

DISSERTATION

TEACHER CITIZEN: FIRST AMENDMENT BALANCING TEST

Submitted by  
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In partial fulfillment of the requirements  
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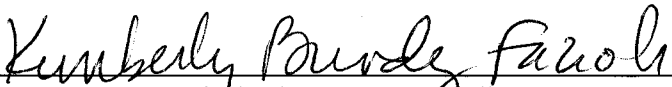
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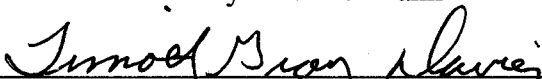
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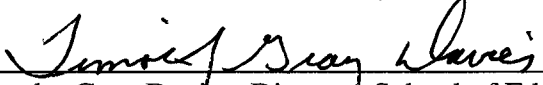
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ABSTRACT OF DISSERTATION  
TEACHER CITIZEN: FIRST AMENDMENT BALANCING TEST

This study provides insight into the life of a relatively unknown character in the continued struggle to defend freedom of speech for public employees. This struggle is portrayed in the life chronicles of Marvin Pickering, a retired public high school science teacher. Written in the life history tradition, this study provides the reader with the story before, during, and after Pickering's journey through a prominent Supreme Court decision. While much has been written about notable legal scholars, justices, and prominent attorneys involved in Supreme Court cases, relatively little has been written about the lives of "common" participants. The examination of this life story of one man's experience results in the broadening of understanding and contributes to the body of knowledge related to public employee freedom of speech matters. My interviews with this individual resulted in an in-depth portrait of his journey as it emerged. The insight may be used by leaders in the field of education or other administrative officials charged with managing public employees. The study will provide a better understanding of the impact of policies and actions that restrict public employees' rights to free speech.

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thank my wife, Susan, for her love, encouragement, strength, understanding and occasional reminder to stay focused.

I am deeply grateful to Marvin Pickering. He is both the reason why I selected this project and the individual that made it possible. Marvin is an extraordinary man whose actions and integrity changed the workplace for all public employees. I hope this dissertation will honor his courage and tenacity.

Finally, I would like to dedicate this to my daughter Jackie. She will always be my hero.

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## PROLOGUE

### Vignette

It was a cold night in December 1964, the first day of Christmas vacation for the students and teachers of Lockport Township High School, a small school in rural Illinois. Normally this was a joyous time of the year with everyone happy to have a few days off to enjoy the family during the holidays. But this Christmas would be different. This night would forever change the life of Marvin Pickering and his family. Marvin knew the bad news was coming, but was not sure just when and how his employer would inform him that he was to be dismissed. The timing could not have been more vengeful or cruel. Pickering had dared to challenge the administration and local school board, and now he would have to pay the price.

In 1963, Marvin Pickering was an idealistic, youthful science teacher in Lockport, Illinois. One year later, he was unemployed. Forty years later, his name is synonymous with the standard for deciding freedom of speech cases involving government employees. *Pickering vs. Board of Education of Lockport Township High School (1968)* now serves as the starting point in public employee First Amendment law (Kaplin & Lee, 1995). In 1962, Pickering, wrote a letter to the editor of his local paper complaining about his school board's allocation of funds to athletics rather than academics. This action resulted in his dismissal. In response, he took legal action against the school board. He lost an appeal of the firing before a state circuit court and then appealed the decision to the Illinois Supreme Court. When the state Supreme Court ruled against him, he appealed to the U.S. Supreme Court, which ruled in his favor on June 3, 1968. The Supreme Court

ruled 8-1 in favor of Pickering and remanded the case for lower court orders requiring the school district to rehire him.

## Introduction

With the 1968, *Pickering v. Board of Education* Supreme Court decision, a new chapter in the rights of public employees was established and the protection of their right to free speech was ushered in. Public employees owe a debt of gratitude to Marvin Pickering for his First Amendment battle. The rationale for this research stems from the legal and cultural context and existing literature on the research topic. All of the research in the literature review dealt with the legal aspects and legal issues involved in the case. However, as leaders in educational institutions, it is important to delve deeper into understanding the multiple dimensions in this case. The intent of this study is to examine the life and experiences of Marvin Pickering, a relatively unknown individual. The challenge of this proposal is to examine the personal qualities of this individual. Did Pickering's qualities result in a case that was strong enough to compel a court to reverse precedent or was he just the right person at the right time?

The story of Marvin Pickering will be presented in a traditional biographical style. The traditional components of this research including the Significance of the Study, Research Questions, Methods and Procedures, Interview Protocols, Definitions, Data Analysis and the Literature Review which can be found as appendices. The story of Marvin Pickering's life is presented in a chronological manner in order to preserve fluency and provide the family grounding referred to by Denzin (1989). Biographies are productions grounded in family, and family history. It is as if every author of a biography or autobiography must start with family, finding there zero point of origin for the life in

question (Denzin, 1989). Each chapter ends with an analysis and conclusion thus providing the framework for presenting the findings of the research.

### How Our Paths Crossed

There are an infinite number of characters to study and stories that can be told. The initial introduction to Marvin Pickering occurred as a result of an assignment in a law class. As a student in the Community College Leadership Program at the Colorado State University, School of Education, I was assigned several legal briefs to present as part of the course work. One of the cases I happened to be assigned was *Pickering vs. Board of Education of Lockport Township High School* (1968). In preparing my presentation, I began to organize the facts of the case. This was a freedom of speech case. It involved a science teacher being dismissed for publicly challenging the actions and decision of school board members. The school board involved was Lockport Township High School.

I was fascinated; I live in Lockport. Could there be a different Lockport Township High School? I soon realized this case that went all the way to the United States Supreme Court originated from the high school in my hometown. Now I was really excited about the assignment. As I read about the case, I began to try to picture this person "Pickering." Most of us have had negative experiences with contemporaries that are just weary, cantankerous, and unhappy with their current circumstances. Was Pickering just a malcontent, or was he the heroic figure I began to picture? I wanted to find out, but I was afraid of being disillusioned by the answer.

The first step in answering this question was to locate Marvin Pickering. Was he still living? Did he still reside in the area? My plan was to stop by the high school to see if anyone knew of Mr. Pickering's whereabouts. That afternoon I went to Lockport Township High School looking for any trace of Marvin Pickering. The first stop would be the main office. I was greeted by two members of the office staff. I asked them if they knew Mr. Pickering. They did not. I asked them if they knew any senior staff members that had worked at the school during the 1960s. They laughed and directed me to the school principal, Bob Meader.

After waiting outside his door for a few minutes, he came out to greet me. I asked him if he knew Marvin Pickering; he just smiled and asked me why. I told him I was in a law class in graduate school and that I would like to contact him to ask a few questions regarding his Supreme Court case. He just smiled at me for a moment. I felt a little uncomfortable. Bob Meader told me that he was once a student of Marvin's. He also informed me that he had worked with Marvin for many years as a fellow faculty member until Marvin retired. Now I was really intrigued and asked where I could find him. He told me he could give me his phone number or direct me to his house. Bob Meader went on to say that he was good friends with Marvin; he even helped Marvin build his garage. I asked if he thought Marvin would be willing to talk to me about the case. He smiled again, and said "I am sure if you offer to buy him a coffee, he would be more than happy to talk to you." Then he gave me Marvin's phone number from memory as well as directions to his house.

I left the school and quickly headed for Pickering's house. As I turned down his street, just two blocks from my house, I looked for the little red ranch, described by Bob

Meador. There it was: “PICKERING” in big letters on his mail box. I had been down this street hundreds of times and never noticed this mail box or his name (see Figure 1). Now it stood out like neon lights in the dark night. This was it—he was alive, and I would be able to talk to him. I decided to drive home and call him immediately. By this point I felt like a detective, one that was just on the verge of solving a case.



*Figure 1- Pickering's Mailbox*

As soon as I got in the house, I pulled the paper out of my pocket with his phone number. I dialed the number. A person on the other line picked up. “Hello, is this Marvin Pickering’s home,” I asked? The voice on the other end of the line replied—who wants to know? I explained the situation and stated that I would like to ask him a few questions. He laughed, and then introduced himself to me. So what would I like to know? I asked him several questions, and he answered each one. He offered to send me information he had put together for other students and law professors that have contacted him over the years.

I was very excited to be able to go back to class that week and share my experience. My classmates seemed just as excited about the experience as I was. After class, I talked to the professor about the Pickering case and how differently we viewed the information after knowing just a little about the central figure in the case. Both he and

I discussed how this experience added to our understanding and interest in the case. Pickering's case certainly seemed more important than the other cases we discussed that day. Too often we ignore or overlook the human experiences associated with such events. That night and most of the next week, I read all I could find about the Pickering case. I thought about the fact that several of the staff members at the high school did not know who Pickering was. I was sure few, if any, of the students attending the high school had any knowledge of Pickering or the landmark case involving him and their local school board. They had no idea of the significance of the event that occurred at their high school some 40 years ago. What a shame.

After discussing my experience with my professor, I decided that I both needed to and wanted to tell the life story of Marvin Pickering. That night I called Pickering back to ask him if he would consent to a biographical study of his life. He seemed interested, but was not completely sold on the idea. He agreed to meet me later that month to discuss the idea. We agreed to meet for a sandwich at a restaurant in our neighborhood. That was it—I had identified the topic of my dissertation. It was not the topic I planned or imagined, but what a great opportunity to capture the history of a unique individual.

Later that month, we met at his home just a few blocks from my house. As I sat across from him, questions came quickly. He was easy to talk to and started to open up to me. I asked him a few questions about the case. At this point, I believe I knew almost every fact about his case. I needed to know if he would agree to let me research and tell his story. I assured him that I wanted to capture his story in his words. I went on to tell him that I would like to understand what inspired him as well as what gave him the strength and courage to continue his struggle. I wanted to know the real man behind this

prominent case. Like the stories I loved to read, I was going to be able to tell the story of a modern heroic character.

## PREFACE

Marvin Pickering's teacher case was heard in the United States Supreme Court on Wednesday, March 28, 1968, at 10:15 a.m. in Washington DC. This would be the end of a long and tedious legal battle between Marvin Pickering and the Lockport Township High School District. The decision would change the right to free speech for all public employees in the United States. What started as a lone voice from a concerned citizen, who happened to be a public school teacher, objecting to the priorities and promises from members of a small town school board was now in front of the highest courts in the land.

It would have been easy to drop the appeals and begin to go on with a normal life. But something about this individual was different! A series of disappointing court decisions was not enough to discourage Marvin. Something made him battle on until no appeal was left. What is it that resulted in the character, intellect and determination needed to complete this journey against overwhelming odds? Where did he and his family develop the fortitude and belief that they would prevail? What would make him standup when others failed to act? What motivated him as a concerned citizen to fight against misguided priorities and abuse of power?

Active citizenship is the muscle behind "We the People." Yet, modern life has produced narrow roles and an outsider perception of an individual's role and responsibilities as citizens in today's community. Many people believe we have lost both our civic muscle and our political ability to act as citizens who are cocreators and

producers of our society. The approval rating of our governing bodies and the individuals that occupy these positions are at an all time low. Apathy is the crisis we face in America today in many settings and institutions, not simply in government.

Active, participatory understanding of citizenship served as the foundation for this great experiment we called democracy. Throughout our history, Americans from all walks of life have volunteered as common citizens to stand up and be accounted for. As individuals and members of movements, citizens have shaped the priorities, fairness and integrity of our governing bodies. Perhaps the decline in active participatory citizenship has led to the corruption and disconnect between our representative and the citizens that elect them to office. As leaders of institutions, do we encourage active citizenship, or pursue a path of least community resistance. What can we learn from an individual that embodies the notion of an active citizen?

#### Introduction to Marvin Pickering

The subject of the study, Marvin Pickering, is a retired high school teacher. Marvin Pickering is a native of Chariton Missouri a small town in north east Missouri. He was born at home in 1936. He taught high school science for over 36 years at Lockport Township High School. Marvin is outgoing and very friendly. He is married and has a son and daughter and two granddaughters. He and his wife live in a house on approximately an acre and a half lot. From our first meeting, he and his wife welcomed me into their home, and we have shared many pleasant conversations and a few meals together.



*Figure 2 - Pickering's Home*

Although retired, Marvin keeps very busy by working around his house, planting a large garden, and helping his neighbors by plowing snow from their driveway in the winter (see Figure 2). He still does most of the work around his home from replacing a roof to installing flooring. In addition, he runs a small computer business out of his home.

As I have gotten to know Marvin, I quickly realized that he is a man of many talents; he is a mechanic, a computer technician, and a handyman. Marvin is resourceful—he can work on everything from computers to automotive engines. He has installed, fixed, and replaced everything in and around his home including the furnace and the wireless connection to his Internet provider. He enjoys tinkering and testing things. He has an extraordinary understanding of how things work. He likes to test them to make sure they function as designed.

Another personal trait I have observed is his incredible memory. He can recall countless facts, names, dates and events from over 40 years ago. I find it amazing that many times during our conversation I am surprised by some detail he shares. At that point, he has stopped, rifled through a pile of documents, and pulled out an article or legal document that completely supported his description. He takes pride in the fact that

not only did he win the court case, but more importantly, several of the justices, specifically stated that he was correct in each of the charges he made.

However, the most significant personal trait I have witnessed is his attitude toward his community and his neighbors. He takes his responsibility as a neighbor and member of the community very serious. To this day, Marvin and his wife Martha are still active citizens in our community. They keep up with community projects that affect them and their neighbors. For example, from my visits and conversation, I learned that he enjoys dabbling with instruments. In particular, he monitors the electrical power for sags and low voltage issues which were common in this rural area. This condition had plagued the area for years, resulting in equipment and appliance failures. Pickering both understood this cause and effect and was willing to confront the issue. When his electronic and electrical devices failed, he went to the local power company and complained about the service that contributed to these failures. Eventually, the local power company improved the system to meet the requirements they were contracted to deliver. His natural tendency to tinker, test and monitor things combined with his tenacity are rare qualities.

Each of these personal qualities contributed to the character that was able to endure the lengthy legal battle. These traits also enabled him to be the individual that would finally be able to overturn a legal opinion that devalued the contribution of public employees acting as concerned citizens.

#### Personality Dimensions

Personality researchers have proposed that there are basic dimensions of personality. Evidence of this theory has gained support over time, beginning with the

research of Fiske (1949). While there is a significant body of literature supporting the concept of personality dimensions, researchers don't always agree on the precise labels for these dimensions. These dimensions may provide the answer to why and how each of us function and experience the world around us (Goldberg, 1981). The study of personality dimensions is complex and varied.

Each person may display behaviors across several of these dimensions (Goldberg, 1981). Research has demonstrated that these groupings of characteristics tend to occur together in many people. For example, individuals who are sociable tend to be outgoing and talkative (McCrae & Costa, 1987). However, other combinations of personality dimensions are rarely attributed to an individual. Many researchers are convinced that these rare combinations may explain the uniqueness of individuals that affect social and cultural change (Goldberg).

These atypical combinations of personality dimensions may result in personalities that see and experience the world different than the mainstream. For example, there are occupations where 'inconsistent personality patterns' work especially well. Some examples might be sales person working in a technical field like science or engineering is a good one. Typically the personality dimensions traditionally associated with scientist and engineers do not typically include the same personality dimensions of a sales person; however, this type of combination of personality traits result in a unique individual.

Patterns like these are not seen very often. Individuals with patterns like these have more difficulty making career decisions and, possibly, "fitting in" to a particular work environment (Goldberg, 1981). Research indicates that individuals with these

unique personality dimensions often need to look for ways outside of work and typical social settings to satisfy the other side of their personality (McCrae & Costa, 1987). Many of these individual are credited with new ideas, inventions, patents and other forms of innovation. These innovations my also appear in the form of social innovation and change.

In analyzing the data collected and observing Marvin Pickering, I have identified three significant personality dimensions. These dimensions influenced and empowered Marvin Pickering's ultimate success in his legal battle. I base this finding on the fact that the Court system in the United States disposes of each case it reviews by majority rule. The Pickering, case like many other cases heard by the court, involves the influence of legal precedent. The court justices typically either affirm or reverse legal precedent by providing a rationale for their decision. This rationale is a critical element of the Court's decision. Moreover, what often makes court cases compelling is the compelling human drama involved (McGuire, 2001). Justices may be personally won over by the involvement of real people engaged in disputes which have been brought to the justice system for resolution. Often the personality involved, their actions, and their passion sway these decisions (McGuire, 2001). I will present the argument that although political influences have some influence, this legal precedent withstood challenge over many decades.

When analyzing Marvin Pickering and the data collected in this biographical study, I often think about the man, the era, and his impact. Was he just a person in the right place at the right time and change was inevitable, or did he possess a special combination of personality dimensions? Did the combination of human drama involved,

his unique personality, and principled actions provide an overwhelming argument that compelled the court? After a lengthy study of the case, the individual, and the circumstances, I have identified three significant personality dimensions that resulted in a unique and compelling case. It was not until this unique man with very unique personality dimension presented his case that many years of precedent was overturned.

#### Dimension 1–Resourcefulness

Pickering is a man of many talents. He is able to deal skillfully and promptly with new and sometimes complex situations. He has an extraordinary understanding of how things work (electricity, electronics, mechanics, law, computers, business, water and drainage, construction, science, etc.). As I mentioned, he runs a small computer business. During this experience, I have continuously been surprised by his depth of knowledge and his ability to stay current with changes. Just last week he explained the drainage problems our community may face due to a new expressway that was built through our neighborhood. He is an individual in his 70s and he is as comfortable working on modern computer as he is working on a 1960 tractor. However, the mere understanding of technical and complex issues was not sufficient. Pickering has other unique personally dimensions.

#### Dimension 2–Retentiveness

The second personality dimension I have identified is his retentiveness. He has an incredible memory. He can recall countless facts, names, dates and events from over 40 years ago. I find it amazing that many times during our conversation I am surprised by some detail, names or dates he shares. Often, he interprets my surprise as disbelief! At that point, he has stopped, riffled through a pile of documents, and pulled out an article or

legal document that completely supports his description and recollection. He has a document in which he mapped out his arguments and charges in the original case. He precisely identifies each charge and the recognition of the facts that supported his argument. His memory of facts, people and events are almost undisputable. This master of facts provides an unusual level of self confidence I have not observed in many other people. I am not referring to brashness or cockiness, but rather a deep belief that he knows and understands an issue and given the change to present the fact, he has a confidence that he can provide a convincing argument.

### Dimension 3—Community Consciousness

Finally, I have witnessed a strong sense of responsibility as a citizen, neighbor, and member of the community. He possesses a personality that would combine the social and consumer activism of Ralph Nader but also traits of a caring neighbor. His modest and country upbringing results in an active citizen, not as an elected politician. Marvin is also known for helping his neighbors, whether plowing a neighbor's farm field with his 1953 Ford tractor that he maintains, or using his 1988 Ford pickup truck to plow the snow from his neighbor's driveway. Not that he would have any opposition to those running for office. It was just that his parents instilled in him a sense of social justice that wore no party or political brand.

To this day, Marvin and his wife Martha are still active citizens in our community. They keep up with community projects that affect them and their neighbors. They will confront builders, developers, school board members, city planners or other neighbors that disrupt the cause of damage to the community. He does not hesitate nor is he reluctant to challenge organizations or individuals that take shortcuts in delivering

services or are negligent when entrusted with the trust of the community. Marvin seems to enjoy this role and in particular looking out for his neighbors and his community. This has resulted in his reputation as a respected community leader.

I have identified these dimensions in analyzing the transcripts of our interviews. I have also observed and recorded these personality dimensions in my field notes and research journal entries. These dimensions will provide a framework for analyzing and illuminating his extraordinary life experiences. Together these personality dimensions shaped a persona that was resourceful, accurate in fact-finding, concerned and confident in his decision making. These dimensions resulted in a legal case that was forceful, honest, believable, and compelling. His case convinced a majority of Supreme Court justices to reverse legal precedent that withstood decades of challenges.

### Epiphanies

All biographies must be organized and interpreted (Denzin, 1989). The conclusion of each chapter will be used to review the guidelines and present the interpretation and analysis of the data used to create each stage of the life history of Marvin Pickering. In analyzing Marvin Pickering's life, I purposely focused on the significant events and experiences that resulted in change. These events include changes in his personal life, changes in our community or changes in our institutions. According to Norman Denzin (1989), "Epiphanies are interactional moments and experiences which leave marks on people's lives" (p. 70). These significant events fundamentally alter the meaning structures in one's life (Denzin, 1989). An epiphany is an experience that represents a moment of revelation, insight or evolvment. These epiphanies serve as markers in real lives. They provide the values that structure the text of a biographical or life study

(Denzin, 1989). These marker points, when captured, reveal the story of a family's struggle, the dilemmas of the poor farmer during the Great Depression, the hard life of the coal miner, and a teacher's legal struggle to regain the rights of a citizen. They capture the moments of pain, satisfaction, and change.

According to Denzin (1989), "It is assumed that these markers fit into place and give coherence to the life in question" (p. 19). When working with Marvin, he clearly credits these epiphanies as the first step toward change. In order to capture meaning from one's life, it is essential to dissect and analyze these points and triumphs that shape the character of an individual. Denzin identifies four forms of the Epiphany:

- "1) the *major* event, which touches every fabric of a person's life;
- 2) the *cumulative or representative* event, which signifies eruptions or reactions to experiences which have been going on for a long period of time;
- 3) the *minor* epiphany, which symbolically represents a major, problematic moment in a relationship or a person's life;
- 4) those episodes whose meaning are given in the *reliving* of the experience" (p. 21).

I have chosen to use these epiphanies in structuring, analyzing, and presenting the life story of Marvin Pickering. Many of the chapters explicitly accentuate the major epiphanies of Marvin Pickering's life. Other chapters analyze the cumulative or representative epiphanies or interactional moments and experiences which leave marks on other people's lives. Finally, others chapters include the minor and relived epiphanies that impacted our community and institutions. Together, these markers paint a compelling story of conflict, sacrifice, courage and above all, this individual's influence on change.

## CHAPTER 1: EARLY INFLUENCES

### Familial Influences

Economics dominated life and politics in the 1930s. This period in American history is primarily remembered as the time of the Great Depression. The decade began with shanty towns called Hooverville, named after a president who felt that relief should be left to the private sector. The decade ended with an alphabet soup of federal programs put forward by the Roosevelt administration. For many, the American dream had become a nightmare. The land of opportunity was now the land of desperation. According to many, what was once the land of hope and optimism had become the land of despair (Clausen, 1995). The American citizens were questioning all they had once place their faith in, democracy, capitalism, and the power of individualism.

For many today, it is hard to understand this depth of despair until we examine the actual economic and social impact on average American families. In the early 1930s the income of the average American family was reduced by 40%, from \$2,300 to \$1,500 (Clausen, 1995). Instead of progress, survival became the key word. Nowhere was this feeling of despair more prominent than in the small towns and farms of Middle America. The dustbowl forced many from their farms. People would take any job in order to survive.



younger sister did attend high school and went on to complete a master's degree as a teacher.

Marvin's parents were common people with basic educational backgrounds. They had lived through tough times. Pickering grew up understanding poverty and hardship. In 1929 only 3% of Americans were without a job, but by 1933, the national unemployment rate had risen to over 25% (Clausen, 1995). The great drought in America's heartland turned the once rich soil to dust. The winds of the Great Plains blew the loose soil into massive dust storms that ravaged the country side from the Dakotas to Texas. Many neighbors were forced to abandon their farms. The Great Depression changed the family in dramatic ways. The national birth rate dropped below the replacement rate for the first time in American history. Families suffered a dramatic loss of income; this put a great deal of stress on families. Pickering recalled that some families reacted by pulling together, making due with what they had. In small towns across America, families, friends and neighbors turned to one other for help. Pickering explained "You had to turn to one another; you see there was little government help in those days." He recalls that some families did not fare as well, and ended up falling apart.

He explained that community involvement was critical in their small town. They understood that the welfare of their community and families depended on their involvement and concern. To some, a good citizen votes and obeys the law. Citizenship and participation was not about politics but rather essential activities that required regular involvement. "If you did not participate, you would go without." This sense of community would grow and play a significant role in his life. It provided him with an atypical perspective of community involvement.

## Life in Chariton, Missouri

Chariton, Missouri was a small town. In fact, even today it is hard to find on a map. Marvin's parents were both from this community. "My parents rented a small farm house off the county road. Later they rented a farm from a local land owner. They eventually purchased a small farm for \$1200." This small community provided the setting for the first part of the story. Marvin was born at home, which was common in that time. "When it was time, my father called the doctor to our home" he explained. This meant his father had to travel to the small general store in town. "You see at this time the only phone in town was at the general store. There was no electricity and the home was heated by a coal stove. In fact, we did not have an accurate scale at the time." When the doctor arrived, he used a balancing scale to measure Marvin's birth weight. They placed him on one side of the balancing scale and a 10 pound jar of molasses on the other side. He was a little heavier, so the doctor estimated his weight to be about 10.5lbs." This is typical of the type of story Marvin recalls from his days in Chariton.

In this rural setting the term "private citizen" had little meaning or value. People had to cooperate for even the most fundamental services and public works. Even within the family, each member had an essential role. "Everyone in the family had to pitch in to help with the farm." He explained that "during this period most farmers still farmed with hand plows and horses—we woke up every morning between 4 or 5 a.m. We worked around the farm until it was time to go to school." Marvin's recollections were of hard times, yet they were times that were innocent and uncomplicated.

The economics of the time required most people to work together to create alternative means to earn income. Pickering explained "Typical wages earned by laborers

were about seventy-five cents a day. The people in this area were poor and worked hard to make a living. You need to understand that in this rural part of Missouri, most people were farmers and many also worked in the coal mines.” The coal from the mines was used to heat the homes and prepare meals. Marvin’s father and uncle worked as coal miners.

His father was an undercutter. Marvin explained that “undercutting was to cut a groove underneath the coal—so he would lay down on his back or side with this pick cutting a groove under the vein of coal. Other men above would then drive a wedge in which would cause the coal to break.” He explained that this was considered one of the most dangerous jobs in the mine.

These jobs, as dangerous as they might be, provided an economic opportunity in the community. Many of the small farms had small coal veins that ran through the area. Neighbors would work together to take advantage of this resource. Any economic opportunity was welcome although the hazard associated with these opportunities would prove to be very real.

### Childhood Memories

Marvin has many memories of his childhood. Many involve the time he spent with his parents on the farm. A few of these memories would etch an indelible impression on his life. When Marvin was 3, his father was injured while working at the mine. His leg was trapped when the coal vein he was undercutting collapsed. The leg was crushed under tons of coal. His father was rescued and brought home. The leg injury became worse and eventually gangrene set in. Soon after the accident, Marvin’s father had to have his leg amputated from just below the knee. Although too young to remember the

actual event, he witnessed his mother and father deal with the misfortune and hardship resulting from the accident. Today we understand that when a part of our body is lost, we experience a grieving process much like a death. Common symptoms include loss of appetite, lack of energy, and feelings of hopelessness. It is common for amputee's to have diminished interest in enjoyable activities and become socially withdrawn. But according to Marvin, the reactions and attitude of his parents did not reflect many of these common reactions and symptoms. Their strength and support of one another would leave a lasting impression on him. Although his family life may have resembled John Steinbeck's *The Grapes of Wrath*; he preferred to remember it as *Little House on the Prairie*.

Pickering's parents taught him to press on in the face of difficulty. They became stronger and closer as a family, and like many families that face tragedy in their life, look to how they could get involved in order to help others. The family received very little assistance as a result of the accident. "You see, a farmer just owned the land they were mining. In other words, the company operating the mine was just another small farmer, they were just very small operator. There were a lot of very small operators of these mines. This was a way to earn extra money. And so you were paid basically on how much coal you got out. You had little choice but to accept the hazards that came with the territory". As a result Marvin's family received no compensation for the injury. However, the state of Missouri ultimately paid for his father to be fitted with a prosthetic leg a year or two later.

Even from his youngest childhood memories, he witnessed his parents' day-to-day struggle in dealing with the economic hardships that resulted from the physical

challenges of his father's accident. However, Marvin never talked about these hardships. He always speaks in a collective voice. Instead of discussing his family's hardships, he would always include the community, their neighbors and fellow farmers and miners. This collective voice is always full of optimism and concern for others. Marvin is quick to explain that "the circumstances did not stop my parents from enjoying life. I can remember my father enjoying himself dancing with my mother on that peg leg." The family enjoyed spending time with others in the community. The people that decided to stay and face the difficulties resulting from the depression formed a stronger bond. They learned that collectively they were able to achieve things that they were not able to achieve as individuals.

#### Marvin's Father

As a citizen, Marvin's father was very involved in local projects. The accident did not prevent him from becoming involved in the community and fighting for its betterment. Marvin shared many stories about his father's involvement in community affairs. One such story involved his father's efforts to bring a gravel road to their community. The Pickering farm was located off an old county dirt road. When it rained, the road became a muddy mess and the school bus could not drive on the road. Marvin's father was eventually able to convince the county representatives to gravel the road so that the bus could drive by their house. He later served as a township tax collector or assessor. Marvin's father provided the foundation for realizing his responsibility as a good neighbor and citizen. From his earliest memories, Marvin was taught that "the foundation of our government is built on citizen participation." His father taught him that getting involved means learning about issues both large and small. According to

Pickering, “Many people just complain about our community and political leaders. If they don't get involved, there is no point in complaining.”

### Marvin's Mother

Marvin's mother worked the small farm and performed household tasks such as sewing, washing clothes, and preparing meals. His admiration for his mother is evident in his appreciation of her strength. He remembered his mother washing cloths by hand. Marvin often would describe his mother as athletic: “She made the boy's baseball team when she was younger.” In the evening, Marvin and his mother would listen to shows on the radio. Marvin remembers the Sunday evening when Pearl Harbor was bombed and the start of the Second World War. “I remember listening to the different reports on the radio—we didn't know what was going on until we heard the reports on the radio.”

Marvin's mother provided him with a sense of curiosity and resourcefulness. She often tended the farm with Marvin by her side. Marvin would recall how she would plan meals and find ways to modify or stretch recipes in order to use what was available. Marvin began to observe how things worked around the house and on the farm. He began to take things apart and fix things around the farm. He enjoyed working with mechanical things and joined the Future Farmers of America at school. He also was good at math and reading.

From his youngest memories, Marvin's parents provided him with a strong sense of hard work, confidence and personal responsibility. Responsibility meant more than his responsibilities at home, but also the responsibilities as a member of the community. These lessons would shape Marvin's character and decision making process throughout his life. Even today, Marvin is active in his community and urges others to get involved

with decisions and actions that affect the neighbors and the community. He has a keen understanding that everyday citizens possess power if they get involved.

### Early Education

It was the 1940s and Americans were concerned about the war. However, war production resulted in an economic turn around in many of the small towns including Chariton. Unemployment almost disappeared, as most men were drafted and sent off to war. For the first time in history, women were actively recruited to the workforce. In 1943, with virtually all the single women employed, married women were allowed to work. Farm products were in great demand. Marvin fondly recalled events during this period, "I remember how excited my father was when we purchased our first automatic washing machine. It was a gas powered model." By this period, Chariton had electrical power to each home. The first electric refrigerators were introduced into small towns across America. There were scrap drives for steel, tin, paper and rubber. These were a source of supplies for the troops, but it also and gave people a means of supporting the war effort. Marvin was in grade school at this time.

Education in this small rural community was simple but greatly appreciated. The reality of the economic environment resulted in limited resources available for the school system. Marvin attended one of the three county grade schools.

This was a one room school that had about twenty students from first through eighth grade in the same class with one teacher. "The school was about a quarter mile from my home. I would walk to school each day. I was one of the lucky kids—some of the children walked one, two and even three miles to class." The building contained one main room about 20 feet by 40 feet. There was no electricity and the building was heated

by a coal burning stove in the back of the room. He recalled “the teachers would have to come in early on cold days to feed the stove so the room would be warm by the time the children arrived. The heat was hard to control, the back of the room would be cookin’ while the front was still freezing.”

The toilet or outhouse was outside. The water also came from an outside well. The kids had to pump the water and bring the bucket inside. There was a dipper to dip the water for a drink. There were no paper tissues like Kleenex or toilet paper. Instead, we used handkerchiefs. The handkerchiefs were washed, ironed, folded and kept in a special box with a lid. Old catalogues might be used in the outhouse. When someone had a cold, rather than using up the handkerchiefs, they would instead use old rags and then burn them to get rid of the germs. The soap back then was made from the fat of animals and mixed with lye and cooked. When ready, it was poured into a flat pan to cool and then cut into pieces.

The classroom was arranged with a blackboard on the left side of the room and windows on the right. The desks had ink wells and were arranged in rows. The older children sat in the back in larger desks, while the younger kids sat in front. “You could hear what the kids 1 year, 2 years and even 3 years ahead of you were learning.” There were four children his age—two girls and two boys. Marvin was a bright child and he loved to read. The 1940s opened with the appearance of the first inexpensive paperback. Book sales went from one million to over twelve million volumes a year (Elder, 1974). Every school had a small library. At one point, he had read every book in the small school library. He spoke with excitement when he talked about the local bookmobile coming to his town. “I was able to get books on all types of topics.”

