would be tantamount to an attempt to destroy it. This institution

7. Id.
8. Id.
9. Id.
was fathered by rebellion against oppression and mothered by a vision of freedom. It has become an instrument of democracy and a place in which the weak can grow strong and the strong can grow great.\(^\text{10}\)

Aycock's words went unheeded, however, as concern over racial issues escalated, triggering passage of the Speaker Ban. *The Charlotte Observer* reported that “[t]he impetus for the gag law began during the 1963 anti-segregation demonstrations in the Capitol,” as politicians linked support for the civil rights movement with communism.\(^\text{11}\) Legislators and the American Legion were outraged that UNC students had engaged in sit-in protests in Raleigh. Making matters worse, demonstrators had even invaded the Sir Walter Hotel—where legislators lived and worked.\(^\text{12}\) Reportedly, at least one of the protesters was a University of North Carolina faculty member.\(^\text{13}\) One legislator, in “a fit of pique, threatened to cut off all University appropriations.”\(^\text{14}\) Strong pressure was lodged against the university to discipline the demonstrators. When campus administrators balked, the Speaker Ban followed.\(^\text{15}\) Commentators described the goal of the Ban as “embarrassing the university administration ... for harboring liberals and integrationists.”\(^\text{16}\) The “Communist” theory of the Speaker Ban was largely the notion that anyone who advocated civil rights and integration must be a Communist.\(^\text{17}\)

---

10. Aycock, supra note 1, at 95–96.

11. Editorial, *Race Behind Speaker Ban Bill?*, CHARLOTTE OBSERVER, July 4, 1963 at 2B [hereinafter *Race Behind Speaker Ban Bill?*]; William J. Billingsley, *Communists on Campus: Race, Politics, and the Public University in Sixties North Carolina*, at x–xi (1999) (noting that “although the content of the allegations was fueled by anticommunism, the specific context was usually provided by the politics of race”).


13. Id.

14. Id.

15. Id.

16. Id. See also Rep. Hamlin Speaks on the Gag Law, campaign flier, May 13, 1964, (on file with the North Carolina Law Review) (“The Speaker Ban Law ... was prompted by legislators angry at the appearance of a University faculty member in a civil rights picket line at the Sir Walter Hotel. It was intended as a slap at the University and not as a tool to fight Communism.”).

17. Jim Clotfelter, *Aycock Hits Out Anew At Speaker Ban Law*, DURHAM MORNING HERALD, Feb. 26, 1964, at 2A (quoting Aycock’s observation that “[a] lot of people in the legislature were mighty, mighty agitated about those demonstrations last spring ... Many people sincerely believe that the racial unrest is caused by Communists ...”). Chancellor J. Carlyle Sitterson explained it this way: “I believe it was a reaction to a fundamental change that was going on in the South ... The ban
THE AYCOCK "EDUCATION" CAMPAIGN

Chancellor Aycock decided almost immediately that an "education campaign" had to be waged against the Speaker Ban. Following the practice of all good administrators, he first took his case to the university's Board of Trustees. Working with John Sanders, Director of the Institute of Government, and Henry Brandis, Dean of Carolina's law school, Aycock prepared a formal critique of the statute. He presented the detailed analysis to the executive committee of the trustees on July 8, 1963. Persuaded by his arguments, the committee determined that Aycock should carry his claims to the full Board of Trustees at its next meeting on October 28.

Aycock principally emphasized the Speaker Ban's unworkability. He argued that the law was "worded in extremely vague terms in almost every particular." For example, what was "THE" Communist Party? "The American Communist Party"? The "Communist Party of Great Britain, France"? "Known" by what means? "Judgment of a court"? "Admission"? "Reputation"? "Known to advocate the overthrow of the Constitution"? "Does not specify by force or violence"? Would it "include those who advocate radical changes of our government through political action?" Did the ban apply to students? Were they at Carolina "for speaking purposes"? No specific enforcement scheme was set forth. The list of ambiguities Aycock set forth was long and chilling.

Chancellor Aycock also felt no ambivalence about the role of the university's leaders. "It is our duty," he claimed, "to express our deep concern clearly and forthrightly." Highlighting a

---

on Communist speakers was tied up not so much to campus unrest ... as it was tied to social changes, especially race relations.” Bob Joyce, *Reds on Campus: The Speaker Ban Controversy*, CAROLINA ALUMNI REV., Spring 1984, at 4, 6 [hereinafter *Reds on Campus*].

