

Skyline's new media policy restricts employees' right to free speech

by Robert J. Bezemek, AFT Local 1493 attorney



Robert J. Bezemek

On March 12, 2014 Skyline College announced to employees its unilaterally adopted "Media Policy" designed to "protect" the college's "brand and image." The policy attempts to do this by restricting faculty comments to reporters and "the media." To be fair, the document does not outright forbid such comments. Rather, it "recommends" and "requests" that employees not speak to reporters, but forward all inquiries to the Director of Marketing, Communication and Public Relations. However, the manner of its presentation, and its emphasis on such protocols reasonably communicates a message that employees should not respond directly to the media. In this way the policy has a "Big Brother"-like approach that coerces compliance, and discourages or "chills" employees' exercise of their constitutional and statutory rights of employees.

Recalling the Pentagon Papers case

The newly-crafted policy illustrates why it is never too late to review the meaning of free speech in America, and to revisit the famous case of the Pentagon Papers and the "prior restraint" doctrine. It all began when a public employee, Daniel Ellsberg, released documents to the *New York Times* and *Washington Post* that included a secret "history" of American involvement in Viet Nam, Laos and Cambodia, which contradicted information previously released by the government to Congress and the American people. To prevent publication of the "papers", the United States obtained an injunction. In a landmark decision, the US Supreme Court held that this injunction constituted illegal prior restraint on speech. See *New York Times v. Sullivan* (1971) 403 US 713. The Court relied on an opinion issued 7 decades earlier, that a main purpose of the First Amendment was to forbid "previous restraints" on publication of information. The *Times* case is not limited to the US government, but applies to all governmental bodies.

The putative Skyline policy is a quintessential example

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Performance Evaluation Task Force's revision of faculty evaluation documents almost complete

by Elizabeth Terzakis, PETF representative,
AFT Local 1493 Cañada Chapter Co-Chair

The Performance Evaluation Task Force (PETF) is entering the home stretch of its efforts to revise Appendix G, the evaluation portion of AFT 1493's contract with the San Mateo Community College District.



Elizabeth Terzakis

Much of the work that we have done has involved creating entirely new documents, rather than just revising old ones. After polling our online faculty and studying the evaluation procedures and documents used to evaluate online learning used by other colleges and organizations, we designed an online observation form and decided to incorporate online learning into the same student questionnaire that we hope the faculty will vote to use for face-to-face classes.

Librarians from all three colleges

met, produced, and generously turned over to the PETF observation and assessment tools that we are currently vetting and that will also represent a totally new section of Appendix G when they are finalized. Also brand new are tools for evaluating counselors and the growing number of faculty coordinators and evaluation summary forms.

In addition to creating these new sections, we have spent a great deal of time revising existing documents and forms to reduce redundancy, enhance clarity and consistency, and respond to faculty concerns as expressed to us through surveys, focus groups, and faculty meetings. The Classroom Observation form has been completely revised, the ratings scale adjusted to allow for more specificity, and follow-up steps clearly laid out to help remove ambiguity and confusion around which form to use for whom, what

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LETTER TO THE ADVOCATE

Appreciating the information on unemployment benefits

Thank you for the ongoing helpful information you share with the CSM faculty, particularly the Adjunct community, who may not be included in all messages/events.

I am in my 6th year as an Adjunct at CSM and after I saw your note about filing for unemployment insurance (I think it was late Fall) I filed and received a small payment. Fortunately, I was rehired for the Spring semester, but the EDD check was a nice closure to the year.

FYI, initially EDD delayed my claim, asked for a phone interview, and when I mentioned the Cervisi decision you had outlined in your message, and the term "adjunct", they quickly agreed to the claim.

Thank you for sharing the email information that allowed me to pull this all together. Just a thought...might you consider putting a copy of the Cervisi article in the college's new hire packet for adjuncts so they understand their options from day one? Just a thought.

Again, thank you for your time and effort! Have a great 2014!