Other memorable experiences included the different school fundraisers. “They had a fundraiser called a candy supper where the kids auctioned boxes of candy. The girls would sell boxes of candy they made to the boys and after the auction they would sit down and eat the candy together.” Marvin grew up in a time in which attending school

was a great opportunity. “The focus was on academics, some of the children knew that they would not and could not complete their primary education. We all understood that this was a chance to improve our opportunities in life.”

He recalled that “There was little time for extracurricular activities. The children were needed at home to help raise animals and work the farms.” This perception of public education influences his attitude and mind set as a student, teacher and citizen concerned about education. Although Marvin and his wife were involved in extra curricular activities, as teachers at Lockport Township High School, his focus was predominantly concerned with academics. To this day, he is concerned with providing a classroom environment designed to promote academic achievement. He enjoyed school dances and sports, but felt very strongly that they should not redirect resources from academic needs. This attitude would ultimately lead to his confrontation with members of the Lockport Township High School Board. Marvin would try to hold the school board members accountable to their stated priority of academics before extra curricular needs.

#### Spirituality and Church Influences

Marvin often discusses the fact that his original intentions were to attend North Central College as a seminary major. In fact he did pursue, and completed a triple major as an undergraduate. In our discussions related to the influence of his church and spirituality, I concluded that Marvin’s spirituality resulted in a rock-solid moral stance. “Our perception of life and the experiences of life are directly connected to our ‘inner self’ which includes our mind, body and spirit.” His ability to take a tenacious stand against what he perceived as deceptive, dishonest or even corrupt intent was based on a clear sense of integrity and decency.

The church played an important role in our life in Chariton. Growing up in a small town had its ups and downs. Chariton was small, so small that you knew everyone who lived there. It was nice cause we had our own little community. The town had one store and one church.

Marvin remembered the community church and small town store as a place where people socialized, the kids could get together to play and the adults could visit with one another.

In many ways the church played a central role in shaping Marvin's character.

Marvin recalled the church as a place where people got together to enjoy one another's company. "The church also provided a gathering point and a reprieve from the hard realities of life during this period. "People worked long and hard hours. The church served as the center of the social life in the small community." The church also served as a place where people could learn about one another's needs and provide care for one another. "If someone needed something, there wasn't any government help—people had to help each other." This perception that people need to stand up for one another stayed with Marvin his entire life and ultimately shaped his future.

The church inspired Marvin. After graduating high school, Marvin traveled to Naperville, Illinois to attend North Central College Seminary School. Marvin would recall this experience as exciting, inspired, and somewhat spontaneous.

My first experience at North Central College was probably a bit unusual. I just showed up at the registration office a few days before registration. I had no application letter, no test scores, not even a transcript. Well of course this was very unusual, but the application officer asked me a few questions about my high school grades and records. I remember explaining that I was the valedictorian of my class. Of course they did not know how small the high school I attended was. Everything actually worked out fine. They sent off for my grades and I was able to register for classes.

Although his intentions were to pursue a seminary major, his background influenced him to also pursue a vocation to support himself. "Back in those days, to be a minister you

also had to work a second job.” He was good in the sciences, so he decided to pursue a triple major: biology, psychology and education. “Teaching would be a good secondary profession, I could preach a little and teach a little.” Again the church would provide inspiration and opportunity.

This was the 1950s and the war was over and the American babyboom was on. Like many young men Marvin was in a big city and alone. Local church members understood he was on his own. “As a freshman, I had to live in the college dorm rooms.” However, he made friends easily. “Local church members looked out for me. They helped me find a job at a local company that printed checks while I was attending school.” A local family looked after him. “The Blessings, Ruben and Ester, made it a practice to look out for a lonesome country boy. You see Ester was from southern Illinois. Ester Blessing worked with me at the check company and Ruben was the custodian at the college field house.” He graduated on time with a triple major. Marvin’s parents drove in from Missouri for his graduation. After graduation, he decided to apply for a part time teaching position at a local high school.

#### Epiphany “A New Home”

Marvin enjoyed his first teaching job. However, he was in a temporary teaching position, so when a full-time science teacher position opened at Lockport Township High School, he applied. He was hired and soon after purchased a home in the community and began to make Lockport his new home. He also met his wife Martha at the high school. They were both new teachers and were required to serve as chaperons at the dances and on the buses that brought the students to football games. Marvin began to meet people in

the community and Lockport became his new home. However, the culture and environment was different in Lockport than what he was used to back home in Chariton.

### Conclusion and Analysis

As an interactive biographical study, the subject needed to understand the goals and approach I planned to use in this study early in the process. Pickering and I met to discuss the schedule and my plan for questions in the initial sessions. He was interested in my approach and asked me for examples of other similar studies. I provided several samples of biographical dissertations and articles written by some of the researchers I identified in my literature review. I planned to share many of the general questions that I would start with so he had some time to collect his thoughts and review artifacts. However, I also planned supplementary questions in order to invoke some spontaneous and impromptu responses. The combination of different questioning styles has resulted in structure, with the ability to delve into the meaning of important events and experiences. Planned and impromptu questions bring life to Marvin's stories. Most of the planned questions sessions evolve into spontaneous line of questions that open new paths and exploration.

The initial interviews with Marvin Pickering focused on his early family life experiences, with general or leading question about his parents and his early childhood. Although many researchers in the past recommended never to use this form of questioning, Yow (1994) states,

Consider first the use of the leading question—the kind of question that indicates what the interviewer wants in the answer. In the past, this has been a technique interviewers were taught never to use because the narrator will be likely to give the indicated answer. He or she wants to be cooperative, polite, or just finish the ordeal. The interviewer learns nothing new (p. 39).

Yow disagrees and believes this form of questioning enables the interviewer to reveal interviewers perceptions and beliefs which can be incorrect. She recalls an interview early in her career. She was interviewing people who had worked as children in the cotton mills. She recalls asking one such individual, so I guess you didn't like mill work? The respondent answered "Honey if you had ever chopped cotton in the hot sun, you would see why I like mill work" (Yow, p. 39).

I knew Pickering well enough at this point to be confident that I did not need to worry about him wanting to be cooperative, polite, or just wanting to finish the ordeal. He understood that this was going to be an in-depth and lengthy process which he agreed to. I also made it very clear to him that I wanted the story to reflect his voice. My use of such questions was intentional; I intended to immediately reveal my perception and expected him to quickly set me straight if I was incorrect. Yow (1994) make the point that narrating a life history can have a positive impact on the narrator. I found this to be the case. "The narrator has a serious, eager listener. This is an opportunity to tell a life story to another person who accepts that this version is true for the teller and that it is important. This is validation for the narrator that he or she is worth listening to" (p. 117)

As expected, Pickering immediately began to frame his childhood within the era in which it occurred. From the beginning of our work together, he had an understanding of the type of information needed. He rarely answered my questions with answers I expected; instead he would often use simple stories and specific examples to paint a picture of the reality of that era. He immediately recognized that I could not properly interpret his relations with his parents and his childhood experiences without background and appreciation of what life was like at that time. I began to understand the significance

as I compared and contrasted his life experience, growing up in a small town during the Great Depression and my childhood in the 1960s in a major city.

Pickering helped me to build an image of his childhood life, a time before television, plumbing or electricity in the home, washing machines and one-room schoolhouses. I had read stories about people in this era, but Pickering and I researched specific articles and places during this period. Together we would research and discuss things like articles of the day including gas powered washing machines, clothing items, items around the home and farming tools he learned to use. He would describe how his mother prepared meals before the electric appliances, what the town looked like and how he and his mother would walk together to the general store in town.

He enjoyed sharing these experiences, and I enjoyed a journey into another world, one I could appreciate but could never fully relate to. I needed to do some homework, so I made a trip to the library and checked out books that recorded the life experiences of people that lived through the Great Depression. I specifically was interested in the recollections of children that grew up during this period. The world he experienced required many different personal qualities and skills when compared to the world I was used to. His relationship with his family had similarities with those I experienced, but in much different circumstances. We both understood and recognized this fact. In telling his life story, it is important to focus on these differences. The circumstances that frame his childhood were one of economic struggle and depression. However, that should not be the focus. The spotlight should examine how this experience changed him and others around him. He clearly understands that these experiences shaped his personality and character.

He experienced poverty and individual sacrifice and was not afraid to face these challenges again. He witnessed the support and strength that came from a family that draws closer when faced with hardship. He became more involved in his community as a result of his parents' experiences and examples. He was a pragmatist and believed that he clearly recognized the essential services and reasons for community leadership and could usually identify when others had confused priorities. As a result, Pickering may be perceived to have a strong personality compared to individuals from a different time and place. Part of this perception may come from the personality dimensions he developed.

Pickering is extremely resourceful. He would rather do any and all tasks himself. This has led to the development of an amazing level of skills in many disciplines. If he doesn't understand something, he is quick to read and learn about it. Part of this dimension of his personality comes from his early family life, but much of it comes from his enjoyment of completing such tasks himself. I witnessed this by his actions and the enthusiasm in his voice. Unlike many people I can relate to, he enjoys having a list of jobs needing work around the house. He looks for ways to help his neighbors and still runs a small business.

During the interviews when we were examining his early family life, he learned that my basement's sump-pump had failed, and as a result, I got water in the basement. The next day he emailed me several things to check with the failed sump-pump. He also sent me a list of vendors where I could find replacement parts in the neighborhood. I am sure he would have volunteered to replace the pump if I needed it. He also wanted me to make sure that the flood was not a result of the highway construction near my house. He had maps of the area and was well-versed in creek and runoff systems in the community.

He had walked the site of the new expressway in order to view and record the construction site. This construction is very close to his neighborhood (several hundred feet). He was aware of previous flooding in the lowlands where his neighbors lived, and he was concerned that the new construction would result more flooding. Although, this information did not directly relate to our research, I entered it into my research journal. This experience and observed behavior was a window into his character.

Pickering is an extraordinary individual. When he involves himself in an issue, he attempts to master the subject. He has the ability to understand the complexities, cost and related issues. He does his homework and wants it done correctly and as it is intended. I am convinced that this was the case when the school board members and administrators required all faculty and staff to promote and support the new school referendum in 1962. However, I do not believe the school board members understood what would occur as a result of their demand of the school employees.

## CHAPTER 2: THE REFERENDUM

### The Situation and Circumstances

In 1959, Marvin Pickering began teaching at Lockport Township High School. The 1960s would be the decade of change, as 70 million children from the post-war baby boom became teenagers and young adults. The first presidential debate was televised and John F. Kennedy moved into the White House. He gave his famous speech - "Ask not what your country can do for you, but what you can do for your country." The 1960s ushered in a movement away from the conservative 1950s and eventually resulted in revolutionary ways of thinking and real change in the cultural fabric of American life and institutions.

In the 1960s, Lockport was a growing community. Lockport is located in the Des Plaines River Valley thirty miles southwest of Chicago and just northeast of Joliet. According to Pickering, "The town was growing, especially west of the river. Romeoville and Bolingbrook had become larger than Lockport." The town grew initially as the headquarters for the Illinois & Michigan Canal and as an agricultural processing center. Lockport's economy thrived when a Texas company decided to build its first refinery outside the northern boundary of Lockport. In addition, area commuter railroads connected Lockport, Joliet, and Chicago. This small town with a population of seventy-five hundred began to expand north and west. The local high school population doubled in less than a decade.

Lockport Township High School was built in 1910. Since the time of the dedication, only two major additions had been made—one in 1930 and another in 1953. The school now occupied an entire city block. It would not be possible to expand any

further due to the fact that the school was located in a residential area and houses surrounded the school. In addition, the high school now serviced a majority of students from nearby communities that had incorporated and were maturing as independent towns. It was obvious to everyone that a new high school would have to be built to accommodate this growth. Local officials and citizens began to plan for the new school.

Like most citizens, Marvin supported the building of two new high schools. However, one thing that he had a hard time adjusting to was the role and behavior of local politicians and community leaders. "You see back in Missouri, the politicians and community leaders listened to the citizens. If the people needed something, they would work together with elected leaders to accomplish whatever was necessary." He felt that in Lockport, the elected officials would tell the citizens what they needed. Many times, he would question their motives and ethics. "You see in those days no one questioned these guys." Most of the school board members had run unopposed. He knew of several instances in which developers and business owners were making decisions that they were personally and financially benefiting from. Pickering knew he had to be involved, but would his involvement be welcomed? Could he support the actions and decisions that would be made?

### The Referendum Process

It is very common for public institutions like school districts to use general obligation bonds to finance capital improvement projects (new buildings, facilities and infrastructure). These general obligation bonds are legally backed by the full faith and credit of the issuing government institution. In other words, the school district is

obligated and authorized to use its taxing power, if necessary, to repay the debt.

However, in Illinois the public must vote on authorizing the government agency to sell the bonds; therefore, a referendum would have to be proposed. If approved, property owners typically see a separate assessment listed on their tax bill to pay back the bonds.

Most experienced administrators recognized that the process of proposing a building bond referendum is legally straightforward and fairly uncomplicated. However, the process needed to pass a building bond referendum can entail much more and typically requires strong leadership and planning. Such referenda's have a much better chance of passing if the school district has strong public relations. "School boards that involve the community in activities and decision-making already have a support group to mobilize. Side issues can kill you! Often, voters don't really object to the tax increase, but are upset or frustrated by a side issue" (North Carolina Department of Public Instruction, 1972, p 5). Side issues can include the selection of building sites, district boundaries, distribution of resources and facilities, accountability for cost and expenditures and the integrity and character of the board members and administration. The Lockport referendum was a classic example of a referendum process that was packed with side issues.

### The Community

A number of side issues could not be avoided. The circumstances faced by the communities during this period were complicated and the personalities were not making things any easier. Lockport Township High School served the southwest suburban communities of Lockport, Romeoville, Plainfield, and unincorporated areas that are now known as Bolingbrook, and Homer Glen. The district was large and naturally divided by

the Des Plaines River and the Sanitary Drainage and Shipping Canal. Lockport and Homer Glen were located on the east and south side of the river while Plainfield, Romeoville and Bolingbrook were located on the west and north of the river (see Figure 4). Pickering recalled, “The district growth was primarily in the Northwest corner of the district (Bolingbrook). The logistics of busing kids to a new high school in Lockport made little sense.” Based on this fact, the board decided a new school was needed in the Romeoville-Bolingbrook community.

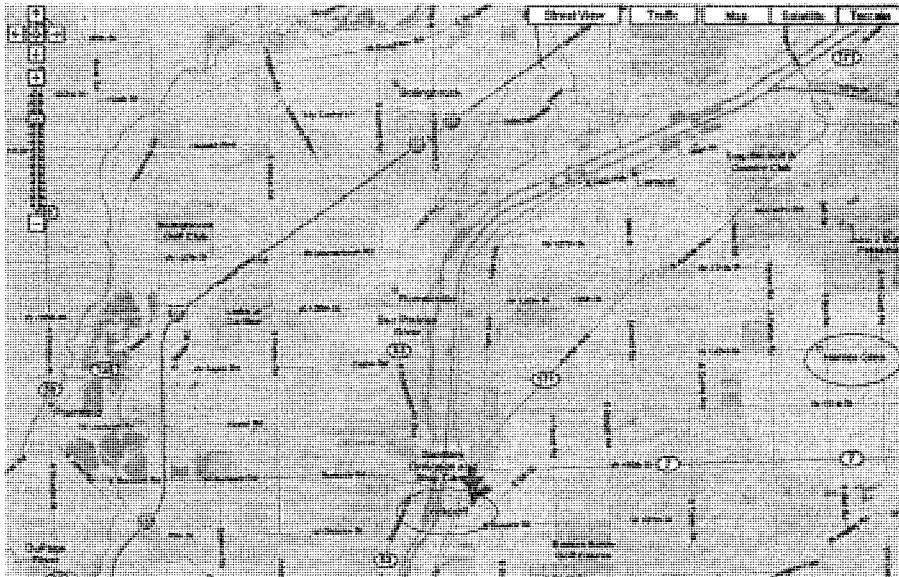


Figure 4 - City of Lockport, Romeoville Bolingbrook.

The rapid growth in the Romeoville-Bolingbrook sector of the district was one of the controversial issues. A new expressway linking this community to Chicago was being planned (Interstate 55). This vital transportation link made the southwest suburbs of Chicago an attractive alternative for the urban population looking to relocate to the suburbs. Many Lockport citizens felt that the leaders in Romeoville and Bolingbrook allowed overdevelopment of the area (*Lockport Herald*, 1959-1963). Developers were profiting, yet not contributing enough to handle the population growth they were creating

(*Lockport Herald*, 1961). According to Pickering, “It was like the gold rush, developers were buying farmland, and slapping up houses faster than we had ever experienced.”

Lockport citizens understood a new school was needed, but should they have to pay for poor and irresponsible planning in these new communities?

The boundaries for the new school were the cause of another controversy. The fear most citizens of Lockport faced was building a new building in Romeoville, while Lockport would be left with a substantial note for the new building. In addition, the existing building in Lockport had no potential for future expansion and no modern facilities. The board made public agreements not to put the citizens of Lockport in that situation. In February of 1961, the school board put forward a \$4,875,000 bond referendum for the construction of two new high school buildings. Lockport East High School would be located on the east side of Lockport and Lockport West would be built on the west side of the river valley. The board tried to broaden support for the referendum by dividing the construction costs between the two new schools. The west campus would be slightly larger, so it was to receive a slightly larger portion of the funding. In addition, the board would control costs by having the two schools initially share athletic facilities such as the pool and football stadium. Each of the communities could expand its facilities as needed and as the tax base increased.

Pickering supported each of these decisions: “There are always issues when a building referendum is put forward—you can’t ever make everyone happy. You have to do what is right and just make sure the essentials are accounted for.” Pickering was most concerned about addressing the overcrowding issues. He supported the construction of a new school that could accommodate the expanding student population. He also applauded

the idea that extracurricular needs would be addressed after the initial buildings were built. “These things (extracurricular needs) are all right, provided we have enough money for them.”

### Personalities Involved

Each of us has an image of good government and community leadership. Our life experiences, family relationships and the actions we observe throughout our life, shape our images. These images often contribute to our community involvement, political party affiliation and the acceptance of political decisions and actions. Disagreements, misunderstandings and interpersonal conflict can result from these images. Often, these different images are categorized or attributed to class differences. The issues and problems of class struggle cut across the social dimensions of race and ethnicity, gender, nationality, educational background and even political-party affiliation. Often the class issue is framed in terms of economic power or social influence.

Even though Pickering was an educated individual who was respected by most of his colleagues and students, he was an outsider. He came from a small town where local politics included cooperation and public involvement as an instrument of survival. The personalities he was about to confront came from a very different culture. Many of the community and school board leaders were life-long friends with common business and social ties. Many times these ties led to personal decisions that were not in the interest of the community. Some involved conflict of interest. Unfortunately, positions of local leadership are sometimes used for personal gain or as a political stepping stone to a position of greater power.

All of these different misuses of public office for private gain can be classified as political corruption. Understanding this is important for several reasons. Corruption can be blamed for both the apathy of our citizens and mistrust of government. It accounts for a great deal of waste in resources and ultimately contributes to the divide between the haves and have-nots in a community. Being raised in the city of Chicago, I witnessed the relationships and culture that resulted from the big city political machine as a way of getting things done. A common phrase used in Chicago political circles was “You scratch my back and I scratch yours.” Many times the line between public service and personal gain is blurred. When you grow up in this environment, you have a better understanding of how the system works. To experience personal gain, you have to be in the game, and the game is business and politics.

Marvin Pickering established his new home in an area where it was common practice to have businessmen, local community leaders and politicians involved in lucrative government business deals at the state, county and local level. According to Pickering and documentation introduced later in the study, several of the school board members had higher political aspirations. Many prominent politicians learn early on that to succeed, they need business backing, and many take the easiest approach to gaining this backing. Since 1958, three out of the last seven governors of our state have been convicted of crimes: George Ryan, racketeering and fraud; Dan Walker, bank fraud; Otto Kerner, bribery, conspiracy, and perjury. A fourth, governor, Stratton, was indicted for federal tax evasion; however he was acquitted. The current governor, Blagojevich, is under federal investigation and recently had prosecutors’ subpoena personal records from

his office. The convictions were not due to extraordinary prosecuting skills, but rather to endemic corruption.

Each of the former governors started in local politics. In fact, many started as local board members or small town government representatives. They learned early in their political careers that you need ties to business leaders. These ties provided critical funding for campaigns, backing of local organizations and in some cases, guaranteeing that they could run unopposed. Along the way, they could make sure their business supporters were treated fairly or in some cases favorably when involved in government contracts or building projects. In other cases, they would allow building developers to proceed with large developments with little restraints or minimum community planning. “Later they could claim that they were just simple local citizens with little professional experience in community planning. In the end, things would work out due to the fact that the citizens in the community understand the importance of education and will just go along with needed tax hikes or building referendums.” However, now an outsider had become involved.

#### His Initial Support

Like all teachers at the high school, Pickering experienced the overcrowding in the existing high school building on a daily basis. On a recent tour of what is now the central campus, he pointed out how crowded the school had become. Storage rooms were converted to classrooms. In fact, he taught in one such room. Although he understood the real cause for this situation and was not especially enthusiastic about supporting the current community leaders and board member, he knew that the current environment must be rectified in order to maintain a high-quality, educational atmosphere. Pickering

attended the board meetings and became familiar with the plans and referendum proposal. Like many school employees, he and his wife went door-to-door promoting the referendum before the election.

At the same time, Pickering began to ask questions in public meetings. He wanted to see the proposed building plans. He was willing to sell the plan to the community, but he wanted to be assured that he was properly representing the plan and telling his neighbors the truth. He understood that most citizens had little knowledge of the current overcrowding situation, and even less had an understanding of the actual referendum proposal. Pickering had a natural aptitude for understanding the important particulars of the project. From my experiences with him, he would be the perfect spokesman for the referendum. I am sure people were impressed with his candor and willingness to answer their questions honestly.

He assured people that the building project was needed. He also assured them that the board members and the school administration promised to look out for all parties. Both communities would have new buildings and both communities would share the athletic facilities in order to save money and initially keep the district together. Yes, the overcrowding problem had been exacerbated by poor planning, but it was too late to do anything about that at this point. The building was needed now; the community could deal with the elected officials that got them in this situation later.

#### The Election Results

The community was distracted by several side issues. According to Pickering “The Lockport citizens were concerned that Romeoville would have a new school and immediately request that the state board of education allow them to form their own

independent school district. Citizens in Romeoville and Bolingbrook did not like the idea of sharing athletic facilities on the other side of the river.” Citizens from both communities questioned the poor community planning. The campaign to promote the referendum was strong. Concerned parents, school officials and teachers worked hard to persuade the community to vote for the plan. However, the referendum was still narrowly defeated.

At this point, the situation had become critical, but the pro-referendum side had gained momentum. Community leaders, school employees and concerned parents united to immediately promote a new referendum. Time was of the essence; they felt they had to keep the momentum going. The board members and administration would quickly draw up and submit a new referendum proposal, and concerned parents, community leaders and teachers, including Marvin Pickering and his wife Martha, would again go door-to-door promoting the new referendum. In December of 1961, the school board resubmitted the bond referendum. The school employees and community were told that the new referendum included some minor cost changes due to the updated construction estimates. This time the school board asked for \$5,500,000 for the construction of the two buildings. All of their hard work and swift actions paid off. The second referendum passed. The bonds were issued and the school board began planning the construction of the two new high schools.

#### New Directions—“Misguided Priorities”

This was the biggest construction project this school district and the communities had ever been involved with. There were two major building projects in two different communities to manage. Both the majority of board members and the administration

were inexperienced in major building projects. The superintendent was relatively new and many of the board members had never overseen a major project like this. According to Pickering, "There were problems from the beginning." There were problems in monitoring and managing costs as well as selecting contractors. The board began to divide along the lines of the communities they resided in. The board members from Romeoville were primarily interested in the progress and quality of the West Campus, and of course, board members from Lockport were primarily interested in the East Campus. The superintendent was concerned with keeping the board members happy.

The first signs of trouble were very apparent; the board members' priorities began to shift. The teachers felt that the board was funding athletic program over academic programs. In many other schools in the area, parents were asked to contribute to the cost of the athletic programs that their children participated in. Pickering explained: "This was not the case in Lockport. Here citizens are expected to contribute to academic programs and athletic programs are well funded. It's a matter of leadership and misguided priorities." The original building bond referendum called for approximately \$3.2 million to be spent on the West campus building and \$2.3 million on the East Campus. When questioned about the cost compared to other neighboring school building projects, board member were quoted as saying "they wanted to overestimate the cost and assured the taxpayers that they would only borrow what was absolutely necessary." Not only did they need to borrow the entire amount asked for, they were going to need more. Cost overruns in the construction on the West Campus began to eat into the funding for the East Campus. The following editorial appeared in the *Lockport Herald* in May of 1964:

The citizen voted to support a referendum for 3.2 million dollars for the West side school and 2.3 million for the East side school. It now appears

that the west side school cost more than the originally allocated. Who knows what the final cost will be for the east side school.... Academic areas have suffered while athletic areas have been increased. For instance, Mr. Taxpayer, do you know that the high schools have pitching machines; scouts and movies of opposing teams, sodded football and baseball fields. In comparison the library has had to have book fairs to raise money to buy books. Remember the picture of the empty shelves in the library of the new West high school and the new football uniforms for the west side school.

When teachers ask for materials to use in their classes, they are told there isn't any money. For instance, no money for a debate team, no money for a science fair. No doubt lack of financing for trade school programs played a part in the resignation of machine and woodshop teachers.

As Pickering witnessed these events unfold, he knew trouble was ahead. He began to notice little things that most citizens and teachers didn't initially recognize. The board, embarrassed by the bad press, began cost cutting measures. However, the board's cost-cutting process began to chip away at the East Campus construction. Pickering and I took a trip back to the East Campus as part of my research. During our tour, he began to explain the issues and showed me exactly what he experienced as a teacher in the building. "You have to remember, we had high expectations—this was a brand new school." He explained that cutbacks and cost shaving resulted in an intolerable environment in many places around the building. "They would make crazy decisions, like not planting grass seed in back of the building. This was a large open field with no trees. On windy days the south side of the school was like a dust bowl." He recalled piles of dirt collecting in the corners and the windows which were constantly dirty. He had to keep the windows in the classroom closed.

As we continued our tour, he pointed out that some of the cutbacks were quite severe. "Yes, many classrooms were built with just three walls; they had to build the back

walls of several classrooms several years later. You would be teaching and see and hear people walking through the hallways.” This may seem unbelievable, but in fact you can still see where the school had to construct the back wall of several classrooms years later. “They even went as far as to cut out heating ducts in some of the rooms on the south side of the building.” He recalled students having to wear winter coats in January and February to stay warm. “The floor would actually freeze.” This would have been bad enough, but what he discovered next put him over the top.

#### Epiphany “Support to Confrontation”

The original plans presented to the public required both school campuses to initially share athletic facilities. However, the board members and administrators secretly reintroduced these facilities in the second referendum plans. “The original construction cost didn’t increase; they secretly reinserted the athletic facilities.” Pickering felt betrayed. “You see I was out there telling people one thing and here the plans had changed without anyone telling us.” Pickering was becoming more and more involved and he did not like what he witnessed. “We could understand if the district was just temporarily short of funding, but they were wasting money on new athletic facilities no one knew about, and meanwhile, our teachers and students would have to settle for classrooms without four walls.”

To make things worse, the school board and administration were now talking about proposing a tax hike. This referendum would ask the citizens to increase their real estate taxes each year. As a citizen, Pickering was annoyed. He witnessed a building project riddled with mismanagement and misguided priorities. Now this same group

wanted the taxpayers to entrust them with more of their tax dollars. He understood that the students needed these projects completed, but he hated the way business was done. In May of 1964, the school board submitted a referendum to raise the property tax rate.

### First Election Results

The following article was published in the *Lockport Herald* 3 days after the referendum election to raise property tax rates:

Voters of district 205 defeated the high schools' educational and transportation tax increase referenda held Saturday, May 23, by a four to one margin. The high schools' present educational tax rate is \$0.65 and they asked for a \$0.21 increase boosting the rate to \$0.86. Transportation rate is \$0.02 and they asked for an \$0.08 increase raising the rate to \$0.10 per \$100.00 of assessed valuation.

Vote on the educational tax increase was 332 yes votes and 1350 no votes. There were 301 yes votes on the transportation increase and 1377 no votes. Reasons cited for needing additional revenue is the operation of three schools instead of one and the increased enrollment.

The citizens of Lockport were very unhappy with the progress and management of the building construction. As a result, the citizens overwhelmingly rejected the request and voted to defeat this referendum. The school board and administrators felt that since they were able to overcome a defeat on the bond referendum, they could do the same with the referendum to increase property taxes. However, this time they had lost community support.

The school board members and administration were determined to push forward. They began to change tactics. If they could not compel the citizens with the merits of the tax increase proposal, they would try to scare them into supporting it. This same tactic would now be used to mobilize the teachers and school employees. Instead of

encouraging their support, they were now told they had to canvas their neighborhoods and drum up support for the resubmission of the tax increase referendum.

Pickering joined the other teachers in promoting the new referendum. However, now the tone had changed. Pickering recalled, “The superintendent told the teachers, and I quote, ‘any teacher that opposes the referendum should be prepared for the consequences’.” In the weeks preceding the election for the new referendum, a few teachers claiming to represent the Teachers’ Organization wrote a letter to the local paper stating: “Some curtailment of essential curricular offerings has already occurred. Continued refusal to provide funds must eventually result in more drastic reductions in curriculum, equipment and services” (*Lockport Herald*, 1964). Another letter by the same group of teachers stated: “Voting no on Saturday, September 19 will mean our students will be offered substandard educational opportunities which could lead to a substandard outlook in adult life” (*Lockport Herald*, 1964).

On September 19th the community again rejected the proposal and voted to defeat the referendum. At this point Pickering felt betrayed by the board and the school administration. He also felt that he and the other teachers were used. He knew that this group of leaders did not deserve the voters’ support. The mismanagement, misleading actions and arrogance turned the communities against the school. He could not in good conscience support this group of individuals, and he knew he would not let them use him to mislead the voters any longer.

#### Notes and Analysis

The research of the Lockport referendums in the early 1960s provides several themes and findings. Although, this research is admittedly from the perspective of

Marvin Pickering, it shed light on the consequences of failed leadership. Researchers examining the events related to the referendums would emphatically state that they were great successes. Admittedly, the second building bond referendum narrowly passed, but the construction and finance management were widely criticized at the time. In addition, several political and personal scandals resulted from the process which will be examined in subsequent chapters.

After examining the process, Pickering and I have identified three crucial mistakes which were committed by the board members and school administration. According to Pickering, “the board members and school administrators made three blunders; first they were not forth coming with information and therefore lost the trust of the citizens and employees, second they let side issues both personal and political affect their judgments and actions, and third they changed the tone from one of cooperation and community involvement to one of intimidation and scare tactics.” Good leadership is stalwart in the face of trouble. Leadership is both a part of who you are and what you do.

Pickering took time to learn the issues, facts, and complexities. He would ask questions and challenge these individuals based on his acquired knowledge. He may have even been one of the reasons they felt it necessary to hide facts from the community. According to Pickering, “Any organizational initiatives that involve community support must be open, honest and clearly illustrate the intentions and merit of the initiative.” More than any other issue he had with individual leaders, he was most disturbed by the lack of honesty and trust.

The second mistake made by this group of community leaders was the distraction from the central goal, or side issues. Board members became caught up in community

politics, personal aspirations, individual egos and shifting priorities. Once these side issues distracted these individuals, they could never recover. They began to struggle among themselves and worse, they exacerbated the concerns and struggles between the communities involved. Many of the individuals involved were inexperienced. However, according to Pickering, several of the individuals lacked the level of integrity he hoped and expected of community leaders. Individual integrity is never easy, and is never supposed to be. Integrity may be the most difficult of all personal qualities to hold intact because of its complicated nature and the multiplicity of its dimensions.

The final mistake made by this group was their loss of composure. In discussing the experience with Pickering, he identifies the point in which these leaders lost their composure as the end of the road. "Effective and admirable leadership requires composure." This group and the community were bound to face many challenges and problems. They were admittedly inexperienced in this type and size of a project. However, challenges, problems, conflicts and obstacles are inherent in any organization and in any leader's path; how a leader conducts himself during the good times and the bad can be indicative of his character, competence, and ultimately, credibility. When the tax referendum failed, and citizens began to question their competence and character, these board members and the school administration lost their composure. They abandoned their strategy of cooperation and community involvement in favor of intimidation and scare tactics.

Pickering was a good soldier. He worked hard on behalf of the board and administration. He and his wife went door-to-door in order to fulfill his responsibility. He publicly supported the process even though he had many reservations regarding the

decision and actions of the board members and administrators. However, he was not going to follow this group as they turned on the very people they ask to support them. Pickering has a strong sense of responsibility to his community. At this point, Pickering no longer trusted or believed in the ability of the board members and the school administration to lead. "Followers expect their leaders to be composed. You know, sometimes leaders have to come from within the ranks. Often when a leader loses his composure, others step forward." This was the time Pickering was needed. He instinctively knew that he needed to act. He also knew the danger he faced as a junior faculty member.

