

ACADEMIC FREEDOM AND TENURE: CEDARVILLE UNIVERSITY (OHIO)¹

This report concerns the action taken by the administration of Cedarville University in July 2007 to dismiss Professor David M. Hoffeditz from his tenured faculty position.

I. Introduction and Institutional Context

Cedarville University, a coeducational Baptist university of arts, sciences, and professional and graduate programs, is located on a four-hundred-acre campus in the village of Cedarville, in the southwestern part of Ohio, some twenty-six miles east of Dayton. The university has an undergraduate student body of approximately 3,100 and nearly a hundred graduate students, served by some two hundred full-time faculty. Its academic programs are organized in four schools: biblical and theological studies, humanities, natural and applied sciences, and social science and human performance.

Originally known as Cedarville College, the institution was founded in 1887 under the auspices of the Reformed Presbyterian Church. It went through serious financial problems and various changes in governance and mission during its early decades. In 1953, the college changed its denominational affiliation, becoming the Cedarville Baptist College and Bible Institute. The next twenty-five years witnessed an expansion in the size of the institution and the addition of various academic programs, with the college achieving accreditation by the North Central Association of Colleges and Schools in 1975. In September 2000, it changed its name to Cedarville University.

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty member at whose request the investigation was conducted, to the administration of Cedarville University, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

Dr. William E. Brown became the ninth president of Cedarville University in June 2003, after having previously served for ten years as president of Bryan College in Tennessee. He succeeded Dr. Paul Dixon, who retired after twenty-five years of service and assumed the newly created position of chancellor. Ronald Becker, the retired president of Speedway SuperAmerica, was the chair of the university's twenty-eight-member board of trustees during most of the events discussed in this report. In May 2008, he was succeeded by Dr. Bill Rudd, senior pastor of Calvary Church in Muskegon, Michigan.

In its various official publications and on its Web site, Cedarville University describes itself as a conservative, evangelical Christian institution, "a Christ-centered learning community of born-again believers" who "wholeheartedly affirm the Bible, God's Word, as inspired, infallible, and inerrant truth." The *Accreditation Self-Study Report Spring 2007*, prepared in advance of its reaccreditation site visit, notes that the institution's "distinctiveness is seen in its daily chapels, caring Christian professors, the required Bible minor, and an unwavering commitment to the inerrancy and authority of Scripture." The university sets forth "certain lifestyle guidelines for the campus community . . . designed to be consistent with biblical teaching." All of the university's employees, including the faculty, are required to sign a statement each year "affirming their full agreement with the university's Doctrinal Statement" and with additional documents that have been included with the annual contracts, sent separately, or provided on the Web. According to the university's bylaws and faculty handbook, "each member of the faculty shall be a separated, born-again believer and a member in good standing, regular in attendance, and active in the work of a University-area independent Baptist church which maintains a position of separation from apostasy" (XII.E).²

Governance at Cedarville University is in many ways hierarchical in structure. The bylaws designate the

2. Citations to the handbook, unless otherwise noted, are to chapter 2.

president as “the chief executive officer of the University and executive agent of the board of trustees”; the president also acts as chair of the faculty and presides over faculty meetings. He meets weekly with his administrative council of six vice presidents. A council of deans reports to the academic vice president. A council of chairs reports to each dean. Faculty members serve on twelve standing committees, including a Faculty Committee to the President—eight representatives elected “to communicate faculty perspectives.” These structures constitute the “proper channels” for communication that are discussed in section II. The university has no AAUP chapter.

Near the end of the period described in this report, the university underwent a process of restructuring. With the beginning of the 2007–08 academic year, what had previously been the Department of Biblical Education became the School of Biblical and Theological Studies, housing three separate departments (biblical studies; ministry and mission; and theology and philosophy). Before and after restructuring, however, most people within and outside the unit continued to refer to both the former department and the current school as “the Bible department.”

For several years, Cedarville University has been the scene of a contentious theological dispute over truth and certainty. This debate, with its epicenter in the Bible department, has been attracting considerable attention in religious circles and in the “blogosphere” beyond the campus. All parties hold to a very conservative strand of evangelical theology and Biblical interpretation, but they differ over the correct way to describe the believer’s mode of knowledge of theological truth. The issue under dispute is whether Christians can have *certainty* that the Bible is *true* (the position attributed to the so-called conservatives) or merely *assurance* or *confidence* that the Bible is *accurate* in context (the opposing position in the dispute). Serious hermeneutic and exegetical questions are at issue, and, as Cedarville events have shown, it has been difficult to say anything about the debate without raising objections from one side or the other. What is important for this report, especially for its examination of academic freedom issues, is that the attempts of the administration and the trustees to respond to critics by formulating a consensus position on which all can agree have in practice exacerbated the conflict. Meanwhile, as one former dean told the undersigned investigating committee, theological issues intensified interpersonal conflicts in the Bible department.

II. Events Giving Rise to This Investigation: The Case of Professor Hoffeditz

Professor David M. Hoffeditz has been a prominent member of a group of self-identified conservative or “traditionalist” faculty who have been concerned about the university’s direction and the image it projects to its constituencies. Professor Hoffeditz, a second-generation alumnus of the university, received his bachelor’s degree from Cedarville in 1992, his master’s degree in theology from the Dallas Theological Seminary in 1996, and his PhD in New Testament studies from the University of Aberdeen in 2000. Immediately upon completing his doctorate, he joined the Cedarville faculty as an assistant professor in the Department of Biblical Education, teaching courses in Bible and Koiné Greek. Since 2003 he has also been associate pastor at Rocky Point Chapel in Springfield, Ohio. Professor Hoffeditz was granted promotion and tenure in January 2006, received a salary increase in March 2006, and signed his contract for 2007–08 in April 2007. In July 2007, he was dismissed with thirty days’ notice, without a prior hearing or warning that such action was being considered. In April 2008, the university’s president and trustees declined to follow the recommendation of a hearing panel to which he had appealed his dismissal. The following chronological account sets these events within their campus context; the issues they raise are discussed in a separate section below.

A. EVENTS IN AND AROUND THE HOFFEDITZ TENURE-PROMOTION PROCESS

In fall 2005, Academic Vice President Robert W. Milliman established a faculty committee, headed by Professor Thomas Cragoe, chair of the Bible department, “to clarify the position on truth” in relation to the doctrinal statement signed annually by all members of the faculty. The committee was charged with discussing both “the nature of truth” and “the degree to which one may know that truth” in relation to “the Postmodern cultural approach to truth claims, the interpretation of written texts, the role of the individual in learning and knowing, and the influence of instruction received by faculty pursuing/completing graduate education in programs which challenge the existence of absolute truth.”³ Faculty members at large were involved through both surveys

3. Cedarville University, *Accreditation Self-Study Report Spring 2007*, 54–55, <https://www.cedarville.edu/accreditation/selfstudy/document/CedarvilleUniversitySelfStudyReport.pdf>.

and discussion groups, resulting in three successive draft statements during the academic year, in anticipation of the fall meeting of the trustees.