Best,

*Cynthia Erickson, Adjunct Faculty
College of San Mateo
Business and Technology Division*

The Advocate

The Advocate provides a forum for faculty to express their views, opinions and analyses on topics and issues related to faculty rights and working conditions, as well as education theory and practice, and the impact of contemporary political and social issues on higher education.

Some entries are written and submitted individually, while others are collaborative efforts. All faculty are encouraged to contribute.

The Advocate's editorial staff, along with the entire AFT 1493 Executive Committee, works to ensure that statements of fact are accurate. We recognize, respect, and support the right of faculty to freely and openly share their views without the threat of censorship.

RETIREES

DART planning two events for retirees & faculty

by John Searle, DART President

The District Association of Retired Teachers (commonly referred to as DART) is planning two events for the coming six months. We invite current faculty as well as retired faculty to join us for these events.

The first is a hike in the Peninsula Watershed area, which has limited access controlled by the San Francisco Public Utilities Commission. The scheduled time is for a Saturday, June 28. We are in the process of planning the details, but the routine requires that participants sign up ahead of time, providing their name and address. If you are interested, please contact John Searle by phone (650-595-4426) or by email (Searle@my.smccd.edu). The maximum number of participants is 20! Personally, I think this activity is very special, and we are lucky to have the privilege of accessing the off-limits area.

The second planned event is a sort of get-together with food and booze (sorry, liquid refreshments) provided, focusing on sharing our retirement experiences with each other, hoping to stimulate conversation, and maybe challenging one another for the coming year. A tentative date is September 21.

AFT 1493 discourages full-timers from taking on excessive overload

The following resolution was passed at the April 13, 2011 AFT 1493 Executive Committee meeting:

Whereas economic instability and budget cuts are affecting the employment status and livelihoods of part-time faculty in the SMCCCD,

Be it resolved, that the AFT 1493 Executive Committee recommend that full-time faculty members **seriously consider refraining from taking on excessive overload in situations where part-time faculty will be displaced from courses to which they would have otherwise been assigned.**

AFT 1493 elections to take place in April; New leaders encouraged to run for office

In mid-April AFT Local 1493 will be holding elections to determine the leadership of the Local for the next two years. Have you ever considered running for President, Vice-President, Secretary, or Treasurer, or member of the Executive Committee, of your Union? In other words, have you ever considered taking an active role in the organization that represents the interests of all faculty in this District? Would you like to contribute to the process of making some positive changes for faculty in this District?



Union office entails various different kinds of tasks and responsibilities, ranging from representing the AFT at the negotiating table to working as a grievance officer, as well as running meetings and doing organizing projects for the Local. Some released time is provided for certain union positions.

The Executive Committee conducts the business of the union at its meetings, and makes recommendations regarding policy to the membership. If you are interested in taking an active role in the decision-making process for the Local, this is the place to do it! The Executive Committee meetings are normally held on the second Wednesday of each month at 2:15 p.m. at each of the different colleges on a rotating basis.

The Chapter Chairs at each of the three colleges bring the concerns of their members to the monthly meeting of the Executive Committee. Work as a Chapter Chair (or Co-Chair) is a good place to begin your work in the Union.

During a two-year term as a member of the Executive Committee, a faculty member would have a good chance to develop or improve their leadership skills. Members of the Local 1493 leadership team have various ways in which to hone their leadership talents: there are CFT conferences that newly elected officers and representatives may attend, as well as a range of workshops sponsored by the Community College Council from time to time. These are both excellent places to meet union activists from other Locals around the state and the country, and to develop new skills at the same time.

AFT Local 1493 is not just the President or a few leaders. It takes many people to make this union work well representing the interests of all of the faculty in this District. Please consider running for a union position, and let's all together make our union stronger and our district a better place to work.

CFT releases statewide study ranking adjunct pay rates; SMCCCD is between 12th & 20th

The California Federation of Teachers has released a statewide study of part-time faculty pay that for the first time ranks compensation for adjunct instructors in all 72 California community college districts.