18. Aycock Makes Blistering Attack on Speaker Ban, NEWS & OBSERVER (Raleigh, N.C.), Nov. 11, 1963, at 8 [hereinafter Aycock Makes Blistering Attack] ("The only power we have is the power of education . . . to show the people and the Legislature the tremendous harm in this bill. And it takes time for such an educational power to assert itself.").


21. *Id.*

22. *Id.* at 159.
recently passed resolution of the Faculty Council, Aycock continued:

Political tampering with the educational process can, over a relatively brief period, drastically lower the quality of the higher education affected. Legislative censorship, once begun, carries 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.23

The Board of Trustees, in response to Aycock’s presentation, dropped its apparent initial skepticism and passed a resolution “condemning the Speaker Ban as a departure from the traditions of North Carolina.”24 The trustees accepted Aycock’s charge to try to convince the legislature to repeal it. The Greensboro Daily News, noting Chancellor Aycock’s arguments, editorialized against the Speaker Ban as “a witch-hunting, ghost-chasing instrument which will continue to damage the university’s reputation.”25 The Durham Morning Herald, echoing Aycock’s claims, argued that the “ban is unrealistic and impractical. It doesn’t do what its framers said it would do.... [F]ar from striking a blow at Communist subversive threats, this ban merely strikes a blow at North Carolina’s state-supported colleges and universities.”26

Meanwhile, the University of North Carolina struggled to enforce the ban. Learned societies began to boycott the Chapel

23. Id. at 160 (quoting Statement of the Faculty Council of the University of North Carolina at Chapel Hill on the Visiting Speaker Law). Aycock’s text indicates that the “Faculty Council of the University of North Carolina at Chapel Hill after careful study and deliberation unanimously adopted a statement [opposing] the Visiting Speakers Law.” Id. at 159–60.

24. Resolution of the Board of Trustees of the University of North Carolina (Oct. 28, 1963) (on file with the North Carolina Law Review) (“The Board of Trustees of the consolidated University of North Carolina deplores this legislation as a departure from the tradition of our State.”).

25. Editorial, In Defense of University Freedom, GREENSBORO DAILY NEWS, Oct. 30, 1963, at A8 (“Chancellor Aycock, a trained attorney, raised pertinent questions in his presentation: What is meant by a ‘known member of the Communist Party?’”). The Greensboro paper also highlighted President William Friday’s opposition: “‘Already the exclusion by law of vital sources of knowledge from our university has begun,’ President Friday noted. ‘Yet, we have by no means felt the full impact of embarrassment and detriment that will ensue if something is not done....’” Id.

Hill campus rather than submit their invited speakers to political
interrogation.\textsuperscript{27} A Russian was allowed to lecture on statistics,
after it was determined that he was not a “known communist.”\textsuperscript{28}

Much fretting occurred before the Moscow Chamber Orchestra’s
appearance was approved.\textsuperscript{29} An enrolled student who had visited
Cuba and later had taken the Fifth Amendment was barred from
speaking formally on campus, though he could “present his views
in ‘bull sessions.’ ”\textsuperscript{30} Tom Wicker, a member of the Carolina class
of 1948 and head of the \textit{New York Times} Washington, D.C.,
bureau, canceled a Chapel Hill appearance to protest the ban.\textsuperscript{31}

An invitation to playwright Arthur Miller was canceled.\textsuperscript{32} Faculty
members left for other institutions.\textsuperscript{33} The Southern Association
of Colleges and Schools notified the university of a possible loss
of accreditation.\textsuperscript{34} In response, a legislator from Harnett County
explained that the loss of the University of North Carolina’s
accreditation “would not mean too much” and would be “far
more preferable than subjecting our young people to the
influence of Communist speakers.”\textsuperscript{35}