In January 2006, Professor Hoffeditz was awarded tenure and promoted to the rank of associate professor. Over the course of his first five years at Cedarville, Professor Hoffeditz had received periodic indications that he was making “good progress toward tenure.” In his sixth-year review for tenure consideration, he had received strong support for his candidacy from his departmental colleagues;⁴ from Professor Cragoe as department chair; from the seven-member University Tenure Committee; from his dean, Dr. Jack Riggs; and from Vice President Milliman. In notifying Professor Hoffeditz of the tenure decision by letter of January 26, 2006, Dean Riggs stated: “Your faculty peers have recognized your effective classroom teaching, publication, and pursuit of excellence.” On March 1, upon the recommendation of the dean, and with the support of the academic vice president and the chair of the Bible department, Professor Hoffeditz received a discretionary supplement to his base salary in addition to the faculty’s market adjustment increase.

It appears, however, that the board’s decision to approve Professor Hoffeditz’s tenure application had not been straightforward. Earlier in January, while the review of his tenure candidacy was under way, Professor Hoffeditz met with the members of the board’s academic committee, as required of all tenure candidates, and discussed his concerns about the direction in which the university was moving. He states that he also responded to a question about “what you would do if you were king for a day” in a way that was interpreted by some key board members as critical of unnamed faculty colleagues. Vice President Milliman reportedly told Professor Hoffeditz afterwards, in the presence of Bible department chair Cragoe, that he, Dr. Milliman, had personally rescued Professor Hoffeditz’s tenure prospects at the meeting of the full board. Had it not been for his intervention, the vice president said, the board would not have granted tenure. In one of its unanimous “findings of fact,” the Hoffeditz hearing panel (see section D below) would later observe that, “[o]ver a two-year period, Dr. Hoffeditz received mixed messages about the security of his employment at CU from the administration and the Board of Trustees.”

That spring, although Professor Hoffeditz was now a tenured member of the faculty, Vice President Milliman advised him to request another meeting with the academic committee to address some lingering concerns.

4. This assertion is contested (see section C).

Professor Hoffeditz told the investigating committee that Vice President Milliman had at one point characterized his tenure status as “provisional,” suggesting that the board’s favorable action on his tenure candidacy had been conditional on a satisfactory follow-up interview.⁵ A meeting was arranged for early May 2006, at which time Professor Hoffeditz delivered a prepared statement to the trustees. “I was horrified to learn from Vice President Milliman,” he stated,

that you perceived me to be “arrogant, immature, unChristlike, unteachable, divisive, and a detriment to Cedarville University.” Needless to say, I would never want to convey such serious character flaws—flaws that certainly should not mark the life of a believer, let alone a professor at this institution.

I feel very bad that these negative perceptions existed. Throughout my tenure process I tried to offer, with respect, honest and open feedback to the questions posed to me. Obviously, as a second-generation CU graduate, I am personally very committed to this institution. Professionally, I have enjoyed teaching nearly four thousand students these past six years and to date my reviews have been extremely positive. I am grateful that my department, my chair, my dean, the administration, and the tenure committee have been very supportive.

I am relieved that these issues have been put to rest; and I am most grateful that you have granted me tenure and promotion. Rest assured I am committed to serving Christ at Cedarville University.

The truth and certainty issue, however, had not been put to rest. According to faculty members who served on the committee to develop a statement on truth and certainty, the administration and the executive committee of the trustees became impatient with the pace at which the faculty was developing a definitive statement and with the committee’s preference for the conservative position on the issues being considered. The administration requested that the report be submitted in June 2006, ahead of schedule, causing some committee members to worry that the resulting report would be hastily written without adequately reflecting the results of their research and deliberations.

5. The faculty panel that later examined Professor Hoffeditz’s grievance found unanimously: “Tenure policy was amended by the Board of Trustees in its interview with Dr. Hoffeditz. There is no provision in the Faculty Handbook for delaying a tenure decision or for meeting a second time with the Board.”

During summer 2006, the investigating committee was told, President Brown found himself under fire over the issue. Some administrators and trustees expected a “blow-up” in the Bible department and wanted it to happen sooner rather than later so as not to threaten the projected building campaign for a new Bible center. By the beginning of the fall semester, a “Truth and Certainty” resolution had been posted on the university’s Web site, although the faculty had not yet had any opportunity to discuss, let alone approve, the final version. Discussion of its status, authority, and coherence flared up anew.

B. A NEW ACADEMIC YEAR AND DEEPENING CONTROVERSY

Dr. Rudd, the new trustees chair, told the investigating committee that he had chaired the ad hoc trustees committee charged with continuing work toward the statement on “Truth and Certainty.” The text that the executive committee of the board approved on August 21, 2006, and that was made available on the faculty and staff Web site on September 13, had been modified significantly from the version the faculty had been developing. The revised version, one-third longer than the handbook’s long-held doctrinal statement, was adopted by the full board at its October 2006 meeting. Rather than calm the waters, however, it roiled them further by employing language that was intended to be acceptable to all parties but that appeared to the more conservative faculty to use familiar theological terms in an equivocal and disingenuous manner. In their judgment, the revised statement suggested that “certainty” in matters of theology and Biblical interpretation can be adequately defined using terms such as “conviction,” “assurance,” and “confidence.” Far from mediating the conflict, the revision appeared to the conservatives simply to discredit their position by appropriating and redefining the concepts to which the other side had given insufficient importance. Because the document employed the term “certainty” in an equivocal fashion to finesse the entire dispute, some on the conservative side of the debate found it impossible to regard the revised statement as a good-faith effort to resolve continuing theological disagreements.

Two previous “Doctrinal Clarifications” evidently arose in the context of theological disagreement between faculty members, but they have been accepted as clarifications rather than partisan statements.⁶ The trustees may well have hoped for the same result from their statement on truth and certainty. That outcome did not ensue, however,

and there is evidence that the perception of conservative faculty that the new document would be used to discredit them was well founded. Several incidents in fall 2006 made it appear that Vice President Milliman, who reportedly said that he had “rescued” Professor Hoffeditz’s tenure, was nevertheless concerned about Professor Hoffeditz’s role in campus discussions. Cedarville University witnessed a series of incidents in which students lodged complaints with trustees about a perceived shift away from Cedarville’s conservative theological stance. In October, an anonymous letter was sent to each trustee. A student who was suspected of being its author was questioned by officers of the administration and, in response to explicit or implicit threats of expulsion, sought the help of an attorney who assisted in obtaining a written letter of apology and a “guarantee of safety” for the remainder of his period of studies at Cedarville. Additional students, and some faculty members, were believed to have been implicated in the preparation of the letter. Some of the suspicion was directed toward Professor Hoffeditz, who denies that he was involved. He received written reassurance from Vice President Milliman and the vice president for student life, Carl Ruby, in October 2006 that they were certain of his noninvolvement, yet perceptions evidently persisted that he had played a role. After a professional association meeting that took place in November, a colleague from another institution who was willing to be named in Professor Hoffeditz’s later hearing wrote to Professor Hoffeditz that Vice President Milliman had alleged at the meeting that Professor Hoffeditz had been complicit in the anonymous letter incident and that if he “messed up again” he would be dismissed. The vice president was further reported to have expressed the hope that Professor Hoffeditz would leave Cedarville and find another position.