Designed as a tool for contract negotiations and salary schedule comparisons, the study includes the comparative rank of each district on the basis of hourly pay for part-time and full-time faculty, while excluding the pay that full-timers receive for office hours, governance and committee meetings.

The study converts salaries to hourly rates and compares them, excluding office hour pay, at four levels:

- Master's degree – Step 1
- Master's degree – Fifth year or ninth semester
- Highest salary (including longevity) without a doctorate
- Highest salary (including longevity) with a doctorate

The study found that salaries varied dramatically throughout the state. The San Mateo Community College District ranked:

- 20th statewide for Master's degree – Step 1;
- 12th statewide for Master's degree – Fifth year or ninth semester
- 16th statewide for Highest salary without a doctorate
- 17th statewide for with a doctorate

The study also includes district-specific information such as the number of steps and columns on the part-timer salary schedule and if there are paid office hours, but it does not include information about district-paid medical benefits for adjunct faculty.

The AFT Local 1493 negotiating committee will be using the data from this study to point out the need to improve salaries and benefits for part-timers in our district in the next round of negotiations.

See the full study on the AFT 1493 website (listed under "Other District Salaries" on the "Contracts and Salaries" pull-down menu) at: <http://www.aft1493.org/other/Part-TimeFacultySalaryComparisonsInCaliforniaCommunity-Colleges-2013.pdf>



PART TIMERS

AFT 1493 hosts get-togethers for part-timers and full-timers to meet at all three colleges

AFT Local 1493 hosted "Meet and Greet" gatherings at CSM and Cañada College in February to show appreciation for adjunct faculty and to provide a chance for part-time and full-time faculty to meet, get to know one another and discuss issues related to working at our colleges. Reports from those two events are on the next page.

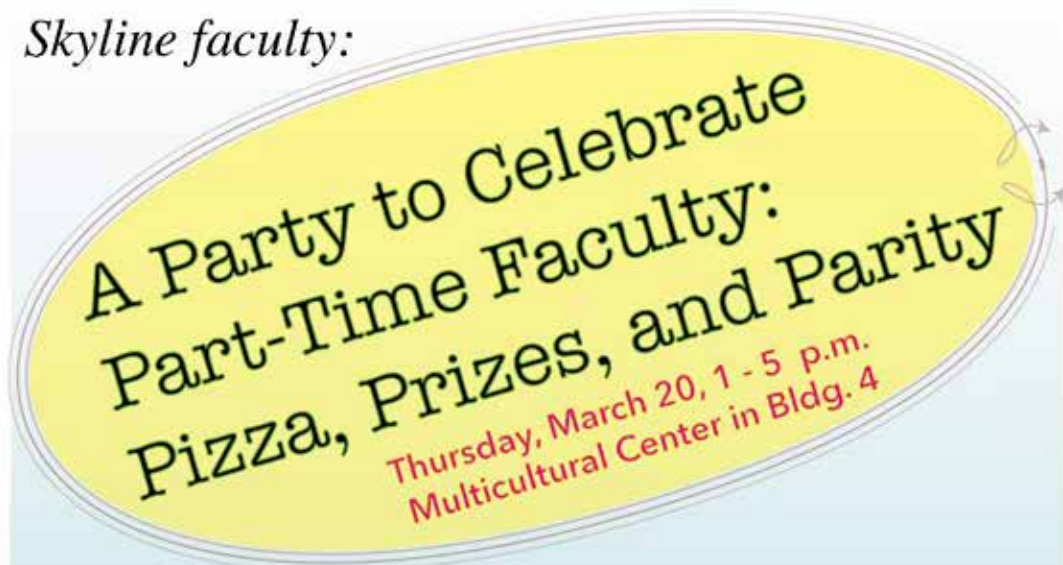
A third event--"A Party to Celebrate Part-Time Faculty: Pizza, Prizes & Parity"--will be held at Skyline College on Thursday, March 20. This event will be held from 1:00-5:00 pm. The

Skyline College community is invited to join in showing their appreciation and support for adjunct faculty.