Chancellor Aycock continued to press the case that the ban
was intolerable. But now he took an unusual step for a university
administrator. He decided to carry the fight beyond the campus
walls. He began with a Nov. 9, 1963, speech to a large alumni
gathering in Chapel Hill. Calling the Speaker Ban an “insult” and
“stigma” to the university, he compared it to the monkey law of
Tennessee\textsuperscript{36} that prohibited the teaching of evolution.\textsuperscript{37} People
who “have taken the fifth amendment can’t speak on campus
irrespective of what they talk about. They can speak on the steps
of the Post Office or in Chapel Hill High School, but, no, they

\begin{footnotes}
\item[27] See Aycock, supra note 20, at 160–61; BILLINGSLEY, supra note 11, at 90-93.
\item[28] \textit{Does the Law Give a Toot?}, CHARLOTTE OBSERVER, Nov. 5, 1963, at 1B.
\item[29] \textit{Id.} ("It's against the law for a Communist to speak at a state-supported
college or university, but University of North Carolina officials believe the law
doesn't give a toot whether Russians play chamber music at Chapel Hill or not.").
\item[30] \textit{No Formal Talks by Phelps at UNC}, CHARLOTTE OBSERVER, Nov. 2, 1963, at 11A.
\item[31] See Reds on Campus, supra note 17, at 8.
\item[32] BILLINGSLEY, supra note 11, at 97.
\item[33] \textit{Id.} at 95-96.
\item[34] See Reds on Campus, supra note 17, at 9.
\item[35] \textit{Id.}
(prohibiting the teaching of evolution in all schools supported in whole or in part by
state public school funds).
\item[37] Mickey Blackwell, \textit{UNC Chancellor Calls Red Gag Law 'Insult,'} CHARLOTTE
OBSERVER, Nov. 10, 1963, at 1C.
\end{footnotes}
can’t speak on campus.”38 He also directly attacked the bill’s effective sponsor, North Carolina Secretary of State Thad Eure, by calling it the “poorest-drafted legislation” he had seen in thirty years as a lawyer.39 Aycock admitted that legislators and other state leaders had warned him to keep quiet, but he was adamant that he wouldn’t be quiet in the face of such a threat to the university.40 In what seems like an amazing statement to modern ears, Chancellor Aycock urged alumni: “If there [is] a choice between giving us your money and giving us your time in getting this law repealed [then] ... keep your money and give us your time.”41 Newspapers carried the speech with banner headlines all over the state—Chancellor “Looses Searing Blast At Speaker Gag” Law.42

Legislative leaders immediately responded with anger. Sen. Adam Whitley of Smithfield told reporters he’d had more than enough “big talk” from the Chancellor.43 “I am sick of hearing university leaders praise the Legislature on one side of their mouth for giving them the money they asked for and out of the other side of their mouth, criticize us for passing a law approved by the great majority of the people.”44 From now on, Whitley declared, he would only support the election of those trustees “willing to carry out legislative policy.”45 “The Legislature has the authority to direct how state institutions are to be run and we need no assistance from Mr. Aycock ...”46 Rep. I.H. O’Hanlon blasted Aycock for attempting to interfere with “the stand of citizens of North Carolina and their representatives in the

38. Id.
39. Id. This was no small critique because Aycock may well have been the state’s most respected lawyer at the time. Rep. Philip Godwin introduced the Speaker Ban bill at the request of Eure and Rep. Ned E. Delmar. See BILLINGSLEY, supra note 11, at 2-3.
40. Aycock Makes Blistering Attack, supra note 18; Gary Blanchard, Aycock Risked a Lot to Get Off Attack on Gag Law, CHARLOTTE OBSERVER, Nov. 12, 1963, at 3A.
42. See, e.g., id.; Aycock Looses Searing Blast at Speaker Gag, DAILY TAR HEEL (Chapel Hill, N.C.), Nov. 10, 1963, at 1; Blackwell, supra note 37.
43. Whitley Hits Critics of Speaker-Ban Law, DURHAM MORNING HERALD, Nov. 12, 1963, at 1A (noting remarks by Sen. Whitley that “UNC officials continue[] to talk about academic freedom ’but I haven’t heard a single one of them say a word about the responsibilities that go with academic freedom.’ ”).
44. Id.
45. Id.
46. Id.
General Assembly for a free America under God.\textsuperscript{47} A Duke University official denounced him bitterly, saying he should “be fired on the spot.”\textsuperscript{48} Chancellor Aycock “is nothing more than an employe [sic] of the state and I regard his arrogant campaign against this law passed by the duly elected representatives of the people as gross insubordination of the first order.”\textsuperscript{49} Former North Carolina Bar Association President Armistead Maupin told a significant civic gathering in Raleigh that if Chancellor Aycock couldn’t recognize a “known Communist,” then he “[was] certainly not qualified to administer the University of North Carolina.”\textsuperscript{50}