In December, some 225 students signed what they described as a “letter of concern” complaining that Cedarville was moving away from its traditional foundationalist position on truth and certainty, sending copies to all members of the board of trustees. The student who was the principal author of the letter stated to an AAUP staff member that he was threatened with expulsion from the university and eventually permitted to continue, on probation, only after he agreed to write an apology to the trustees. Professor Hoffeditz, who was the mentor of the student, would later be accused of having encouraged—indeed incited—the student to write the letter and of having assisted him in its preparation. Professor Hoffeditz sharply denies having done so.

President Brown visited the Bible department in December. Department members had been invited to

6. Faculty handbook appendix VII was updated with provisions in 1967 regarding solar days of creation and in 1973 on the charismatic movement.

submit questions to the president in advance but, according to a member of the faculty who was present, the questions related to the continuing controversy were belittled by the president, whom the faculty member recalled as having said, if you're not on board, leave; if you don't, we'll get you to leave. If you believe in me and Cedarville, stay; if not, go. According to another faculty member who was present, the president had made it clear that he would help disgruntled faculty members to find other positions if they would leave quietly.

By the end of 2006, the investigating committee was told, some deans and chairs had become aware that the "proper channels" cited by the administration had completely broken down. The Hoffeditz hearing panel was later to find that "the administrative chain of command and channels of communication were not sound. As the situation developed, Dr. Milliman grew increasingly distrustful of his Dean and Chair of the Bible Department." Professor Cragoe was removed as the chair of the department on December 29, 2006.

Expecting faculty affirmation of the "Truth and Certainty" resolution to be routine, the administration composed a letter entitled "Administrative Statement to the Cedarville University Department of Biblical Education" that Vice President Milliman read aloud to the department on January 10, 2007. The letter included the following: "The administration now expects all members of the Bible Department to abide by the university Doctrinal Statement, the Community Covenant and general Workplace Standards of Conduct, the Truth-Certainty Statement, the Policy on Academic Freedom and Professional Ethics, and the Faculty Performance Objectives which would then 'result in true unity and collegiality.'"⁷

The academic vice president's Web site announced soon afterward, "Every professor at Cedarville University (and in the Bible department specifically) is in agreement with the Truth & Certainty Statement." The Cedarville faculty Web site said, "All faculty members must affirm their agreement with the Truth and Certainty statement (as well as our doctrinal statement) in order to teach at Cedarville University."⁸

7. Several of these documents, mentioned repeatedly by faculty members, are discussed in section IV.

8. Cedarville University, "Clarifying the Issues," <http://www.cedarville.edu/academics/avp/truth/clarifying.cfm> (accessed September 12, 2007); Cedarville University, "Commitment to Biblical Truth," <http://www.cedarville.edu/cf/truthandcertainty> (posted September 13, 2006, accessed April 15, 2008).

Some members of the faculty at large, however, continued objecting to "Truth and Certainty."

At the same January 10 meeting, Vice President Milliman told the Bible department that the trustees were aware of recent personnel actions taken by the administration: Professor Cragoe's having been removed from his position as department chair at the end of December and Professor J. Michael Thigpen's having been denied renewal after his fourth-year review the day before the semester began. The vice president then predicted that "further actions will occur." By the end of the month, Professor Cragoe, who had also chaired the faculty's Truth and Certainty Committee, had been denied tenure, and Dean Riggs had resigned in protest. All three of these individuals (Cragoe, Thigpen, and Riggs) were among the conservative faculty members who were unhappy with the handling of the certainty issue. The investigating committee was told by one of the former deans with whom it met that the handling of Professor Cragoe's tenure denial was in some respects typical of adverse personnel actions in recent years: despite the support of his department, dean, and the university committee, he was denied tenure "at the highest level." He was summoned to appear before Vice President Milliman, who allegedly read aloud an eight-page letter informing him of the grounds for the denial, but—in an apparent departure from normal university policy—he was reportedly not permitted to leave the room with the letter or to receive a copy of it. Although university practice was for the dean, department chair, and chair of the tenure committee to receive copies as well, the vice president refrained from providing them on the advice of university counsel.

Both Dr. Rudd and university counsel David A. Haffey acknowledged in conversation with the investigating committee that Cedarville's procedures for awarding tenure have sometimes been lacking in rigor, and they added that the grievance process sketched in the faculty handbook had not been tested because the university had never previously experienced a grievance over a dismissal that continued to the hearing stage. Faculty members interviewed by the committee offered a less benign reason why the grievance process was untested: the administration, they told the committee, "got rid of" faculty in a manner calculated to reduce the likelihood that a grievance would be filed, and nonrenewal was often accompanied by an offer to assist released faculty members in finding positions with other Christian institutions and the provision of a small severance package. These measures of assistance were

offered in exchange for nondisclosure agreements, ensuring that both colleagues and constituents were kept in the dark concerning the administration's action and its grounds.

In an attempt to demonstrate that "Truth and Certainty" made no unacceptable demands on conservative faculty, the Bible department had posted on its Web site a document covering a number of theological topics, giving for each case two different views, both of which were said to be compatible with the Cedarville doctrinal statement. The last topic is noteworthy here: "Certainty: Everyone at CU believes that the Bible can be known with certainty. Faculty members differ on the nature of that certainty." Faculty members may differ, the document added, about whether it should be defined (a) "in the same way that it is defined in the Truth and Certainty Statement: assurance, confidence, firm confidence" or (b) "as a state in which it is impossible to doubt, i.e., absolute or philosophical/metaphysical certainty."⁹ Alternative (b) apparently misrepresents the conservative position, using terms drawn from philosophical disputes of the early-modern period that adherents of this position regard as inappropriate in a theological context. Moreover, because the first alternative is identified as the correct interpretation of the "Truth and Certainty" statement, which all faculty members are required to affirm, what initially appears to be an affirmation of alternative viewpoints amounts, in this instance, to an assertion that any construal of certainty that departs from alternative (a) disqualifies a faculty member from employment at the university.

On February 8, Vice Presidents Milliman and Ruby called together some sixty students who had signed the December "letter of concern" to trustees but had refused, when called before administrators individually, to recant and apologize.¹⁰ Vice President Ruby said that it was the administration's responsibility "to make sure that we as a team work well together; and for several years we have told the team to get along, play nice." Conceding that "people will be very upset, as they already are," he used a metaphor:

No one would deny that Shaq is a great basketball player, right? . . . Most people agree that Kobe is a

good basketball player. They are both good basketball players. . . . But it was not working with them on the same team. And someone had to step in and make some difficult decisions to get the team functioning the way they needed it to. As an administrator, that is our goal. And that is what we are going to do.

The administrators assured the students that there were no doctrinal matters at stake, characterizing the issues as personal within the Bible department. Dr. Milliman introduced two Bible department professors who, in his view, had been unfairly put on the defensive by the students' letter: David M. Mills and Tim Gombis. Both had been invited to the meeting and had provided material for the students to read in advance. Professor Mills had authored and circulated on the Internet a 2004 paper discussing his thesis on certainty; it shows that controversy about terminology, even among those in substantive agreement with one another, is endemic to the subject matter: "He [D. A. Carson] has said quite eloquently much of what I have been trying to articulate to my colleagues for some time now. I only wish he would not continue to call such knowledge certainty . . . I would recommend the word *confidence* to describe this situation."¹¹

Closing the meeting after a discussion period, Vice President Ruby reiterated the administration's intention to "put a couple of faces behind this controversy." The effects, the investigating committee was told, were to make some faculty fearful of losing their jobs and to make it more difficult to confine the truth and certainty debate to academic dialogue about theological issues.

