

# University professors exercise free speech, get fired - AvvoStories

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Otto Warmbier, a 21-year-old student at the University of Virginia, probably did steal a poster from his hotel while visiting North Korea. His [confession](#) that he did so under the direction of the United States government seems unlikely—and his death one year into a 15-year sentence of hard labor (he passed away after being returned to the US in a nearly comatose state) is hard for Americans to absorb.

But as that situation played out, almost as much attention was focused on [statements](#) an adjunct anthropology professor at the University of Delaware made on her personal Facebook page. Kathy Dettwyler called the deceased a “spoiled, naïve, arrogant, US college student,” who got “exactly what he deserved,” and related his actions to rape culture.

The University of Delaware promptly issued a [statement](#) denouncing Dettwyler's comments regarding Warmbier; two days later, the university [announced](#) that Dettwyler, who was not on contract with the university at the time she posted about Warmbier, would not be rehired in the fall.

Actually, the waning days of June 2017 saw two college professors let go for making insensitive, offensive statements. Did their employers, both of which are state-funded institutions, violate these professors' First Amendment rights to [freedom of speech](#)?

## Essex County cans Durden for Fox interview

Another adjunct professor, Lisa Durden, was teaching a summer course at Essex County Community College when she gave an inflammatory [interview](#) on Fox News, in which she defended a blacks-only event, mocked white privilege, and called American society racist.

Durden was suspended two days after the interview and fired two weeks later. In a public [statement](#), the newly hired president of Essex County College, Anthony Munroe, said, "The College affirms its right to select employees who represent the institution appropriately and are aligned with our mission."

Durden [believes](#) the college violated her freedom of speech and civil rights under the U.S. Constitution and New Jersey law. She is considering [legal action](#).

## Protected speech?

Most people would agree these former professors made outrageous statements. Can they legally be terminated for what they said? Maybe.

As employees of publicly funded universities, Durden and Dettwyler would expect to enjoy greater protections under the First Amendment and Fourteenth Amendment, which guarantee that federal and state governments will not interfere with free speech. (Private [employers](#), by contrast, can restrict political speech at work.)

In the case of [McVey v. Stacy](#), the U.S. Court of Appeals for the Fourth Circuit found that in order to prove that an adverse employment action violated their First Amendment rights to freedom of speech, an employee must establish that:

- The employee was "speaking as a citizen upon a matter of public concern or as an employee about a matter of personal interest"
- "The employee's interest in speaking upon the matter of public concern outweighed the government's interest in providing effective and efficient services to the public"
- "The employee's speech was a substantial factor in the employee's termination decision."

Both former professors meet the first and third requirements. But the second requirement is more challenging. Per [McVey](#), an employee with greater responsibility and a public role "enjoys substantially less First Amendment protection than does a lower level employee."

It'll be up to the courts to decide if the professors' rights to speak freely was infringed upon, or fell outside the bounds of what businesses (and universities [are definitely businesses](#)) are compelled by law to allow.

Tagged [civil rights](#), [education](#), [rights](#)

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