Aycock responded to the criticism by upping the ante. He spoke to the Greensboro Bar Association, again poking hole after hole in the statute.\textsuperscript{51} The Speaker Ban Law, he declared, was “a departure in every respect from our traditional practice of freedom—its conception, its drafting, its passage, its application and its effect.”\textsuperscript{52} Aycock frankly told members of the legal community that it was their professional obligation to enroll in the fight. Infuriating the bill’s sponsors, he said “[w]e have made the first step toward emulating the narrow dogmas of the [Communist] enemy we all abhor.”\textsuperscript{53} Quoting Pericles, he said that we should “die resisting rather than live submitting.”\textsuperscript{54} Again, front-page stories appeared across the state spreading word of Aycock on the attack.\textsuperscript{55} The Democratic Party of

\textsuperscript{47}. In the Wake of the Gag Law: O’Hanlon Asks & Aycock Answers, CHAPEL HILL WEEKLY, Jan. 2, 1964, at 2B.
\textsuperscript{48}. Legislators Opposing Speaker Ban Should Be Defeated—Butler, DURHAM MORNING HERALD, Feb. 9, 1964, at 6A.
\textsuperscript{49}. Id. See also Blanchard, supra note 40; Whitley Reported as Blasting UNC Critics of Speaker Law, SMITHFIELD HERALD, Nov. 12, 1963, at 1.
\textsuperscript{50}. Gag Law Defended, NEWS & OBSERVER (Raleigh, N.C.), Feb. 29, 1964, at 18 (“[T]he ‘anguished voices’ of those who oppose the speaker ban law ‘would never have been raised if the John Birch Society was denied a platform.’ ”).
\textsuperscript{51}. William Brantley Aycock, The Law and the University, Speech to the Greensboro Bar Association (Nov. 21, 1963), in SPEECHES AND STATEMENTS, supra note 1, at 162, 162–68.
\textsuperscript{52}. Id. at 167.
\textsuperscript{53}. Id.
\textsuperscript{54}. Id. at 168.
Johnston County, Aycock’s home county, passed a resolution condemning him as “misguided.”

With the 1964 Governor’s race now in full swing, Aycock called on the candidates to support repeal. All three—Lake, Richardson Preyer, and Dan K. Moore—sided with the ban rather than with Aycock.

Chancellor Aycock responded by stepping up his speaking tour. He reprimanded the State Attorney General for alleging, without proof, that universities had ignored subversives. He publicly rejected concern for the threats constantly levied against “those few of us who speak out”:

> Even more surprising is the constant admonition directed to those few of us who speak out that we should be quiet. This brings a new dimension to our representative form of government. There is nothing in the history of this State or Nation to support the notion that the merits of legislation cannot be discussed in full measure. Neither the decisions of Presidents, Governors, Congress, the General Assembly or the Courts, both State and Federal, have ever enjoyed the immunity suggested for this legislation.

Aycock then carried the case all over the state and the South. In Atlanta, he told the Southern Regional Education

---

56. Editorial, *Democrats Showed Misunderstanding Of Our Heritage*, SMITHFIELD HERALD, May 15, 1964 at 4. The Smithfield Herald responded: “Among the critics of the law are Johnston County’s Bill Aycock, chancellor of the University of North Carolina at Chapel Hill ... and an able champion of democratic government.” *Id.*

57. See Clotfelter, supra note 17; Perry Young, *On The Shoulders of Greatness*, CHAPEL HILL HERALD, Mar. 17, 2001, at 4 (outlining Richardson Preyer’s personal struggles over refusing to take a public position against the Speaker Ban Law). Gov. Terry Sanford also declined to take a public position against the Speaker Ban. See BILLINGSLEY, supra note 11, at 8–9 (“During the almost five-year life of the speaker ban, Sanford failed to issue any public statement concerning the law’s existence or effect.”).

58. William Brantley Aycock, Laws Affecting Speakers, Speech to the Watauga Club (Jan. 21, 1964), in SPEECHES AND STATEMENTS, supra note 1, at 171, 172 (attacking the Attorney General for saying, untruthfully in Aycock’s view, that “apparently the institutions of higher learning have paid no attention” to state loyalty statutes).

59. *Id.* at 177.