C. EVENTS IN AND AROUND THE HOFFEDITZ DISMISSAL

In March 2007, the administration issued faculty contracts for the 2007–08 academic year. Instead of signing her contract, conservative Professor Amy-Hope Guisleman resigned from the Bible department, writing, "I firmly disagree with the administration's position that the only issues dividing us are interpersonal issues. I believe that there are serious doctrinal issues at stake in this debate, and I am not comfortable to continue in an environment where: (1) serious doctrinal disagreements are ignored, and (2) students and faculty who

9. Cedarville University, "Understanding the Issues," <http://www.cedarville.edu/academics/avp/truth/response.cfm> (accessed September 12, 2007).

10. The investigating committee read a transcript of the meeting and heard accounts of its effects from several faculty members.

11. "The Emergent Church—Another Perspective: A Critical Response to D. A. Carson's Staley Lectures," 24, http://people.cedarville.edu/Employee/millsd/mills_staley_response.pdf (accessed May 13, 2008). Carson is a prominent evangelical scholar and research professor of New Testament at Trinity Evangelical Divinity School.

believe that the issues are serious are belittled, addressed with sarcasm, and even removed from their positions.” The contract issued to Professor Hoffeditz was signed and returned on April 13.

Less than three months after he signed his 2007–08 contract, Professor Hoffeditz was notified by letter dated July 7, 2007, from Vice President Milliman that he was being dismissed from the faculty, effective one month later. The letter asserted that the action was prompted by his failure to “maintain consistent, biblically appropriate, spiritual interest and effective Christian relationships in the University family.” It went on to set forth the “causes for the University’s determination” under three general headings. Under the first, “Knowing Violation of the Canons of Professional Ethics,” the administration charged him with having “made statements in violation of [his] Christian, ethical obligation that are disrespectful of the opinions and positions of other faculty members that vary from [his] own”; “made statements to students expressing [his] disagreement with established school policy and the judgment of the senior administration in spiritual matters, and when confronted, . . . defended [his] absolute ‘right’ to do so”; “made statements to students to provoke sharp criticism against fellow faculty members with whom [he] disagree[s]”; “made statements and exhibited behavior that does not demonstrate Christian love and objectivity in the professional judgment of colleagues”; and “made statements advocating changes in the institution in a manner *not* provided for by University policies.”

Under the second heading, “Breach of the Terms and Conditions of Employment,” the letter charged that Professor Hoffeditz, in his teaching role, “advocated a position contrary to the University’s Doctrinal Statement and/or Standards of Conduct and/or the Community Covenant and General Workplace Standards of the University, as interpreted by the board of trustees and senior administration,” and “introduced topics and material not pertaining to [his] academic discipline that are controversial and not appropriate material to introduce into the classroom.” Among the other charges under this second category, Professor Hoffeditz was accused of having “publicly advocated views that are contrary to or violate the Doctrinal Statement, corporate policies and/or Standards of Conduct, and/or the Community Covenant and General Workplace Standards of the University . . . [and] discussed such views with persons other than administrators and outside of faculty and/or committee meetings”; of having used “speech that is neither ‘wholesome’ nor ‘uplifting’”; of “engaging in conduct that constitutes distrust, damaging criti-

cism, disrespect, . . . and irreverence”; and of “failing to engage in ‘redemptive expressions of confrontation and forgiveness.’”

Under the third category of alleged misconduct, “Departure in Conduct or Belief from the Official Doctrinal or Conduct Positions of the University,” the letter provided the following “Summary Description of the Evidence”: “You have advocated a position contrary to the University’s Doctrinal Statement . . . , and you have communicated this contrary position both to your fellow faculty members and also to students.” It added the following subcharge: “You have expressed disapproval of the University’s adherence to the Doctrinal Statement, thereby advocating a position contrary to the University’s Doctrinal Statement.”

Vice President Milliman concluded the July 7 letter by informing Professor Hoffeditz that he had ten working days to submit a written grievance to the vice president’s office. He was immediately relieved of all faculty responsibilities.

Within hours after the letter of dismissal had been issued to Professor Hoffeditz, the administration posted on the university’s Web site a document entitled “FAQ: Recent Personnel Actions” that was intended to explain the “personnel actions resulting in the departure of two faculty members from the Cedarville University Department of Biblical Education.” (The other faculty member, a tenured colleague in the Bible department, had been dismissed from the faculty at the same time as Professor Hoffeditz and under virtually identical circumstances.) The document characterized these actions as part of a process “to restore a healthy team spirit and to refocus our attention and energies on our mission.” These “personnel actions come only after every other option has been exhausted.” They were “difficult personnel decisions [not linked] to theological issues. In fact, the University’s commitments to the inerrancy of Scripture, to its historic doctrinal statement, and to its conservative theological heritage have not changed.”

The board of trustees issued a statement, dated July 9, along the same lines as the FAQ document, but adding that “[a]ll our faculty members have affirmed their full agreement with the University’s doctrinal statement and *Truth and Certainty statement*.” (Emphasis in original.) (The investigating committee, when it visited Cedarville, asked university counsel Haffey whether faculty members’ affirmations of “Truth and Certainty” had been obtained and, if so, how and when. Mr. Haffey acknowledged that such affirmations had not been obtained. The committee found a range of views among faculty, most saying that no one had been required to sign “Truth and Certainty,” but some allowing that they

“may have signed it” inadvertently after the university’s adoption of an online affirmation procedure.)

In a letter to Vice President Milliman dated July 19, in which he formally requested a hearing on his “unjust termination,” Professor Hoffeditz challenged the content of the letter of dismissal. He complained that “the standards and terms that [the vice president] cited are vague and overly broad” and that the administration’s “application of them in the allegations against me are very arbitrary and capricious. Moreover, there was no specific, supportive evidence of any of these allegations.” He went on to state that “these allegations were never addressed to me in writing during my seven years at Cedarville. In fact, the evidence supports conclusions contrary to these allegations. . . . Furthermore, these concerns and allegations were not brought to my attention at the time of my contract in mid-April 2007.” He also complained that “the University made no attempt to resolve my alleged issues prior to my termination.”

Pursuing these complaints in its meeting with university counsel Haffey and the new chair of the board of trustees, Dr. Rudd, the investigating committee was informed once more that the decision to dismiss Professor Hoffeditz and his tenured colleague in the Bible department “had nothing to do with their theological positions,” which “they were free to advocate,” but arose from “conduct issues,” including “reports of significant damage to students.” These issues arose, they stated, in both departmental and board discussions of Professor Hoffeditz’s tenure candidacy in 2005–06.¹² There were “no questions on scholarship, teaching, or student evaluations,” they told the committee, but the decision to approve reappointment with tenure was made only after lengthy discussion and an assurance by Vice President Milliman that he “could work with” Professor Hoffeditz to resolve the issues that had arisen. According to Mr. Haffey and Dr. Rudd, these matters were discussed at meetings between Professor Hoffeditz and Vice President Milliman, and between Professor Hoffeditz and President Brown, but no written reprimand was issued, nor was any written record made of the content of these conversations. “Brown and Milliman were

trying to help resolve the problem,” they told the committee, “but perhaps they were not stern enough. Perhaps there was some naïve optimism.” Nevertheless, the problems noted in the period immediately preceding the granting of tenure “remained visible after tenure.” The investigating committee notes that, if the administration later presented to the faculty grievance panel any evidence of “damage to students,” the panel did not find it persuasive, for students are nowhere mentioned in the panel’s report.