## CHAPTER 3: THE LETTER

### A Time to Speak Out as a Concerned Citizen

When Marvin Pickering returned to school after the failed referendum, the tone was negative and the teachers did not know what to expect. There was finger pointing and accusations over the failed referendum. The following evening, Pickering decided to do something about the situation. He began to reflect about the last 3 years. When I asked why he decided to write this letter, his response was simply, “I don’t know I just felt we were betrayed.” He never set out to start a major legal battle. “I just felt someone needed to confront these people.” That night Pickering reviewed all or most of the articles that were published in the local paper. He decided to write a rebuttal to the doom and gloom picture that had been painted by a select group of teachers and the superintendent in support of the referendum.

He initially intended to give a different perspective, but as he began to review the articles put forward by the school leaders and their supporters, he began to rebut each of their false statements in his letter. This may explain why the letter itself reads like a rebuttal. Pickering addressed each incomplete fact, exaggeration and intentional untruth that was published in support of the referendum. Pickering was meticulous in addressing each issue he knew to be false or misleading. When Pickering and I reviewed the actual letter, he had original pen marks and notes related to each comment. “I knew this could get me fired, but I believed I had the right as a resident and citizen of Lockport to inform the community of the situation. I also knew someone who had a handle on the facts needed to persuade the board to re-examine their actions.”

In this light, one can actually see the commentary he is making to the board members and the superintendent. He wanted them to take a step back and comprehend what they told the community over the last 3 years. “You see they could not comprehend why the citizens OVERWHELMINGLY rejected their referendum proposal.” Looking back, he now realized that any attempt to persuade this group of individuals to examine its own actions and take responsibility for the situation was futile. In the end, the people in this community needed to know what type of mess this group of elected individuals had put the school district in. He also wanted the community to understand the environment the teachers were facing at work. This was a difficult and emotional action. He was not an irresponsible employee. He was not a malcontent teacher. He did not initially have any personal conflicts with members of the board or the superintendent. He was a citizen asking this group of community leaders to consider their words and actions and how their words and actions resulted in the community unanimously turning their back on the school. He wrote a letter to the local paper which was published 2 days later (see Figure 5).



Figure 5 - Letter as it appeared in the Lockport Herald.

The content of Pickering's letter is follows:

The Actual Letter

Thursday, September 24, 1964, Page 4

Dear Editor:

I enjoyed reading the back issues of your paper which you loaned to me. Perhaps others would enjoy reading them in order to see just how far the two new high schools have deviated from the original promises by the Board of Education. First, let me state that I am referring to the February thru November, 1961 issues of your paper, so that it can be checked.

One statement in your paper declared that swimming pools, athletic fields, and auditoriums had been left out of the program. They may have been left out but they got put back in very quickly because Lockport West has both an auditorium and athletic field. In fact, Lockport West has a better athletic field than Lockport Central. It has a track that isn't quite regulation distance even though the board spent a few thousand dollars on it. Whose fault is that? Oh, I forgot, it wasn't supposed to be there in the first place. It must have fallen out of the sky. Such

responsibility has been touched on in other letters but it seems one just can't help noticing it. I am not saying the school shouldn't have these facilities, because I think they should, but promises are promises, or are they?

Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow, I feel I must say something about the letters and their writers. Many of these letters did not give the whole story. Letters by your Board and Administration have stated that teachers' salaries total \$1,297,746 for 1 year. Now that must have been the total payroll, otherwise the teachers would be getting \$10,000 a year. I teach at the high school and I know this just isn't the case. However, this shows their "stop at nothing" attitude. To illustrate further, do you know that the superintendent told the teachers, and I quote, "Any teacher that opposes the referendum should be prepared for the consequences." I think this gets at the reason we have problems passing bond issues. Threats take something away; these are insults to voters in a free society. We should try to sell a program on its merits, if it has any.

Remember those letters entitled "District 205 Teachers Speak," I think the voters should know that those letters have been written and agreed to by only five or six teachers, not 98% of the teachers in the high school. In fact, many teachers didn't even know who was writing them. Did you know that those letters had to have the approval of the superintendent before they could be put in the paper? That's the kind of totalitarianism teachers live in at the high school, and your children go to school in.

In last week's paper, the letter written by a few uninformed teachers threatened to close the school cafeteria and fire its personnel. This is ridiculous and insults the intelligence of the voter because properly managed school cafeterias do not cost the school district any money. If the cafeteria is losing money, then the board should not be packing free lunches for athletes on days of athletic contests. Whatever the case, the taxpayer's child should only have to pay about 30 cents for his lunch instead of 35 cents to pay for free lunches for athletes.

In a reply to this letter your Board of Administration will probably state that these lunches are paid for from receipts from the games. But \$20,000 in receipts doesn't pay for the \$200,000 a year they have been spending on varsity sports while neglecting the wants of teachers.

You see we don't need an increase in the transportation tax unless the voters want to keep paying \$50,000 or more a year to transport athletes home after practice and to away games, etc. Rest of the \$200,000 is made up in coaches' salaries, athletic directors' salaries, baseball pitching machines, sodded football fields, and thousands of dollars for other sports equipment.

These things are all right, provided we have enough money for them. To sod football fields on borrowed money and then not be able to pay teachers' salaries is getting the cart before the horse.

If these things aren't enough for you, look at East High. No doors on many of the classrooms, a plant room without any sunlight, no water in a first aid treatment room, are just a few of many things. The taxpayers were really taken to the cleaners. A part of the sidewalk in front of the building has already collapsed. Maybe Mr. Hess would be interested to know that we need blinds on the windows in that building also.

Once again, the board must have forgotten they were going to spend \$3,200,000 on the West building and \$2,300,000 on the East building. As I see it, the bond issue is a fight between the Board of Education that is trying to push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money.

I must sign this letter as a citizen, taxpayer, and voter, not as a teacher, since that freedom has been taken from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?

Respectfully,

Marvin L. Pickering

### The Reaction

Pickering was not sure what the reaction to the publication of his letter would be. He knew several individuals would want him fired; however he believed that a few of the calmer heads would prevail. There were rumors floating around the school that he was to be fired. Several teachers were fearful to be seen talking to him. He could recall having to meet in the men's room with them to discuss the situation. As time went by, he began to think that they would not take any action. Maybe they actually read the letter...thought about the issues presented ... and maybe...tried to understand why the referendum failed. "We would find out soon. The school board meeting was scheduled a week later; this

might be the place the issue would be brought up.” A group of citizens, neighbors, and parents attended to show support for the Pickering family.

On October 8<sup>th</sup> 1964, the Lockport Township High School Board of Education meeting at the new West Campus met for a regularly scheduled board meeting. Pickering and his wife and 2-year old daughter were in attendance. The board met in a closed session for over an hour. They were discussing the adoption of another School Board resolution. However, this resolution was to dismiss Marvin Pickering. The following article was written by an eyewitness and published in the *Lockport Herald* in October of 1964 describing the event that night.

Headline: District 205 Dismisses Teacher At Meeting (see Figure 6)

After an hour and 10 minute executive session held October 8th, Lockport Township High School Board of Education asked the secretary, Carrol H. Ward to read the resolution dismissing Marvin L. Pickering, a high school science teacher, as of Dec. 30, 1964. The vote was unanimous with all board members present. There were no comments made.

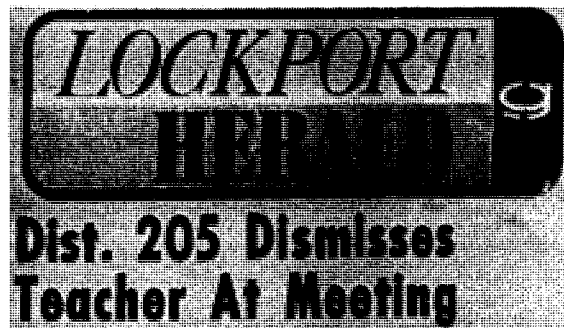


Figure 6 - Announcement as it appeared in Lockport Herald.

The board refused to answer any questions. The basis for the dismissal was initially for statements in the published letter. The board charged, “The letter contained many untrue and false statements which these statements unjustifiably impugned the ‘motives, honesty, integrity, truthfulness, responsibility and competence’ of both the Board and the

school administration” (*Lockport Herald*, 1964). The Board also charged that the false statements damaged the professional reputations of its members and of the school administrators, would be disruptive of faculty discipline, and would tend to foment “controversy, conflict and dissension” among teachers, administrators, the Board of Education, and the residents of the district. There were public outbreaks of shouting and disorder, the board would have to schedule a second meeting 4 days later. This time the community would be there in force. The local newspaper published a large ad encouraging citizens to turn out to support Pickering and the right to free speech. The place was packed, but the board attorney would not allow any petitions to be accepted and would not discuss the Pickering case, due to possible legal issues involved.

Meanwhile, Pickering was surprised that the board members and administration would challenge the truthfulness of his statements. He knew he could prove the accuracy of each statement. This would only publicly embarrass these individual even more. “I was sure if I had a chance to defend my statements, I would be proven correct. The other charges were ridiculous, unjustifiably impugned the motives, honesty, integrity, truthfulness, responsibility and competence of both the Board and the school administration.” He felt they had impugned themselves. He knew he would need a lawyer and he needed to find out what his legal recourse would be.

### Legal Context

Pickering was a smart and educated man. He began to seek legal representation, but he also researched the law regarding free-speech and public employment. “It was not like today, there was no Internet, and there was no *Legal Matters for Dummies*. I had to

read legal journals and briefs.” The legal context at the time Pickering was dismissed definitely weighed against him.

The legal relationship between public employees and their governmental employer is a unique relationship. This relationship not only involves the usual duties of an employee, but also the obligations of that governmental body to the citizens it is intended to serve (Kaplin & Lee, 1995; Rich, 2002). The legal context up to this point was that the employer-employee relationship allowed the State or the government employer the authority to establish standards of performance. The State or government employer also was granted the right to enforce these standards by discharging an employee who failed to abide by them (Kaplin & Lee, 1995; Rich, 2002). The courts had recognized and supported this line of thought based on the belief that it was needed in order to maintain efficiency in public service. Understanding this point, Pickering knew this was going to be an uphill battle.

On the other hand, he felt he was justified in speaking as a taxpayer and resident of the community exercising his freedom of speech. The citizen-state relationship at the time required that government employers recognize the rights of their employees as citizens, with all the constitutional guarantees afforded them by the First Amendment. (Kaplin & Lee, 1995; Rich, 2002). That is if it doesn't involve their terms of employment, so far so good for Pickering. So does the First Amendment allow a government employer to use a public employee's speech as the grounds for discharge or denying a promotion? The Supreme Court's answer to this question was simple: “Yes.” Justice Oliver Wendell Holmes wrote in 1892, “There may be a constitutional right to talk politics, but there is no constitutional right to be a policeman.” (Kaplin & Lee, 1995,

p. 103). This legal precedent was maintained even as late as 1952 when, in *Adler v Board of Education*, the Court said, “You have a constitutional right to say and think as you will, but you have no constitutional right to work for the government” (Kaplin & Lee, 1995, p. 303).

Occasionally, a public employee (like Pickering) is compelled, with direct knowledge of circumstances, to criticize their governmental employer. However, the legal context of the time established that the State had been likened to a private employer with regard to its ability to discharge those critical employees. Thus, based on the fact that, “a public employment is neither property nor a constitutional right; public employers had an absolute right to discharge” (Kaplin & Lee, 1995, 303). The legal precedent involving public employee freedom of speech recognized over the last century was clearly in favor of the public employer. However, the uniqueness of Pickering’s knowledge and actions provided a rare opportunity to challenge, and maybe overturn, legal precedence.

#### Personalities and the Reaction

The Pickering dismissal was the talk of the town. People were asking for back copies of the *Lockport Herald* to read his letter. He received phone calls from teachers, parents and newspaper reporters from around the area. A neighbor and prominent citizen of the community publicly supported Pickering by circulating a petition. Pickering had her son in his science class. She planned to present the petition to the board at the next scheduled board meeting. Citizens, parents, and neighbors called Pickering to let him know that they signed the petition and would be at the board meeting to support him. Fellow teachers called Martha Pickering to inform her they would help by caring for their

2-year old daughter if she wanted to be there to support her husband. The community planned to form a citizen's committee for free speech. Most people were supportive of Pickering; however the board stood firm against him. The Board had a group of citizens and teachers who supported its actions. They pressured the editor of the *Lockport Herald* and questioned her judgment in publishing opinions that were damaging to the school district. A few days before the hearing, the following statement was published in the editorial page of the *Lockport Herald* newspaper:

Between the proposed sale of the public library property and the dismissal of a high school teacher, things are really buzzing in Lockport. You may be assured that The *Lockport Herald* will keep you fully informed on all the happenings in these matters because, as you faithful readers well know, we are interested in everything that happens in Lockport, and we devote our entire efforts to this community.

As an editor, I am a believer in freedom of speech and as such make these pages available to everyone, whether their opinions coincide with mine or not. I am certainly interested in the opinion of the community whether they be elected officials or taxpayers, but you may be sure no one can pressure this editor into making editorial decisions.

We regret that Mr. Pickering and the High School Board have clashed, and a report of the Board's action is on this week page 3. Both parties to this disagreement firmly believe the other side to be wrong, and therefore it will take a set of attorneys and a hearing to decide the issue.

IT IS UNFORTUNATE that citizens usually ignore school boards and the library board, or any other publicly-elected tax-supported group until a controversy arises. Then the taxpayers get excited and begin writing letters to the editor, signing petitions and looking into the system involved.

As an editor I have attended scores of meetings of these tax-supported groups where there were no more than one or two citizens in attendance. But now ... they have to find a lot of extra rooms for the citizens who have a renewed interest in their deliberations.

Perhaps the newly-formed citizens committee will nudge some citizens into seeking office on some grade school, high school, library, township or village board.

At this point the ball was rolling and picking up momentum. The board had made its decision and Pickering had few options. Pickering sought legal counsel.

## Community Support

Several members of the community including parents, students and the local newspaper supported Marvin Pickering during this period. In addition, the American Federation of Teachers immediately and continuously supported Pickering. As a teacher at Lockport High School, Pickering was a local member of the American Federation of Teachers (AFT). He immediately contacted their national office which happened to be located in nearby Chicago. He was directed to a local Chicago Attorney named John Ligtenberg. Pickering met with his attorney a week later.

Ligtenberg served as the AFT's Council. He was a well-respected and courageous fighter in the battle for social justice in the 1950s and 1960s. Ligtenberg was probably best known for his Amicus Curiae brief in the Brown v. Board of Ed case in 1953, stating:

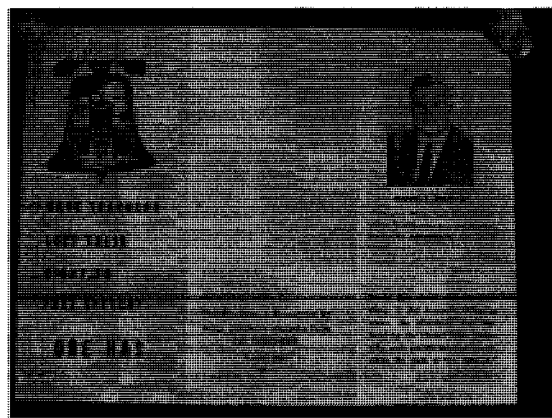
The American Federation of Teachers feels that desegregation on the American scene is successfully proceeding in various ways-by voluntary community action, by legislative acts, by judicial review, by military and religious authority and by individual initiative. In all of these cases the question of appropriate method, timing and who should take the initiative, arises. We believe that the public school being one of the molders for our citizens of tomorrow should take the lead; we believe the time is now-we believe we have the 'know-how'-we believe the most logical authority is the Supreme Court.

Ligtenberg informed Pickering that he was guaranteed a public hearing as a tenured faculty member. He was also guaranteed a Bill of Particulars from the school board. The Bill of Particulars would spell out exactly what Pickering was charged with. The Bill of Particulars is a written statement used in both civil and criminal legal cases. The document is written and submitted by a plaintiff or a prosecutor at the request of a defendant. The purpose of this "Bill of Particulars" is to provide the defendant detailed

information concerning the claims or charges made against him or her. It also serves to expedite the orderly progress of judicial proceedings by reducing, if not eliminating, the need for the amendment of ambiguous or vague pleadings. The Bill of Particulars is not proof of the facts it states, but, rather, a clarification of the charges (Kaplin & Lee, 1995).

At this point, Pickering knew he had a fighting chance. Although, the legal context at the time favored the school board, he had strong legal representation and a strong understanding of the facts. The hearing before the school board was scheduled for November 19, 1964. His attorney began to plan their case and mobilize local and national support. The following article was published in the Federation of Teachers newsletter:

Under the direction of Lockport Federation of Teachers, Local 1291, a "Freedom of Speech Defense Fund" has been established in support of Marvin L. Pickering. Pickering, an East High School Science teacher, was recently dismissed by the Lockport High School Board of Education for writing a letter which was critical of the policies of The Lockport High School Board. The American Federation of Teachers at all levels is supporting Mr. Pickering in his fight for the retention of his position through the Illinois Courts. Such costs are extremely great. Freedom as its best, in any sense, is expensive; but who would deny that it isn't worth every effort and cent that it may cost. All contribution will be gratefully acknowledged. Please send contributions to "Freedom of Speech Defense Fund" in care of the Lockport Federation of Teachers, Local 1291, Post Office Box 63, Lockport Illinois (see Figure 7).



*Figure 7 - American Federation of Teachers newsletter supporting Pickering.*

Pickering and his attorney now examined the details of the charges. This was a six page document listing over 40 charges. Looking back, Pickering seemed amused at this document. "Like everything else during this period, I think the board members overstated the case a bit." A copy of the original cover page for the "Bill of Particulars" received by Pickering is shown below. Pickering and his attorney made the markings as they reviewed each charge making notes and recording facts. Some of the charges list almost every line in Pickering's letter. It would refute the most minimal point. The following is an example of a few of the charges: "Item P. The bond issue has not been twice defeated." So the board was quarrelling over the words **bond referendum** rather than **property tax increase referendum** which was defeated twice. However, even their own Bill of Particulars included similar mistakes. "Lunch prices are not 35 cents rather 30 cents because of packing lunches to athletes."

While Pickering and his attorney were preparing for the hearing, several citizens in the community came to his defense. The Editor of the Herald supported Pickering also as a matter of free speech. Petitions were circulated and signed by over 1200 people (out of a total population of 2500) and called for a rescinding of the dismissal. This type of community support was very much appreciated by the Pickering family; in fact, Pickering has saved a copy of this petition for 40 years.

#### Petitions Supporting Marvin L. Pickering

To: The Board of Education of School District No. 205, Will County,  
Illinois

We the undersigned being residents of School District No. 205, Will County, Illinois do hereby and herewith petition the Board of Education of School District No. 205, Will County, Illinois to reconsider its action in discharging and terminating the services of MARVIN L. PICKERING as a member of the teaching staff at Each High School in

Lockport Township, Will County, Illinois by action of the Board taken at its regular meeting held on October 8, 1964, for the reasons set forth in a certain Bill of Particulars served upon said MARVIN L. PICKERING under date of October 9, 1964, relating to a letter addressed by said Marvin L. Pickering to the Editor of the *Lockport Herald* under date of September 24, 1964 and do respectfully request the Board of Education to reinstate said Marvin L. Pickering for the following reasons:

1. Said letter represented the views of the writer only and as such was informative to the public, and he should not be condemned for rendering a public service.
2. That to curb "FREE SPEECH" would destroy what this Country has worked and fought for and is guaranteed to all persons by the laws of our land.
3. That MARVIN L. PICKERING is an owner of real and personal property in School District No. 205 and as such has a vital interest in any school expenditure which could cause an increase in the school tax levy and as such has a right and a moral obligation to speak out on matters within his knowledge affecting the taxation of the District.
4. That there is nothing derogatory in the remarks made by Marvin L. Pickering to any member of the Board, to the Superintendent or the Staff.

That it is for the best interests of the District that Marvin L. Pickering be reinstated to his teaching position for action taken which does not affect his teaching ability.

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF WILL        )

I, \_\_\_\_\_, hereby certify that I am a voter and reside within School District No. 205, Will County, Illinois described in this Petition and that the above and foregoing signatures were signed in my presence and are genuine, and that to the best of my knowledge and belief the persons so signing were at the time of signing qualified voters.

Sign:

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of October, 1964.

\_\_\_\_\_

## Notary Public

### Day of the School Board Hearing

This must have been a harrowing experience. In discussing these events with Pickering, I observed an unusual level of emotion when he talked about the day of the hearing. I asked him to revisit the room where the hearing took place. That afternoon, in the old library we retraced his memories of that day. It was a cold, November afternoon. The hearing was to take place in the large library in the old central campus. The public was not allowed. In the middle of the old library, the school board had three tables setup. At one table sat Pickering and Ligtenberg, another for Dr. William Blatnik, the district superintendent, and Lou Bertani the attorney representing the School Board, and the last table for William Verda a local attorney. Verda was asked to act as the judge or arbitrator for the hearing.

Under Illinois Revised Statues Chapter 122 “a school board has power to dismiss a teacher for in competency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interest of the school requires it. ... Dismissal or removal shall not become effective until approval by a majority vote of all members of the board upon specific charges and after a hearing.” Under Illinois law the board could act as plaintiff, prosecutor, judge and trier of the facts. In addition, the board’s findings were considered prima facie (at first determination) correct, pending judicial review (Illinois Revised Statues Chapter 122). As a result, this Illinois statute permitted the school board to control the evidence in support or in opposition to any findings, order, determination or

decision. According to the statute, the same school board that was to judge the evidence, also had the authority to control what evidence they would permit to be heard. (Illinois Revised Statutes Chapter 122).

According to the school board's opening statement, the hearing was a formal legal proceeding which was to address the accuracy and inaccuracy of the statements in the letter. Pickering was informed that the hearing, was solely intended to determine if the statements noted as false or untrue were proven to be so, Pickering would be found guilty. At that point, the Board could confirm his dismissal. The board set the agenda and items they would scrutinize. The board's attorney never introduced any evidence nor was Pickering's attorney allowed to introduce evidence concerning the disruption of teacher discipline or the reputation of the board members, administration or school. Marvin told me "Of course, these statements would not be examined, there is no way they could prove these statements by the board were true – you see they could publicly accuse me and I had no recourse in their hearing." Every time Ligtenberg tried to introduce evidence related to the most damaging charge, the board's attorney would object and the judge would sustain the objection. (*Lockport Herald*, 1964).

Bertani questioning focused on several pieces of supporting evidence regarding specific statements made by Pickering in the letter. Their evidence included the letter, school audits, the letters to the editor written by the teachers, and several published newspaper articles on the original building bond issue back in 1961. The board called the superintendent, the school auditors, the architect, and the chairman of the teacher's committee as witnesses. Although frustrated by the tone and the bias of the hearing,

Pickering and Ligtenberg had no other option but to cross examine the board's witnesses and call their own.

The architect was asked to testify about the plans submitted to the board for the second bond issue. Testimony from the architect supported the board's version that the building plans had not deviated. Mr. Ligtenberg's cross examination however, showed that the details of the plan had been changed after the original bond issue was defeated; in fact, these changes were never revealed to the public. The plan was changed to include a pool and athletic fields. An argument then ensued focusing on what "the original bond proposal" meant. Pickering referred to the original bond proposal, the board referred to the second bond proposal as the *original* referred to in the letter (*Lockport Herald*, 1964). "They knew they had changed the proposal secretly, how would I even know of a second proposal. This fact was hidden from the public until after the fact." They moved on the next issue.

One of the teachers that wrote the letter to the editor supporting the referendum was asked to testify. She testified that the letter was submitted to the superintendent for review only out of courtesy. However, Pickering knew better, he passed a note to his attorney informing him that the teacher's handbook required articles intended to be published required administrative approval. The teacher handbook specifically stated 'In order to prevent any possible embarrassment or misunderstanding check all materials with building principals before releasing it. Any information which an individual feels should be published in the local papers should be submitted in triplicate to the publicity coordinator.' (*Lockport Township High School Handbook*, 1964, p. 2). Under cross examination she also acknowledged the fact that those letters had been written by a small

group of teachers representing a larger group and that they had been chosen for the job by Teachers Organization Executives.

Mr. Blatnik testimony refuted many of Pickering's other statements. These included statements regarding teacher's salaries and the School District budget. He also testified that Pickering's account of the cost of athletic programs was grossly exaggerated. However, he was never asked to present real evidence to support his testimony. In response, many of Ligtenberg's questions in cross examination were objected to by the board's counsel. One of the issues the superintendent was asked to clarify was the threat he was overheard making to teachers. The superintendent claimed that his statement was misinterpreted. Pickering explained that "When Ligtenberg tried to question the superintendent, he was repeatedly interrupted. Every one of the Board's counsel's objections was upheld. In fact, every defense motion was overturned by the Board's legal advisor. Well of course, the School Board's legal advisor was actually appointed by the School Board members." The hearing had one purpose and one purpose only, to prove the board's case. Here is a sample of the actual testimony transcribed during the hearing:

*Ligtenberg:* Will it be necessary to make any further cuts during the current year?

*Bertani:* Objection. Immaterial to any issue in question.

*Anderson:* Object sustained.

*Ligtenberg:* Well, it so happens that I agree, I also agree that all this testimony today is basically irrelevant because I think the real issue here is whether he had a right to write the letter, without reference to the fact as to whether every statement in it was true or untrue.

Finally, Pickering himself was asked to testify. His attorney asked him questions regarding what sources he had used, personal knowledge and personal experiences, most of which were objected to and sustained. The hearing went on for two days. Time after

time, Pickering's attorney would prove his statements correct. For example, the line from Pickering's letter quoted the superintendent's threat to teachers and read, "Any teacher that opposes the referendum should be prepared for the consequences" (*Lockport Herald*, 1964). The superintendent admitted saying these words, but claimed that the teacher had misconstrued his intentions. Pickering asked, "How could any teacher misconstrue these words?"

The most damning charge was that Pickering had damaged the reputations of the Board, disrupted the discipline of teachers, and fomented controversy and dissension between the Board, the teachers and the public. However, the Board was careful not to mention or allow any evidence to be introduced that would support or oppose these charges. This was an important strategy employed by the Board knowing that no additional evidence would be allowed in any appeals based on Illinois statute. Mr. Ligtenberg's closing statement reflected this deliberate decision by the board:

I move... that the Board... dismiss the charges...and quash the notice of dismissal on the ground that evidence on both sides as presented here has failed to make a substantial proof in support of said charges. The warrantedness of the statements made in this letter were not in issue. They should not be regarded as the final touchstone of this decision.

The Board's final resolution also reflected the deliberate decision by the Board.

#### Epiphany "The Board Decision"

The board members met the same evening and decided to dismiss Marvin Pickering. The decision came in the form of a final resolution on December 2, 1964.

That this Board...finds and decides from the sworn testimony and exhibits introduced at (the) hearing that the causes and reasons for such dismissal and charges...are true...and that no meritorious or sufficient defense was interposed or proven by...Pickering.

That this Board...finds and decides that said causes and reasons for dismissal...are not remediable and that it is in the best interests of this School District and the schools of the School District that said teacher be dismissed.

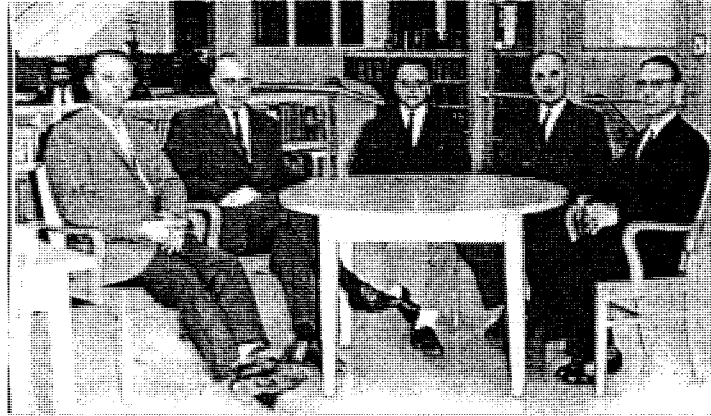


Figure 8 - Lockport Township H. S. Board Members 1964

The Board (as depicted in Figure 8) had concluded that the statements were factually untrue and that this resulted in per se injury to the reputation of the schools and its officials and would be per se disruptive of teacher discipline. Pickering and his family received the Notice of Dismissal on last day of class in December 1964 (*Lockport Herald*, 1964, p. 1).

According to Pickering, “many of the board members were confident that Pickering’s reputation was destroyed in the community.” After all, he had a hearing, he was defended even though he had a high-powered union attorney defending him, and he was found to be publishing facts that were incorrect and harmful to so many! His reputation was questioned by many. According to Pickering, “they thought this was the last they would hear from me.”

Even citizens in the community were convinced this was the end. The following editorial letter was published the following week in the *Lockport Herald*:

Dear Editor:

Most of the reading public in this area are aware of the discharge of Marvin Pickering, science teacher, by the Lockport Township High School Board of Education (District 205). If I were to believe just what I heard today on WJOL radio, I would believe that this man was fired because he exercised his freedom of speech to criticize the school board. Many fair-minded people would hear this account and exclaim, "How unjust!" But is this really why he was fired? Do most of the people know what went on at his public hearing? He was represented there by counsel and it was a fair and thorough hearing which lasted several days.

Mr. Pickering wrote a letter and submitted it to this newspaper. He made statements and presented figures which were in error. Many readers would believe that a teacher would, of course, present the correct facts and figures, trusting that he took the time to check them out. These people would be influenced by such a letter. Now Mr. Pickering says that whether his statements were true or false is of no consequence, he says the only question is one of free speech.

I will say this to Mr. Pickering: "With every right, there is a corresponding responsibility. As a teacher, ours is an even heavier responsibility. We entrust our children's minds to you. Do you teach your students that they can say or write anything, because they have freedom of speech? Do you teach that truth is not the important factor, only 'free speech?' I would rather have instilled in my children that truth is the most important. If you are stating an opinion or a theory, present it as such, not as fact. As a parent and taxpayer, I have disagreed with the high school board many times. I feel that there were many ways in which our money was spent unwisely. I might write a letter to a newspaper, expressing my opinion, but I would not use fact and figures which I knew to be erroneous."

Mr. Pickering says that he is now going to take this case to court. He already has the services of a lawyer being donated to him by a large labor union. If by some chance he should win his case in court (which, in my opinion, would be a miscarriage of justice), the school board would be obligated to rehire him. This would mean that the hiring and firing of our local teachers would not be a local board matter. There are always people who would like to remove control of our local schools, and their policies, from local hands.

Pickering came from a modest family upbringing. He and his family had faced hard times in the past and like most people that lived through the Great Depression, completely expected to face hard times again. He would immediately look for other employment. But, he knew from the moment he left the hearing that this was not the end. Pickering could and did address each accusation in this editorial page. Pickering knew

that if he could receive a fair hearing, he would be proven correct on each statement in the letter. Instead of demoralizing him, it gave him greater resolve. “This group had their way in this town for a long time, but they were in for a big surprise if they thought I would just walk away with my tail between my legs.”

#### Notes and Analysis

Throughout the centuries, people have attempted to define and understand acts of courage, self sacrifice, and integrity. Just about everyone considered themselves to be courageous, but it certainly is possible, in fact probable, that not everyone is. When discussing the topic of courage with Pickering, we agree that the mere act of taking an opposing stance is not necessarily courage; the stance must be based on some form of virtue or merit. Many of the board members may have felt they were courageous in their actions against Pickering. Our society has attributed courage to all manner of actions that may indeed be admirable but hardly when compared to the conscious self-sacrifice on behalf of something greater than one's own self-interest. For example, I can recall leadership classes from my Navy days. We were taught that courage is like a muscle; the more we exercise it, the stronger it gets. I don't agree with this perception of courage; however, I understand the point and worry that individuals become weaker as leaders due to a lack of courage. Were Pickering's actions courageous? We may only understand this if we can understand his inner motivations.

The real issue of this process ultimately was **not** the discovery of truthfulness. Ultimately, the real principle being challenged was the balance between a citizens's right to free speech and the restrictions of a public employee to criticize his employer. Pickering's unique personality dimension made him stand up to the board members and

administration. In this case, Pickering happened to be a public employee and happened to be very knowledgeable of a situation due his position and employment, and possessed a conscience and the courage to confront a publicly elected School Board member's decisions and actions. Up to this point in time, these balances had never seriously been challenged. The legal framework for this balance can be traced to the foundation of the American conception of free speech—freedom of the press (mainly in the context of political criticism) and freedom of religion as developed in England, starting in the 17<sup>th</sup> century (Kaplin & Lee, 1995). Freedom of speech serves an important function in our society and institutions.

One of the most important functions of free speech is that decision-making at all levels is preceded by discussion and deliberation of a representative array of viewpoints. This does not mean just elected representatives. In fact, a decision made as a result of broad debate and scrutiny is more likely to be representative of the community and gain greater acceptance (Alfred, 1999; Lewis & Altbach, 1996). Thus, freedom of speech and public discourse serve society as a means of checks and balances, especially for those who hold positions of power and influence (Hudson, 2002; Johnson, 1999). The Pickering case is an example of failed leadership on the part of School Board members. There was a failure to be open and honest with the community, open to opposing viewpoints, and above all open to criticism. Pickering in no way tried to relinquish local control of the board to make decision or control their actions. He did publicly try to hold them accountable for those decisions. In the famous decision concerning the right of public employees to criticize their employers, Justice Oliver Wendell Holmes wrote in 1892, "There may be a constitutional right to talk politics, but there is no constitutional

right to be a policeman“ (Kaplin & Lee, 1995, p. 103). However, Marvin Pickering would argue, “If a publicly elected leader is not willing to take public criticism they probably should not run for public office.” I would argue that this case strongly illustrates that leadership can surface from unexpected sources when freedom of speech is protected.