Gift cards, donated by the Skyline College Bookstore, will be raffled each hour; lucky winners must be present to claim their prize. The Skyline AFT Chapter will raffle off five \$10 gift cards (or ten \$5 gift cards) every hour: 1:00, 2:00, 3:00, 4:00, 5:00.

Skyline AFT 1493 Executive Committee members Katharine Harer, Nina L. Floro, Eric Brenner, Janice Sapigao, and Paul Rueckhaus are planning the event.

Skyline faculty:



Hosted by AFT 1493 Skyline College Chapter

Pizza, party, and prizes (to be raffled each hour) - Lucky winners must be present to claim prize
The entire Skyline College community is invited to this event

Contacts:



Part-timers raise issues at CSM's "Meet & Greet with Treats"

On Monday, February 24, CSM AFT Executive Committee members, Teeka James, Anne Stafford, Lin Bowie, Sandi Dorsett, and Michelle Kern (designer of the wonderful flyer partially displayed below), hosted an Adjunct Faculty Appreciation Meet and Greet with Treats to show appreciation for adjunct faculty and to provide an opportunity for part-time and full-time faculty to meet and get to know one another.

Part-time faculty came from a variety of disciplines: Fire Academy, ESL, Biology, Dance/PE, Business Technology, Physics, Speech, and Kinesiology. Full-time faculty and AFT provided pizza, cookies and fruit as the treats and those who attended shared information about themselves to help everyone get to know each other.

Both part-time faculty who attended and those who sent regrets expressed their appreciation for the event. And both part-time and full-time faculty in attendance shared that they enjoy teaching at CSM more than at any of the other schools at which they have taught because of the classroom and office facilities available to all faculty and the friendly and helpful faculty members themselves.

Those in attendance were also encouraged to share any questions or issues they had about teaching at CSM. One concern that the part-time faculty shared was a lack of good information about part-time faculty retirement plan options. During the discussions, Teeka James, President of our AFT local, came up with the idea for AFT to organize an Adjunct Faculty Retirement Workshop similar to those that are offered during the academic year for full-time faculty.

Another important issue that was discussed concerned being asked to perform work (e.g. SLO work, meeting attendance) without compensation. AFT members explained that CA labor law requires being paid for all work done. It was pointed out that when a Dean asks a PT faculty member to do SLO or other extra work that an affirmative response should be contingent upon compensation at least at the Special Rate for all work done. Most Deans seem to find the necessary money, but usually only when asked.

Concern was also expressed about the recent change in the photocopying policy. It is now much more difficult or impossible to make last minute copies of materials for classroom use. This especially has a negative impact on part-time faculty, who often are rushing from campus to campus, photocopying materials as needed.

Cañada adjuncts discuss parity, pay for non-classroom work, e-portfolios, and much more

Cañada College AFT representatives held a Meet and Greet for adjunct faculty on Monday, March 10th, at the Cañada Vista clubhouse. The objective of this event was to give adjunct faculty a chance to meet their AFT representatives; ask their questions; present their concerns; and provide suggestions. Faculty who attended provided AFT representatives with insight into issues they are facing and expressed their appreciation for such an event as well as a desire for AFT to hold additional similar events.

A gist of the meeting included topics like part-time parity; part-time representation on committees; compensation for tasks that extend beyond the classroom; clarity on college-wide policies (e.g., flex day compensation, methods for keeping records, and hiring and staffing processes); e-portfolios; recognition for contributions to their departments and the college; consideration for adjunct contracted responsibilities and time; leveled classes and repeatability of courses; and fair compensation for student-contact hours.

AFT is thankful to those faculty who were able to attend the Meet and Greet, for they helped start a cross-campus discussion of adjunct concerns. We hope that if you have a concern, you find the chance to let one of the AFT reps know, so we can help build a thriving and amiable working environment across campus. As AFT continues to advocate for increased part-time parity, your suggestions, concerns, and involvement are of vital importance to the negotiations team.