Professor Hoffeditz alleges that the administration had already made plans to dismiss him from the faculty even before it issued him a contract for the 2007–08 academic year, and he has cited various pieces of evidence to support his claim, including Vice President Milliman’s January 10, 2007, statement to the Bible department about further faculty personnel actions and Vice President Ruby’s statement a month later to students about cutting members of a basketball team. Most controversial is a one-hundred-minute tape recording that a student secretly made of a conversation the student had with Vice President Milliman within a month after Professor Hoffeditz and his colleague had both been dismissed. In the course of that conversation, the tape of which was subsequently posted on the Internet, Vice President Milliman states that the university’s pending reaccreditation review by the North Central Association in March 2007 was a major factor in the decision to issue contracts to both faculty members at that time: “We weren’t going to cause a furor with terminating people right before NCA came. And so I talked to the lawyers. And we weren’t even ready anyway; we weren’t ready.”¹³ Professor Hoffeditz and his colleague were subsequently given notice of dismissal after the accreditation process was completed. Professor Hoffeditz further alleges that, prior to issuing him notice of dismissal, the administration had already removed his name from the university’s 2007–08 catalog, edited in late spring 2007, an allegation sharply denied by university counsel Haffey.

Following receipt of the dismissal notice, Professor Hoffeditz consulted an attorney, through whose intervention he was able to secure an agreement by the administration to continue paying his salary and benefits until a hearing was held. Professor Hoffeditz also solicited testimonials as to his conduct from various colleagues,

12. The investigating committee’s *only* discussion of the Hoffeditz departmental tenure meeting with a participant was with a member of the faculty no longer at Cedarville who said, “It was bitterly argued. [Name of a faculty member] was looking for a reason to get him [Hoffeditz] out. [Same name] said ‘I can work with anyone except Hoffeditz.’ They attacked him for not going to a talk, for some interaction with a cleaning lady. It was all petty.”

13. The recording was removed from the Internet by its host upon receipt of a letter from attorneys for the university, but an excerpt from the transcript was provided to the investigating committee.

including his former dean and department chair, rebutting the allegations against him and attesting to his collegiality, professionalism, and theological orthodoxy. On August 18, he sent each member of the university's governing board a detailed statement in response to what the trustees had posted on the university's Web site on July 9, where they sought to "clarify certain points" relating to the "personnel actions" that had been taken. "Concerns I have with these statements," he wrote to the board in a cover memorandum, "are as follows: the unexpected termination without official warning of any kind, the lack of good faith in issuing my contract [for the 2007–08 academic year], and the troubling situation surrounding my termination." In the document to the trustees he stated that he was "grieved by the fundamentally untrue and misleading statements" in the board's July 9 Web posting. He complained that he had "not had a formal meeting, a letter, a phone conversation, or an e-mail with any administrator, the dean, or the interim chair of the Bible department in 2007 regarding any personnel-related issue of displeasure or personal concerns." He also stated, "Not one member in the Bible department has ever filed a grievance against me nor has anyone in the Bible department met with me to indicate or to resolve points of conflict in 2007. No students have submitted any concerns to me regarding any issues."

On September 28, Professor Hoffeditz wrote to each member of the board, requesting a hearing during their meeting scheduled for early October "to bring resolution to these troubling matters in a spirit of Christian charity." The then-chair of the board, Mr. Becker, responded on October 3, denying the request.

D. APPEAL OF SEVERANCE FILED AS A GRIEVANCE

By the terms of the faculty handbook, the Grievance Investigation Panel (GIP) that would hear and respond to the Hoffeditz grievance was to consist of the chair of the elected Faculty Committee to the President, serving as the panel's chair; two members appointed by the president; and two elected by the faculty. President Brown asked two members, one of them a department chair, to serve. The faculty elected two of its members—both of whom, it was noted by faculty unconnected with the Bible department, were well known to be allies of those on the conservative side of the theological dispute. Under the university's regulations, the burden of proof would be on Professor Hoffeditz to demonstrate why he should not have been dismissed. Protracted discussions took place by e-mail throughout the fall semester between Professor Hoffeditz and the panel chair, Professor Charles D. Dolph, about setting the date for

the hearing and determining the rules and procedures that were to be followed.

As the panel was establishing its procedures, university counsel Haffey intervened in at least two ways. First, he informed the panel that neither the secretly made audio-tape nor the transcript of Vice President Milliman's statements to the student concerning the relationship between accreditation and the handling of personnel cases could be considered by the panel because they represented evidence gathered illegally. (Under Ohio law it is permissible for either party to record a conversation without the other's permission unless the recording is made for purposes of committing a crime or a tort; university counsel claimed that the student intended to commit the tort of invasion of the vice president's privacy rights.) Second, when the panel decided to seek independent legal advice concerning the admissibility of this evidence, Mr. Haffey informed Chair Dolph that this was not permissible because the panel was a part of the university and was therefore required to rely on his legal assistance exclusively. Ultimately the proceedings, which had been cancelled twice and postponed for six months, went forward on January 8.

In the meantime, the dismissals of Professor Hoffeditz and his tenured colleague in the Bible department had increased the turmoil on the Cedarville campus. By December 2007, a number of current and retired faculty members, including three former deans and two former vice presidents, had formed the "Coalition of the Concerned" and had attracted President Brown's attention. They accepted his invitation to meet with him to discuss their perceptions and concerns, a meeting that, from the coalition's perspective, resulted in the president's assurance that he took seriously the issues they had raised and would respect the rights of those faculty members who would take positions different from those of the administration. In the weeks following the meeting, however, conditions worsened markedly for a conservative faculty member in the Bible department, Professor Richard Blumenstock, seemingly demonstrating that President Brown had failed to follow through.¹⁴ The president later acknowledged to the faculty, "There were a couple of issues I promised to follow up on and was in the process of doing so," though the investigating committee was unable to determine the nature of that process.

On January 9, 2008, following a somber meeting in which retired members of the coalition, fearing administrative reprisals against current faculty, had urged younger members to consider carefully whether they

14. Details of departmental measures taken against Professor Blumenstock are in section IV.

could afford to lose their jobs over signing an open letter, fourteen coalition members signed a letter that had been drafted on December 11, 2007, and hand-delivered it to the Cedarville faculty and administration, mailing copies to the trustees. The cover note that accompanied the letter expressed a widespread lack of confidence and trust in the administration's governance of the institution and a perception that Cedarville was drifting from its theological position and identity. The note ended with the hope "that timely and definitive solutions will be proffered for serious consideration in resolving these issues, amicably, for the long-term good of Cedarville University. . . . Our desire and prayer are for resolution, reconciliation, and revival on the . . . campus." The body of the letter detailed fifteen problems in three areas: "administrative governance," the meaninglessness of tenure, and theological drift.