In this context, freedom of speech is important for public institutions and their governing bodies. Free speech provides the opportunity for leaders to hear directly the consequences of their decisions and policies (Lewis, & Altbach, 1996; Rhoades & Valadez, 1996). Institutions are ultimately shaped by their leaders’ policies and decisions. The ability to make decisions depends on the leaders’ ability to recognize ethical issues and to reason through the ethical consequences of their decisions. Good leadership must be based on a leader’s ability to persuade or inspire rather than to intimidate, coerce, or give orders (Lewis & Altbach, 1996). Good leaders are also expected to produce cooperative efforts and to pursue goals that transcend their narrow self-interest (Alfred, 2001). Unfortunately, organizational norms and historic legal decisions have encouraged “going along” and discourage questioning the unethical actions of others (Glazer, 1999). This discouragement can quickly compromise ethical standards in any organization. The concept of public employees’ involvement in social discourse in the public work place is only a recent realization in American law. Pickering is definitely one reason for this realization.

## CHAPTER 4: THE DIFFICULT YEARS

### Waiting to Hear the News

The hearing was over and a decision was made; all Pickering and his attorney had to do now was to wait for the official notice of his dismissal. He expected to receive the letter the next day. Instead the board waited to the last day of class in 1964. Pickering would recall, "Many thoughts go through your mind when you are fired. Although it may take a while for you to pick yourself up, you know you will have to work again. More than likely, your ego has been bruised, and it will take some time to heal. This was the first time I had ever been fired."

What made this particularly difficult was that the entire community was aware of his dismissal. Other school districts would not even consider hiring him at this point. He pondered his options. As the school recessed for Christmas break, Pickering would be notified that he was dismissed. The following letter was received on December 18, 1964.

### The Notice of Dismissal

That you did write a certain letter to the editor of the *Lockport Herald*, a newspaper publisher in and having a general circulation in said District, and that you caused said letter to be published in said newspaper in its edition of Thursday September 24 1964 on page 4 thereof, which said letter contained many false statements and comments which directly and by innuendo and without justification questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administration of this district in carrying out their official duties, which said statements, comments and questions contained in said letter written and caused to be published by said Marvin L. Pickering seriously involved and damaged the professional reputation of said Administrators and Board of the reputation of the school of this District and are and will be highly disruptive to the discipline of teachers and the morale and harmony among teachers, administrators, Board of Education and residents of this District, and which said statements and comments will tend to foment controversy, conflict and

dissension among them and jeopardize the welfare of the schools of this District.

This letter of dismissal represented a turning point—it meant that he would no longer be employed by the school district. It also represented a dramatic change in his life.

#### Someone is Missing

It's normal to feel overwhelmed, bewildered or just plain scared when a person loses a job. It is common for most people to experience stages of loss including shock, denial, anger, and depression, before there is finally acceptance. Pickering felt like his life was just turned upside down. He recalled, "I never really dwelled on the situation, I had so many things to think about and to be concerned with." He had to meet with his attorney to plan an appeal. He had small children and a wife at home. He had to find a job quickly! "No, I really didn't have an opportunity to feel sorry for myself or worry about my feelings. Yea, I missed my job, but it was out of my hands now."

As part of the research process, I visited the local community library. As I looked through books, pictures and articles I enjoyed looking for pictures of Marvin Pickering during different periods. However, one memory that personally affected me was when I began to look through the class yearbooks. I found his picture in 1959; he looked so young and green, it made me reflect on how I felt as a new teacher learning the ropes of a new job (see Figure 9).



*Figure 9* - Pickering class yearbook 1963.

In 1960, he still looked young, but he looked more relaxed and happy, more confident. In the 1962 picture, the science teachers posed together. He was smiling.

The students and teachers were excited about the two new schools. The Lockport High School marching band won a national championship and the whole school celebrated. He was in several different pictures in 1963. I envisioned him more involved. The new West campus high school had just opened, the crowding situation was over. The new East campus building was to be completed the following school year.

Then I looked for him in 1964—he was missing. Not one picture! I knew what had happened but I continued to look for pictures of him anyway. Something made me look in the 1965 class yearbook, still not there, 1966 still not there, 1967 still not there, 1968 wow – still not there! I am not sure why, but for a moment I experienced a deep sense of loss. Pickering was gone all that time. I wondered what it would have been like

to be removed from everything related to the school for that period of time. He had made Lockport his new home. He had friends at the high school. I am sure they missed him. I know from our interviews, that he missed them. I wondered where he was and what he was doing during those lost years!

### The Lost Years

After his dismissal Pickering began looking for a job. "I hit the streets, putting in applications anywhere that were accepting them." In early January of 1965, he was hired by the Campbell's Soup Company in Chicago. He was hired as a production supervisor in the meat preparation area on the fourth floor. He worked the swing shift from 2:00 p.m. in the afternoon until midnight. Then a week later his schedule would change and he would work from midnight to 8:00 a.m. the next morning. He went from a one-mile drive to a thirty-mile drive each way. He was happy to have found a job so quickly. He recalled that the managers liked him. "I could explain the process to employees and give them demonstrations." This was a tough job, according to Pickering. Many college graduates would come and go during his time with the company.

In researching Pickering's experience, I was particularly interested in the experience of others who were punished for their public speech. As a result I found most research in this area was performed by C. Fred Alford in studying the experience of whistleblowers. His research examined the effects on the whistleblower, after the whistleblowing event. His research has debunked the perception that these individuals are viewed as courageous employees. The perception that they are credited for bringing a corrupt organization to account for its actions and receiving society's gratitude proved false in most circumstances (Alford, 1999). Alford's research has found a much more

pessimistic experience. The large majority of whistleblowers are financially and socially destroyed. These individuals typically lose their jobs, their houses, their friends, their careers and families (Alford). However, it gets worse. Many of these individuals lose their trust in people and justice (Alford).

There are many individuals that resist this condition of mistrust and often a self defense and justification mechanism results. According to Alford (1999), organizations of all types and affiliations operate on the basis of power, not morality. However, individuals afflicted with this self defending mechanism deny this reality. If individuals that speak out against corruption, mismanagement or negligence were to recognize this reality, then their own actions become less important or even meaningless (Alford). Many of whistleblowers go to extremes to vindicate their actions to prove justice does prevail. They want to see real results from their actions. When observing Pickering, I have witnessed this mechanism. He and his family experienced a disconnection from the community, and many hurtful changes in the life.

Pickering's actions represent classic signs of such a self defense and justification mechanism. He wants to be reassured that his actions resulted in real change, especially during this painful period. During my initial meetings with Pickering, he shared a box of documents he had saved regarding his case. Many of these documents had comments and markings. I especially remember a newspaper article concerning school board member elections. The article pointed out that eleven people were running for the four positions on the board. He was extremely proud that people in the community were now getting involved. He was very interested in vindicating his name and reputation. One way to do

this was to prove that his statements were correct and that board members had personal conflicts of interest involved in many of their questionable decisions.

### Restoring His Reputation

Pickering was now just another citizen in the community. He was free to become as involved in school board issues as he wanted. He would attend board meetings and ask for detail after detail about the board's decisions and actions. This board would finally answer to someone that was interested. In addition, other citizens became interested in the School Board's dealings. The board meetings were now attended by more people. As he became involved in the construction project, he discovered several abnormalities. He also began to question if the board had the public's interest in front of any personal interest. It became public that a board member was employed by one of the companies bidding on the construction contract for the two high schools. When the reporter was interviewing Pickering regarding this issue, he and the reporter were escorted off of the school's property. The following were excerpts from an article published in the Chicago Daily News on Friday December 11, 1964.

As Felix Borio recalls, his position could have been awkward. There he was, a member of High School Board 205 of Lockport Township, Will County. And sitting across the table from him was his boss, Ernest Moore Jr., partner in an architectural firm where Borio works as field superintendent. Moore was asking the board to name his firm of Kruegel, Healy & Moore, to design two new school buildings. The architect's fee on the \$5,000,000.00 would approach \$250,000.00. Three other architectural firms were also bidding for the construction project. Borio's job was to question them all about their plans. Did he feel any conflict of interest as he interrogated his own boss? "Absolutely not," said Borio. When I'm at the board meeting I am representing the 5,000 taxpayers and no one else. But just to play safe, said Borio, when the contract came up for a vote, he passed. "I didn't even make the motion recommendation Kruegel, Healy & Moore," said Borio. One of the other members did. But even without Borios's vote the firm was selected and is

now completing work on Lockport East, the second of the schools.  
(Glubok, 1964, p. 19)

The board members began to turn on one another. When other board members were interviewed about this issue, their comments were, “we brought up objections to this contract award at the time, but he (Felix Borio) just went ahead, knowing his company would get the contract, and let the bid be awarded” (Glubok, 1964). The bid was awarded by a unanimous vote. Pickering also challenged decisions made by Willard Anderson, a local real estate broker in the area. Pickering strongly felt that he was involved in several school board decisions from which he would personally benefit.

Pickering also began to try to vindicate his reputation. Pickering reviewed each statement from his letter that was charged as being untrue and gather the facts that proved him correct. Many of these facts were cut and dry. He was correct, and the board members were either putting out incorrect information or trying to hide information from the public. One such example was the statement concerning teacher’s salary. Pickering’s exact statement in the letter was

I feel I must say something about the letters and their writers (meaning the superintendent’s comment about teacher’s salaries). The letters by your Board and Administration had stated that teachers’ salaries total \$1,297,746 for 1 year. Now that must have been the total payroll, otherwise the teachers would be getting \$10,000 a year. I teach at the high school and I know this just isn’t the case. However, this shows their ‘stop at nothing’ attitude.

In fact, not one teacher earned \$10,000 a year in salary as revealed by the pay schedule that was published in the *Lockport Herald*.

## HS Teachers Get Raise Averaging \$316 Per Year

**LOCKPORT TOWNSHIP HIGH SCHOOL  
1962 - 1963 SALARY SCHEDULE**

Experience	Step				
	1	2	3	4	5
	B.A.				
	2/3				
	M.A.				
	4/30				
	Ph.D.				
1	\$ 3000	\$ 3100	\$ 3200	\$ 3300	\$ 3400
2	3225	3325	3425	3525	3625
3	3450	3550	3650	3750	3850
4	3675	3775	3875	3975	4075
5	3900	4000	4100	4200	4300
6	4125	4225	4325	4425	4525
7	4350	4450	4550	4650	4750
8	4575	4675	4775	4875	4975
9	4800	4900	5000	5100	5200
10	5025	5125	5225	5325	5425
11	5250	5350	5450	5550	5650
12	5475	5575	5675	5775	5875
13	5700	5800	5900	6000	6100
14	5925	6025	6125	6225	6325
15	6150	6250	6350	6450	6550
16	6375	6475	6575	6675	6775

Schedule for elimination of steps: 62-63  
B.A. 14  
B.A. plus 15 15

Figure 10 - Teachers salary schedule as published by the Lockport Herald.

The salary cited by the administration in their editorial letter included all employees just as Pickering had charged (see Figure 10). However, in their seat of power they did not have to prove the truth of their statement until now. Pickering would eventually prove the majority of his statements to be true, except one. The statement, "Since there seems to be a problem getting all the facts to the voter on the twice defeated bond issue, many letters have been written to this paper and probably more will follow, I feel I must say something about the letters and their writers." The reference to a twice defeated referendum was not a bond referendum, but a tax increase referendum. This fact bothers Pickering because he took pride in the fact that he was careful in his choice of words.

### The County Appeals Process

Marvin Pickering's appellate proceedings began in Joliet, Illinois at the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois. Pickering and his attorney submitted the official appeal to the circuit court on February 19, 1965. The case would be heard by Circuit Judge Michael Orenic (see Figure 11). Pickering's appeal of his dismissal was based on his right of free speech which was infringed upon because he wrote a letter which was critical of the School Board. He would argue that the letter did not contain statements that were knowingly or recklessly false. Pickering's attorney argued that he could not be dismissed for writing statements critical of a School Board when those statements were substantially correct, and that the dismissal procedure was biased.

The appellate court schedule was full and Pickering and his attorney felt the School Board's strategy was to drag out the process. According to Pickering, "One of the school board members, William Babich, was an ex-classmate of Circuit Judge Michael Orenic."



*Figure 11 - Circuit Judge Orenic.*

The month went by as they fought one delay after another. Finally, in January 1966, Pickering was notified that his appeal would be heard on February of 1966. They

knew that it was unlikely that the circuit court would overturn the Board's decision to dismiss, but this was the first step in the appeals process. If things went their way, the judge would order the School Board to drop the dismissal. If they lost, they would appeal to a higher court. The testimony in the Circuit Court was solely based on the transcript of the Board hearing (as noted earlier, Illinois statutes prohibited new evidence except that recognized during the board hearing).

Ligtenberg argued, "The decision finds that the charges were proved. However, no evidence of the alleged damage was introduced at the hearing and none is found in the record of the hearing." He went on to state that, "the charges or the decision (or both) are made capriciously; it is inferable that they were made in anger or hatred and from reason of bias." (*Pickering v. Board of Education Will County, 1965*) This line of argument was intended to question the board's motives and ultimately the fairness of the hearing process. Ligtenberg went on to illustrate this point by arguing,

It is not alleged in the charges that the cause or reason for dismissal are not remediable. Without any bias in the charges, the decision finds that said causes and reasons are not remediable. The board introduced no evidence on the issue of remediability. Thus this part of the decision is capricious for two reasons. The findings that the board may make are limited (1) to the charges and (2) to the charges supported by substantial evidence; and here there was neither charge nor evidence.

Ligtenberg continued to argue that the hearings were biased and partial. The fact that the School Board members specifically refused to examine evidence related to the most serious charges was proof of bias. The board's attorney would cite Illinois Revised Statutes Chapter 122 "a board has power to dismiss a teacher for in competency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interest of the

school requires it” (Pickering v. Board of Education Will County, 1965). The School Board’s attorney also argued that this statute granted the board member and administration the right to include and exclude evidence that they identified as relevant.

Ligtenberg again argued that the complete lack of evidence regarding the untruthfulness of so many of Pickering’s statements represented an intentional bias. More importantly, Pickering was originally dismissed based on the fact that he damaged the reputation of the board members and school administration. Ligtenberg argued the inability of the School Board to prove damage to the reputation of the school; the administration and the board members were intentional. He would argue that the mere fact that the letter was written and published after the second referendum failed would seem to prove that the board had a damaged reputation in the community before Pickering’s letter. The circuit court judge recognized the Illinois statute and refused to allow any additional evidence. The Circuit Court opinion was issued early in March, 1966. Pickering overheard one of the board members bragging that Orenic ruled just as they thought he would.

#### Ruling of Circuit Court

The court ruled in favor of the Board of Education. Judge Orenic refused to recognize any bias or partiality on the part of the board’s hearing or ruling. His opinion opened by stating that, “On administrative review, the court will set aside the final administrative action if the action is without substantial foundation in the record or is manifestly against the weight of the evidence. The best interest of the school is the guiding star of the board and the interference of the court is justified only where a board acted capriciously, maliciously and arbitrarily.” Not only did Judge Orenic’s not find bias

partiality on the part of the board, he went on to find the action of the Board as being supported by substantial evidence. In discussing the right to dismiss Pickering, Orenic held that the legislative standard that allowed dismissal when “the interests of the schools require” was constitutionally sufficient and not “so vague and indefinite as to be a denial of due process” (Opinion Circuit Court. 36 Ill. 2d 568, 225 N. E.2d 1 1967).

Regarding Pickering’s right to freedom of speech Orenic ruled, “The constitutional question squarely presented in this case is whether or not there is any public interest to be protected which is so important that it overrides Pickering’s freedom of speech. I answer yes...the interests of the school is patently an overriding public interest.” He went on to state that “Pickering’s conduct was adverse to the interests of the school. The Board decided that the interests of the school required his dismissal. Freedom of speech does not protect the job of an employee whose conduct is against the interests of his boss.” He concluded by stating, “The interest of the school is patently an overriding public interest“ (Opinion Circuit Court. 36 Ill. 2d 568, 225 N. E.2d 1 1967)

When discussing this ruling with Pickering, he questioned the statement “best interest of the school.” “According to the court decision, whatever ‘the interest of the school’ meant was left up to the board members to interpret. Was wasting tax dollars in the interest of the school? Was lying to the tax-payers in the interest of the school? According to Orenic, if the board decided it was, no one had the right to question them.” The Board members became confident that their decision would withstand any challenge. However, that month several taxpayers wrote letters to the *Lockport Herald* editorial page questioning the cost of this legal exercise. “Will tax payers of Lockport Township; again have to pay the price to support the egos of our school board“ (*Lockport Herald*,

March 1966). The setback in the circuit court was disappointing, but expected by both Pickering and Ligtenberg. They immediately appealed the decision. Pickering understood it would probably take another year before they knew if they would be successful.

### Epiphany “Self Doubt”

The Pickering case was undoubtedly headed for a second year of litigation. Pickering was strong, but he certainly experienced some self-doubt and a sense of cynicism and pessimism. He witnessed many examples of inside favors, manipulation of rules, and questionable moral judgments and actions. He knew that for many outsiders he must look guilty. They controlled the evidence, they had Illinois law on their side, and it really didn't matter if the process was just, fair, or based on a sense of high moral beliefs.

What made things worse is that he had heard that Justice Orenic was known as a fair justice. The judge had a love for music and was known in the area for playing the flute and bass fiddle in a dance band. Orenic was also an accomplished concert violinist. Pickering had heard that “people had remarked that often times, as you passed by his chambers before court convened, they would hear music as he played his violin.” (*Lockport Herald*, 1965). He also had a good reputation when deciding cases involving organized labor. Pickering was now becoming much more sensitive to the perceptions of others. This may have been a real epiphany. He was not quite as independent and he still had a deep belief that he was right. However, he was starting to believe that he might never get the chance to prove his case.

According to Alford (1999), a researcher specializing in the experiences of whistleblowers, this is a common stage of accepting reality. Alford hypothesizes that “large organizations are, in fact, the enemy of morality” (Alford, p. 265). Although this

seems to be a radical belief, in studying the Pickering case, one gets a better understanding of his premise. To support this thesis, Alford relies on stories told by whistleblowers. Alford interviewed whistleblowers from both government and private organizations. He strongly disputes studies that report substantial differences in the experience of public and private sector employees (Alford).

For example, he presents the story of a public employee that worked for the Nuclear Regulatory Commission (NRC). This engineer and inspector revealed that several safety and fire hazards existed at a nuclear power plant. This was one of his responsibilities and he felt a moral obligation to report these conditions. After his supervisors refused to investigate the conditions, he tried unsuccessfully to elevate the report to senior management. He was accused of being emotionally ill by his supervisors. After experiencing humiliation in his workplace, he attempted to deliver a report to President Carter. On arrival at the White House grounds, he was arrested and forced to undergo involuntary psychiatric confinement. After he was released, he was fired and found himself blacklisted (Alford, 1999). Alford concluded that many individuals are ruined, due to the fact that their personalities cannot accept the reality that organization can act as enemy of morality (Alford).

If Pickering was going to crack under this reality, this would have been the point. However, he didn't crack, he did a lot of self-reflection. He began to better understand individuals like Justice Orenic. Orenic may not have been an immoral or unfair individual. He was influenced by a combination of the legal process and his relationship with his friend who happened to be a board member, this evidence convinced him that Pickering was a nut or a crackpot. The real issue was that Illinois law did not allow

Pickering to adequately defend himself or challenge the evidence that the School Board recognized.

Pickering's background and personality characteristics resulted in an individual that was strong, but patient. He believed in his ability to withstand hardship. To him the ability to endure hardship was one of the greatest attributes one could have. He believed that if he was patient, he could change the law in Illinois, which allowed the School Board to act as prosecutor, judge and jury. Pickering believed that he could change the interpretation of the First Amendment regarding a public employees acting as a citizen, and he believed that he could prove his statements were truthful.

#### Notes and Analysis

Commitment, determination and persistence are the attributes that are found in many great leaders and more importantly in genuine change agents. The most important single factor in an individual achieving success in any endeavor would be commitment (Elder, 1994). Commitment ignites individuals to action and brings communities together. As Pickering's case advanced through the court system, it gained greater recognition and importance. What started as an inconsequential conflict between a teacher and his employer in a small town was gaining momentum and prominence. Ligtenberg recognized that this could be a rare opportunity to impact First Amendment law. Pickering would recall a discussion with his attorney. Ligtenberg told Pickering that "The American Federation of Teachers was 100% committed to him and his case. You see this case is now about much more than Pickering vs. Lockport Township Board of Education. Marvin, this is a unique opportunity to overturn unfair limits placed on free

speech. Yes, these limits affect all public school teachers, but they also affect all employees of the state.”

To commit, is to obligate oneself to a purpose or line of action. Ligtenberg was asking Pickering to remain committed to this case. Pickering was a good employee and teacher. Ligtenberg knew it might be tempting for Pickering to pick up his family and move somewhere that had not heard about his case and just start over. Ligtenberg would go on to tell Pickering, “This case is important. There are parties on both sides that have incredible interest in winning. We need you to stay committed to our cause.”

This point has stayed with Pickering to this day, the idea of “persistence with a purpose.” In fact, these experiences strengthened his commitment. In talking to Pickering, his commitment was never in doubt, but it was important for him to know others were counting on him. Pickering’s commitment was based on a strong set of beliefs. Pickering remembered an old saying, “If you don’t stand for something, you’ll fall for anything.” In fact, he did stand for something. He personally experienced the effect of limits being placed on his freedom of speech. He also experienced the effect of poorly written statutory law, which could be misinterpreted to manipulate the system of due process. As a result of his experience, Pickering became a little cynical and pessimistic. Now he does not blindly trust what he reads in the newspaper. He has learned to ask questions before forming an opinion. Finally, he continuously asks questions of those entrusted with the good faith of the public.

Today, Pickering is still very involved in community issues. He will engage and oppose those individuals he believes to be derelict in their service to the public. He won’t think twice in reporting obvious cases of mismanagement. He actively confronts leaders

that put their personal interest over the interest of the public. This sense of determination and persistence with a purpose has made him a change agent in the community.

## CHAPTER 5: Winter Blues Give Way to Spring Fever!

### A Historic Winter

Something about winter disheartens the human soul and calms our spirit. Many in our society refer to this change as “winter blues.” As a result of scientific research, we now know that this is not “winter blues,” just our connection to nature detecting the change of season. In the past, people lived closer to nature. This change in the human spirit may be an evolutionary signal that nature uses to tell our bodies to take a well-earned rest for the coming winter. This “soul winterizing” readies our spirit to accept the seeming endless cold and darkness and the introspection that it brings. Fortunately, winters blue are typically followed by spring fever, a regeneration of the soul, a new found energy.

The winter of 1967 was one of the worst winters in Chicago history. That January the area was hit with a blizzard of historical proportions. The Great Snowstorm started at 5:02 a.m. on January 26, 1967. It ended at 3:05 p.m. on January 26, leaving 23 inches. By February 6, an additional 28 inches had accumulated. This brought the 1967 totals to 59.6 inches, close to the all-time record (Johnson, 1967). Pickering recalled the storm, “The snow was so deep that year that you could climb drifts to the top of your house. It was also cold that year.” He was correct; it fell to ten degrees below zero on January 18 (The Chicago Tribune, 1967). Pickering would recall, “Snow was shoveled up into tall heaps, then hardened into ice, and was still around in March.” Several schools in the Chicago suburbs were forced to have the students sleep in the library because the buses could not get through the snow. In the middle of this Pickering received the news that his case would be heard by the Illinois State Supreme Court.

Pickering, like millions of people in the Midwest had suffered through a long and exceptionally tough winter, trapped indoors for months. The long nights provided plenty of time for soul-searching. He would replay the experiences of the last 6 years over and over in his head. These years were particularly difficult due to his long work hours and time away from his family. As spring approached, Pickering had a bad case of spring fever. He was anxious to get outside and work in his garden. He had plenty of chores around the property. And he had a date with the Illinois State Supreme Court just around the corner.

### The Illinois State Supreme Court

The Illinois State Supreme Court is located in Springfield, Illinois and is a four-hour drive from Lockport. The court is comprised of seven justices and serves as the highest tribunal in the state. The seven justices are elected from judicial districts for a term of 10 years. Three justices are elected from the First District (Cook County), and one from each of the other four districts. Similar to most State Supreme Courts, the Illinois State Supreme Court has general administrative and supervisory authority over all courts in the state. This authority is exercised by the state's Chief Justice and staff appointed by the Supreme Court. Justice Ray I. Klingbiel was the Chief Justice during the review of the Pickering case. (About the Courts in Illinois, 2008)

Pickering recalled "that just after my hearing, Chief Justice Klingbiel was caught up in some type of scandal." After a little research, I was able to verify that Pickering's recollections were correct. As Chief Justice, Klingbiel was caught up in one of the most notorious scandals in the history of the Illinois State Supreme Court. An investigation revealed that Klingbiel and Justice Skolnick (who preceded Klingbiel as Chief Justice)

had illegally accepted stock from a Chicago Bank and Trust Company (Civic Center Bank & Trust Company or CCB). They were accused of accepting these gifts while litigation involving the CCB was pending at the Illinois State Supreme Court. A special commission was appointed to investigate the matter. Ironically, the regular commission that investigated judicial malfeasance was chaired by Klingbiel. Therefore, John Paul Stevens, a private attorney at the time was appointed to investigate the matter (Chicago Tribune, 1968).

During the course of the investigation, Klingbiel initially claimed he had purchased the stock long after the decision. When it was revealed that he had received the stock as a gift before the decision, he claimed that the stock was a campaign contribution. This assertion did not seem plausible since the stocks were received after the campaign was over. Stevens' investigation further revealed that Klingbiel was assigned the case even though it wasn't his turn in the court's rotation. Stevens also discovered evidence of Solfisburg suggesting that CCB officials "do something nice" for Klingbiel. When the commission reported back, it recommended that both Klingbiel and Solfisburg resign, which they did grudgingly (Hansen, 2002). It is widely believed that this investigation propelled John Paul Steven's nomination and confirmation to the United State Supreme Court (Hansen, 2002).

#### Justice Schaefer

The Illinois State Supreme court had another member that played a significant role in the Pickering case. In March of 1951, Governor Adiai E. Stevens appointed Walter V. Schaefer to the Illinois State Supreme Court. Schaefer was a graduate of the

University of Chicago Law School. After graduating and serving in private practice, Schaefer served as a law professor at Northwestern University for 11 years.

He left to chair the Illinois Commission to study state government which became known as the Schaefer Commission (*Chicago Tribune*, 1969). Justice Schaefer was recognized by legal scholars of the time, as one of the two or three top state Supreme Court Justices in the United States. In fact, Schaefer received the American Bar Association's highest award, the ABA Medal. Schaefer was only the 34th American lawyer to receive the medal. The award placed him in company with many well known Supreme Court justices including; Oliver Wendell Holmes, John Henry Wigmore, and Charles Evans Hughes. Several recent justices including; William J. Brennan, Thurmond Marshall, Sandra Day O'Connor later received this honor.

(<http://www.lib.niu.edu/ipo/1977/ii770108.html>). Many legal scholars feel that one of the great injustices was Schaefer's absence from nomination or appointment to the United States Supreme Court. Although, Ligtenberg understood Pickering's case was still a long shot in Illinois due to the Illinois statutes, he was optimistic that judges like Schaefer might recognize the bias in the School Board hearing.

Ligtenberg and Pickering agreed upon a defense strategy based on the fact that Illinois law once again had to rely on the hearing transcript as the only testimony. At this point however, the defense's strategy would be expanded so that it could meet the requirements for an appeal to the United States Supreme Court. This strategy included a violation of the Fourteenth Amendment as well as a violation of Pickering's First Amendment rights. Ligtenberg asked Illinois State Supreme Court for a reversal on the following grounds:

1. The dismissal decision was not supported by substantial evidence and is against the weight of evidence.

2. The record did not show the dismissal to be for the best interests of the school.

3. That it did not appear that any of the charges were nonremediable – and that Pickering never got warning, in writing, stating specifically the causes which, if not removed, might result in charges for his dismissal.

4. None of the charges made against Pickering set forth lawful cause for dismissal.

5. The charges were too vague, uncertain, ambiguous and indefinite to notify Pickering of the nature of the charges so as to enable him to prepare his defense.

6. The School Board acted arbitrarily, capriciously, and from reasons of bias or personal hatred.

7. Pickering was damaged in and deprived of his personal and property rights, in violation of the 14th amendment.

8. Pickering was deprived of his 1st Amendment rights of free press and speech.

9. That it did not appear from the evidence that matters charged against Pickering fomented controversy, conflict or dissension.

10. That it did not appear that Pickering published anything that involved or damaged the professional or personal reputation of the Board or harmony among teachers, administrators and residents.

11. That the evidence shows that letter publication was warranted, that the statements were based on fact; and that free speech is not limited to what can be proven true. (Pickering v. Board of Education, 1968)

Pickering's appeal had reached the Illinois Supreme Court and was awaiting judgment.

Due to the fact that the Illinois Supreme Court was under the same jurisdiction as the Will County Circuit Court, the majority of the testimony revolved around the same Illinois statute. However, for the first time a court representative asked the school board legal counsel for evidence that established that some or any of the statements were actually untrue. On numerous occasions, Justice Schaefer asked what proof the school board member used to prove the statements were incorrect. In fact, according to Pickering, "when Schaefer asked the School Board's architect for specific plans that would prove a statement correct or not, he responded that he did not bring the actual plans. Justice Schaefer's was annoyed by this answer and responded by asking 'then why

did the board ask you to testify?” Pickering recalled specifically passing notes to Ligtenberg in response to some of Justice Schaefer’s questions.

For the first time, Pickering and his defense had an opportunity to present evidence that supported the truthfulness of some of his statements. It was obvious to some of the justices that the original School Board Hearing process denied Pickering due process. Many of the facts were undisputable. The statement made by the superintendent concerning the budget and teachers salaries was one such case. However, Justice Schaefer was the only justice to raise questions specifically about the hearing process. (Pickering v. Board of Education, 1968).

#### Illinois State Supreme Court Ruling

Pickering received the ruling of Illinois State Supreme Court a few weeks later through his attorney. By a majority decision, the court again ruled against Pickering—they did not accept Pickering’s defense arguments. However, this time the court was split in a 3-2 decision with another two Justices not participating. This meant the court had upheld the decision of the circuit court and the School Board hearing process. As expected Justice Klingbiel and two other justices wrote the majority opinion that reiterated the fact that the evidence found “true” by the School Board in its hearing, must be accepted based on Illinois statute. They ruled in favor of supporting the decision that Pickering’s statements were all false based on the School Board hearing. The court then turned its attention to the contention that despite falsity, Pickering’s remarks and comments are protected by his First Amendment rights (Pickering v. Board of Education, 1968).

According to Justice Klingbiel, “The issue is not whether the Board may be publicly subjected to false accusations but whether it must continue to employ one who publishes misleading statements which are believed to be detrimental to the schools” (Pickering v. Board of Education, 1968). He addressed the issue of free speech for public school teachers by stating,

The court held that they are not “mere” members of the public. He holds the position of teacher and is no more entitled to harm the schools by speech than by incompetency, cruelty, negligence, immorality or any other conduct.... by choosing to teach in the public schools, plaintiff undertook the obligation to refrain from conduct which in the absence of such position he would have an undoubted right to engage in. (Pickering v. Board of Education, 1968)

Justice Klingbiel’s opinion went on to address the only reason that the court would overturn a Board of Education ruling. In upholding Pickering’s dismissal he stated:

A teacher who displays disrespect toward the Board of Education, incites misunderstanding and mistrust of its policies, and makes unsupported accusations against the officials is not promoting the best interests of his school, and the Board of Education does not abuse its discretion in dismissing him. (Pickering v. Board of Education, 1968)

However, the most significant opinion up to this point was Justice Schaefer’s dissenting opinion. For the first time, someone on the court found it proper to argue the constitutional issues involved. Justice Schaefer’s argument was twofold: he believed that Pickering’s First Amendment rights had been violated and that the statutory issues governing this process had been responsible for this denial of due process.

It is not clear to me that .... The General Assembly intended to authorize a school board to discharge a teacher for criticizing the policies and actions of the board ... if (they) did intend to authorize imposition of the ultimate sanction of discharge against a teacher for exercising first amendment rights, I think that the State and Federal constitutions require a more

precise standard than “the interests of the schools. (Pickering v. Board of Education, 1968)

Justice Schaefer went on to cite *N.A.A.C.P. v Button* (371 U.S. 415 p. 2), “Because first amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity,” and *Speiser v Randall* (375 U.S. 513, p.2), “When one must guess what conduct or utterance may lose him his position, one necessarily will steer far wider of the unlawful zone” (*Pickering v. Board of Education*, 1968). Justice Schaefer believed that unclear guidelines were used to scare people from exercising free speech. Justice Schaefer also questioned the School Board’s role in the hearing process and their personal accountability:

These charges were formulated by the very members of the board whose motives, honesty, integrity, ... were alleged to have been falsely impugned. The aggrieved members of the board then determined whether the charges that they made had been established by the evidence, and they decided that their charges ... (were) not remediable. (*Pickering v. Board of Education*, 1967 p.7)

Justice Schaefer argued that there was a serious problem with the Illinois statute. Justice Schaefer’s challenge of the statute was based on the vague language and the School Board’s interpretation. He questioned the legislature’s intent and meaning. Did the members of the legislature intend this statute to be used to restrict free speech? He also had doubts that this statute was intended to be used to short circuit an employee’s due process (*Pickering v. Board of Education*, 1967, p.8).