Board:

The injurious effects of the 1963 Speaker Ban Law are numerous. Those charged with its enforcement are constantly faced with accusations by those persons professing to possess clear and precise notions of what the law means... that this vague and ambiguous law is not being rigidly enforced. Furthermore, a law aimed solely at colleges and universities creates a stigma for higher education. The forbidden speakers can perform anywhere in the State except on college and university campuses.61

Back in Raleigh, before the Watauga Club, Aycock flatly claimed it would be "far better to close doors of a university than to let a cancer... eat away at the spirit of inquiry and learning."62 He issued a national call as well: "[G]eneration after generation of [students] have gone forth from the campus to provide sound leadership throughout the length and breadth of this land. It is a pity that so many have left us for other places. We need them now" to defend the integrity and independence of the university.63 He summed up his views by repeating his refrain that the University of North Carolina had come a long way "fathered by rebellion against oppression and mothered by a vision of freedom."64 We may be "short on cash, but [we're] long on freedom."65

THE BRITT COMMISSION TESTIMONY

Two years after the Speaker Ban went into effect, Aycock's campaign culminated when he marched into the eye of the storm by testifying before the legislature's Britt Commission. Dan K.

Aycock also gave a major address to parents in Chapel Hill, telling them, "We do not forget the faith, the effort and the sacrifices of many generations that have gone before us... [The Speaker Ban Law] is an expression of distrust in the young people of this state which is unique in all the land." William Brantley Aycock, A Family Reunion, Speech on Parents Day (May 3, 1964), in SPEECHES AND STATEMENTS, supra note 1, at 189, 189–91.


63. Id. at 116.

64. Id.

65. Aycock, supra note 60, at 191.
Moore, the recently elected governor, announced that "[t]he speaker-ban issue has become a symbol of resistance to Communism in North Carolina [and therefore] ... the General Assembly would not be receptive ... to any move to repeal this law."66 The threat from the Southern Association of Colleges and Schools to withdraw accreditation, however, eventually got the legislature's attention.67 In June 1965, the General Assembly created a commission to examine the Speaker Ban issue and report to the Governor. Rep. David Britt of Fairmont chaired the nine-member committee and invited Aycock to testify.68

Aycock's fiery testimony was carried statewide on television on September 8, 1965.69 One newspaper characterized his performance as UNC's "Compelling Counterattack."70 Aycock began by chiding the legislators who had attempted to silence critics of the ban. "They freely extol the supposed benefits of this legislation but they object to having its harmful effects called to the attention of the citizens of North Carolina."71 He discussed, as well, the surprising manner in which the statute had been passed. "My first knowledge of the Speaker Ban Law," he indicated, "came to me over the telephone from my wife who happened to hear a report about it while listening to the radio. It was surprising to learn that a law affecting vitally the University would be passed without an opportunity for someone responsible for its administration to be heard."72

Aycock again emphasized the bill's ambiguities, but he went further. "[A]ll the technical skill in draftsmanship which could be

66. See Reds on Campus, supra note 17, at 8-9.
67. See id.
68. By the time the Britt Commission assembled, Chancellor Aycock had returned to the law school faculty and no longer spoke officially for the University of North Carolina. On this occasion, though, he and Dr. Friday were clearly regarded as the University's principal spokespersons. See Jonathan Yardley, Editorial, U.N.C.'s Compelling Counterattack, GREENSBORO DAILY NEWS, Sept. 10, 1965, at A8. Aycock's appearance and its impact were all the more remarkable because he had recently undergone a serious bout with illness. Id.
69. See id.; Reds on Campus, supra note 17, at 9.
70. See, e.g., Yardley, supra note 68.
72. Id. at 366. President William Friday made the same point, describing it as "a bill of far-reaching significance to higher education and the future of the state, which less than 24 hours earlier was unknown to any college or university president in the state and unknown to all but a few assembly members." Reds on Campus, supra note 17, at 7.
mustered cannot make wise a law which transgresses a fundamental principle of our great heritage." But in making the free expression case, Aycock took a turn that surely tormented the Ban's supporters: "In discussing this fundamental principle I could quote such masters of freedom as John Stuart Mill, John Milton or Thomas Jefferson. Instead I have chosen to quote a well-known North Carolinian[,] ... Jesse Helms."  

Only a year earlier, WRAL-TV's license had been challenged under the fairness doctrine. On air, Helms repeatedly had blasted the effort as government-imposed censorship. With soaring rhetoric, Helms concluded an August 4, 1964, broadcast by arguing that "[w]hen one is denied any part of his rightful freedom, then every man's freedom has been lessened." In defense of the university, Aycock adopted Helms's sentiments as his own. 