Responding the next day in an e-mail message addressed to the entire faculty, President Brown condemned the coalition and its letter, which he characterized as being "filled with misunderstandings, half-truths, and rumor." He wrote, "It is clear their motives were not to find understanding or resolution but to raise suspicion once again about the Cedarville administration and members of the School of Biblical and Theological Studies, and to 'keep things stirred up.'" Invoking the language of Professor Hoffeditz's letter of dismissal, the president alleged, "This group's action violates our Community Covenant, General Workplace Standards, and Faculty Handbook. More significantly, it cuts to the heart of what it means to be a Christ-centered community." He went on to defend the "difficult personnel decisions" he had made and to assert that, in making those decisions, although "all the facts cannot be revealed," he had followed "biblical principles, University policies, and legal guidelines." "I am convinced," he wrote, "that if all the information were communicated, everyone would understand why these decisions were made and most would agree with them. But, as an administrator, you take it on the chin every day and keep going." The president ended his message with a warning: "The distribution of the type of material that we received yesterday needs to stop. The campaign to organize, criticize, and destroy that began last year stops now. It cannot and will not be repeated." Following a directive from the council of deans, current members of the faculty who had signed the letter of concern were summoned to the offices of their respective deans for questioning and warning.

In December 2007, one month prior to the expected commencement of his hearing before the GIP, Professor

Hoffeditz submitted some one thousand pages of documentation to rebut the charges leveled against him and to support his request for reconciliation and restoration. At the initial meeting of the hearing panel, held on January 8, he presented a nineteen-page statement in which he responded to the three questions the GIP had addressed to him: "Why was your severance unfair?" "What attempts were made to prevent severance?" "What procedures were violated?" He called several witnesses, one a former dean, the others current faculty members (his former colleagues) in the Bible department; he also presented signed affidavits corroborating his position.

The proceedings of the GIP, which included two hearing sessions each with Vice President Milliman and then separately with Professor Hoffeditz, concluded in mid-February. On February 28, having completed its investigation and deliberated over the documentary evidence and the testimony, the GIP issued its report, which it addressed to President Brown. The report, as required, was divided into findings of fact, conclusions, and a "recommended disposition." The first two, they wrote, "represent the unanimous consensus of all five members of the GIP."

The first section of the report consisted of nineteen numbered findings of fact. The panel found that Professor Hoffeditz had "overstated his case in some instances and could have been more forthright in his position." It also accused both Professor Hoffeditz and the administration of acting "uncharitably and unprofessionally." But the panel's report reserved the bulk of its criticism for the administration, which it charged with having committed "missteps" in the dismissal process. The panel found that Professor Hoffeditz had not received any "written reprimands, warnings, or plans of correction" from the administration before he was handed his notice of dismissal, despite the university's assertion the previous summer that "every other option" short of termination had been "exhausted." Finding that Professor Hoffeditz "did not violate the University Doctrinal Statement," the panel said that it "understands the university position to be that Dr. Hoffeditz insisted that his colleagues adhere to doctrinal positions that are not in the university's doctrinal statement."

As its recommended disposition, the panel said, "In a split decision the GIP is disposed to find for Dr. Hoffeditz." The investigating committee was surprised by the mildness and vagueness of this overall recommendation, coming as it did after a succession of strongly worded rebukes to the administration. Why did the panel not recommend more directly that the termination should

be reversed? Two reasons suggest themselves.¹⁵ First, although the findings of fact were all unanimously approved by the five committee members, the summary recommendation received only a majority vote, and it is possible that more strongly worded alternatives were considered but failed to gain the support of at least three committee members. By Cedarville policies—contrary to AAUP guidelines—two of the five GIP members had been appointed by the president, and one of them was currently serving the administration in the role of department chair. Under these circumstances, even after coming to a consensus regarding specifics, the panel may have found it impossible to agree on a more forceful final recommendation. Second, the mandate of the GIP offers no instructions concerning the form or extent of its conclusions, and, in the absence of any procedural requirement for a recommendation to sustain or overturn the termination decision, the committee may have hesitated to adopt an overall conclusion that directly challenged the university's actions. Whatever the reasons for the vagueness of its conclusion and the split vote cast in its support, however, the overall outcome of the appeal process remains clear and unequivocal: Professor Hoffeditz had persuaded the appeal committee that his termination had been unwarranted. The process for appeal specified in the faculty handbook had resulted, at this stage, in an implicit, if not fully explicit, recommendation for reversal.

E. SEIZURE OF THE RECORD AND REVERSAL OF THE GRIEVANCE PANEL'S RECOMMENDED DISPOSITION

On March 3, less than a week after the release of the grievance panel's report, the chair of the committee, Professor Dolph, sent an e-mail message to Professor Hoffeditz and Vice President Milliman, informing them that the chair of the board of trustees, Mr. Becker, and the president, with the approval of university counsel, had ordered the GIP "to deliver the entire record of the hearing to the president," in contravention of the rules and procedures developed by the GIP that the record would not be available to the administration or counsel. Believing that they were "compelled to comply" under threat of charges of insubordination, the members of the panel relinquished all of the documents over which until then they had had sole custody; they also turned over the only copy of the transcript of the proceedings. "The GIP," Professor Dolph wrote, "is no longer able to enforce its own rules or control the record of the hearing."

That same day, upon learning what had happened with the documents and the hearing record, Professor Hoffeditz requested that the panel provide him with a copy of the materials it had given to the administration, but Professor Dolph informed him that "the case and the records are now out of the GIP's control," and he suggested that Professor Hoffeditz "address this and all future concerns directly to the University Counsel." The next day Professor Hoffeditz filed a formal grievance with the board of trustees against board chair Becker and President Brown for having violated the rules of the GIP. He expressed "grave concern about the potential repercussions to the many faculty, staff, students, and alumni who testified on [his] behalf. Their willingness to do so was based upon the assumption that all evidence was to remain confidential as was promised and stated by the agreed-upon rules and procedures." Finally, he stated his "concern about the [potential] destruction of evidence," all of which was in the possession of the administration. The grievance went unacknowledged.

A month later, on April 4, the board of trustees met in "special session" to render a final decision on Professor Hoffeditz's grievance over his dismissal. Later that same day the board issued a statement:

After carefully reviewing the University's policies and procedures, the report of the GIP, and the recommendation of the President, the Board of Trustees concluded that there were clear grounds for the severance of Dr. Hoffeditz and that the University's guidelines relating to this personnel matter had been followed. This decision by the Board was unrelated to any theological issues. Therefore, the Board of Trustees voted to accept the recommendation of both the President and the Academic Committee of the Board of Trustees and to uphold the termination of David Hoffeditz.

With the board's having upheld Professor Hoffeditz's dismissal, the university ceased paying him any further salary and benefits, although his insurance coverage remained in effect through the end of April 2008.