Schaefer went on to question the School Board’s findings. According to the School Board “the false statements damaged the professional reputations of its members and of the school administrators, would be disruptive of faculty discipline, and would tend to foment ‘controversy, conflict and dissension’ among teachers, administrators, the

Board of Education, and the residents of the district“(Pickering v. Board of Education, 1967, p.8). In Justice Schaefer’s opinion he stated, “The School Board’s charges were not established by the evidence” (Pickering v. Board of Education, 1967, p.8). In fact, not one article of adverse consequence was presented on anyone in the school district. In his closing statement Justice Schaefer stated “School Boards are public officials engaged in the conduct of public business and they cannot be immunized from criticism, even by teachers (Pickering v. Board of Education, 1967, p.8).

Justice Schaefer also questioned the standards the school board adopted in the hearing. “The school board apparently adopted the erroneous standard that the plaintiff had to prove the accuracy of each and every fact and opinion he asserted in his letter.” Schaefer went on to clarify the proper standard, “The proper question should have been ‘did the plaintiff state ‘Knowing or reckless falsehoods’.” In fact after examining what evidence was attainable Schaefer argued, “The plaintiff did not make statements which were ‘knowing or reckless falsehoods’ but he was, in fact substantially correct in his criticism“ (Pickering v. Board of Education, 1967, p.8).

In the end, the Illinois State Supreme Court decision seemed to be based on politics. Of the five justices hearing the case, three were Republicans and two were Democrats. The three Republican justices made up the majority in the court opinion. Pickering was disappointed that the decision was influenced by politics rather than the merit of the case. However, Justice Schaefer’s strong dissenting opinion opened the door for further appeal. Schafer’s opinion raised questions regarding Pickering’s right to free speech guaranteed by the First Amendment. Schaefer also raised questions about Pickering’s right to due process guaranteed by the Fourteenth Amendment.

## The First Amendment and Free Speech

Free speech in United States is guaranteed by the the First Amendment of the United States' Constitution. The First Amendment reads as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances (U.S. Constitution, N.D.).

The First Amendment has been interpreted by the courts as applying to the entire body of government even though it only expressly names Congress (Kaplin & Lee, 1995).

Furthermore, the courts have interpreted the due process clause of the Fourteenth Amendment as also making the First Amendment applicable to all institutions of the government including state governments' and local governing bodies (Kaplin & Lee, 1995).

Yet the courts have long held the government as an employer, including all public schools, to different standards from the government as a regulator of the public (Kaplin & Lee, 1995). For example, the Supreme Court has ruled that public school teachers, just as other public employees, do not surrender all constitutional protection when becoming a government employee. In fact, in the Supreme Court decision *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Supreme Court ruled that "it can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (Kaplin & Lee, 1995, p. 307). However, this belief in the protection of public employee speech was not always upheld.

From the foundation of the United States until the early part of the twentieth century, the courts ruled that government employees had little or no rights when it came to objecting to conditions placed upon their government employment (Kaplin & Lee, 1995). For years, the courts adopted the opinion given by Justice Oliver Wendell Holmes: “A policeman may have a constitutional right to talk politics, but he has no constitutional right to be a policeman” (*McAuliffe v. Mayor of New Bedford*, 1892, p. 517). The Supreme Court as a body embraced this belief all the way through the 1950s. In fact, by the 1952 decision in *Adler v. Board of Education*, the court decision stated:

It is equally clear that they have no right to work for the state in the school system on their own terms. They may work for the school system under reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech or assembly? We think not. (*Adler v. Board of Education*, 1952, p. 303)

This opinion represented the tone of the court up to the Pickering case. Even armed with a strong dissenting opinion from Justice Schaefer, the chance of an appeal to the U.S. Supreme Court was a long shot. The current restrictions on public employee’s right to free speech would most likely go unchallenged.

#### Writ of Cert

In the modern era the United States Supreme Court regularly receives between 7,000 to 8,000 requests for review each year (McGuire, 2001). The submission is in the form of requests for “writs of certiorari.” The “writ of certiorari” is a petition from one or both sides of a case asking for the court's consideration for review. If the court decides to accept the petition, a “writ of cert” is issued. The “writ of cert” is a order for the appellate court to send all records to the United States Supreme Court for review (McGuire, 2001).

The case screening process begins with the clerk of the court who examines each petition to ensure it is in proper form to be reviewed. The case then goes on to the court's pool of law clerks. The clerks begin the task of selecting "cert cases" by sorting through the petitions and determining which cases fall within the Court's jurisdiction. The clerks then review each "writ of certiorari" searching for appropriate cases requiring court review. The process is driven by questions of constitutional and legal importance. The process may also be influenced by compelling situations, circumstances and politics (McGuire, 2001).

After passing through the clerks, a "writ of certiorari" request is presented to the full complement of justices for deliberation and consideration. The Court meets in closed session while the justices discuss which cases they consider worthy of full deliberation. Each justice will cast a vote aloud to determine the petition's fate. Under the so-called "Rule of Four," at least four justices must vote to hear the case for it to move on to the docket. The most junior justice takes handwritten notes that will go on to produce the public announcement of the court's order on the petition (McGuire, 2001).

The process has evolved over the years and the criteria justices use to select cases have varied. One factor that is typically considered is whether the case has been decided in a different way from a very similar case coming from another lower court. Another factor that many justices consider is the weight of the rulings in the lower courts. However, from the 7,000 to 8,000 initial petitions, the court generally only accepts about 150 cases for full review. However, that number has dropped over the last three decades. Last year the court only heard 69 cases resulting in written decisions. Cases that are accepted for full Court deliberation are next scheduled for oral arguments. Lawyers for

each side of the case are given a strict thirty-minute time limit during which they address the justices. Generally, the attorneys can expect direct and constant questions throughout their appearance before the high court. For most attorneys, addressing the United States Supreme Court is considered a major career distinction (McGuire, 2001).

#### Epiphany “Importance of a Dissenting Decision”

There are thousands of cases submitted to the U.S. Supreme Court each year. The large majority never elicit the interest of the court. Statistically, the Pickering case was a long shot to receive “writ of cert.” However, something about this case was compelling enough to warrant the attention of the clerk pool and ultimately the four justices needed. The case was surrounded by charges of corruption and abuse of power. From the resignation of the disgraced members of the Illinois Supreme Court to the accusation of abuse of power by the School Board, the Pickering case seemed to be peppered with allegations of corruption and abuse of power.

Justice Schaefer’s dissenting opinion specifically accused the School Board and administration of denying Pickering his constitutional rights. These charges combined with the respect and recognition of Justices Schaefer’s accomplished judicial career must have attracted the attention of members of the clerk pool. The drama in the story of a group of powerful local leaders determined to crush or ruin a citizen teacher for his public criticism is compelling.

Most of us are familiar with the famous quote by Lord Acton, “Power tends to corrupt, and absolute power corrupts absolutely” (Botch, 2003, p. 119). Acton was a historian and moralist who was expressing this opinion in a letter to Bishop Mandell Creighton in 1887. Pickering would disagree with Lord Acton and argued that the

corrupted or corruptible seek power. There are cases, however rare, in which individuals serve, and then return to the community no more powerful or profited than before their service. But the corruptible are drawn to power.

In researching the Pickering case, several questions needed to be answered. Was this a case of abuse of power? If not, why did the School Board choose not to support their charges of damage caused by Pickering's comments? Was this a case in which dismissal was the only remedy? It would be hard to believe this line of thought. When closely examined, this looked more like a case of local leaders out to destroy anyone who would dare question their actions, morals or management. Lord Acton recognized this "power game" which has reached, matured and infected our era, the age of democracy. In a democracy, it is in everybody's theoretical reach to grab power over others. The corrupted or corruptible are free and even encouraged to seek power in these conditions.

This power grab can exist at the local, county, state or federal level. It may involve profits, properties, privileges or control of public policy and dollars. No matter the prize, this system naturally results in an unleashing of the power-seekers. These officials, often corrupted by their pathological quest for power and privilege, have in a democracy a foundation from which to profit and exercise their will unchecked by much of the community. This is the reason freedom of speech is so imperative in a democracy. The founders recognized that a system of checks and balances among the different branches of government was not enough to control corruption.

These elements of the "check and balance system" can themselves become corrupted, as in the case of the justices from the Illinois State Supreme Court. The right

of the citizenry to publicly challenge and criticize is the ultimate last line of defense in the struggle.

Justice Schaefer's dissent tells a story of such individuals. This story introduces a central character with intimate knowledge of mismanagement by public officials. Marvin Pickering has little to gain and much to lose by exercising his right to free speech in criticizing these officials. As a result, this individual is hastily removed and denied his rights to due process. Finally, the laws designed to provide control in an educational environment, are used to masquerade a dishonest claim of due process and prevent any subsequent attempts to introduce evidence to the contrary. For those willing to listen, this was a compelling story.

#### Notes and Analysis

Pickering has been contacted by many people over the years—lawyers, students and professors, all interested in his famous legal case. However, I think our time together is different. I am interested in the case, but I am more interested in him and his story. When we discussed this period in his life, he was ready to discuss the technical aspects of the long appeals process, but that was not what I was interested in. I wanted to know what his life was like during this period.

Up to this point in the study, I had discovered much regarding Pickering's life. During our time together I learned more about this complete stranger than I knew about many of my closest friends. I began to understand him at a very personal level. I was able to interpret his emotions, his words and his body language. He comes off as a rough and tough individualist at first. But during our time together, I discovered his softer side.

This period in Pickering's life was much like his experience in the winter of 1967. The outlook was dark and bleak. The environment was cold; many considered him a malcontent or complainer. They questioned his loyalty. He was away from his family more due to his employment situation. It began to wear him down. From my research and observation, I would conclude that he became depressed and just needed a well-deserved mental rest. This was against his fighting nature, but like the unconscious effect of "winter blues" sometimes our minds and bodies take over. Nature has a way of preparing us for the important tasks, by rejuvenating our minds and bodies.

In our interviews, I noticed a change as we passed through this period of his life. I sensed a rejuvenation of his spirit. I could tell when he was reflecting on or analyzing my questions. I could tell when I needed to change the subject, but also when we could return to the emotional or upsetting experiences. I think he was gaining a new perspective after all these years. As we began to reflect on this period, I could sense the personal loss he felt. This loss was not financial; he had been through much tougher times economically. It was not about his reputation. He knew he was right; believe me, he really knew he was right! No, the type of loss he felt is different. He was forced to leave a job he enjoyed, friends he liked, and a community he cared about and was willing to fight for.

He did not get to this point because he was a vengeful individual, a disruptive force, or a malcontent employee. It would have been easy to be like the majority in the community that would complain, yet do nothing. Even after the hearing, he could have publicly apologized and asked for his job back. I found that he was in this situation because he sincerely cared. He cared that the School Board had made several poor decisions. He cared that the public felt they had been lied to and misled. He was

concerned about the future of this community with the mind set and arrogance of those that were in charge. He felt a personal obligation to oppose these individuals. They had become corrupted by their position of power. They had the power to remove criticism rather than listen to it. They were willing to make accusations but not defend them. They were willing to use taxpayers' money to pay for legal actions that were unnecessary. And now they were willing to risk the possibility that they would be finally be exposed.

## CHAPTER 6: THE END OF THE ROAD

### The Supreme Court of the United States

As you enter the main entrance of the United State Supreme Court you see these words, “Equal Justice Under Law.” This court serves as the highest tribunal in our nation based on Article III of the U.S. Constitution. As the final arbiter of the law, the Court is charged with ensuring the American citizens equal justice under law. The court over the years has become the guardian and interpreter of the Constitution, which is necessary due to the very nature of the U.S. Constitution (Horwitz, 1998). The United States Supreme Court is unique in this way; few courts in the world practice the same authority and none have exercised it for as long or with as much influence (McGuire, 2001; Miller, 1985).

With this type of power also comes great responsibility. When the Supreme Court rules on an issue, its judgment is final. The Court’s decisions can only be overturned by constitutional amendment or by later rulings of the Court. Even the decision not to hear a case is final. There are no other appeals. On Friday mornings when the nine Justices meet to discuss and vote on cases, they are alone; no clerks, no aides, no reporters, and no lobbyists are allowed in the conference room. The Justices are forced to focus on and argue the law, their principles, and be guided by their consciences (Thomas, 1979).

### The Mystery of the High Court

Pickering was very knowledgeable about the Supreme Court. In order to prepare to question him about the Court, I needed to become much more familiar with the Court. The United States Supreme Court has a remarkable history. From its inception, the Supreme Court of the United States was cloaked in ambiguity and abstraction (McGuire, 2001; Miller, 1985). Unlike the other two branches of the federal government, the

establishment of the Supreme Court lacked specificity. Early descriptions of the judicial branch were abstract and described in general terms. Other than its establishment and jurisdiction, Article III of the U.S. Constitution does not spell out the specific duties, the powers, or the organization of the Supreme Court.

The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. (Article III, U.S. Constitution)

Instead, the authors of the U.S. Constitution left it to Congress and to the Justices of the Court itself to develop the authority and operation of the entire Judicial Branch of government. In fact, the very first bill introduced in the United States Senate was the Judiciary Act of 1789. This bill established 13 judicial districts. The structure of the court was not officially established until 1789. The Act of 1789 called for the Supreme Court to consist of a Chief Justice and only five Associate Justices. The Act also assigned the power to nominate Supreme Court justices to the President of the United States with the approval of the Senate (Miller, 1985). This act also directed the Court to meet in the Nation's Capital. However, for the first century, the justices of the Supreme Court were actually required to travel to each of the 13 judicial districts at least twice a year (Horwitz, 1998). The Supreme Court has had nine justices since 1869; however, the number of Supreme Court Justices changed six times. In the history the Supreme Court, there have only been 16 Chief Justices, and just over 100 Associate Justices (Horwitz, 1998; McGuire, 2001).

In its early years, the Supreme Court was obligated to hear and decide every appeal that came before it. However, as the country and population grew, the ability to hear every appeal became impossible. As a result, over time the Court secured greater

control over its appellate docket, both in the number of cases it hears and in the selection of those cases. Congress granted the Supreme Court authority to accept or reject appeals on a discretionary basis by passing the Judiciary Act of 1891. The act authorized use of the writ of *certiorari*, by which the Court directs an inferior court to certify and transmit for review the record of a particular case (McGuire, 2001; Miller, 1985).

Congress again substantially reduced the number of mandatory appeals on the Court's docket when they passed the Judiciary Act of 1925. Today, using the writ of *certiorari*, the Court considers only cases of “gravity and general importance” involving principles of wide public or governmental interest (Horwitz, 1998). Like everything else related to the court, this measure was a matter of interpretation. Pickering questioned if his case was worthy of one of these rare opportunities. After all, this was a case between a small town school board and a local teacher. The challenge was to convince the Court of the significance and general importance of his case.

#### Only One Appeal Left

After the defeat in the Illinois State Supreme Court, Pickering felt frustrated by the decision and disturbed that politics influenced the decision. He now faced tremendous odds to be one of the few cases that would be granted writ of *certiorari* by the highest court in the country. In my research of the United States Supreme Court, I marveled at the odds he overcame to actually reach this point in his appeal. I wanted to understand his frame of mind at the time. What was it like to wait, knowing your chances were so slim?

I specifically questioned Pickering about his optimism at the time. Was he discouraged? Did he think about his appeal much? Pickering felt the court was very unpredictable, yet he and his lawyer were very optimistic that their case would be

favorably reviewed by the members of the court and clerk pool at the time. Justice Schaefer's was highly respected as a legal scholar, and Pickering and his attorney felt his case definitely involved constitutional issues. Pickering recalled, "We felt very confident that our case would be heard, this was a clear violation of both the First and Fourteenth Amendments." When I ask what it was like waiting for a response from the court, Pickering stated, "I didn't sit around and think about it. When and if they accepted my appeal, we would be ready."

Pickering was very confident that Justice Schaefer's detailed dissenting opinion was exactly the type of case the court looked for. It is also important to understand the circumstances in our country at this time. It was 1967. In the midst of growing opposition to the war in Vietnam, wide-scale anti-war protests were held in major U.S. cities including, New York, San Francisco, and Chicago. In New York City, the protest began in Central Park, where draft cards were burned, and included a march to the United Nations led by Reverend Martin Luther King, Junior. There were also protests at college campuses throughout the country. Thurgood Marshall was sworn in as the first black United States Supreme Court justice. In November of 1967, amidst all of this national turmoil, the Supreme Court granted certiorari and agreed to hear Pickering's case. His attorney notified him by mail.

#### Pickering's Defense Strategy

This was the moment Pickering and his attorney were waiting for. Pickering's defense strategy consisted of several points for review by the Supreme Court. Armed with the strong dissent opinion from Justice Schaefer, Pickering's lawyer questioned the Illinois statute; they would argue that the School Board manipulated this statute in their

hearing. In challenging the Illinois Statute, Pickering's attorney also argued that the statute did not provide clear and precise language. They would also question if the language was unconstitutional due to vagueness. Pickering would recall, "This was an important issue for the union to raise, according to Justice Schaefer, 'the statute was clearly not intended to limit a teacher's right to free speech'." If successful, the teachers union would be able to do away with this statute completely. However, Pickering was personally focused on questions related to the School Board's allegations and charges that he knowingly or recklessly made false statements.

Ligtenberg would argue that the entire case was based on an unconstitutional limitation of both his First Amendment and 14th Amendment rights. Pickering's lawyer would argue that, "Without a fair hearing, any public school teacher could be dismissed for publishing statements critical of his Board of Education when the statements were substantially correct." The item by item scrutiny Justice Schaefer used to challenge the School Board's ruling enabled Ligtenberg to challenge Pickering's right to due process. Pickering explained that, "Ligtenberg was now allowed, for the first time to introduce evidence that questioned whether the dismissal hearing complied with the due process clause of the Fourteenth Amendment."

According to Pickering, "Ligtenberg presented a constitutional argument, 'are public employees entitled to First Amendment rights when it involves their employers'." Ligtenberg would argue that many times these are the only citizens knowledgeable enough about a particular decision or action to challenge issues of abuse, corruption, mismanagement or misuse of the public trust. In presenting this argument, Ligtenberg referenced several cases in which the Court decided the extent of constitutional rights of

public employees. This included *Wieman v Updegraff* (1952), a case in which the United States Supreme Court overturned a state's ability to make public employees take "loyalty oath," stating, *inter alia*, that he or she is not, and has not been for the preceding 5 years, a member of any organization listed by the Attorney General of the United States as "communist front" or "subversive." employment. The Court ruled this to be unconstitutional because the Act violates the Due Process Clause of the Fourteenth Amendment (*Wieman v Updegraff* 1952). In his ruling, Justice Black stated "The Oklahoma oath statute is but one manifestation of a national network of laws aimed at coercing and controlling the minds of men. Test oaths are notorious tools of tyranny" (*Wieman v Updegraff*, 1952).

Ligtenberg also referenced *Keyishian v Board of Regents* (1967). This case was argued just months before Pickering's case and involved issues similar to *Wieman v Updegraff* (1952). Pickering's argument before the court began with the assertion that he had been dismissed "solely and exclusively because he had entered into the arena of public debate." Ligtenberg would argue that other teachers in the district and the superintendent also participated in the public debate; however Pickering happened to take the opposing side of the debate. The School Board's dismissal resolution limited the grounds for its action to the letter and to no other reason. Thus, he had been dismissed because he exercised his right of free speech.

The decision in *Keyishian v Board of Regents* (1967) resulted in the Court adopting a practice of weighting state's interests against the individual's interests. How would a measure be used to determine the state's interest in comparison to the individual's interest? Pickering argued that the School Board had asserted no overriding

interest which might justify a limitation of his First Amendment rights. The School Board justified Pickering's dismissal based on, "the interests the Board had deemed worthy of greater protection than free speech." In their charges, the School Board solely defined the measures "the interests the Board"; without presenting any credible evidence that Pickering's letter interfered with the School Board interest or operation (Pickering v. Board of Education, 1968 p. 2). Pickering would question whether the School Board was capable of an unbiased determination. Ligtenberg asked the Court to examine the reputation of the School Board in determining this question.

The second issue was the charge made by the School Board that accused Pickering's letter of, "affecting the order and discipline among the teachers." Ligtenberg acknowledged the legitimacy of this interest; however, he argued that no evidence of any reaction among teachers to sustain this charge. Ligtenberg further argued that the board was required to provide actual evidence, not speculation based on Thomas v Collins (1945).

...any attempt to restrict...liberties must be justified by clear public interest, threatened not doubtfully or remotely, but clear and present danger.(Thomas v Collins 1945, 323 U.S. 516)

According to Pickering, the most important argument was the use of the Illinois Revised Statute, chapter 122, Section 10-22 by the School board in the decision to dismiss him. Was this statute that denied him due process constitutional? Ligtenberg would argue that the vagueness in the language of this statute was unconstitutional and would cite court precedence in presenting this argument.

Makeup of the United States Supreme Court

During the Pickering case, the United States Supreme Court was lead by Chief Justice Earl Warren. Under Warren, the Justices paid particular attention to issues of civil rights and criminal justice (Horwitz, 1998; McGuire, 2001). The Warren court heard an unusual number of cases involving civil rights and personal freedoms. However, in so doing, the Court attracted a great deal of controversy. “In Warren's first session, the court outlawed school segregation (Brown v. Board of Education, 1954)” (Time Magazine, June 28, 1968, p. 2). Warren would write,

To separate [children] from others of similar age and qualifications solely because of their race, generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. (Brown v Board of Education, 1954 p. 3)

In the 1950s, the Warren court reined in McCarthy's communist hunters, who had in their search for communist subversives rode roughshod over the due-process guarantees of the Bill of Rights (*Time Magazine*, 1968). Now in the 1960s, the Court limited the powers of government to censor books and movies, expanding the First Amendment and due process guarantees (Horwitz, 1998). According to Pickering, this court was composed of several individuals that were interested in protecting and expanding individual freedoms and due process. The Court was composed of senior justices nominated by President Franklin D. Roosevelt to the junior Associate Justice, Thurgood Marshall, the first African-American Justice nominated by President Lyndon Johnson in 1967 (McGuire, 2001).

It is customary in the American court system that the nine Justices are seated by seniority on the Bench. The Chief Justice occupies the center chair; the senior Associate

Justice sits to his right, the second senior to his left, and so on, alternating right and left by seniority.

Chief Justice Earl Warren was nominated by President Dwight D. Eisenhower in 1953. He served as the 14th Chief Justice of the United States Supreme Court. Warren served as both a California district attorney of Alameda County, the 20th Attorney General of California, and the 30th Governor of California. As Chief Justice, his term of office was marked by numerous rulings affecting, the legal status of racial segregation, individual freedoms, civil rights, separation of church and state, criminal justice, and police arrest procedure in the United States (Horwitz, 1998). Although he is considered one of the most influential Chief Justices of the 20th century, Warren may be best remembered for chairing the Warren Commission, which was formed to investigate the John F. Kennedy assassination (Horwitz, 1998; McGuire, 2001).

Associate Justice Hugo Black was nominated by President Franklin D. Roosevelt in 1937. He was the senior Associate Justice of the Supreme Court at this time. Justice Black is widely regarded as one of the most influential Supreme Court justices in the 20th century (Horwitz, 1998). He was the fourth longest-serving justice in Supreme Court history, Justice Hugo Black is noted for his position that the liberties guaranteed in the Bill of Rights were imposed on the states by the Fourteenth Amendment (Horwitz, 1998; McGuire, 2001).

Associate Justice William Douglas was also nominated by President Franklin D. Roosevelt in 1939. Justice Douglas served on the Supreme Court for 36 years. Justice Douglas was nominated during the Great Depression. He was famous for his claim, "I worked among the very, very poor, the migrant laborers" (McGuire, 2001).

Associate Justice John Harlan II was nominated by President Dwight D. Eisenhower in 1955. He served as an Associate Justice of the Supreme Court from 1955 to 1971. Justice Harlan is often characterized as a member of the conservative block of the Warren Court. However, he advocated a broad interpretation of the Fourteenth Amendment's Due Process Clause, arguing that it protected a wide range of rights not expressly mentioned in the Constitution (McGuire, 2001; Miller, 1985).

Associate Justice William Brennan, Jr. was nominated by President Dwight D. Eisenhower in 1955. Known for his outspoken liberal views, including opposition to the death penalty and support for abortion rights, he was considered to be among the Court's most influential members. Brennan was the son of Irish immigrants. Brennan was considered an outspoken liberal throughout his career; he played a leading role in the Warren Court's dramatic expansion of individual rights (Horwitz, 1998; Miller, 1985).

Associate Justice Potter Stewart was also nominated by President Dwight D. Eisenhower in 1958. Stewart was inclined to moderate positions, but was often in a dissenting posture during his time on the Warren Court. Stewart believed that the majority on the Warren Court had adopted readings of the First Amendment Establishment Clause and Fourteenth Amendment guarantee of Equal Protection with regard to voting rights which went beyond the intention of the framers (Horwitz, 1998).

Associate Justice Byron White was nominated by President John F. Kennedy in 1962. He came from Fort Collins, Colorado. Justice White was famous for both a legal and football career. Byron White was an all star football player for the University of Colorado Buffaloes. After graduation, he signed and played with the NFL's Pittsburgh Pirates (now Steelers) during the 1938 season. He took 1939 off to study at Oxford as a

Rhodes Scholar, but returned to play for the Detroit Lions from 1940-41. His career was cut short when he entered the United States Navy during World War II. After the war, he elected to attend law school rather than return to football. Frequently a critic of the doctrine of “substantive due process,” which involved the judiciary reading substantive content into the term “liberty” in the Due Process Clause of the Fifth Amendment and Fourteenth Amendment (Horwitz, 1998; McGuire, 2001; Miller, 1985).

Associate Justice Abraham Fortas was nominated by President Lyndon Johnson in 1963. Fortas remained on the bench, but in 1969, a scandal arose. Fortas had accepted a \$20,000 retainer from the family foundation of Wall Street financier Louis Wolfson, a friend and former client. Fortas denied that he ever helped Wolfson. Wolfson was convicted of violating federal securities laws later that year and spent time in prison. Fortas returned the retainer. When Chief Justice Earl Warren was informed of the incident, he persuaded Fortas to resign to protect the reputation of the Court and avoid lengthy impeachment proceedings, which were in their preliminary stages (Horwitz, 1998; McGuire, 2001; Miller, 1985).

Associate Justice Thurgood Marshall was the junior member of the court at this time. He was nominated by President Lyndon Johnson in 1967. In nominating Marshall, Johnson stated, “This was the right thing to do, the right time to do it, the right man and the right place“ (McGuire, 2001 p. 124). Justice Marshall was the first African American to serve on the Supreme Court of the United States. Prior to becoming a justice, he was a lawyer who was best remembered for his success in arguing cases before the United States Supreme Court. In particular, Marshall is remembered for the victory in *Brown v. Board of Education* in 1954. Marshall served on the Court for the next 24 years,

compiling a liberal record that included strong support for Constitutional protection of individual rights, especially the rights of individuals in criminal cases (Horwitz, 1998). Although Justice Marshall is best remembered for his jurisprudence in the fields of civil rights and criminal procedure, he is also widely regarded as one of the most influential Supreme Court Justices in the 20th century (Horwitz, 1998; McGuire, 2001).

### “My Day in Court”

The United States Supreme Court Session begins on the first Monday in October every year, and the last cases are usually heard in June (Horwitz, 1998). With rare exceptions, each side is allowed thirty minutes to argue before the bench. Normally 22 to 24 cases are heard at one sitting (Miller, 1985). Since the majority of cases involve the review of a decision of some other court, there is no jury and no witnesses are heard. For each case, the Court has before it a record of prior proceedings and printed briefs containing the arguments of each side.

Marvin Pickering’s case was scheduled to be heard at 10:15 a.m. on Wednesday March 27, 1968. According to Pickering, “The Supreme Court proceedings are completely scheduled and deliberated in a fixed amount of time. The justices receive briefs, or summaries of arguments, from the lawyers ahead of time. Often they receive ‘*amici curiae*’, or briefs prepared by interest groups or government agencies that support one side or the other.” The actual hearings are open to the public and are strictly timed; however, Pickering recalls, that it was required to have government clearance in order to sit in the gallery. He was a volunteer sheriff deputy so he was allowed in the gallery to hear his case argued, but his family and friends were not. When the Court is in session,

the entrance of the Justices into the courtroom is announced by the Court Marshal. Those present at the sound of the gavel rise and remain standing until the robed Justices are seated following the traditional chant:

The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court! (McGuire, 2001, p. 21).

Pickering enjoyed telling the story of his encounter with one of the Marshals of court. He was waiting to enter the gallery to witness the proceedings when he asked the Marshal what case was up next. The officer replied, "It's some case involving a teacher in Illinois – nothing significant." Pickering, with a smile on his face, would respond, "That case is significant as far as I am concerned." The Marshal understood what he meant and smiled and apologized. Pickering recalled that each side received exactly thirty minutes to present its case. Then the justices would ask questions and even debate one another during the allotted time.

Pickering did not completely follow or understand the line of questioning. But he understood they had been briefed on the case weeks ago. Several of the justices asked questions during the proceeding including Chief Justice Earl Warren, Justice Abe Fortas, Justice Byron White, and Justice Thurgood Marshall (*Lockport Herald*, 1968, p. 1). Pickering would recall, "Justice Thurgood Marshall asked the School Board's attorney, 'if the letter were read publicly at an open school board meeting and the reporter stated the facts, would this be cause for dismissal?' The attorney answered 'A teacher might be dismissed and the Illinois Court might sustain.'" After the public hearing, the Justices met together privately to discuss the case during which they share opinions, debate the

issues, and eventually come to a conclusion. Each justice takes a side individually, and because there are nine justices (an uneven number), one side always wins. Pickering and his family, his friend from the *Lockport Herald*, and his attorney spent a few days in Washington D.C. then returned home to Lockport.

### The Supreme Court Ruling

On June 3, 1968 the United States Supreme Court issued its ruling in the *Pickering v. Board of Education of Township High School District 205, Will County* (1968). Justice Thurgood Marshall delivered the opinion of the Court:

Appellant Marvin L. Pickering, a teacher in Township High School District 205, Will County, Illinois, was dismissed from his position by the appellee Board of Education for sending a letter to a local newspaper in connection with a recently proposed tax increase that was critical of the way in which the Board and the district superintendent of schools had handled past proposals to raise new revenue for the schools. Appellant's dismissal resulted from a determination by the Board, after a full hearing, that the publication of the letter was "detrimental to the efficient operation and administration of the schools of the district" and hence, under the relevant [565] Illinois statute, Ill. Rev. Stat., c. 122, § 10-22.4 (1963), that "interests of the school require[d] [his dismissal]."

Appellant's claim that his writing of the letter was protected by the First and Fourteenth Amendments was rejected. Appellant then sought review of the Board's action in the Circuit Court of Will County, which affirmed his dismissal on the ground that the determination that appellant's letter was detrimental to the interests of the school system, was supported by substantial evidence and that the interests of the schools overrode appellant's First Amendment rights. On appeal, the Supreme Court of Illinois, two Justices dissenting, affirmed the judgment of the Circuit Court. 36 Ill. 2d 568, 225 N. E. 2d 1 (1967). We noted probable jurisdiction of appellant's claim that the Illinois statute permitting his dismissal on the facts of this case was unconstitutional as applied under the First and Fourteenth Amendments. [note 1] 389 U.S. 925 (1967). For the reasons detailed below we agree that appellant's rights to freedom of speech were violated and we reverse. (*Pickering v. Board of Education* 1968)

The court ruled in favor of Pickering by an 8 to 1 margin. Justice Byron White was the only justice to dissent. In White's dissenting opinion he stated, "Deliberate or reckless falsehoods serve no First Amendment ends and deserve no protection under that Amendment" (Pickering v. Board of Education 1968) Justice Byron White went on to state,

A teacher may be fired without violation of the First Amendment for knowingly or recklessly making false statements regardless of their harmful impact on the schools. As the Court holds, however, in the absence of special circumstances he may not be fired if his statements were true or only negligently false, even if there is some harm to the school system. I therefore see no basis or necessity for the Court's foray into fact-finding with respect to whether the record supports a finding as to injury. If Pickering's false statements were either knowingly or recklessly made, injury to the school system becomes irrelevant, and the First Amendment would not prevent his discharge. For the State to be constitutionally precluded from terminating his employment, reliance on some other constitutional provision would be required. (Pickering v. Board of Education, 1968)

#### Epiphany "Now I Understand!"

It was a summer evening in our hometown of Lockport, Illinois. I was driving to the local Pizza Hut. Pickering and I agreed to meet for a pizza and a short interview. I was excited; this was it—the big moment. Tonight we were going to begin to review his experience before, during and after the United States Supreme Court appeal. I wanted to talk about his anxiety of waiting to hear if his case would be reviewed. I wanted to record his excitement when he received the notice that his case would be heard. I wanted all the details of his court experience. This was the most significant element of his story, right? I wanted to record every element of this experience. However, I soon learned my perceptions were mistaken.