Please contact: Victoria Clinton, Salumeh Eslamieh, Monica Malamud, Elizabeth Terzakis, or Lezlee Ware with your questions, concerns, and suggestions.

AFT 1493 presents:
Meet & Greet with Treats
For Adjunct Professors



Join us for food; meet your AFT reps; and share your thoughts and questions about how AFT can better support Adjunct Professors.

AFT 1493 presents:
Adjunct Appreciation Event
Meet & Greet with Treats!



IN THE NEWS

New assembly bill would reform accreditation process

Assemblymember Rob Bonta has introduced AB 1942, a new bill sponsored by the CFT, that seeks to introduce transparency, due process, and accountability into the accreditation process for our colleges. Bonta described the four key components of the bill as follows:

- Introduces competition to the accreditation process: Allows community college districts to choose their accreditation agency.
- Restores transparency and accountability: Requires an accreditor to make decisions at a public hearing and requires public disclosure of income and expenditures of accreditors' employees and contractors. Requires accreditation documents to be maintained for at least 10 years.
- Restores fairness to the accreditation process: Requires an accreditor to provide due process and notice to the public and colleges about evaluations and allows colleges to appeal decisions.
- Maintains integrity of the accreditation system: Eliminates potential conflicts of interest by accreditors. The integrity of the system is further ensured by requiring the accreditor to annually disclose to the public information regarding charges to member institutions, and fiscal data for the accreditor's employees and contractors, including the source and amount of income and expenditures.

Legislature begins looking at how to deal with CalSTRS shortfall

The California legislature has begun hearings on how to fix the \$71 billion dollar funding shortfall for teacher pensions. Without an increase in contributions, CalSTRS predicts its assets will be depleted in about 30 years.

The CFT has formed an advisory committee that has begun analyzing the issues facing CalSTRS solvency and at possible reasonable and equitable solutions.

Although CalSTRS investments grew at a rate of 13.8% in 2013, which increased their portfolio by about \$550 million, there is general agreement that the gap cannot be bridged by investment returns alone.

The governor has called for a new CalSTRS plan that would be enacted in the 2015-16 fiscal year and phased in over several years. A key question is how much each of the three CalSTRS contributors—teachers, school districts and the state—would increase their contributions. Currently teachers pay 8%, districts pay 8.25% and the state pays approximately 5%.

PART TIMERS

Part-time faculty can still get paid for flex activities

Part-time faculty have had questions about whether and how they can get compensated for professional development work they do for their Flex activity. If you were not able to attend any on-campus Flex activities on this semester's three flex days, you can still complete a professional development activity and be paid provided that you complete the activity before the end of the semester and fill out the flex reporting form.

Here's how it works: Article 7.11.2 of our contract states that "part-time faculty members shall participate in flex activities as part of their basic assignments if the flex day falls on a scheduled workday." The flex reporting form, found on the District Academic Senate's website, says that:

"Post-retirement and hourly faculty who are scheduled to teach during the day on scheduled Flex Days may report Flex activities up to the total number of hours normally worked on that day(s) in order to receive compensation. Those Flex activities may be conducted at any time during the year between June 1, 2013, and May 31, 2014, outside of regularly scheduled workdays. Additional hours will not be compensated. In addition to the reporting form, hourly faculty must submit a time sheet to their Division Dean in order to receive pay. Flex days for post retirement and hourly faculty **MUST** be reported during the semester in which they were observed but **NO** later than December 15th for Fall semester and June 15 for Spring Semester."

The flex reporting form is available at: <http://www.smccd.edu/accounts/smccd/committees/academicsenate/flexform.php>

If you have questions, please call the AFT 1493 office at x6491 or email: kaplan@aft1493.org.