By May 2008, the executive committee of the board of trustees had issued an executive summary of "Truth and Certainty" in an attempt to bring greater clarity to the continuing debate both on campus and in the media.¹⁶ Dr. Rudd, newly elected as chair of the board of trustees,

15. The investigating committee regrets that it was unable to meet with any members of the hearing panel.

16. Cedarville University, "Commitment to Biblical Truth," <http://www.cedarville.edu/cf/truthandcertainty> (accessed May 18, 2008).

explained to the investigating committee that a shorter and clearer statement was required to speak to external constituencies. The executive summary has none of the terminological inconsistencies of the full statement, and indeed it appears to cast the question of certainty in a way that only the conservative side could affirm: “The Bible’s message is true and certain in its entirety,” it states, and we can be “wholly certain” of the doctrines it teaches. Conservatives see this as evidence of duplicity: the administration, they allege, continues to give lip service to its historical position on certainty while its actions embrace an alternative. The investigating committee heard no persuasive evidence that there was an intent to deceive, but the alternative explanation—that the trustees did not understand how their statement would be perceived—seemed no more plausible.

III. The Association’s Involvement

David Hoffeditz first sought the advice and assistance of the Association’s Ohio conference in August 2007. The chair of the conference’s Committee A referred the matter to the AAUP’s Washington office.

The staff wrote to the administration on September 11, setting forth the Association’s concerns about issues of academic due process posed by Professor Hoffeditz’s case, namely, the failure to afford him a pretermination hearing of record before a faculty body in which the administration had the burden of demonstrating adequacy of cause for its action. The letter urged that the notice of dismissal issued to Professor Hoffeditz be rescinded, that he be reinstated to his academic and other responsibilities, and that any subsequent action be consistent with AAUP-supported principles and standards. Replying by letter of October 1, counsel for the university, Mr. Haffey, stated that “the University and its employees are bound in this matter by its governing documents. Since faculty personnel matters at Cedarville are confidential, [the university] cannot respond to your inquiry.” On October 9, having by then seen a copy of the “Rules and Procedures” that the grievance panel (with advice from Mr. Haffey) had devised for the hearing it was to conduct into the Hoffeditz case, the staff responded to Mr. Haffey’s letter, conveying concerns about other major departures in the university’s rules and procedures from basic standards of academic due process. The staff wrote as follows:

First, the GIP procedures permit the affected faculty member to “have an assistant present who is an employee of CU,” but do not allow an attorney. By contrast, generally accepted standards for

formal proceedings permit the presence of counsel of the faculty member’s choice. Second, the procedures call for the hearing to be “taped and transcribed for the benefit of the panel,” but “no one else will have access” to the taped record. By contrast, generally accepted standards for a hearing of record make that record available to the concerned parties. Third, the GIP procedures call for “each side” to present its case independently of the other, thereby precluding one side from cross-examining, or even hearing, the testimony of the other’s witnesses. By contrast, generally accepted standards call for an adjudicative proceeding with both sides having the right to confront and cross-examine opposing witnesses.

Perhaps worse yet with respect to academic due process, Professor Hoffeditz reports having been told that “I will never receive any evidence for the accusations leveled against me in my termination letter prior to my presentation on October 15. I am still confused how I am to respond to unsubstantiated accusations.”

The staff’s letter concluded by urging again that Professor Hoffeditz be afforded the requisite protections of academic due process.

In the absence of a response from Mr. Haffey or the Cedarville administration to the staff’s October 9 letter, the staff wrote again on October 25, having learned by then about a set of specific “Clarifications to the Rules and Procedures” that the chair of the hearing panel, Professor Dolph, had provided to Professor Hoffeditz in response to the latter’s request. The staff noted five procedural matters of particular concern—in addition to the ones previously raised—that deepened its worries over the fairness of the hearing process. In a letter to the university counsel dated October 25, 2007, the staff took particular issue with the following numbered “rules and procedures” enumerated by Professor Dolph:

2. The opposing parties are never together in Session I or II. They will not be in attendance, see, address, or question the opposing party or witnesses.
3. Each party may submit a list of questions and request that the GIP ask such questions of the other party and/or his witnesses in either session I or II. The GIP however makes no commitment to ask those questions and will do so only if and when the GIP decides it serves the GIP’s purpose.

5. The GIP will not disclose to the parties the names of the opposing witnesses or the witnesses that the GIP chooses to call.
6. The GIP will not disclose the advance evidence material or the witness lists to the opposing parties.

12. *The evidence collected is for the benefit of the GIP. It will not be available to either party, the administration, or the university's attorney.* (Emphasis added.)¹⁷

In commenting on these provisions, the staff inquired

how Professor Hoffeditz can be afforded a fair opportunity to present his case if he is not allowed to question witnesses, will not be told the identity of witnesses called to testify by the hearing panel, has no assurance that the panel will ask witnesses the questions that he submits to it, and will not have access to evidence obtained by the panel. The fact that the administration will be *subject to the same rules* as Professor Hoffeditz does not diminish our concerns. Rather, it deepens them, for under the rules described in Professor Dolph's e-mail message neither party can fully argue its case, and the panel would therefore be deprived, so it seems to us, of the full arguments and evidence necessary to reaching a just decision.

(Emphasis added.)

Again the staff concluded with admonitions to the administration to "remedy the deficiencies in these procedures before the hearings commence and . . . afford Professor Hoffeditz the procedural protections called for under our recommended standards."

One month later, still having received no response from the administration to the staff's letters of October 9 or October 25, and with the proceedings—previously scheduled for late October—having been postponed until January, the staff wrote directly to Professor Dolph, as chair of the hearing panel, to urge him "to ensure that Professor Hoffeditz is afforded a fair and proper hearing" and "to make the requisite adjustment in its procedures." Professor Dolph did not reply.

With the Association's concerns relating to the case of Professor Hoffeditz remaining unresolved, the gen-

17. This extraordinary provision, and its subsequent breach, is key to the issues raised in section IV and also to the conclusions of this report. The staff's comment, immediately following, was prescient of the outcome and goes some way toward explaining why the report of the GIP was astonishingly sparse.

eral secretary authorized the appointment of an ad hoc investigating committee, and the staff so informed the Cedarville University administration by letter of February 20, 2008. Responding by letter of March 14, Mr. Haffey stated that the administration was not willing to cooperate with the investigation and that the committee would not be welcome on the Cedarville University campus. The staff wrote again two weeks later to inform the president of the names of the investigating committee members and to propose dates for their visit. After further correspondence from the staff and from the chair of the investigating committee, Mr. Haffey agreed to meet with the committee, along with the newly elected chair of the board of trustees, Dr. Rudd, on the Cedarville campus. The committee was not, however, offered an opportunity to interview the president or the vice presidents.

The investigating committee traveled to Cedarville on May 20, stayed for three nights in an area hotel, and devoted two full days to interviewing fourteen individuals, ten of whom served on the faculty or in administrative positions during the events discussed in this report. It also met with a retired member of the faculty, two attorneys, and one trustee.¹⁸ The committee's meeting with Mr. Haffey and Dr. Rudd, originally scheduled for two hours, went on for twice that time. The committee thanks all those who were willing to come forward. Evidence of deep love for, and loyalty to, Cedarville University on all sides is a hopeful sign, as is the desire for professional integrity heard from both the new chair of the board of trustees and many members of the faculty.