As I began to question Pickering that night, I was caught by surprise. As we talked about his experiences, I noticed a different tone. He was not enamored by his experience with his United States Supreme Court. Yes, this was the culmination of his legal battle with the School Board, but it was not the central element of his life story or the most important experience in this long legal battle. His life, his actions and his family were his life story. The thirty minutes in which his attorney argued his case before the United States Supreme Court was really an insignificant detail in comparison. Up to this point, one justice at the Illinois State Supreme Court level had been willing to ask one of the most essential questions in law, "What was the truth." As we spoke, I began to understand the most important aspect of this case according to Pickering. The real tragedy was that the law was actually used to prevent the truth from being examined. Justice Schaefer was the first person to ignore the law, and actually pursue an understanding of the truth. Now I began to understand Pickering. I was excited about meeting and interviewing an appellant in a landmark United States Supreme Court case. I expected this event would be the pinnacle of his experience. I expected him to be enthusiastic in describing the details and how this event changed his life. However, I was wrong. This was not the high point in his journey. This was the point I began to better understand the importance of this study. There was no one significant event, rather the collection of events and the journey as a whole was significant. This was my epiphany.

When I decided to study the case of Marvin Pickering, I had a very specific purpose. I wanted to do something completely different. I did not want to provide another legal analysis of his case. No, I clearly stated that I wanted to capture his life experience during this ordeal. The human experience existed all around the case, before, during and

after. Now I finally understood that this significant experience in Supreme Court and Freedom of Speech history did not have a significant influence on Pickering the person. The period after the Illinois State Supreme Court and throughout the United State Supreme Court was really anticlimactic.

Many of my questions were still pertinent, yet they would not lead to where I had expected to go. As I learned more about the United States Supreme Court, I began to understand why. The hearing at the Supreme Court was far different than the events Pickering experienced at previous appeal venues. The experience at the Supreme Court was just a formality. Yes, the justices received briefs and witness testimony by the parties involved. Yet, much of the process is done behind the scenes. Much is determined by the individuals occupying the positions on the bench. The thirty minutes that the argument actually takes place in had very little impact on Pickering. What left an indelible impact on Pickering was the importance of individual freedoms and the pursuit of truth.

Pickering's perception of justice is similar to most; his belief of justice is that which is fair, right, appropriate, and deserved. I expected Pickering to say something like, "Justice is achieved when an unjust act is rectified and the victim feels whole again." However, as our conversations continued over the months, I came to better understand his experiences and perceptions. According to Pickering, "there are many situations in which the victim can never feel whole again. Not necessarily me, but all victims."

Even the notion of justice in which the offender is held accountable for his behavior is not what I heard. When I listened to Pickering, I heard that justice must serve both parties in a dispute. Pickering contended that, "The justice system must be interested first and foremost in the truth and facts of a case. That is the starting point." Pickering

readily admits that this is one of the most difficult tasks of a society. Truth can mean different things to different people. Yet according to Pickering, “If the system is guided by truth first and implementation of the law second, we can begin to pursue justice. However, if the process is short-circuited by laws, and the truth is irrelevant, then justice cannot serve all.”

Pickering believes that the founders of our country understood the complexity of establishing a government that would pursue justice for all. Although this was a goal of many of our country’s founders, the personalities, issues, experiences and circumstances left many outside the umbrella of justice. Individuals then and now have widely different concepts of justice. This may be why the branch of government established to serve as the highest tribunal and responsible to oversee and administer our courts of justice was almost neglected in the Constitution. In discussing his experiences with the courts, Pickering would describe the judicial branch of our government as inconsistent and arbitrary. “Our legal system is subject to individual will or judgment and likely to change as the people that lead the courts change.” However, people are imperfect; we cannot expect any human endeavor to be perfect. As long as the members of the Court continue to pursue the truth, they will continue to uncover the imperfections in our laws.

### Conclusion and Analysis

The power of the biographical study is the ability to capture the events of daily life. This type of information is rarely recorded in public records. There is an abundance of public documents that record and analyze every aspect of United States Supreme Court decisions, but there is little that captures the human stories coupled with these cases. The United States Supreme Court is an institution that has impacted the lives of millions with

the rulings in cases like *Dred Scott v. Sanford* (1857) to *Brown v. Board of Education of Topeka* (1954). The complete extremes of such decisions represent the unpredictability and continued evolution of this institution (McGuire, 2001).

The United States Supreme Court represents the last opportunity for individuals like Pickering to receive justice. However, over the years as the Court has matured, its ability to hear such appeals for justice have diminished dramatically. In our discussion I observed that Pickering clearly understood that the United States Supreme Court was his last chance for an appeal. Pickering personality dimensions would again serve him well. He was determined to try to understand as much as possible about the Court. In his research, he began to understand the unusual history of this institution. He also came to understand the tremendous power the justice of the court possesses.

This knowledge was confirmed when he personally witnessed the process. In conversation with Pickering, he would paint a picture of the process as intentionally impersonal and bitterly efficient. His encounter with the United States Supreme Court was not his most significant life experience by any measure. Yet he welcomes questions and is very willing to share his experience and knowledge of this institution. As I studied the history of the United States Supreme Court, I was awed by the sheer odds of any case being heard. Yet Pickering was absolutely confident that his case would be heard.

The one question I continue to ask is why. Why did Pickering believe his case would be heard? What if his case was never heard? Many cases never were. I believe Pickering, like most of us do not want to come to terms with the truth. The truth is the odds were against Pickering because the world is not always fair and our system of justice is far from perfect. He was lucky that his case was even brought before the

Supreme Court bench. Not only is it hard to come to terms with this truth, but when one finally does, they are left with nothing (Alford, 1999).

What we can learn from Pickering's experience depends on how much of common values we can surrender. Surrendering our values is difficult because they hold up the foundations of our faith in our community, our neighbors and our fellow man. These values include that the individual matters, that law and justice can be relied upon, that the purpose of law is to remove the caprice of powerful individuals, that ours is a government of laws, not men, that the individual will not be sacrificed for the sake of the group, that the truth matters and someone will want to know it, that if one is right and persistent, things will turn out all right in the end (Alford, 1999).

I am a person that likes the good guy to win at the end of the story, but I understand these stories are just that, stories not reality. The Pickering story makes us feel good about ourselves and our society. Pickering and I want to believe these common values.

We have been taught that we have institutions and officials that oversee justice and fairness in our society, yet as I examine just one case, "Pickering v Board of Education," among thousands, I find a web of corruption that surrounded the process. In analyzing this web, I find Pickering revealed School Board members that intentionally misled the community and some even placed their personal interests before that of the community they were elected to serve. Pickering pointed out that even the most respected institutions were tainted; members of both the State and Federal Supreme Court were forced to resign amidst scandals and charges of corruption. Just about every level of the process involved individuals that were engaged in some type of corruption. At the start of

this study, I had no intention or knowledge of revealing this part of the story. Often, it is individuals, like Pickering, acting as citizens that expose the flaws in the process and lead to the removal of these individuals. They make it possible for us to refuse to believe the truth. He and his family were feature in an article reporting the outcome of the case (see Figure 12).



*Figure 12 - Pickering and his family.*

## CHAPTER 7: IMPACT OF THE PICKERING BALANCING TEST

### Citizenship vs. Public Employee

The title of this dissertation is “TEACHER CITIZEN: 1<sup>ST</sup> AMENDMENT BALANCING TEST.” My initial reasoning for this title was to provide a resource and insight for present and future leaders in the field of education. This resource would assist them in navigating the precarious issue of free speech by employees in public institutions. Not only was this study an in-depth analysis of a failed School Board case involving employee free speech, but it also provided the personal stories and experiences in this case. However, as my knowledge and insight of the case grew, the title began to take on a new meaning. The title also represents a calling that all people have a responsibility as citizens, in particular public employees that have first hand knowledge of violations of law, gross mismanagement, abuse of power, or dangers to public health and safety, to voice their opinions and challenge such behavior.

One overriding fact that I would be remiss if I didn't explicate is that Marvin Pickering loves his country and his community. He believes that this love is best manifested in the actions as an involved citizen. Of course he also has a strong belief in the right to free speech, but more importantly the belief that people need to exercise this right. Like many of our founding fathers, he possesses the wisdom of understanding the great potential of a representative democracy. Yet he also has first hand knowledge of the possible abuse within such governing institutions.

These personal characteristics are not completely uncommon. Individuals that have an elevated concern for their community and an ability to understand complex issues seem to be a common trait of many historical personalities. Not surprisingly, many

had a keen interest in individual freedoms and these same personal characteristics were evident in the writings of many of our founding fathers. One such character is President James Madison, one of the authors of the “Bill of Rights.” Madison wrote, “All men having power ought to be distrusted to a certain degree“ (James Madison, 1788, art. 51). Madison would go on to state, “In framing a government, which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place, oblige it to control itself (The Federalist. Feb 8, 1788, p.1 ).

Madison would later realize the error in this line of thinking; men that are corrupted and have power are unlikely to practice self control. Madison would come to understand that the essential balance needed in this role would have to come from a knowledgeable and involved citizenry. In later years, Madison would write, “A people who mean to be their own governors must arm themselves with the power which knowledge gives.” (James Madison, 1788, art. 51). According to Madison, the citizenry would need to be knowledgeable of issues and take an active role in holding the governing class accountable.

Before my encounter with Pickering, I had a very different notion of a good citizen. I consider myself a good citizen; I vote in every election, I volunteer my time to help the youth and underprivileged in my community. I try staying current with issues in the community. I have attended public meetings and signed petitions for a variety of community initiatives. I have even pondered the idea of running for a school board member position. My discussions with Pickering changed my perspective.

According to Pickering, “We have lost our understanding of citizenship.”

Pickering has taught me that it is our responsibility as a citizen to get involved. Pickering had first-hand knowledge of the government serving the people’s needs when he grew up in a small community that was dependent on collaboration and involvement. “We have come to expect the government and all the different institutions within the government to run itself. This notion is part of the reason corruption in our governing bodies has been so rampant.” It is not enough to pay your taxes and vote. It is not enough to get involved in community decisions.

Pickering refers to an educated citizenry when he talks about involvement. These are citizens who are willing to take the time to learn the issues. I can recall reading the reaction of a local school board member’s excuse when challenged by a local reporter. The reporter was asking her a question concerning an embarrassing issue the School Board found itself in, and her reply was, “I am just a common citizen, we are not experts, we did the best we knew how!” But did she? Did she study the issues or request that the board bring in experts if necessary to help educate the board members regarding the issue at hand.

When Pickering chooses to get involved, he lives up to the expectation of the community. What is this expectation? According to Pickering, “The community expects its leaders to make decisions in the best interest of the community. If that means a legal counsel is needed, then the elected official needs to hire a competent lawyer.” He realizes that elected officials are not going to be experts in every area, yet they should be intelligent enough to recognize their limitation, and in doing so, bring in expertise as needed. This type of expectation has changed our community over time.

## Influences on Our Community

Marvin Pickering had an immediate and lasting impact on our community. As the local paper started to publish his story, citizens gained interest in the School Board and the Administration at Lockport Township High School. For years the members of the Lockport Township School Board would run unopposed. The parents and local citizens had little interest in running for the school board positions. However, after the Pickering case things began to change. After board members were publicly accused of steering contracts and withholding facts from the public, the community involvement increased.

After Pickering's accusations of mismanagement and abuse of the public trust, people in the community began to question the decisions and actions of the school board members. In the next school board election, the one member of the School Board up for reelection lost by a 2-1 margin. The following school board elections involved eleven candidates running for three positions. Before long, most of the original board members had been voted out or decided not to run (*Lockport Herald*, 1965). Although there had been very little public reaction to Pickering's initial charges, the Board's reaction to Pickering's letter had created the very controversy they had accused Pickering of fomenting. Their actions, not Pickering's created a wave of change.

Even after his dismissal Pickering followed the results in the paper. He was pleased to see real citizens involved. According to Pickering, "The newly elected school board members were a different crowd." They were no longer employees of contractors looking for inside deals, or politicians using the position as a stepping stone to the next rung on the ladder of local politics. Most of the candidates were parents interested in their children's education. After winning his case, he returned to Lockport Township High

School and taught for another 30 years in the science department. He also returned to supporting the new school leadership. He never ran for office or pursued a position of authority, but he continued to influence the community from within his classroom. In fact, the current principal was once a student of Pickering.

Pickering continues to be involved. During our time together, he kept me informed about the new highway project coming to completion in our neighborhood. He and his wife Martha attended many of the meetings. The highway contractor was caught taking short cuts from time to time, resulting in flooding and drainage problems. In response, Pickering acquired the topology maps of the area, requested the public build plans and reviewed the work of the contracts. At one point, he contacted the EPA over issues with sewer water draining into unauthorized areas. He has a rare combination of knowledge, concern, and gumption to assure that publicly funded projects are done right.

When highway planners refused to construct sound barriers in areas that have high noise levels from the new highway traffic, Pickering again became involved. The highway commission argued that the communities were allowed to originally identify areas that required sound barriers based zoning of commercial versus residential use. The problem is that the original planning was done over 10 years ago. Now the highway is built, and many residential areas have been affected by excessive noise levels.

The issue has been brought up at local meetings with the highway planners. The highway commissioner presented the fact that communities were involved in the planning from the beginning. Overall, the communities accepted this argument and began discussing the need to raise local funds for the new sound barrier project with the funding being the responsibility of the local municipalities. Not Pickering—he understood that the

highway route had been changed dramatically over the 10 years since its approval. As a result, the highway was built much closer to existing residential areas than originally proposed. He is leading local efforts to have the highway commission pick up the cost of the barriers in areas that were affected by re-routing the highway. What makes Pickering different is that he not only challenges officials, he has the intelligence, knowledge and commitment to investigate the facts. He epitomizes the educated citizenry of which Jefferson spoke.

### Impact on Public Employees

Measuring the impact of Pickering in the area of public employee rights is a complex task. I could have devoted this entire study to just that topic. To start with, Pickering v. Board of Education (1968) has been cited 54 times in federal cases ([www.findlaw.com](http://www.findlaw.com)). As a result of Pickering case, the U.S. courts have come to agreement that the nation is best served if the countries 21 million federal, state and local government employees are free to uncover and report instances of critical importance both to the public and the government.

Contemporary understandings of freedom of speech, especially the protection of public employees, were transformed in 1968. Pickering v. Board of Education (1968) has established fundamental measures that organizational leaders must consider when taking action against employee speech. After the Pickering decision, the courts established that public employees have a limited right to speak on matters relating to political, social, or community concerns without fear of repercussion. That right, however, is balanced by the government's need as an employer to function efficiently (St. John, 2000). This balancing

and the measure associated with the balancing is now known as the “Pickering Balancing Test.”

### The Pickering Balancing Test

The Pickering Balancing test is the fundamental measure of a public employee’s right to free speech. It is now taught as part of every law case in educational leadership programs. The Pickering case serves as the starting point for all cases challenging the right of a public employee’s speech related to his employer. The “Pickering Balancing Test” maintains that government employees have a significant interest in commenting upon matters of public concern without having to worry about losing their jobs. One important purpose of the First Amendment is to protect the free discussion of public affairs (Kaplin & Lee, 1995). This is an essential freedom and enables a well-informed citizenry to hold public officials accountable and compel government to correct its abuses (Pickering v. Board of Education, 1968).

The first element of the “Pickering Balancing Test” requires consideration to whether the speech in question addresses a matter of public concern. This is determined by the content, form, and context of a given statement, as revealed by the whole record. The content of the speech is the most important consideration. The second element, the Pickering balancing test, requires a determination of whether the interests of the plaintiff, as a citizen, in commenting upon matters of public concern outweigh the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees (Kaplin & Lee, 1995). If it is determined that the employee's speech is constitutionally protected, then the court must consider whether the protected speech was a substantial or motivating factor in the defendant's actions. If the speech was such a

factor, the employer must have the opportunity to prove that it would have taken the same action regardless of the plaintiff's exercise of First Amendment rights. However, the issue of the employer's motivations is irrelevant if the plaintiff's statements are not constitutionally protected (Kaplin & Lee, 1995).

#### Impact on the Our Institutions of Education

Pickering has had a tremendous impact on the institutions of public education. When visiting the National Education Association website, you now find "The Supremes' Greatest Hits." This is an assortment of High Court highlights from the last 100 years. Among the hits you will find "Pickering v. Board of Education (1968)." Teachers have come a long way since the Pickering's case was decided. According to the NEA website, "Teachers across the country owe Pickering a debt of gratitude." The impact Pickering v. Board of Education has had on teachers is twofold; first courts declared that a teacher may not be compelled to waive their rights as citizens; second, the Court has demonstrated willingness to go beyond considerations of procedural due process and engage in an examination of substantive grounds for dismissal used in specific cases. With the restriction of their right to free speech lifted, teachers have become a political force (Pickering v. Board of Education, 1968).

The Pickering ruling has also affected school leadership. Across the country, the value of participatory leadership is taught. Participatory leadership is hailed as a way to recognize leadership from within the organization and restore confidence in the school system. Participatory leadership is based on the premise that staff, faculty and administrators serve as major and minor contributors in the process of decision making. Their role is to provide insight and feedback on issues, actions and decisions. It extends

to superintendents and school board members. It does not mean that the superintendent and the board of education give up their governance of the school system or their vision. It does mean that the knowledge and skill of those employed to implement this vision are invited to the decision-making process (Rich, 2002).

The Pickering case brought similar change to the Lockport Township High School District. According to Pickering, teachers are no longer fearful of speaking out publicly and it is now common for teachers to do so at faculty meetings, board meetings and public forums. They serve on committees that are responsible for almost every activity or initiative within the school system. According to Pickering, “Prior to this case, faculty used to sit quietly—now teachers are quite vocal.” Pickering commented that he was amazed; back in 1964 “teachers wouldn’t have dared to do and say what they do” since he returned. He claims that “the fear of oppression has been removed.”

As a direct result of the Pickering case, many teachers are now able to openly organize. In the courts, the Pickering ruling had major significance. Just a few days after his decision, another case from Illinois was heard in Federal Court, *McLaughlin v Tilendis* (398, 1968). The case involved a nontenured teacher who was dismissed for attempting to organize a union. Citing Pickering as authority, the court ruled that the right of free association is guaranteed to public school teachers and that the “assertion of first amendment rights by public school teachers will usually not warrant their dismissal.” At the time of his dismissal, Pickering estimated that there were about a dozen teachers who were members of the American Federation of Teachers. As a result of his case, the union experienced a large growth in membership. Presently there are over 500 teachers in the

local teachers union at Lockport Township High School (Lockport Township High School Annual Report, 2007).

### His Legacy

Everyday of our lives we walk a path. The path may be straight and flat or curved and steep. Often times we have no say. As we walk this path it becomes our journey. This journey can lead somewhere, or it can lead nowhere. For most of us, this journey is guided by our natural instincts. These instincts tell us to avoid obstacles, take short cuts and take the path that is safe and well worn. But the paths we decide to take will ultimately define who we are. Individuals that are willing to stray from the worn trail are often rewarded by the experiences and new trails they create. Once in a while, someone will plan a new route. This can be dangerous; it can result in a separation from our familiar trails. But if we are successful, we leave new trails for those who follow us. I believe that the collection of paths we leave become our legacy.

When we examine the definition of legacy we find that it means “anything handed down from the past, as from an ancestor or predecessor.” Our legacy is defined by our ability to make a difference in the lives of others. Like the trails we create, we often have no idea where they will lead. Maybe you never heard of him, but Marvin Pickering is an important person in our community. His name is not famous in most circles. In fact, many people in his own community don’t know his name. He was an appellant in a landmark Supreme Court case. But that’s not what made him important. The example that Pickering set for the rest of us who believe in freedom, justice and the values we know are worth fighting for is what really made him important. His decision to publicly confront the school district leadership was not popular and he drew many accusations and

attacks. But before long, people in the community began to stand behind him. They saw in Pickering a man who simply wanted to be judged on the truth. Pickering was saying the things they longed to hear; he was armed with knowledge and wasn't afraid to stand up for what was right. In fact, many people just admired Pickering for going where many of them would not.

Pickering's legacy will mean different things to different people. His neighbors and fellow teachers see Pickering as a courageous individual. However, local leadership may have a different perspective. After reading the facts of the case, some may question his loyalty. I did before we meet. Because it's up to interpretation, some might perceive it as good, others bad. Does it really matter? A 100 years from now, what will it matter?

That is the reason this research is important. The legal documents do not tell the entire story. Only Pickering can tell his part of the story. Yes, it is from his perspective. It has to be. Yet the scales of justice, though not always fair, are always at play. Pickering's life is a story of an individual not afraid of creating a new trail. His actions were initially criticized, but later recognized as courageous. For those interested in the entire story, this research will paint another view.

#### Epiphany "Our Bond"

Research that involves the study of a human life is much different than other types of scientific and social scientific research. It probes deep into the most sensitive experiences in an individual's life. It has a lasting affect on both the researcher and subject. The researcher must challenge the subject to self reflect and revisit many different experiences which often trigger different emotions and reactions (Yow, 1994). Yow was correct—it is hard to relate this phenomenon without experiencing it. Many

times I felt uncomfortable opening doors to memories that triggered emotional feelings. Other times, I observed Pickering's resistance in talking about a particular topic. However, I found real meaning and a glimpse into his character as he surrendered. Later as we began to review my interpretation of our conversations, both Pickering and I had moments of discomfort and uneasiness.

When I was initially planning my research I did not intend on signing up for this type of experience. This was supposed to be cut and dry. Sure I plan to hear things that would be motivating, interesting, and maybe courageous. But I did not intend to develop such a personal bond with a complete stranger. I can recall developing a systematic approach to the data collection process. I planned to schedule interviews and record the information I observed. My plan was to have Pickering walk me through the chapters of his life. I would record the stories, collect the accounts of the experiences and try to make sense of the information by connecting themes, analyzing his experiences and drawing conclusions others could learn from.

All of these things occurred, but something unexpected happened. The process resulted in a very special bond between Pickering and me. In the past, he has been approached about his experiences related to the case. Each of these individuals was specifically interested in his experience during the proceedings or his legal point of view. But this study was different; we examined any and all aspects of his life. I can recall talking about his parents. I wanted to know what his relationship was like with his mother and father. As I delved deeper with my questions, Pickering was a bit resistant. As we talked, he began to drop his guard. I can recall his tears as he told stories about his mother. I don't think he ever shared these types of stories with anyone (at least any other

stranger). Pickering shared his stories and his sentiments. I believe we were both a bit uncomfortable initially as we crossed these emotional reminiscences. I can also remember feeling a bit uncomfortable as we sat down together and reviewed my drafts. Pickering is a modest man. Some of the things I wrote were not anything like he would write or state about himself.

These moments made this study a very personal experience for me. I believe I grew as a researcher, as a leader and as a person. I also believe the experience impacted the results of the study. The process of self-reflection enabled Pickering to develop a completely new perspective looking back some 40 years. It allowed him to reflect on how his entire life prepared him for this experience. I believe we accomplished the initial goal of the study and in some respects we surpassed what I initially set out to find.

When future leaders wish to study the results of the Pickering v. Board of Education, they will have a completely new perspective. They can view the case from Pickering's perspective. They will be able to understand his motivation. They will come to realize the result of restricting an individual's rights as a citizen. They will see the effect of bad decisions from a real human stand point. Most of all I hope that Pickering's message, best stated by Norman Cousins (1978), is appreciated. "In a democracy, the individual enjoys not only the ultimate power but carries the ultimate responsibility"(Cousins, 1976, p.67).

#### Conclusion and Analysis

A biographical life study is not just a collection of facts and themes. It is a story that captures the different dimensions of an individual's personality. These dimensions may include character, beliefs, actions, attitudes, principles and above all perspective.

The intent of this study has been to examine and tell the story of a single individual. The research was intended to focus on Marvin Pickering's life experience before, during and after his experience as an appellant of a famous U.S. Supreme Court case. The story is intentionally derived from his perspective. Obviously, there is more to his life than the stories and experiences he chose to share. Yet, looking back, Pickering provided a complex portrait of an individual with a very unique personality dimension.

Marvin Pickering shared his personal story, beginning with his childhood experiences of growing up during the depression on a small farm. He shared personal feelings about witnessing his parents struggle to cope with and overcome very personal tragedies. Conversely, Pickering enjoyed describing his recollections of simple pleasures of life in a small community like listening to the radio at night with his mother or congregating with neighbors at the community chapel. He shared the experience of witnessing his father's involvement in the community.

Through their role modeling and fortitude, Pickering's mother and father provided young Marvin with a clear example of community service and persistence. Pickering was influenced by his parents' values and determination. Pickering witnessed the local governments actually serving the people in his small rural community. He witnessed members of the community including his father, struggling at times to keep informed of local issues and voicing their opinions. His childhood experiences taught Pickering that he could be happy and endure even the most difficult times and situations. These experiences prepared him for the personal struggles he would face.

Pickering shared his willingness to work hard for community and school interest. He and his family served the school district well in promoting and rallying the

community support for the school referendums. He understood the complexities and obstacles the school district leadership faced. He also described the circumstances he would not allow himself to be placed in. He would not let himself be used to deceive or mislead his neighbors. When it came time to challenge individuals, he would take a position of public leadership.

His leadership was not based on title, privilege or association with other leaders. Pickering would state that his leadership came from knowledge and honesty. He was eager to work with the leadership of his institution until they crossed a significant line. When the School Board leaders decided it was in the best interest to hide the facts from the community, Pickering believed they no longer represented the interest of that community. At this point they were content to work with a citizenry that lacked knowledge of issues. Leading from behind, or even from the middle, is a very difficult position, particularly during times of conflict. Pickering knew his actions would result in a reaction from the school leaders, but he was surprised by their decisions and actions.

In analyzing the reaction, Pickering has a very philosophical perspective. When organizational leaders lose focus of long-term goals in lieu of short-term goals, it often requires an individual with courage and gumption to challenge their decisions and actions. The reason many leadership initiatives fail is because they are dictated without involving individuals at the ground level. The leaders believe they know best. They can go it alone. Unfortunately, their failure to pursue greater participation is typically motivated by a belief or actuality of having something to hide. This might be mismanagement, a record of poor decisions, an effort to avoid politically sensitive issues, or worse! (Lee-Chai, & Bargh, 2001).

That's where leadership from the ranks comes into play. According to Pickering, "When leaders depend on distorting or hiding facts in an effort to achieve short-term goals, they lose credibility as well as the trust of everyone involved." This is particularly true when employees are asked to support the efforts of these leaders. This point was particularly abhorrent to Pickering: "When a leader takes action and makes decisions that result in his reputations being questioned, that is one thing. But when they ask others to participate in this type of behavior, it is a completely different level of misconduct."

When asked what he hopes future leaders learn from his experience, Pickering is quick to point out that "leadership is not about making decisions and getting your way. Leadership is about promoting ideas, providing vision, involving everyone and most importantly accepting criticism. When an individual accepts the role of leader, he must accept the fact that people will disagree with his decisions and actions. Pickering is quick to remind us that we elect individuals to serve! During many hours of interviewing Pickering, I never once observed the attitude that he wanted to control the decisions or actions of the school board leaders. His intent was to challenge their behavior and principles. According to Pickering, "Leaders and politicians are elected to serve the people and the community, not tell them what to do." He happened to be an employee of the school district, but his actions were clearly that of a concerned citizen.

"The efforts of the government alone will never be enough. In the end the people must choose and the people must help themselves". (Kennedy, 1961)

## APPENDIX A: THE SUBJECT AND PURPOSE STATEMENT

### The Subject

Marvin Pickering is now a retired public high school science teacher. In 1962, however, he had no idea that his struggle with the local school board officials would lead to the prominent Supreme Court decision on a public employee's right to free speech. On September 24, 1962, Pickering wrote a letter to the editor of a local paper complaining about the school board's allocation of funds. His complaint was based on the unreasonable favoritism of athletic programs exhibited by the school board and school administration. In his opinion, spending was skewed; a disproportionate amount was for athletics at the expense of academic programs. Accordingly, Pickering wrote a two-page letter to the editor of the local paper. According to the court opinions, Pickering was very exact and only stated the facts precisely as they were, describing the conditions teachers were working under as totalitarian (*Pickering vs. Board of Education of Lockport Township High School*, 1968, p. 567).

Pickering's letter also warned the citizens that the school district's tax payers were being taken "to the cleaners" by the school board's actions. He concluded the letter by stating "I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken away from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?" (*Pickering vs. Board of Education of Lockport Township High School*, 1968, 563 p. 567).

Pickering was successful in attracting citizen attention to the situation, but it also got the attention of the school's administration and school board members. Pickering was dismissed for his actions. Pickering was clearly a public employee, but his actions were

that of a concerned citizen acting on a matter of public concern. The dismissal of Pickering reinforced the belief of the day, that is — that all public employees surrendered their right to publicly criticize their employer when they accepted employment. Free-speech experts now say that this case stands as the starting point in all public employee First Amendment case law. Robert O’Neil, founder of the Virginia-based Thomas Jefferson Center for the Protection of Free Expression stated; “To this day the Pickering case stands as the public employee First Amendment case, though the court has modified the test for public employee rights somewhat, it still all begins with a Pickering analysis” (Hudson, 1998, p. 1). Pickering’s case involved the issue of freedom of speech for public employees. However, a life study of Pickering may also illuminate several significant derivatives worth investigation and analysis. Personal and professional sacrifice, public discourse, individual courage and leadership in the form of decent, are possible derivatives that may prove worthy of further examination.

#### Purpose Statement

All institutions are influenced by a variety of legal issues, policy making based on these legal issues, and the resulting leadership decisions. According to the current legal context, the leadership in all public institutions may face complex decisions, related specifically to issues of employee free speech. Accordingly, all public schools at all levels of education are clearly affected (Rich, 2002). Therefore, research on a specific prominent case related to this issue, and the challenges confronted by a particular educational institution, and the central figure involved in the case may yield findings that enhance our understanding.

A series of interviews with the central figure in the *Pickering vs. Board of Education of Lockport Township High School* (1968) may illuminate important facts, logistics, and details. Moreover, these interviews may also lead to greater understanding of the sociological, cultural, and political issues that are interwoven in this case. Thick depiction can elevate the knowledge base from static facts and issues to a dynamic source of knowledge (Rhoades & Valadez, 1996). A fresh source of knowledge, in turn, may enable state, county, and local leaders to ensure that such developments in our future institutions of public education are implemented in a positive and constructive manner for all concerned (Wildman, 1991).

#### Making Sense of a Individual's Life

Biographical studies can be undertaken for many reasons. These reasons are usually determined by both the people being studied, but also on those doing the studying. Typically, the purpose is to document a brief summary of the unknown facets of a person's life, work, and contributions. In undertaking this biographical study of Marvin Pickering, I will strive to provide much more than a collection of stories describing his life work, and legal perils and triumphs of Marvin Pickering. There is a deeper reason for researching the lives of others. Denzin (1989) describes a biography as “conventionalized, narrative expressions of life experiences.” (p. 17).

According to Denzin (1989), “These conventions, which structure how lives are told and written about, involve problematic presuppositions and taken-for-granted assumptions.” (p. 18). These assumptions include the existence of others, the influence and importance of class, starting points, objective life markers, turning point experiences and family beginnings). The explorations of these conventions serve to distinguish the

biographical method as a unique approach to the study of human experience (Denzin, 1989).

## APPENDIX B: RESEARCHER'S PERSPECTIVE

### Researcher's Perspective

Qualitative researchers interact closely with research participants; therefore, the position of the researcher in a qualitative study is an important dimension to consider. In a biographical study in particular, the reader must understand my basic relationships (Elder, 1994). In an attempt to understand the interpretation and assertions, the reader must be conscious of my connection with both the subject and the topic. My strong convictions, personal biases, and life experiences may influence covertly the portrait I present. These influences may manifest themselves in the manner in which I have formulated my questions, how I respond to verbal and nonverbal responses and in the depth and breathe of the follow-up questioning. Any narrative inquiry, even the most objective can be disfigured by my subjectivity as a writer (Clandinin & Connelly, 2000). This perspective is an attempt to identify and address such concerns and inform the reader of my personally held believes, biases and common experiences shared with Marvin Pickering of this biographical study.

It is the task of readers to observe the text in full consciousness of that possibility; doing so is merely part of the process of reading. The most powerful voice in a biography is supposed to be invisible, that is the voice of the author. Throughout the writing, the biographer's voice is heard, but if the reader does detect the biographer, he or she is accused of artistic and technical failing. Worse yet, when you don't notice this hidden voice, you risk forgetting how much of biography is based on interpretation rather than "fact" (Taylor, 2002). It is best stated by John Locke (1690/1959), "Reading furnishes the

mind only with the material of knowledge; it is in thinking that makes what we read ours” (p. 549).

Recognizing the influence biographers may contribute is imperative in so the researcher must acknowledge and attempt to mitigate their own preconceptions and biases. In doing so, the researcher may give up some control over the research and empower the reader by coming clean with the reader (Denzin, 1989; Giele & Elder, 1998; Josselson, Lieblich & McAdams, 2003; Yow, 1994). This process contributes to the whole of research while adding greater depth and broader understanding. However, no method assures the researcher of success, however, clear intentions might be (Taylor, 2002).