AFT 1493 Calendar

Executive Committee/ General Membership Meetings:

- **Wed., April 9, Cañada, 3-142, 2:15 pm**
- **Wed. April 23, CSM, 10-141, 2:15 pm**
- **Wed. May 14, Skyline, 6203, 2:15 pm**

CFT Annual Convention: Manhattan Beach, March 21-23

National Conference: Joint Labor/Management Meeting: Achieving Successful Results in Higher Education through Collective Bargaining New York City, April 6, 7, 8, 2014

AFT 1493 supports reform of Proposition 13 to require large commercial property owners to pay their fair share

AFT Local 1493 recently passed a resolution that resolved that “the San Mateo Community College Federation of Teachers supports efforts to modify how the value of commercial properties in California are reassessed to allow for more regular commercial property value reassessment” and “that tax revenues generated by modernizing how commercial property is reassessed benefit local schools and not accrue to the State of California as General Fund savings.”

By passing this resolution, AFT 1493 has joined a growing coalition that has formed to reform Proposition 13, passed in 1978. Since that time the corporate loopholes in Proposition 13 have crippled California, decimated our education system, increased government gridlock, and created a massive handout to

corporations. All of this has come at the expense of students, working families, and everyday homeowners.

This new effort to reform Proposition 13 will maintain existing

protections that are now provided to residential homeowners.

The plan to make Proposition 13 work for the people of California, without providing huge tax breaks for corporations is quite simple:

- Establish regular reassessment of non-residential commercial property in California. Nearly everywhere else in the country regularly reassesses commercial property every 1-5 years.
- Maintain current Prop. 13 protections for all residential property. Homeowners, home renters, apartment owners, and apartment renters will not be affected by this reform.
- Provide an exemption for small businesses. Large commercial property owners like Chevron and Disney Corporation are currently under-taxed by billions each year! These corporations would be affected by this reform, not small business owners.
- Implement this reform in a smart way. Some commercial properties have not been reassessed in 35 years, meaning they are still paying property taxes based on 1970s rates. Our reform would take this into account and gradually phase-in changes over time to make the transition as smooth as possible.

This common sense reform will:

- Decrease the tax burden on working families. Prop. 13's commercial property loophole forces our state, county, and municipal governments to raise funds in other ways. Today, California has the highest income and sales tax in the country, and local governments regularly ask voters to pass regressive parcel taxes to fund vital public services.
- Provide at least \$6 billion a year of desperately needed revenue to our schools and public services. Prior to Proposition 13, California schools ranked in the top ten nationally in per pupil spending, today we rank 49th! Restoring funding to our schools is critical for the

future of California and making corporations pay their fair share is the best way to do this.

- Increase California's fiscal stability. Increased reliance on



The average homeowner is paying 8 times what Disneyland pays in property taxes!
Voters passed Proposition 13 to protect your castle, not Sleeping Beauty's castle!

more volatile forms of taxation, like income and sales tax is bad for our economy. The property tax is the most stable form of taxation, which is why it should be a greater source of revenue for state, county and municipal governments.

- Make California's property tax system fairer. In most counties, the property tax burden was equally shared prior to Proposition 13. Since Prop. 13 passed, the property tax burden in California has dramatically shifted from commercial property to residential property. Today, homeowners pay 72% of property taxes, while commercial Properties only pay 28%.
- Create a healthier business climate in California. Prop. 13 is anti-competitive. If a new business buys property across the street from an established business that has owned their property for longer, they are at a competitive disadvantage. Two identical businesses side by side can pay drastically different property tax rates based on when they purchased their property. This does not foster fair competition or encourage new business creation in California.

For more information, see evolve-ca.org.

PETF revision almost complete

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the outcome of the evaluation is, and what future actions are needed. As mentioned above, the student questionnaire has also undergone major changes. Specific references to online education have been added, outdated questions have been removed, and criteria for evaluation have been clarified.