Aycock also pointedly reminded the Britt Commission that the Speaker Ban "is a special limitation on the freedom of the campus." Speakers barred from the university, he reminded, "are free to speak anywhere else in North Carolina. They can speak in this State Legislative Building or they may be heard and seen over the facilities of WRAL-TV." If the Ban is such a good idea, Aycock argued, why not spread its benefit? 

Finally, making the point that censorship is dangerous, and double-edged, Aycock again turned to the words of his adversaries:

The University has been criticized for not imposing its own censorship on speakers. To do this requires a censor. Suppose you had the job as censor. Now,
further, suppose the students invited a speaker to the campus, a person known to you as one who has asserted that the President of the United States "runs our socialist dictatorship with a mouthful of peace and a handful of war." Would you let him speak? Would you let him address "impressionable" college and university students?

One other example. As campus censor you have in hand this statement:

If the federal judiciary and the executive branch of our government take the law into their own hands, then they deserve no better than Charles the First and Archbishop Laud got; they had their heads cut off by a people who despised dictators.

These statements were not made by the forbidden speakers but rather by well known conservative North Carolinians. Should those persons be permitted to speak on ... campus? I would let them speak and I would also let those banned by the 1963 Law speak.\(^81\)

Aycock's performance was widely heralded. The *Greensboro Daily News* wrote: "[Aycock] picked at the ban's most outspoken advocates with subtle irony, quoting Jesse Helms on freedom of the press to support the university's arguments for academic freedom, citing [Republican leader] Chub Seawell's diatribes against President Johnson's 'socialistic dictatorship' as instances of comment that might ... be banned from college campuses."\(^82\) Jesse Helms responded icily the same night on his TV show: "I accept Dr. Aycock's endorsement in the same spirit in which it was offered."\(^83\)

**CONCLUSION**

Vitally important chapters in this story remain. The Britt Commission concluded that "[t]he evidence before us fails to justify charges of irresponsible radicalism at Chapel Hill."\(^84\)

---

81. *Id.* at 370 (referencing statements by Herbert F. "Chub" Seawell, Jr., a prominent Republican, and James P. Dees, President, North Carolina Defenders of States' Rights, Inc.).
82. Yardley, *supra* note 68 ("With the skill of an expert lawyer Mr. Aycock stripped away the veneer of anti-communism that cloaks this attack on the state's leading state-supported institution of higher learning.").
84. *Reds on Campus, supra* note 17, at 9.
There "will always be individuals," it continued, "who express themselves in ways that, to some, are disturbing because they are unorthodox." Governor Moore called the General Assembly into special session and the Speaker Ban Law was amended, putting the authority to regulate "known Communist" speakers in the Board of Trustees, thus easing accreditation pressures. The amended law became known as the "Little Speaker Ban." Tensions continued, however, and University of North Carolina students energized the cause. The Students for a Democratic Society chapter invited Frank Wilkinson and Herbert Aptheker to speak. The trustees, under Governor Moore’s leadership, banned them from campus. More than 2,000 students stood on campus as Aptheker spoke across a low wall on Franklin Street. Ultimately a successful lawsuit was filed, principally instigated by student leaders. McNeill Smith, counsel for the plaintiffs, wrote to Bill Aycock in 1993 explaining that the case was built on "the vagueness issues which you demonstrated so well in your speeches." Smith also reported that he "was especially privileged to be present and hear [Aycock’s] speech on THE LAW AND THE UNIVERSITY to the Greensboro Bar Association on November 21, 1963." Finally, in 1995, the North Carolina General Assembly officially repealed the ban.

Aycock’s role in the Speaker Ban saga is worth examining for two reasons. First, we must remind ourselves that our traditions of free expression did not occur simply by happenstance. They

85. Id.
87. Id.
88. Aptheker was a member of the Communist Party USA’s national committee. Wilkinson was the executive director of the National Committee to Abolish the House Un-American Activities Committee. BILLINGSLEY, supra note 11, at ix; id. at 180.
89. Dickson v. Sitterson, 280 F. Supp. 486, 486-99 (M.D.N.C. 1968). Student Body President Paul Dickson III was the lead plaintiff in the suit. His attorney, McNeill Smith, a 1938 UNC alumnus, remarked that: “The dragon just didn’t curl up and die. St. George slayed it. These students were St. George.” Reds on Campus, supra note 17, at 11.
91. Id.
are frequently the direct products of moral courage. We stand, as they say, on the shoulders of others. And some of them are giants. Aycock, of course, is not the sole craftsman of intellectual freedom at the University of North Carolina. Frank Porter Graham, William Friday, Henry Brandis, Daniel Pollitt and others have set the mark high. But this university has a special, historic role to play in the free expression of ideas. It has cast its lot on the side of a full-throated democracy. Lessons learned in so trying a fashion are tougher to forget.