The researcher’s decision to pursue a life study requires a self-reflection of my convictions related to this subject and topic. The self-reflection process requires an inward examination of personal experiences and biases that may influence my intrusion into the manuscript. According to Creswell (1998), “At the larger structural level, the biographer needs to discern the degree to which there is intrusion of the author into the manuscript. This issue, the extent of the interpretation in a biography, varies from one study to another“ (p. 173). As part of the self-reflection process I examined many of the experiences and positions that I share with Marvin Pickering.

#### Our Connection

It is important to reveal that I came upon the Pickering case purely on accident. In fulfillment of the requirements in a Law in Higher Education class, my assignment was to develop and present a legal brief on one of many cases we studied. I just happened to be assigned *Pickering v. Board of Education* (1968). I was originally intrigued by the case

purely due to the locality. Coincidentally, the school board involved in the Pickering case is my local school district. In addition, I discovered that Pickering might be a neighbor of mine. These facts intensified my interest. However, after examining the case I was completely captivated by the topics and issues involved.

I felt very comfortable around Mr. Pickering from the first time we meet. This might be due to the fact that we had several experiences, positions, and beliefs in common. Both Pickering and I came from a large family; we also have shared common family tragedies. However, our most significant commonality is that we both chose the same occupation. After just a short conversation with Pickering, I recognized that he shared the same high respect and passion for our chosen profession. To understand my passion for teaching, I need to explain the significant role teachers have played in my life.

My mother was only sixteen when I was born. As a result, she never completed high school. My father completed high school and worked as an autoworker. Like most children of teenaged parents, I was raised by both my parents and grandparents. My grandmother was especially close to me because of my mother's age when I was born, but also because I was the oldest of five children, three brothers and a sister. Like many children, my grandmother was my first real teacher.

My grandmother served as my initial inspiration. However, many other individuals have served as role models and influenced my admiration of teachers. Teachers throughout my life have provided stability and direction in a chaotic childhood. My father changed jobs frequently during my childhood and as a result our family was continuously on the move. This resulted in a very interesting primary education; I attended thirteen different grade schools. So I learned to make new friends quickly. I

often changed schools in the middle of the school year. This was very uncomfortable, and as a result, I became very dependent on my teachers. I was very fortunate to have fine teachers. From my earliest memories, I admired these teachers. All along, my grandmother was my greatest enthusiast. My grandmother was very impressed that I was able to do well in school, even though I never attended the same school for more than a year.

When it came time for high school, I applied to a magnet schools in the city of Chicago. These schools only accepted a small number of students from dozens of primary schools across the city. My grandmother was extremely pleased to hear that I was accepted. However, by the middle of my freshman year, my father had accepted a new job, and my family was on the move again. I was extremely disappointed since I loved this school and had the opportunity to be taught by some of the best teachers in the Chicago public school system.

My grandmother was concerned about my dilemma. As a result, she promised to speak with my parents and try to persuade them to let me complete high school by living with her and my grandfather for the next 3 years. While this resulted in much family turmoil, she was successful. When my family moved to the suburbs, I moved in with my grandparents. Looking back, I am sure they didn't know what they were getting themselves into. It had been several years since they had children at home. However, several of my teachers and coaches knew about my situation and promised my grandparents that they would keep a close eye on me, and they did! These experiences exposed me to a different dimension in the roles and responsibilities of a teacher. I

learned that teachers are called upon to provide much more than just classroom instruction, especially in lower social economic schools.

I will always be grateful to these special individuals who took time out of their own lives in order to take a special interest in mine. Like adopted parents, many of them would come to my sporting and school events, check on my grades, and make sure I was not taking advantage of my situation. They made it possible for me to complete all four years at the same high school. When I look back on my high school years, I now recognize the tremendous influence these teachers had on my life. These experiences ultimately lead to my ability to be the first person in my family to attend and graduate college. In fact, these influences led to my decision to become a teacher. I wanted to be able to have a positive influence on others, just as these teachers had on me.

Today, I find it important to share my experience in the Chicago Public School System whenever and wherever I can. Too often we read about the negative publicity received by the Chicago Public Schools and its faculty. After graduating high school, I enrolled at a local state college. I later, joined the United States Navy where I began my teaching career. After I was discharged, I returned to Illinois and was hired as a teacher and coach at a local high school. Like Pickering, I worked for one of the Illinois High School districts.

My experience in high school is just one example of why I believe teachers play an especially important role in our communities and can have profound impact on our children. It has been my experience that teachers, unlike most other public employees, find themselves serving in many roles other than the one they were hired for. Many teachers serve as counselors, mentors, advisors, evaluator, coaches, trainer, club

coordinator, events coordinator and many others in addition to their responsibilities as instructors in the classroom.

Teachers often find themselves providing family and social support, as a result of their high profile and daily interactions with their students. These responsibilities often result in teachers possessing a special relationship with their communities and often result in a unique understanding of the needs and perspectives of their fellow citizens. As a result, there are many times when teachers find themselves placed in position in which they feel obligated to take a public stance. These actions may include providing special attention to individual students, or speaking out publicly to influence policies and decision that may affect the quality of their communities or institutions.

#### Recognized Biases

As a result of my self-reflection, I recognize that the strongly held personal views regarding the profession of teaching may pose obstacles in a bias free approach to this research. However, I also believe shared knowledge and personal experiences may result in a unique insight and special opportunities to understand shared personal experiences. Some researchers suggest that to presume researchers and subjects have commonality might impede the capacity to discover and discern (Denzin, 1989; Yow, 1994). These concerns typically effect the researchers ability to interpret subject knowing. However, in my interaction with Marvin Pickering I will try to present a clear picture of myself as a life-long teacher. This means that I will share many similarities with the subject as well as the reader.

These similarities may provide greater understanding of the interpersonal relationships, professional relationships, organization, cultural environment and daily

experiences of a classroom teacher (Denzin, 1989; Josselson, Lieblich & McAdams, 2003). Denzin refers to this type of understanding as intersubjective knowing.

*Intersubjective knowing* is a form of subjective knowing based on drawing from shared experiences. The interaction with others and the knowledge gained from the process of participating in a shared experience provides a new but different experience than subjective (Denzin, 1989). Intersubjective knowing based on our commonalities may manifest themselves in many different forms including greater ability to ask detailed question, relating to organizational culture, and familiarity with the daily experiences and task we have shared. Ultimately, intersubjective knowing results in a richer depiction based on shared experiences (Denzin).

Although we share many commonalities, in many ways we are very different. These disparities provide challenges to gain greater knowledge based on what Denzin (1989) refers to as “subjective knowing.” Subjective knowing refers to understanding drawn from interpretation of a phenomenon from personal experiences or the personal experiences of others. The disparity that stands out for the most part is our difference in age and his strong call to action.

The Pickering case occurred in the 1960s. Many factors have changed over the last four decades. The effect of time and the study human experience can be viewed from several different perspectives. The life-stage perspective examines the common experiences each of us experiences as we develop both biologically and psychologically. These would include stages of childhood, puberty and aging. Although there are differences, generally experiences and human develop follow a similar path. The life course perspective recognizes the significance of the social ecology of development but

emphasizes the historical positioning of one's life course (Elder, 1974, 1994, 1998). From the legal environment to the interpersonal relationships, the researcher and subject come from entirely different eras. Recognizing the dissimilarity in the eras we experienced, I am interested in examining these differences. I hope to extract examples of such distinctions in an effort to analyze and interpret them in order to better understand the culture then and now. Pickering's actions over 40 years ago changed our culture and employment relationships in public institutions. The analysis of just these social and cultural changes could provide the bases for an entire study.

#### Researcher's Motivation

The research was not limited to the deductive facts, personalities and logistics of the legal proceedings. As a fan of history, I also recognize that individuals who dare to challenge the norm have made the greatest and most enduring impact on society. As a result of my examination of the Pickering case, I found myself trying to better understand Pickering the "man." Denzin (1989) refers to this as the "ideological self." The ideological self refers to the broader cultural and historic meanings that form the characterization of the individual in a particular setting, with a particular group at a particular time. The disparity between Pickering and me were central to my interest in the individual. Although I have taken what I would view as courageous stands over my 20-year career, I have never taken the type of personal risk when compared to Pickering's actions.

Part of my interest in his story was to understand what influenced his actions. Will he be able to look back at the situation 40 years past and recall and communicate his feelings, thoughts and motivations? What was the situation? What motivated him to act?

Denzin (1989) refers to this as the “linguistic self” (p. 31). The linguistic self refers to the symbolic or linguistic indicators that an individual uses when conducting inner conversations. What can I find out about his inner personal beliefs, courage, sacrifice and values. The challenge of understanding the inner character is certainly not new.

## APPENDIX C: SIGNIFICANCE OF THE STUDY AND RESEARCH QUESTIONS

### Significance of the Study

This research is of significance to the domain of educational leadership as it extends the knowledge base that currently exists in that field. This study is significant in both its content and process. In terms of content, this study helps fill a void in the existing research about individuals that have challenged, sacrificed, and shaped decisions and policy from the outside in. The existence of biographical research which focuses on whistleblowers or individuals that lead movements of activism are few. Research about the more generic notion of leadership is abundant, but the study of leadership from outside the traditional perception of leadership is less common. The literature review revealed several parallel studies in two forms:

1. Research that studies the life of whistle-blowers and social activists.
2. Research that provides legal analysis of important legal cases.

This study attempts to bridge these two types of analysis into a biographical study that provides limited legal analysis. This life study is designed to trigger analysis or focus attention on a voice, experience and lesson from an individual that influenced change from the most unlikely position. Through the imagery of his life and the first person voice, the reader will see leadership through a new lens.

Finally, the biographical tradition is an infrequently used venue for dissertation research (Taylor, 2002). A review of existing dissertations reveals biographies derived from examining the writing of deceased authors, poets, politician officials and social trailblazers (Clark, 1988; Collins, 1999; Flanagan, 1992; Kaylor, 2002; Nelson, 1998; Prichard, 1986; Rich, 2002; Sarnecky, 1990; Scott, 1992; Smith, 1998; St. John, 2000;

Sutton, 1981; Timbs, 2003). There are relatively few biographies of common living men and women as told from their perspective. This study provides prospective leaders with an example, and a point of departure for their contribution to the institution.

### Research Questions

In addition to examining the legal implication and impact of the *Pickering vs. Board of Education of Lockport Township High School* (1968), specific attention will focus on influences and experiences of Mr. Pickering's life that contributed to his actions that resulted in a landmark Supreme Court Decision. The rationale for this examination is drawn from the interpretive interactionism theory. This theoretical approach to social research presented by Denzin (1989) "attempts to make the world of problematic lived experience of ordinary people directly available to the reader" (p. 7). This is a rare opportunity to gain greater knowledge of the unknown stories and personality related to this case. The intention is to "capture the voices, emotions and actions of those studied" (Denzin, 1989, p. 19). What events and or actions are not found in the official court documents? I seek to reveal the personal thoughts of Pickering's phenomenological self. What are his ideas, images and beliefs in regard to the actions and events he experienced throughout the ordeal? Who were the major characters that influenced the case? The intent here is a thick depiction, thick interpretation, and deep, authentic understanding. Interpretive interactionism is based on a combination of subjective and intersubjective means. The study will draw upon the gained knowledge and understanding of the life experiences of an individual as well as the researcher's shared experiences with the subject (Roberts, 2001). The method used in this work is dependant on an interpretive process that leads the researcher to enter into the emotional and psychosocial life of

Marvin Pickering. All researchers, no matter how unstructured or inductive must come to the fieldwork process with some orienting questions or ideas (Miles & Huberman, 1994).

Wolcott (1982) describe it this way:

There is open mindedness and willingness to enter a research setting looking for questions as well as answers, but it is impossible to embark upon research without some idea of what one is looking for and foolish not to make that quest explicit (p. 157).

In an attempt to provide focus and establish bonding, the research will be guided by the following research questions.

*Question 1*

What personal facts, images, artifacts, details and beliefs can Pickering recall and communicate in order to develop a deeper understanding of the impact and outcome of the *Pickering vs. Board of Education of Lockport Township High School* (1968) decision?

*Question 2*

What generational, cultural, experiential and family circumstances in Pickering's life influenced, motivated, and shaped his conception of justice, responsibility, and courage?

*Question 3*

How were Pickering's conceptions of justice and personal and professional responsibility made manifest in his role in legal action against the school board and school administration?

According to Bruner (2002) "the purpose of all social science research is to capture the personal experience in a method that connects with fundamental qualities of

human experience, and relate these qualities to wider social communities” (p. 133). The process will address a historical and empirical void. Much has been written from the legal perspective regarding the law and higher education. Graduate students in education law classes study the well-known seminal cases. However, more is needed in order to understand the affect these cases have had on the individuals involved (Botch, 2003).

The objective is to discern how the perceived realities of the cultural context that existed in the 1960s Illinois school district and school administration influenced Pickering’s actions, decisions, and experiences. Were the actions taken and outcome inevitable or could different decisions avoided the entire ordeal? I hope the reconstruction of the events and experiences through the personal lens of Pickering will uncover new facts, details and truths that future leaders can learn from. What mistakes were made and by whom? Do the same circumstances exist today, and if not, what has changed?

## APPENDIX D: METHODS AND PROCEDURES

### Significance of the Study

All institutions of education are influenced by a variety of legal issues, policy-making based on these legal issues, and the resulting leadership decisions. Therefore, research on a specific prominent case and the challenges confronted by a particular educational institution, and the central figure involved in the case may yield findings that enhance our understanding. Time and again the little ideas are overlooked and common characters are unseen. “Perspectives too simple or too narrow become fallacies that cloud rather than illuminate managerial action” (Bolman & Deal, 1997 p. 34). This study is based on the belief that change and the leadership that influences change often results from the most unexpected sources. The Pickering case provides three very important issues to be examined: law and legal policy making, free speech and challenges to the authority, and decisions of leadership and the person cost involved when individuals challenge authority.

The majority of legal case study and the study of law in higher education focus on the major legal issues and implications to our institutions. Although this must be a focal point in the study of law related to educational institutions, there is an aspect which is often neglected that may also provide insight and greater understanding. Few articles or research projects examine the individuals, relationships or actions involved in prominent cases. The examination of these lives may shed light on understanding the consequences of both sound and flawed policies and actions. Another significant issue involved in the

Pickering case is free speech, especially speech that challenges the policies, actions and decisions of administration and board members.

One of the most volatile legal issues is freedom of speech (Alford, 2001). Too often individuals who hold positions of power and influence view free speech and challenges to their ideas and decisions as personal affronts to their authority and effectiveness. This often blinds them to the effect and results of their actions (Alford). The inability to view the environment from different lens results in ignoring important organizational participants. According to Rhoades and Valadez (1996),

“Like good ideas, leadership ability is possessed by many organizational participants. The strength and personal qualities of individuals vary widely. In different settings and in different contexts, the strength or qualities needed by individuals to provide direction for the organization and for others also will vary. Therefore, opportunities must be created that enable a variety of members of the college to assume responsibility. Leadership is not a quality possessed only by high-ranking organizational officials.” (p. 210)

Our ability to examine significant events from the opposite end of the telescope will broaden our understanding and strength as leaders. “What would social theory look like if it were told by one who stood up and tried to do the right thing and was crushed by power?” (Alfred, 2002, p. 265).

By studying the life and experience of Marvin Pickering before, during, and after this landmark case, we will come to a greater understanding of his experiences and try to understand the personal costs he experienced. Alford (1999) a professor at the University of Maryland, describes a recent ethics conference in which he states “there was a lot of talk about character education, values education, and all the rest. There was not one word about consequences or costs”(p. 29). Too often ethics and ethical individuals are publicly praised and honored. But rarely are we interested enough to ask the hard questions. Has

the theory and practice of ethics become idealistic, or is this a way of making sure that ethics does not get in the way of the real business of making a living (Alford, 1999).

The examination of life stories and personal experiences reveals the unique capacity of narrative inquiry to comprehend human experiences (Clandinin & Connelly, 2000). However, just as there is no definitive answer to the problem of society and its injustice, so there is no ultimate solution to the problem of the relationship between the principled individual and the organization. Some problems reveal tensions so basic to social life that they can never be solved, only dealt with and understood (Alfred, 1999). Written in the life history tradition, this study is an attempt to provide greater understanding of such a conflict.

### Qualitative Methodology

Qualitative research has its origins in the notion of multiple realities that are constructed within the confines of time and place (Creswell, 1994). The fundamental principle recognized by qualitative researchers is that truth is not an objective construct attainable through detached observation or measure. Nor is the objective of qualitative research the creation of a universalized construct designed to explain a given person, group, or phenomena. Rather, qualitative research is a way of describing, exploring, and offering a perspective (Wolcott, 2001). In some cases, such as when it seeks to give a voice to an underrepresented population, it becomes a form of political expression (Lincoln & Guba, 1985).

In other cases, it serves to provide clarity and understanding of an opposing view, experience, or stance. Legal documents focus on the central questions within the legal

context. Understanding the legal context may have significant importance to leader, however, understanding the actions and decision that lead to costly and sometime embarrassing legal battles can be just as important. In fact, understanding the interpersonal conflicts, culture, decision processes, decisions impact and ultimate outcome of a specific legal conflict may provide greater details and guidance for future leaders.

Creswell (1994) described qualitative research as “an intricate fabric composed of minute threads, many colors, different textures, and various blends of material. This fabric is not explained easily or simply. Like the loom on which the fabric is woven, general frameworks hold qualitative research together” (p. 13). Creswell’s metaphor reveals the importance of examining even the most ordinary to better understand the extraordinary. This “bottom up” account not only provides a new perspective, but also colors the picture of the social context of the time (Dautenhahn & Coles, 2001). The Pickering story is just such an example. Although Pickering is somewhat of an obscure individual and acted from a rather powerless position, his action resulted in significant change. His story, from his perception, may well never be told, interpreted, or understood. This qualitative research is an opportunity to add color, depth, and richness to our understanding of just one of thousands of conflicts that taint our institutions. A passage from this study may well accompany the Educational Law textbook one day, as the preferred choice of examining this case. The human story may well add compassion and awareness when crafting legal policy for future leaders.

#### Role of the Researcher

Each of us brings different personal characteristics to our work. Whether the characteristics of intolerance, fear, hope, caring, activism or courage, these characteristics in turn bring meaning to our lives and shape the world around us. In examining the life of the Marvin Pickering, there are implications of caring and protest of a concerned employee and citizen. Others displayed characteristics of intolerance and fear. Ultimately the story is driven by one individual's tenacity, hope, and courage. Although each and every one of us is capable of these characteristics, the manifestation of these characteristics in the right time, and right place, forces turmoil and influences change. I have attempted to go beyond reporting simple events and details of experience. Instead I have worked to explain how events and details actually represent a web of meaning (cultural constructions).

Above all, my goal was to establish and maintain research integrity. Research Integrity is central to the search for new knowledge; it calls for the rigor, accuracy, truthfulness and accountability that are the hallmarks of good scholarship. All individuals engaged in research are responsible for fostering a process and work that encourages absolute intellectual integrity with open communication and trust. Good researchers emerge from a true sense of identity and integrity (Palmer, 1998).

But by identity and integrity, I do not mean only noble features, or good deeds we do, or the brave faces we wear to conceal our confusions and complexities. Identity and integrity have as much to do with our shadows and limits, our wounds and fears, as with our strengths and potentials. (p. 13)

Identity comes from the different relationships, experiences, and decisions of our lives. Integrity is a result of making sense of our identity and relating to forces in ways that bring wholeness and life rather than fragmentation and loss (Palmer, 1998).

## Data Collection

A biographical life history is a written account of a person's life based on conversations and interviews (Denzin, 1989; Yow, 1994). In this tradition, the central source of data in this study is a series of 10 to 12 personal interviews with the central character. Other sources of data including artifacts, legal records, articles, and personal writings will be examined. These additional sources serve as both points of reference and instruments to jog memories for recalling experiences. In terms of focus, the lens of this study intentionally spotlights the ordinary, the teacher, the citizen. The story of Marvin Pickering is exactly that, an opportunity to examine the personal experience taking place at the reverse end of the telescope.

The interview process was structured and continually assessed to provide greater adaptability to the data collection process. The structure was based on Yow's (1994) structure for biographical narrative inquiry. The interview process began with what Yow refers to as a *preliminary meeting*. "At this preliminary meeting, you can talk about what work will be done during the recording session. During the preliminary meeting I will mention the goal of the study; refrain from getting into details at this point. Explain that the recorder will pick up sounds... insist on a noise-free environment" (p. 57). This session is also used to introduce each other, ask question about the process, and agree upon boundaries and guidelines for later meetings.

The next type of interview used was the informal *conversational interview*. This is a free-flowing process designed to gather information, data, themes and guidance for later interviews. This interview was planned with no predetermined questions in order to

remain as open and adaptable as possible to the interviewee's nature and priorities; during the interview, the interviewer “goes with the flow” (Yow, 1994). Typically, the interviewer will start with an introduction and move to very general open-ended question regarding the individual or the individual’s experience. This will require some general planning, but the intention is to learn more about the person, the process, equipment, surroundings and become comfortable with possible topics and directions. Many times it was useful to ask Marvin Pickering to bring artifacts, notes, pictures, and other things that may trigger conversation and trigger memories (Denzin, 1989; Yow, 1994). This type of interview was good for forming direction; however most interviews fall under the general interview.

The general interview guide approach is intended to ensure that questioning is designed around a topic or related topics. This form of interview provided more focus than the conversational approach, but still allows a degree of freedom and adaptability in getting information from Marvin Pickering. This type of interview requires more detailed planning and is designed to gather target data. The final type of interview strategy I plan to use is the intensive interview.

The intensive interview typically lasted for 40-90 minutes. In the intensive interview the emphasis was on obtaining narratives or accounts in the Pickering’s own terms. I used an interview guide as a primary reference, but I also felt free to change topics based on the responses heard. A series of probes (often connected to a specific question) were used to engage the participant to discuss issues not mentioned or only slightly disclosed earlier. Intensive interviews were used throughout the process. These interviews served to intensely examine narrowly focused topics related to his

experiences, relationships, personal beliefs or feelings. For instance, I chose to examine Pickering's experience at the high school hearing after an actual visit. I continuously tried to capture feelings and memories triggered by our visits. The interview strategy selected was driven by the process, questions to examine, and results of the data analysis.

Yow (1994) identifies different types of questions one can ask in an interview session. These include questions related to *behaviors* or about what a person has done or is doing, *opinions or values* question regarding a topic or experience, question that address feelings. These types of questions are expected to be answered by subjects responding with "I think ...," so researchers need to be careful to note that they are looking for feelings. Knowledge questions are types of question that go to the facts about a topic; sensory question, are questions about what people have seen, touched, heard, tasted or smelled; background or demographics questions are designed to gather standard background information, such as age, education, family, employment etc.; standardized, open-ended questions are questions designed to promote open dialogue and freedom to explore topics; an open-ended question allows respondents the freedom to choose how to answer the question. In some cases, Yow (1989) also discusses the use of closed, fixed-response questions. These are questions in which the subject is asked a question that is designed to have a fixed possible answer "yes or no," and numeric answer, a specific date of time. In keeping with the modern techniques of biographical studies, the majority of the questions will be open-ended and inviting. Specifically, the main question for this study was: How does this individual describe his life and his experience as a Supreme Court case appellate.

Questions were selected based on Denzin's interpretive strategy. The interpretive strategy is characterized by the following features. First, the researcher begins with an objective set of experiences in the subject's life. These experiences were organized by life-course stages (childhood, adolescence, adulthood, parenthood, old age) or by life-course experiences (education, spirituality, marriage, employment, sacrifice, turbulences; Dentin, 1989). In an attempt to understand the phenomena and experience of a central figure in a prominent Supreme Court case, I constructed a life-course experience model.

This included Pickering's experiences before, during, and after the case decision. Particular attention was focused on his experiences as the case passed from venue to venue during the appeals process. I revisited several of the venues with Pickering. As part of this process, I captured Pickering's perceptions, recollections, and emotions with the use of a voice recorder as well as capturing the experience with photographs. The data was organized, analyzed, and interpreted to form a deductive portrait of the legal process from his perception. The aim was to gain greater knowledge of the facts, timeline, and people involved in each of the major milestones within the legal process. However, this study of Pickering was intended to go beyond a deductive examination of the legal proceedings.

To gain a greater understanding of Pickering the man, I constructed a parallel life-course stages model. This model provided a framework for an inductive examination of the individual. Denzin (1989) refers to this as the "phenomenological self" (p. 31). The phenomenological self is concerned with "ideas, images, and thoughts a person has of himself or herself as a unique person" (Denzin, 1989, p. 31). An examination of his childhood influences, family life, education mentors, spiritual life, parenthood, aging ,and

other aspects of his life will reveal the inner character of the man. In doing so, the researcher hopes to come to a greater understanding of what motivates individuals who take such a strong public stance. This framework also reveal insights to other aspects of Pickering’s phenomenological self, including his sense of leadership, courage, justice, and self sacrifice.

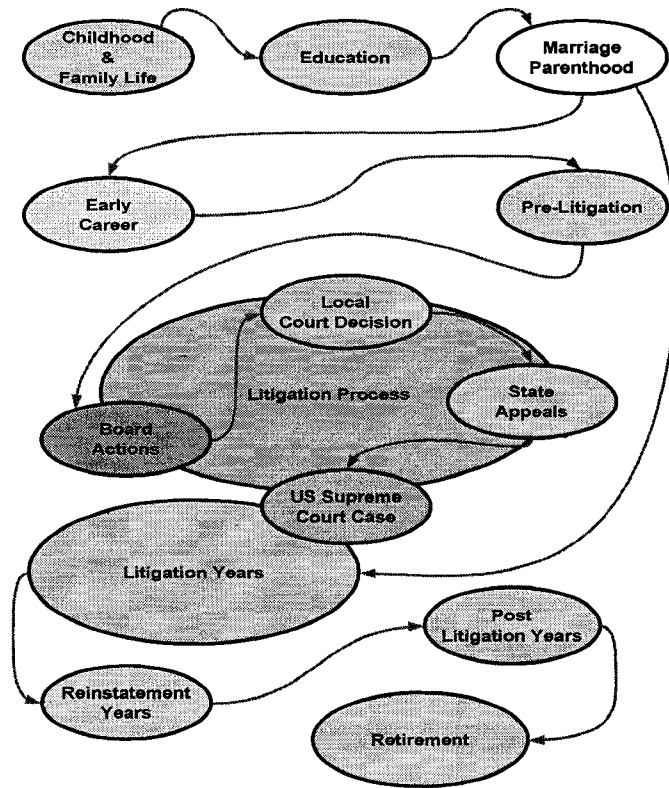


Figure 13 - Concept map deductive study of life-stages.

The final stage of the interpretive strategy requires me to traverse the model (see Figure 13). As data begins to fill in the story, areas of interest or importance were revealed. The exposed facts, stories, themes, and experiences themselves may serve as a future stimulus for the subject (Yow, 1994). The data collected during the initial interviews provide direction and scope for future interviews (Denzin, 1989). This

constant analysis and redefining is continued through the research process. Each interview session was shaped and guided by analysis of previous discussions.

## Ethical Issues

Issues of ethic need to be addressed in nearly all forms of research. The objective of all researchers should be to do little if any harm in the process of data collection, while pursuing data collection processes that afford fair and accurately represents of the information gathered (Creswell, 1994). Most harmful in biographical narrative inquiry is misrepresentation of the information subjects provide (Yow, 1994). This represents a violation of the covenant of trust that must exist between the researcher and his or her subject.

In choosing to study Pickering, I didn't have a particular hypothesis to test nor a theory to develop. Instead, my intentions were to provide a unique insight into the life and experiences of an uncommon leader. Information and personal disclosure were limited by what Marvin Pickering felt was an appropriate level of information for the research. In an attempt to protect the subject, he will have the option to edit any factual information he felt overtly or covertly outside of what was acceptable for public use. He will also be afforded the option to clarify or remove data that he feels represents misinterpretation or inaccurate account of his words. In the process of defining the commitment need to complete this research, and in recognition of his age and health, Mr. Pickering was given control over the number and length of interviews within certain minimum requirements.

## Limitations

In the tradition of qualitative research a biographic life study carries with it the assumption that multiple realities exist and truth is a socially constructed notion (Clandinin & Connelly, 2000; Creswell, 1994; Denzin, 1989). Thus, this study was not an

attempt to arrive at an absolute or objective reality. In fact, “the use of life reviews may result in a picture that is narrow, idiosyncratic, and ethnocentric” (Yow, 1994, p. 16). Yow cautions researchers that use the biographical life study approach to consciously avoid this common pitfall. Yow (1994) states “In-depth interviews do not necessarily result in data peculiar to the individual. Questions and responses can be designed to examine the individual’s perspective, while allowing for broader analysis” (p. 16). Denzin (1989) offers the notion of intersubjective knowing, “a form of subjective knowing based on drawing from shared experiences. The interaction with others and the knowledge gained from the process of participating in a shared experience provides a new but different experience” (p. ). Questions that probe not only self, but others that shared the experience enable the subject to reflect through an intersubjective lens (Denzin, 1989; Josselson, Lieblich & McAdams, 2003).

Another limitation of biographical life studies is generalization of the testimony. According to Yow (1994), “There are limitations in oral history research that the researcher must take into account. He or she must ask about the evidence” (p. 18). How have passages of time and self-selectivity affected the subject’s perceptions and memories? Documents, artifacts, articles, and other written records often support or conflict with a subject account of an event (Denzin, 1989; Josselson, Lieblich & McAdams, 2003).

These secondary sources provide several advantageous components to the research. These sources can be used to trigger memories, places, specific events in chronological order, support testimony, address questions of rigor, and add unexpected meaning. This is brilliantly revealed by Yow (1994) when she states, “So what if the

subject is dead wrong about a number, a date, or an event? The information may be incorrect, but look closely at the document to discover what significance the discrepancy may reveal” (p. 22). She reminds us that “untrue” statements are psychologically “true,” and the errors may be more revealing than the factually accurate accounts. The dividing line between fact and fiction thus becomes blurred in the biographical text. If a subject makes up facts regarding his or her life, who knows what is true. However, if the subject thinks something exists and believes in its existence, the effects are real (Denzin, 1998). The responsibility lies with the researcher to extract meaning from parallel sources that result in asymmetrical data.

#### Interview Protocol

The interview protocol was flexible while also providing structure. In general, the interview protocol was designed to organize and structure the session. The following checklist provided constant reminders of the task or procedure to be followed: (a) check recording equipment prior to meetings, (b) arrange date and time of interview in the field note before each interview, (c) share interview topics and guideline with subject before each session, (d) inform subject when transcripts will be provided for clarification and amendment (e) throughout interview take mental notes, record them in field notes after each session, (f) write up contextual interview notes after each session, (g) word open-ended questions to encourage in-depth responses and to avoid bias, (h) if closed-ended questions are used, limit them to a small number of questions with response choices that can be communicated simply, (i) all questions should be phrased appropriately, practiced out-loud before sharing them with the subject, (j) limit the number of questions to a set that can be covered within 60 to 90 minutes, (k) order questions logically, try to asking

the highest-priority questions first, (l) opinion questions generally should follow information questions, (m) for the interview as a whole, build up to more complex topic areas and end with a simpler topic area, (n) include a script in the protocol so that the interviewer can introduce, guide, and conclude the interview in a consistent manner (Clandinin & Connelly, 2000; Miles & Huberman, 1994; Yow, 1994).

In an attempt to capture the most relevant and valued experiences and reminiscences of the subject, the “subject authority” approach was employed for this study. The logistical and priority of the study was developed through communications with Marvin Pickering. Although I have some specific inquiry paths I was specific interested in, I feel the value of surrendering authority to the subject resulted in much richer and valued data collection. Guided by Marvin Pickering authoritative approach there is relatively minor interest in how participants' stories accorded with each other or what discrepancies might mean, beyond traditional concerns with reliability, validity, and truthfulness (Gubrium & Holstein, 2002). Marvin Pickering had an equal hand in creating the session schedule, time limitations and location in which the interviews took place.

## APPENDIX E: DATA ANALYSIS

### Organization of the Dissertation

The data analysis process was appropriate for the research methods selected and therefore was consistent with the philosophical underpinning of the study. While the selection of method of analysis into 'qualitative' or 'quantitative' was relatively straightforward, ensuring that the data analysis method is congruent with the more subtle elements of the study is sometimes less apparent. A biographical life story is more concerned with words not numbers, and exclusive counting of the frequency with which codes occurred, or opinions expressed, would diminish the real meaning of qualitative data since its most important element is generating precise and in-depth meanings.

Qualitative methods of research emphasize the significance of individual experiences and perceptions, as encountered in life experiences. The nature of qualitative research results in a large amount of 'rich', 'deep' data. The volume of data collected requires a systematic analysis in order to extract the key elements of the information and to present a coherent and rational representation of the findings. The process used to formulate the portion of the chapter was based on several of the stages Denzin (1989) put forward in the interpretive approach: (a) Select a series of research hypothesis and problems to answer; (b) Record the objective events and experiences in Marvin Pickering's life that pertain to the research problems; (c) Obtain Marvin Pickering's interpretation of these events as they occurred in chronological or natural order; (d) Resolve the validity of the interpretations both internally and externally; (e) Rework the presentation in its natural sequence in light of the results of the resolved instances of validity examinations (Denzin, 1989).