We are currently revising and editing the overall narrative of evaluation procedures and assessing the efficacy of past and current practices: How does the timeline work? Are committees effectively constituted? Who is responsible for orienting new faculty around evaluation procedures and making sure that the process is followed over time? Once again, the results of faculty surveys have been crucial to our discussion of these questions.

Simultaneously, we are addressing the formatting and appearance of the documents with an aim toward increasing professionalism and ease of use: removing typos, rationalizing the numbering system for easy reference, converting forms to fillable PDFs, and adjusting the overall layout to increase consistency and, in general, make it look nice. We hope to make the student questionnaire available online and on paper.

Our overarching goal for all revisions has been to take out guesswork, to make sure that there is a clearly designated form for every required process, to make sure that there is no unnecessary redundancy, and to produce a professional-looking and error-free document, and I am happy to say that the end of the Task Force's work is in sight. We plan to present the new and improved Appendix G to AFT leadership and the District Academic Senate before the end of this semester and to vet it with the faculty as a part of the flex days opening the Fall 2014 semester.

Skyline's new media policy

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of a prior restraint on employee speech. The practical problem with the policy is that it confuses the right of a public employer to delineate what its official representatives say FOR the college with what its employees, students and even Board members say ABOUT the college. A college is a marketplace of ideas, not a market with one idea. No matter how satisfying it may be for PR folks to control "images" and "brands," such non-lofty goals cannot interfere in Constitutional rights of freedom of speech. And while such media policies may become ubiquitous with private schools and employers, they are generally illegal when grafted onto public entities.

Public education has always been a matter of public concern in this country. When employees who work for a public college speak with the media about their college, program, courses, working conditions, activities or other topics, they are exercising their constitutional rights to speak about issues of public concern. In order to restrain employee speech, a public employer carries a "particularly heavy" burden to prove that

its media policies are "necessary to the efficient operation" of the agency. In the case of Skyline College, it has managed to survive, actually excel, for more than 50 years without muzzle employee speech. Suppression of speech doesn't just affect the speaker, it also deprives listeners - the public - of essential information. In order to justify a prior restraint, the government must show that the interests of both the speakers and the listeners, present and future, are "outweighed" by actual impacts on the "actual operation" of the college. See, e.g., *U.S. v. National Treasury Employees Union* (1995) 513 US 454, 468. A "branding" campaign hardly qualifies. For these reasons, a federal court in New York held a media policy unconstitutional, even when employees were regularly exposed to "confidential" information about welfare recipients. See *Harman v. City of New York*, 140 F. 3d 111 (2d Cir. 1998).

Besides its violation of the Constitution, a policy that restrains future speech will ordinarily violate California's collective bargaining law, the Educational Employment Relations Act, if its natural and reasonable tendency is to chill employees in the exercise of their EERA rights to inform the press of their working conditions or other employment-related matters.

Finally, traditional academic freedom also protects academic employees' rights to offer opinions on topics that affect their colleges, including such matters as accreditation. *Demers v. Austin*, 729 F. 3d 1011 (9th Cir. 2013)

Prior restraint policies adversely affect the rights of public employees to comment on matters of public concern, and go to the core of those freedoms the First Amendment was designed to protect. Such policies also harm prospective listeners and the public.

"Media Policy Clarification" issued

On March 14, Skyline College issued a "clarification" of its media policy, stating: "Faculty members who are speaking to the media as subject matter experts in their area of expertise and are not speaking on behalf of the college are welcome to proceed as they normally would." This statement, however, does not acknowledge the fact that all faculty are protected by the law, regardless of the level of expertise or knowledge one may have regarding the topics under discussion.

The recently adopted Skyline policy neglects to contain necessary assurances that utilizing a PR service is merely an option for employees, except perhaps for those rare occasions, as when someone has been engaged to speak on behalf of the college to express the college's "official" position. It wrongfully presents the policy as outlining expected protocols. In my opinion, faculty, students and even Board members cannot be required nor can they be expected by their employer to obtain permission or approval of their words when they decide to talk to the media about their college. The Constitution demands this recognition by public colleges.