CIVIL LIBERTIES By Harvey A. Silverglate

Freedom seems academic

Av "neadamic fraedom" and people think of the right of college profes-sors to pursue knowl-edge without comorable or penalty. Not so, says the U.S. Court of Appeals for the 4th Circuit en banc. To the extens the First Amendment protects acaderaic freedom at public campusas of higher education, it recognizes "only an institutional right of self-governance in ecademic affairs." Put more blumily, academic (reedom affers no protection against restrictions imposed by college administrators on intellectual inquiry. Colleges. (and college administrators) have academic freedom; professorr do not.

The opinion, which undurstantably has academe buzzing, issued on June 23 in Uroffsty a Chance. No. 98-1481. Six professors at various public colleges and universities in Vergiota had challenged a mate statute that restricted them, and all state amployees, from accessing seat-ally amplicit material on mate-provided computers. No distinction was made between a clerk engaging in banchetine amusement and a professor duing academic research.

The circuit court first disposed of the primary first account attack, calling the restriction permissible because the patote convolled the plaintiffs que state employees and the relevant agency heads were acting as employees rather than government officials. It then went on to decide the plaintiffs' backup argument—that the first Amendment has special relevance to college professors, in contrast to other state employees, because of the anadomic beedom component.

The case was important to academics and civil libertarians, attested to by the presence of emici briefs from the American Civil Libertlet Union, the American Association of University Professors, the Thomas Jefferson Center for the Protection of Free Expression and the Authors Guild. The case produced an 8-4 spill.

Too little concern

The shock engendered by the decision is a result of the cavellar way the majority treated decades of Supreme Court optutions extelling academic freedom as a component of the Pirst Amendment. In the first case in which the high court adopted that notion, Surezy a New Hampshire. 354 U.S. 234 (1957), the plurality said that the state's efforts to force a professor to discuss his views in a subversive activities the engage.

Mt. Silverglate is a bimanchig MLI columnist and a partner as the Boston firm of Silverglate & Good. tion "unquestionably" infringed the plaintiffs "liberties in the areas of academic freedom and political expression."

This press to academic freedom notwithstanding," wrote the 4th Circuit, "the plurality did not vesses the plainiff's contempt conviction on First Amendment grounds, but rather concluded that because the atterney general lacked authority to investigate the plainiff, the conviction violated due process."

Similarly, the Supreme Court ruled 10 years later, in Keptahian a Board of Regents, 305 U.S. 589 (1967), that a New York statute excluding "subversive" people from state employment was unconstitutional as applied to a college professor. The court called academic freedom "a speglal concurn of the First Amendment." Notwithstanding, the 4th Circuit ruled that the case "involved the right of a professor to speak and associate in his cupacky as a private cidzen" and hence was not authority for the proposition that academic freedone be accorded a professor sching as an employee.

In another case, the high court invalidated a law probibiting the teaching of evolution, noting that "the Pirst Amendment down not tolerate laws that cast a pall of orthodoxy over the classroom." Epperson v. Arkortsas, 393 U.S. 97 (1968). This was viewed by the 4th Circuit as dictum, as the Supreme Court invalidated the statute on establishment clause rather than free speech grounds.

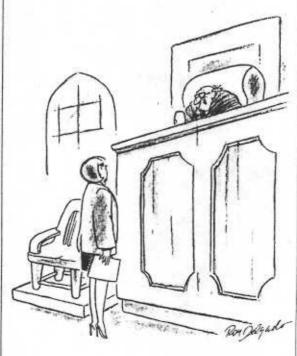
Feints and dodges

Thus did the 4th Circuit weave in and out of decades of Suprema Court law, in an odd formulation of populist rhetoric, the majority ruled that the First Amendment pertains to all state employees equally and offers no special protection for those whose job it is no pursue and tench knowledge.

While "public employees, including trachers, do not forfelt First Amendment rights upon accepting public employment," wither do trachers enjoy any extra protection. Rather, college administrators as employers enjoy a power, protected by whatever academic freedom the First Amendment provides, to resorte the latefactual inquizion of the professoriate.

The professors plan to seek Supreme Court review, presumably in the hope that the justices, wallto the 4th Circuit, are more likely to take sertomly that predecessors "passets) to academic freedom." [38]

LAW AND LAUGHTER



"... and furthermore, I dan't care what Greta van Susteren said!"