Second, Chancellor Aycock’s role in the Speaker Ban controversy provides an example of academic leadership at its best. Once Aycock concluded that the statute was a clear threat to the university, he chose to fight it. He did not remain above the fray. He publicly challenged the Secretary of State, he publicly challenged the Attorney General, he publicly challenged the legislative majority, he debated the bill’s proponents, and he did not mince words before the Britt Commission. When state leaders criticized or threatened him, he offered immediate, public rejoinders. He treated his opponents respectfully, but he also answered them with precision and force, without reserve. He made it clear that his opposition to the ban would remain unyielding. As long as he could speak, he would. He did this despite the fact that the Speaker Ban Law was popular across the State of North Carolina and despite the fact that its proponents controlled his budget and, ultimately, his employment. He challenged governors. He goaded the alumni of the university. He lectured its Board of Trustees. His speeches gave no sense of academic remove. Nor did they carry even a wisp of the modern, professional university administrator—who refuses to offend, at any cost. No one doubted—no one—that Aycock meant exactly what he said.

93. See BILLINGSLEY, supra note 11, at ix (“The critical factor preventing purges at UNC was President Frank Porter Graham.”).
94. See supra note 25.
95. Dean of the University of North Carolina School of Law, 1949–1964.
96. A noted constitutional scholar on the UNC law school faculty, Pollitt challenged the Speaker Ban before the Britt Commission and also participated in the legal challenge to the statute in Dickson v. Sitterson, 280 F. Supp. 486 (M.D.N.C. 1968).
97. My view that Chancellor Aycock’s behavior during the Speaker Ban controversy was heroic is not unanimously held. Walter Billingsley writes in COMMUNISTS ON CAMPUS that Aycock “abandoned an unfettered defense of free political expression” and failed “to insist on the unimpeded right to conduct the academic enterprise.” BILLINGSLEY, supra note 11, at 38, 90. Billingsley builds his
I asked the Chancellor once what the source of his courage was. He was, as I knew, perhaps the most highly respected teacher in the UNC Law School's history. Aycock responded that when his friend, Bill Friday, asked him to be chancellor of the university, he answered, "I don't know if it will last for a week or for a decade, but I'm going to do what I think is right and then go back and teach my classes." Aycock's theory of academic leadership, of course, is from another era. Modern professional administrators, seemingly, have too much at stake to risk offense. Careers are built, step-by-step, institution-by-institution. We raise money, we please alumni, we lobby legislators, we fret over admissions decisions, we try to keep out of the newspapers, we sidestep problems, hoping they'll go away. At least we hope they'll go away on our watch. The thought of returning to the classroom, for many, sounds more like a threat than a delight. Faculty rarely expect us to teach of academic values, much less of fundamental freedoms. We manage and we sell. Aycock's brand of leadership has largely disappeared. Too bad.

case against Aycock principally on the fact that the Chancellor complied with the ban while it was in effect and that he failed to reappoint a British teaching assistant named Nicholas Bateson who repeatedly had pled the Fifth Amendment before the House Un-American Activities Committee. *See id.* at 150-58. Billingsley therefore concludes that Aycock demonstrated an "overweening desire to placate pro-speaker law critics." *Id.* at 156. In his position on compliance, Aycock took the same view that Lincoln did: It is vital "for all, both in official and private stations, to conform to and abide by, all those acts which stand unrepealed, [rather] than to violate any of them, trusting to find impugnity in having them held to be unconstitutional." President Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) in *THE LIVING LINCOLN* 383 (Paul Angle & Earl Miers, eds. 1992). In fact, Billingsley almost completely ignores Aycock's repeated, and massively public, efforts to get the Speaker Ban repealed. As the addresses highlighted above indicate, without the slightest ambiguity, Aycock may be accused of many things, but showing an "overweening desire to placate pro-speaker law critics" is simply not one of them.

Billingsley also concludes, completely unconvincingly, that President William Friday "simply lacked the conviction that the mission of a free university was sacrosanct and a concomitant willingness to defend this belief by defying the political meddlers." BILLINGSLEY, *supra* note 11, at 107.