The process of organizing data in any research is critical in the analysis and interpretation of results. However, it was impossible to separate the organization from the analysis. Even the fundamental stage of organizing information requires a minimum level of analysis. To address the issues of organization and verification of data, I recorded and transcribed all interviews and used a computer-based application to create categories to organize the data. I began to categorize the data both chronologically and by pre-determined themes throughout the collection process. To assure the narrative accurately reflects the subject's perspective, I employed a constant verification process of sharing the narrative with Marvin Pickering. We would identify which stages of his life story revealed greater volume and depth of meaning to the study, and then we would explore these areas in greater depth. I would record and deliver each segment of analysis to Marvin Pickering for verification, clarification or correction. The edited materials would be updated to reflect his annotations.

In this life study, three aspects of data organization were established. The first aspect involved the presentation of the information, in particular, how best to tell this life story. The second aspect involved what to emphasize and how to incorporate the analysis and results. Finally, I explored methods to reinforce my ability to obtain understanding and greater perception of his experiences.

While analyzing and organizing data, Marvin and I felt that the information we collected was best presented in a chronological order. The appreciation and understanding of the personal struggles, motivations and sacrifice are revealed as the case moves from a simple school board decision to county and state appeal and ultimately

federal landmark case. The dissertation was organized by chapter and the chapters are chronologically ordered to provide a better perspective of time, events and impact. I have made a conscious attempt to provide themes, meaning and interpretation jointly as part of the conclusion notes of each chapter.

After transcribing the interviews, field notes and research journal we reviewed them in a hard copy printout. Each sheet was tagged with a label and we began to create an initial protocol of inclusion. This process naturally led to the development of preliminary chronological category names on the back of the labels (childhood, initial hearing, appeal process, U.S. Supreme Court, etc.). The labeled piles were then organized in a chronological order. These piles of papers were then pins to a board as I organized the chapters. Many of the piles were marked with a special color label indicting an epiphany that would be analyzed with greater research. This process provided a clear sequence in developing and communicating the life story of Marvin Pickering.

Many of the chapters explicitly accentuate the critical events or epiphanies of Marvin Pickering's life. According to Norman Denzin (1989), "Epiphanies are interactional moments and experiences which leave marks on people's lives" (p.70). These significant events fundamentally alter the meaning structures in one's life (Denzin). In order to capture meaning from one's life, it is essential to dissect and analyze the pain points and triumphs that shape the character of an individual.

Finally, in an attempt to experience Marvin Pickering's long legal ordeal, I sometimes accompanied by Marvin, retraced the trail of his legal appeals. I wanted to see and feel the buildings, surroundings and sites Marvin experienced I believe this journey better prepared me to visualize and capture his descriptions and perceptions. I trust the

result of these decisions provides a more coherent story that better reveals the complexities of his experiences. The reader is able to follow Marvin Pickering as he describes the issues, personalities, decisions, setbacks, sacrifices and triumphs.

I examined Pickering's perspective; did Pickering's actions represent a courageous leader within the ranks or just a malcontent employee? These questions were key to understanding Pickering, his actions and the circumstances that surround this important First Amendment case. Was Pickering really courageous? Did Pickering consider himself and his actions as defiance and or courageous? How should this distinction be made and who should be the one to draw the line that separates those courageous individuals from those who take a stand but lack virtue? Pickering's voice added to our understanding of this distinction and provided a window into understanding the difference.

#### Locations and Places

The interviews with Marvin Pickering were conducted over a twelve month period. The majority of the interviews took place in this home in Lockport, Illinois. Marvin also accompanied me to both the Lockport Central High School campus, the old campus as well as the new campus Lockport East High School. At the high school we toured the classrooms where he taught biology, chemistry and natural science. Marvin also recreated the scene in the old library where his initial hearing was held. Marvin described the way the tables were arranged and where each person sat. We took pictures and he visited with several colleagues that we saw. The settings were always informal and started with initial conversation about preselected topics. Then I would have

my list of specific question I felt were key for me to understand his experiences. At this point I typically had another list of question spurred on by our conversation. One such interview session took place at the old Lockport Township High School Central Campus. We recreated the original school board hearing in the old library. I also made the trip to both Will County Municipal Courthouse in Joliet, Illinois, and the state court house in Springfield, Illinois to retrace his appeal to the Illinois State Supreme Court. Finally, I retraced his journey to Washington, DC and his appeal to the U.S. Supreme Court.

### Data Analysis

Data from qualitative research provides a source of well-grounded, rich description and explanations of processes in identifiable local context (Miles & Huberman, 1994). “With qualitative data one can preserve chronological flow, see precisely which events led to which consequences, and derive fruitful explanations” (Miles & Huberman, 1994, p. 1). As data is collected from subsequent interviews, the narrative segments and categories within the interview-story are isolated. “Patterns of meaning and experience are sought” (Denzin, 1989, p. 56). The result is an analytical abstract that focuses on the structural processes in Marvin Pickering’s life, different kinds of structural-objective factors of the subject’s life, and both the unique and general aspects of Marvin Pickering’s life.

Interpretive interactionism ought to be comprehensive, open, logical, inclusive, nonreductionistic, and nonpolemical (Denzin, 1989; Josselson, Lieblich & McAdams, 2003; Yow, 1994). Denzin (1989) argues that “a preoccupation with method, with the validity, reliability, generalizability and theoretical relevance of the biographical method must be set aside in favor of a concern for meaning and interpretation” (p. 25). The

outcome is a unique strategy, which results in an interactive production, even before it is read and analyzed. Denzin (1989) cautions researchers that the process is imperfect, subjects' memories may be limited, and subjects' may decide not to share certain thoughts or stories. However, the process can be shaped and molded to fit the subject and the topics to be analyzed (Yow, 1994). New directions with deep meaning may be revealed and constructed. On the other hand, initial paths and subjects may be abandoned before reaching dead ends or no entry areas (Denzin, 1989).

Specific analytic methods to be employed include isolating patterns processes and themes, identifying commonalities and differences, clustering, factoring and elaborating small sets of generalizations that identify consistencies in the data collected (Miles & Huberman, 1994). My data analysis strategy was linear; however the assessment of data collection resulted in an overall systematic cyclical approach. The linear stages of analysis included the following task identified by Miles & Huberman (1994): (a) maintain field notes, (b) coding keys words or tags to segments of text, (c) Organizing and storing data in electronic database (HyperResearch), (d) search, retrieval and linking of segments of text, (e) memoing reflective commentaries on some aspects of data, (f) content analysis (possibly frequency counts or relationships of word locations), (g) data display reduction, (h) theory building or systematic, coherent explanations of findings (i) conclusion development and testing, (j) graphic mapping.

#### Tradition of Inquiry

There are relatively few biographies of living men or women told from their perspective. The identity, motives, and magic of people come to life in these unique life studies. Life histories trace paths to accomplishment and explore the depths of character.

In fact, the origin of social sciences is founded on the study of human experience, and therefore, it may be argued that experience must be one of the preferred starting points for all social science inquiry (Yow, 1994). The mere act of recording our life stories enables social science to move beyond the individual drama and bear witness to a broader point of understanding (Glesne & Peshkin, 1992). The biographical study is one of the five traditions of qualitative inquiry identified by Creswell (1994). According to Yow (1994) “The focus of all biographical work presumes the study of a life that has been lived, constructed, reconstructed and written about“ (p. 4). The purpose of a biographical study is to provide insight and understanding of an individual life, experiences and actions (Elder, 1994).

The diverse processes and approaches to narrative inquiry enable social scientists to view the human experience from different perspectives and through a broader lens. The process of connecting the actions and events that form life stories seem to actually transform the juncture experienced. The postmodern constructivist placed significant value on biographical narrative inquiry to capture and reveal understanding of personal experience. These experiences take on new meaning from the perspective of time, context, experience, reflection, age and knowledge (Price, McKenry, & Murphy, 2000). The constructivist significance in understanding the context of the experience is described by Creswell (1994):

The goal of research, then, is to rely as much as possible on the participants' views of the situation being studied. The question becomes broad and general so that the participants can construct the meaning of a situation, a meaning typically forged in discussion or interactions with other persons. (p. 8)

According to Mulligan and Smith (1986), everyday language and actions cannot be understood without being situated within a social context. The goal of this research was based on this idea of relying as much as possible on the participants' views of the situation being studied.

Each of us has a story to tell; these stories may describe an event in our life, recall a unique period in one's life, or attempt to summarize the whole of an individual's life. Clandinin and Connelly (2000) affirmed "Every present moment has a storied past and a storied future possibility" (p. 17). Each recount of these stories reveals a reality in which each of us and others play a role. In our stories, characters emerge as if part of a play. Sometime the play reveals conflicts, tension, or oppression. Other stories reveal friendship, joy, and transformation. These themes are best revealed, developed, and presented by a methodical interpretive strategy (Denzin, 1989).

#### Interpretive Domain of Biographical Study

A conceptual framework can be used to guide the approach, methodology, and collection of biographical data. Denzin's theory of "interpretive interactionism" will guide this study. The "interpretive" approach is steeped in deriving meaning from interactive experiences. Denzin is very open in recognizing that "new life history" continues to be a method in the making. The intent of this new method is to bring classical life history approaches in line with recent developments in ethnomethodology, sociolinguistics, and narrative analysis. Denzin (1989) suggests that the following assumptions and arguments be used to frame biographical methods in social disciplines:

The lived experiences of interacting individuals are the proper subject matter of sociology. That is, sociologist must learn how to connect and join biographically meaningful experiences to society-at-hand and to larger culture- and meaning making institutions of the late postmodern period. (p. 33)

The concepts comprising his framework serve to identify the type of data needed and where such data might be found. There are several sources for data in a biographical study including artifacts, legal records, articles, and personal writings such as journals or memoirs. However, it seems clear that the meaning of these experiences is best presented by those who experience them (Denzin, 1989; Josselson, Lieblich & McAdams, 2003; Rhoades & Valadez, 1996; Yow, 1994). A series of interviews with the central figure in the *Pickering vs. Board of Education of Lockport Township High School* (1968) illuminated important facts, logistics, and details. Moreover, these interviews also lead to greater understanding of the sociological, cultural, and political issues that are interwoven in this case. Thick description elevated the knowledge base from static facts and issues to a dynamic source of knowledge (Rhoades & Valadez, 1996). A fresh source of knowledge, in turn, may enable state, county, and local leaders to ensure that such developments in our future institutions of public education are implemented in a positive and constructive manner for all concerned (Wildman, 1991).

The study of a lived life, according to Denzin (1989), consists of two different but very important phenomena: first is the lived experience or conscious existence; second is the concept of person referring to a self-conscious being. These two phenomena are simultaneously directed to “an inner world of thought and experience and to an outer world of events and experience” (Denzin, 1989, p. 66). The examination of both of these worlds forms the foundation of the examination and interpretation of life based on Denzin’s interactional approach to life study. The recognition and analysis of these phenomena will be vital to this biographical study. They cannot be separated and together form the basis of understanding human existence (Denzin, 1989).

The interpretive domain of biographical study works from the assumption that the researcher's understanding and reporting efforts are always within the lens of his/her own understandings, biases, and beliefs (Denzin, 1989). This may mean that the line between the researchers telling the story of the subject's own story is often blurred. I selected the interpretive strategy specifically based on the notion that the subject and researcher share many beliefs, and common experiences. I believe that life results in a phenomenon in which our lives are sufficiently intertwined as to make clear distinctions difficult (Denzin, 1989). No story is ever as simple as it may seem on the surface, and the complexities of such stories can be traced to the interaction between individuals, events, and decisions made by individuals.

#### Evaluation Criteria

Standard criteria for evaluating biographical life studies are seldom set forth and frequently discouraged. However, as in all research, the creation of guidelines and research standards provides direction and purpose to the process. In an effort to provide self-assessment of the process, I established several evaluation questions:

1. Does the narrative accurately and fully represent Marvin Pickering's perspective and voice?
2. Is Marvin Pickering's voice clearly dominant?
3. Does the analysis provide rational and rich portrayal of Marvin Pickering's life?
4. Does the narrative correctly conceptualize his experiences, epiphanies and motivations?

5. Are the principles of truth, connection and association used to identify the most meaningful representation of the findings?

Through a series of constant comparative sessions, Pickering confirmed that these self-assessment evaluation questions satisfied the overall study goals and research outcomes. His editorial and experiential comments and feedback provided continuous confirmation and guidance.

## APPENDIX F: DEFINITIONS

This work represents a unique examination of an individual's life and life experiences. In order to bring greater understanding, several terms related to the process and methods of a biographical life study will be defined. Each of these terms may have multiple definitions; I tried to provide precise definitions in an attempt to shape the reader's understanding of the terms used in this work. Among the terms needing clarification are life, method, life study, self, experience, biography, epiphany, ethnography, and history. The purpose of this information is not intended as a dictionary of terms nor to educate the reader on the biographical methodology. These definitions are intended to deconstruct the underlying conceptual foundation of this biographical work.

1. In this work the term *life* refers to two phenomena: (1) a lived experience or conscious existence; (2) the concept of person referring to a self-conscious being (Denzin, 1989).
2. The term *method* shall be understood to refer to a way of knowing about an individual and the world in which they exist. The phenomena of knowing can be approached from two different directions; subjective or objective (Denzin, 1989).
3. *Subjective knowing* is based on drawing understanding and interpretation of a phenomenon from personal experiences or the personal experiences of others.
4. *Intersubjective knowing* is a form of subjective knowing based on drawing from shared experiences. The interaction with others and the knowledge gained from the process of participating in a shared experience provides a new but different experience than subjective (Denzin, 1989).
5. *Objective knowing* is based on the assumption that one can understand an experience from the outside, or independent of the persons experiencing the phenomenon (Denzin, 1989; Josselson, Lieblich & McAdams, 2003).
6. *Life study* will imply that there is someone else that is involved in inspiring the subject to begin the act of remembering, jog memories, review records and interpret the subject's words and records (Yow, 1994).
7. According to Denzin the term *self* has many different forms:

The *phenomenological self* refers to the ideas, images and thoughts a person has of him or herself. In this form, the self is a process that connects the pathways of thought and experiences the person has about himself to a single point of reference (Denzin, 1989).

The *linguistic self* refers to the symbolic or linguistic indicators that an individual uses when conducting inner conversations. These indicators address the “empty personal pronouns (I, me) with personal, biographical and emotional meaning” (Denzin, 1989 p. 31).

The *ideological self* refers to the broader cultural and historic meanings that form the characterization of the individual in a particular setting, with a particular group at a particular time.

8. The term *experience* will refer to individuals meeting, confronting, passing through and making sense of events in their lives (Denzin, 1989). Experiences refer to how the realities of a life present themselves to our consciousness.
9. The term *epiphany* will refer to problematic experiences or moments of revelation in a person’s life. Epiphanies often leave lasting effects of the lives of individuals. Epiphanies can also be described as moments of revelation in an individual’s life.
10. The term *ethnography* applied to qualitative research where the purpose is to provide a detailed, in-depth description. This is sometimes referred to as “thick description“
11. The term *history* will refer to an account of an event and involve determining how a particular event, process or set of experiences occurred.

## APPENDIX G: LITERATURE REVIEW

### Literature Review

This study of the life of Marvin Pickering explored several aspects of Pickering's life as well as the impact of this prominent freedom of speech case. In doing so several areas of research were necessary. The initial research involves literature directly related to the *Pickering v. Board of Education* (1968) case. Although the facts of the case provide background knowledge, the Pickering case has had far reaching impact in freedom of speech law. This literature review also includes an examination of scholarly and legal transcripts that address the context before, during, and after the case. This review also examines the long-term impact of the *Pickering v. Board of Education* decision. The methodology selected for this research is the biographical life study.

The choice of this methodology implicitly drives broader research than the simple understanding of the case and its legal impact. In order to study Pickering the person, several additional areas of literature review were necessary. Topics like personal sacrifice, courage, and character are examined. Finally, the literature also examines research methodologies, specifically the tradition of biographical life studies. In particular this review examines the interpretive interactionism domain of the biographical tradition. The intent of the study was to examine two parallel phenomena; the legal case from the very personal perspective of Marvin Pickering and the inner character of the major figure in the case.

Literature focusing on the Pickering case is rich (Donehower, 2003; Kaplin & Lee, 1995; Kaylor, 2002; Prichard, 1986; Rich, 2002; St. John, 2000; Sutton, 1981). The influence of *Pickering v. Board of Education* is not limited to just public schools; this

case has had legal precedence in U.S. law related to First Amendment rights of all public employees (Alford, 1999; Austin & Pilat, 1990; Bennett, 1997; Brown, 1990; Donehower; Fink, 1980; Foster, 1993; Frank, 1949; Glazer, 1999; Johnson, 1999; Kaplin & Lee; Lewis, 1996; Nelson, 1998; Prichard; Relis, 2002; Rich, 2002; St. John; Sutton ).

### Pickering v. Board of Education

The case can be traced back to the actions of the Lockport Township High School Board of Education in 1961. The board members asked the district's voters to approve a bond issue to raise more than \$5 million to build two new high schools. The bond issue was approved by the voters (*Pickering v. Board of Education*, 1968). The next year the board submitted another proposal to raise taxes to obtain more funds for the operations of the two schools. This proposal to raise the tax rate was defeated. The school board decided to submit another proposal the following year. In the middle of this debate, Marvin Pickering, a teacher at Lockport High School, decided to get involved. In a letter to the *Lockport Herald*, he criticized the board's decision, stating; "Members of the board were not being straight about how they were spending some of this money for these new schools," he said. "They were spending too much money on athletics" (Kaplin & Lee, 1995, p. ). The letter concluded: "I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken away from the teachers by the administration. Do you really know what goes on behind those stone walls at the high school?" (Hudson, 2002, p. ).

After writing the letter, he read it to his wife. "She told me: 'You're probably going to get fired.' But I went ahead and sent the letter anyway," he says ("*Pickering v. Board of education*," 1968). Pickering believed that if he was fired, it would prove his

case, so he mailed the letter to the local paper (Hudson, 2002). The board concluded at a hearing that several statements in the letter were false. Pickering was fired based on the charge that he was detrimental to the efficient operation and administration of the schools of the district (*Pickering v. Board of Education*, 1968).

Pickering promptly appealed the board's decision in state court. He argued that his dismissal violated his First Amendment Right to free speech as a citizen of the school district. A state Circuit Court disagreed and affirmed the school board decision (*Pickering v. Board of Education*, 1968). As a result, Pickering lost his job as a teacher and was forced to take a job in a soup factory in Chicago. Pickering appealed the state Circuit Court's decision to the Illinois Supreme Court. In January 1967, the Illinois State Supreme Court decided against Pickering 3-2 (Hudson, 2002). They rejected his claim of First Amendment violations. The court opinion stated:

By choosing to teach in the public schools, plaintiff undertook the obligation to refrain from conduct which in the absence of such position he would have an undoubted right to engage in“ The majority continued: “A teacher who displays disrespect toward the Board of Education, incites misunderstanding and distrust of its policies, and makes unsupported accusations against the officials is not promoting the best interests of his school, and the Board of Education does not abuse its discretion in dismissing him. (*Pickering v. Board of Education*, 1968)

Pickering lost his appeal; however, the two dissenting justices re-affirmed Pickering's claim and wrote: “The letter is substantially accurate, and more important it has not been shown to be knowingly false” ; the justices concluded that the board had violated Pickering's First Amendment rights (Hudson, 2002, p. ).

This gave Pickering hope; he appealed to the U.S. Supreme Court. On June 3, 1968, the high court issued its decision: an 8-1 vote in his favor (*Pickering v. Board of Education*, 1968). The court found that the Board of Education had violated Pickering's

First Amendment rights. They noted that oftentimes employee-employer disputes present a conflict between the employee's free-speech interests and the employer's efficiency interests (*Pickering v. Board of Education*). Justice Marshall wrote:

The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. Board of Education*, 1968).

Pickering returned to the classroom the next year, where he taught until he retired in 1997.

#### Greater Context

The Pickering case and the Pickering balancing test have become part of every education law class. According to Kaplin and Lee (1995) this case resulted in "the court balancing the teacher's free speech interests against the states ability to maintain efficient educational systems" (Kaplin & Lee, p. 302). The Pickering balancing test involves weighing the employee's First Amendment interest against the government's interest, as an employer, in efficiently providing government services through its employees. The Pickering Balancing test can be summarized with these five points: (a) Was there a close working relationship between the teacher and those he criticized?; (b) Is the substance of the letter a matter of legitimate public concern?; (c) Did the letter have a detrimental impact on the administration of the education system?; (d) Was the teacher's performance of his daily duties impeded?; and (e) Was the teacher writing in his professional capacity or as a private citizen? (Kaplin & Lee, 1995). According to Kaplin and Lee, the Pickering balancing test has been explicated in two later Supreme Court cases: *Givhan v. Western Line Consolidated School District*, 439 U.S. 410 (1979), and *Connick v. Myers*, 461 U.S.

138 (1983). Since the original Supreme Court ruling, the Pickering balancing test has been cited in many other lower court rulings (Brown, 1990; Kaplin & Lee; Prichard, 1986; Rich, 2002).

Rich (2002) provides historical legal analysis of academic freedom and particularly examines the issue of free speech. This study provides a historical review of the American university system. Rich identifies each of the significant events that form today's perception of academic freedom and freedom of speech for university professors. The author examines two principles that dominate the process by which speech is ruled to be protected. First, the speech must be on a matter of public concern. Although the ruling in *Pickering v. Board of Education* clearly acknowledges Pickering's arguments as such (Kaplin & Lee, 1995; Rich, 2002), the court declined to lay down guidelines for courts to use in determining this (Rich, 2002). Second, there is a balancing of the interest of the faculty member in the speech against the institution's interest in the maintenance of the efficiency of its operation (Kaplin & Lee, 1995; Rich, 2002). Rich's analysis concludes that the parameters of faculty free speech protection under the First Amendment are delimited by the Pickering line of cases. "These cases resulted in a series of legal tests that would effect the actions of college leadership in moving to limit faculty speech or actions to dismiss such faculty" (Rich, 2002, p. 29). Although the Pickering case did not result in a complete test for determining the parameters of public employee freedom of speech rights, it did result in the first major test that would serve as the foundation for future court guidance (Kaplin & Lee, 1995; Rich, 2002).

Prichard (1986) examined *Pickering v. Board of Education* and *Tinker v. Des Moines Independent Community School District*. Prichard provides a historical study of

the cases that have referred to either *Pickering v. Board of Education* or *Tinker v. Des Moines Independent Community School District* in their final rulings. He finds that *Pickering v. Board of Education* and *Tinker v. Des Moines Independent Community School District* definitively established that public school teachers possess First Amendment rights that school districts must honor. Prichard's analysis concludes that "these cases have been instrumental in forming several general principles when considering freedom of speech for public school teacher" (Prichard, p. 177). The *Pickering* balancing test has been cited in the majority of freedom of speech cases involving any public employee (Prichard; Rich, 2002; Russo & Delon, 2003; Verger, 2001). The ruling in *Pickering v. Board of Education* has changed the policies for both public schools and public agencies (Prichard; St. John, 2000; Sutton, 1981). As a result of *Pickering v. Board of Education*, policy has changed but also the scrutiny of role identification of public employees.

St. John (2000) examined a series of Supreme Court rulings in an effort to scrutinize the principle of role identification. St. John performed a rhetorical analysis to examine contemporary Supreme Court rulings in federal employee free speech law. The Supreme Court has never put forward a test for determining whether a person speaks as an employee or as a citizen. The facts of Supreme Court cases, however, indicate several factors involved in such a determination: whether the expression occurred at work, whether the expression occurred as part of the employee's duties, and whether the expression occurred during time for which the employee was being paid (St. John). St. John attempted to address this issue by applying the sociological framework of Habermas (1968) in an attempt to redefine the spheres of interest in several landmark freedom of

speech cases. He argues that “through his analysis of three cases using Habermas’s framework is potentially useful to the court and that this framework permits a reconceptualization and reevaluation of the content and cartography of federal employee free speech law” (St. John, p. 45). Another area the *Pickering v. Board of Education* has had great impact are elementary schools.

Sutton (1981) study focused on decisions of the Supreme Court, which have been based on the Constitutional guarantee of freedom of speech involving elementary and secondary schools to determine the nature and scope of the state's interest in the education of the individual. Sutton’s study was an historic study of six cases involving freedom of speech issues: *West Virginia v. Barnette* (1943), *Pickering v. Board of Education* (1968), *Tinker v. Des Moines Community School District* (1969), *City of Madison v. Wisconsin Employment Relations Commission* (1976), *Mt. Healthy v. Doyle* (1977), and *Givhan v. Western Line Consolidated School District* (1979). Sutton’s analysis concluded that

the findings of the study indicate that there is not consistent use of the term, The State, within the relevant literature and within decisions of the Supreme Court, that the power and authority of “The State” through the arm of the Supreme Court may be seen as a mechanism for the maintenance of order, stability, and consensus within the social system, and that the procedural and substantive issues within the decisions of the Supreme Court have had an important influence on educational institutions.(Sutton, p. ).

Sutton concludes that without *Pickering v. Board of Education* (1968) and *Tinker v. Des Moines Community School District* courts would completely lack balance in protecting individual rights and the institution's ability to efficient operations.

Whistle-Blowers

The examination of the life of Marvin Pickering involves much more than the logistics and facts of the legal proceedings. Pickering is a multifaceted complex individual. His actions and willingness to challenge individuals with power and influences is uncommon. He is a unique and rare type of individual. Research related to landmark Supreme Court cases is plentiful (Donehower, 2003; Fink, 1980; Prichard, 1986; Rich, 2002; St. John, 2000; Sutton, 1981). However, there is very little research examining appellants or plaintiffs (Clark 1988, Frank 1949; Relis, 2002) and even less, if any that directly focus on Supreme Court appellants. However, in searching for literature related to this unique type of individual I found myself repeatedly in the same area of study. That is in the area of those who study whistle-blower.

The study of whistle-blowers provided insight and common indicators are shared by these unique individuals. The theme that unites each of these individuals is their common willingness to forgo self sacrifice for what they believe is for the common good (Alford, 1999, 2001; Bennett, 1997; Botch, 2003; Collins, 1999; Flanagan, 1992; Provis & Stack, 2004; Sarnecky, 1990; Schaerer King, 1993; Scott, 1992; Smith, 1998). In particular, this study examined research that focuses on the experiences and influences that motivated these individuals (Alford; Bennett; Clark, 1988; Frank, 1949; Glazer, 1999). In addition, individuals in leadership roles should understand how they and their organizations can learn from a better understanding of these unique people (Brown, 1990; Glazer; Johnson, 1999; Roberts, 2001; Russo & Delon, 2003; Taylor, 2002; Ventriss & Barney, 2003; Wildman, 1991).

## Experiential Theory and Understanding

Biographical life studies tradition is closely linked to the interpretation and understanding of human experiences. One of the most influential writers and research in the study of experiential theory was John Dewey. According to Dewey (1925), “Experience is an elusive concept that resists specification and finalisation“ (p. 132). According to his interactionist approach, the first task in conceptualising experience is to provide a basis for understanding experience. Dewey’s philosophy of experience was based on an approach that would end the tendency to reduce. In his (1934) work entitled, *Art as Experience*, he states “the most debilitating reduction to private, subjective experience is a feature of modern times” (Dewey, 1925, p. 198). According to Dewey “experience is the irreducible totality of people acting, sensing, thinking, feeling, and meaning-making in a setting, including their perception and sensation of their own actions“ (p. 145). Dewey strongly believed that experience was the sum total of what men do, suffer, what they strive for, love, believe, and endure. To understand their experience, you must also understand how men act and are acted upon, the ways in which desire and enjoy, see, believe, imagine (Dewey, 1925). The irreducible totality argument advanced by Dewey supports both the post-modern approach to narrative inquiry as well as the theory of subject authority. Dewey’s interactionist approach to experiential theory was advanced by Herbert Blumer (1969).

Blumer (1969) advanced the theory of “symbolic interactionism.” Symbolic interactionism is the process of interaction in the formation of meanings for individuals. Dewey thought that human beings are best understood in relation to their environment. Blumer advanced this notion by recognizing the study of human group life and conduct.

According to Blumer, understanding of human experience was dependent on three core principles: meaning, language, and thought. These core principles lead to conclusions about the creation of a person's self and socialization into a larger community (Blumer, 1969).

Symbolic Interactionism represents the principle of meaning as central in human behavior. The principle of meaning states that humans act toward people and things based upon the meanings that they have reflect upon those people or things. Language, the second core principle, provides humans a means by which to negotiate meaning through symbols. Thus naming was the basis for human society and the extent of knowledge. It is by engaging in speech acts with others that humans come to identify meaning, or naming, and develop discourse. Thought, the third core principle, is concerned with each individual's interpretation of symbols. Thought, which is based-on language according to Blumer (1969), is a mental conversation or dialogue that requires role-taking, or imagining different points of view. Each of these core principles presents an obstacle and opportunity to the biographer in the conceptualising of human experience. One of the leading modern-day interactionists is Norman K. Denzin.

Denzin's (1989) influence on the post modern interactionism has been substantial. In his manuscript entitled *Interpretive Biography*, Denzin presented the theory of Interpretive Interactionism. Denzin describes this theory as “interpretive interactionism” attempts to make the world of problematic lived experience of ordinary people directly available to the reader” (p. 7). Denzin central focus is to capture the voices, emotions and actions of those studied. He describes interpretive narrative inquiry as “thick description, thick interpretation, and deep, authentic understanding” (p. 33). Later in the book, he

describes four ways in which the interpretation should be located or captured: “through time and history, through gaining access to the relevant setting, through learning the appropriate languages, and finally through connecting individuals to interactional situations” (p. 123). According to Denzin, all this clarifies the meaning of an experience.

#### Recent Biographical Studies

Nelson (1998) studied the life of Alexander Meiklejohn, an educator, philosopher, socialist, and free speech advocate. Nelson presented the life of Meiklejohn during the depression, when Meiklejohn created adult and workers' education programs in San Francisco (Nelson). With the start of the cold war, he joined Roger Baldwin and the A.C.L.U. in the fight against McCarthyism and the intimidation tactics used by the House Un-American Activities Committee. He was deeply involved with the “loyalty oath” controversy at the University of California in 1950. Nelson described personal clashes between Meiklejohn and Sidney Hook. “Meiklejohn maintained that citizens must always be permitted to express 'radical' views—and even to teach Communism in public schools” (Nelson, p. 35). Toward the end of his life, he offered an “absolutist” interpretation of the First Amendment, asserting that the freedom of political expression must never be abridged.

Sparkman, Lampe, Slaten, and Hartmeister (1994) performed a qualitative case study that identified the levels of moral development and ethical reasoning processes of school board members and school district attorneys. The premise of this study was to compare the moral and ethic reasoning between board members and school attorneys to the general public. His analysis revealed little or no significant difference between these individuals and the citizens they serve.

Smith (1998) studied the life of Robert Spence Gilchrist, an educator, administrator, and nationally noted curriculum leader. This study examined the accomplishments of Gilchrist in reform education, not as a philosopher, academic, or theorist, but as a practitioner. The study focuses in on his accomplishments as Professor of Education, Graduate School of Leadership and Human Behavior at the United States International University, San Diego, California (1969-1978).

Schaerer King (1993) studied the life of Mary Ella Hall an elementary teacher, state supervisor, university professor, professional, and civic leader. As a state founder in 1935, she served on the executive board, organized chapters, and provided continuing leadership at state and chapter levels in the honorary organization for women in education.

Flanagan (1992) studied the life of Kelley Ezell, the director and founder of the Education Services Program at Sheppard Air Force Base, Texas. The biographical study documented the individual accomplishments and experiences of an Air Force officer in establishing educational opportunities for airman at the Sheppard Air Force Base, which were in turn replicated throughout the U.S. Air Force.

Scott's (1992) study examined the life of Annie Webb Blanton the First Lady of Texas education. Spanning seven and one-half decades, her history exemplifies women's roles as they are affected by concurrent social and political events. She served as a teacher, first woman president of the Texas State Teachers' Association, and the first woman to serve as State Superintendent of Public Instruction in Texas.

Weber Sarnecky (1990) studied the life of Julia Catherine Stimson, a nurse, social worker, soldier, educator, administrator, organizational activist, ethicist, economist,

musician, writer, speaker, historian, prophet, humanitarian, patriot, and early feminist. Miss Stimson was a multifaceted professional whose lengthy career was characterized by strong leadership and significant contributions. An interpretive interactionist approach was used to provide an understanding of the events and experiences of Miss Stimson.

Dawes Kaylor (2002) examined the life of Allie Corbin Hixson a national speaker, activist, organizer, and leader. The focus of this dissertation was to examine the speeches of activist Allie Corbin Hixson as a strategic response to conflict over ratification of the Equal Rights Amendment in her 30-year quest for equal rights.

### Conclusion

These literature reviews enable me to formulate several essential aspects of this study. The initial review provided a legal context for my understanding of the case and relevance in First Amendment law. Authors like Denzin and Yow provide theories and research findings that enable me to create a methodology that captured original data from a different perspective. Their research also put forward different forms and perspective in evaluation of a biographical study. Other authors including Alford, and Bennett, provided additional information I used to better understand the psychological aspects of and individual like Pickering. They also provided theories and findings I found useful in comparing the personality dimensions and development experiences of Marvin Pickering. Finally, the review of other biographical dissertation provided various examples of non-traditional formulation of the dissertation format.

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