IV. The Issues

Summarized here are what appear to the investigating committee to be the central issues raised by the actions taken by the administration of Cedarville University against Professor Hoffeditz, as determined from information available to the Association, through interviews with members of the Cedarville University community, and through additional conversations and correspondence, as related to the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, the Association's

18. In accordance with AAUP policies, investigating committee expenses are subject to reimbursement by the national office, but committee members volunteer their time for preparation, on-site interviews, and the writing of reports.

derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*, and the *Statement on Government of Colleges and Universities*.¹⁹

A. THE HOFFEDITZ DISMISSAL: PROCEDURAL CONCERNS

Two sorts of procedural matters are at issue: whether the Cedarville University administration (1) afforded nationally recognized protections of academic due process to Professor Hoffeditz and (2) followed the provisions of its own faculty handbook in the post-termination grievance procedure.

1. *Due process standards.* The 1940 *Statement of Principles*, the 1958 *Statement on Procedural Standards*, and Regulation 5 of the *Recommended Institutional Regulations* set forth safeguards of academic due process in cases involving dismissal for cause. They call for a preliminary proceeding in which “the appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference.” They place the burden on the administration to demonstrate adequacy of cause for dismissal in an adjudicative hearing of record before a body of faculty peers. Under these standards the professor against whom the administration proposes to take action should be informed of the charges in writing prior to the hearing, should have the right to counsel, should have the right to confront and cross-examine all adverse witnesses, and should be given the opportunity to be heard by all bodies that pass judgment on the case. A verbatim record of the hearing should be taken and a copy be made available to the affected faculty member. The hearing committee, all of whose members should be chosen by the faculty, should make explicit findings with respect to each charge, and such findings should be given in writing to the professor and to the president for transmittal to the governing board. The president and the governing board should normally accept the faculty committee’s recommendation. If either the president or the board has objections, the matter should be returned to the faculty committee with objections specified so the committee can reconsider its recommendation before the board renders its final decision.

The Cedarville administration did not provide Professor Hoffeditz with a pretermination hearing. In

placing the burden of proof on the individual appealing his or her dismissal to show that it was unjustified, the faculty handbook departs from accepted procedural standards in a particularly objectionable manner. But even were that provision absent, the appeal process offered to Professor Hoffeditz would still have failed the following tests: preliminary conference, right to counsel, right to see the evidence against him, right to confront and cross-examine witnesses, right to be heard by all bodies sitting in judgment, right to a copy of the record of the proceedings, hearing before an elected body of peers, and findings on *each* charge. Once the hearing sessions were complete, and the GIP had found that Professor Hoffeditz’s dismissal had not been warranted, the investigating committee notes further failures. Neither the president nor the governing board remanded the case to the GIP, with objections specified, for reconsideration. Rather, the GIP’s recommendations were summarily set aside without further consultation.²⁰

Compounding these departures from generally accepted standards, President Brown took a step that has no precedent in the AAUP’s annals, confiscating the only record of the hearing, together with all the evidence, despite the GIP’s having promised confidentiality to witnesses. The investigating committee, expressing its alarm at the seizure, asked Mr. Haffey for his rationale in advising it. The chief reason, he said, was that the president required the record to prepare his report for the board of trustees. A second reason offered by Mr. Haffey was the president’s view that the report of the GIP marked the panel’s dissolution. How, Mr. Haffey asked, can a panel that does not exist secure the record? Urged in the strongest terms by the committee to release the record immediately, Mr. Haffey said that there could be no need, other than litigation, for Professor Hoffeditz to see the record, and that if it were turned over to him in response to a court’s order of discovery, the court would be able to prevent inappropriate distribution of the record, which the university could not. Dr. Rudd added that there had already been a number of times when internal communications concerning the recent personnel actions had been posted irresponsibly on the Internet, and that the university had been injured in that process. At this impasse, the committee reiterated

19. Cedarville University is a member of the Association of Governing Boards of Universities and Colleges, which co-authored the *Statement on Government of Colleges and Universities*. It is also a member of the Council of Colleges of Arts and Sciences and the Council of Independent Colleges, endorses of the 1940 *Statement of Principles*.

20. Cedarville University representatives objected to language in a prepublication draft of this report that described the GIP’s findings as “overturned,” on the ground that the university’s faculty handbook entrusts such a committee only with the power to forward recommendations to the president.

its view that the seizure was wrong, and that any legal or academic body would find it outrageous.

As noted above, Professor Hoffeditz was not afforded an opportunity to challenge his dismissal through the university's grievance procedure until after his services had already been terminated; in fact, the hearings before the grievance panel did not begin until five months after his dismissal had been effected. The courses he was originally scheduled to teach were reassigned to other members of the Bible department faculty. The investigating committee finds that the administration's decision to remove Professor Hoffeditz from all teaching and other academic responsibilities prior to any hearing before a committee of faculty peers was without any justification.

2. Internal procedure and practice. University counsel Haffey told the investigating committee that it had been his responsibility to advise the administration to follow its published procedures, flawed though they now appeared in hindsight to all concerned. The investigating committee concurs that both the act of dismissal and the grievance process complied in most respects with the requirements of the gravely deficient faculty handbook.²¹ There were three exceptions, however. First, the tenure policy in the handbook "guarantees tenured faculty members the right of appeal to both peers and to the trustees" upon dismissal (VII.A). Professor Hoffeditz's written request for a meeting with the trustees to appeal their ratification of his dismissal was denied. Second, according to the handbook, a faculty member who is issued notice of "severance for cause" is entitled to "a summary description of the evidence relied on by the University in specifying the cause" (XI.D.2). Professor Hoffeditz was given no such document. The dismissal letter included a section with the heading "Summary Description of the Evidence," but in fact it contained only a more detailed specification of the charges, not a description of the evidence supporting them. This omission became all the more egregious in light of the grievant's not being allowed to see the evidence against him during or after the hearings as a result of the administration's confiscation of all the evidence and the hearing record, despite the stipulated rules and procedures to which all parties to the proceeding had agreed to abide. Third, the charge of "breach of the terms and conditions of employment" relies heavily on documents

21. A provision on mandatory retirement at age seventy has just been removed from the handbook. The investigating committee was told, however, that sabbaticals are still denied on grounds of age to persons who have reached seventy.

formulated by the Cedarville administration and unilaterally imposed on faculty, as discussed below. Thus the provisions of the faculty handbook in areas related to theology had in effect been overridden by administrative decision.

In discussing the university's internal procedures, Mr. Haffey emphasized to the investigating committee that no prior written warnings are required by the faculty handbook before a tenured member of the faculty can be dismissed for cause. Prior conversations with President Brown and Vice President Milliman, he said, had served as warnings of concerns about inappropriate conduct on the part of Professor Hoffeditz; and the lack of a paper trail documenting the content of these conversations was motivated by a desire to protect the interests of faculty and to preserve an informal and familial model of mutual admonition and correction in the Cedarville community.²² This account is problematic, however, for two reasons. First, it is clear that the meetings that are now characterized as appropriate warnings were perceived by Professor Hoffeditz simply as part of a theological and institutional conversation, not as notice of impending disciplinary action. Second, the policy of issuing reprimands orally, without written documentation, is inadequate when the alleged misconduct in question is so serious as to warrant consideration of dismissal. If the meetings in question had been scheduled in response, for example, to a parent's complaint over syllabus content or a colleague's concern about intemperate remarks in a faculty meeting, the omission of a written record might be understandable. But by Mr. Haffey's own account, the university was coping with what it considered to be serious and persistent misconduct on the part of David Hoffeditz, rendering him unfit for continued service on the faculty, and Mr. Haffey alleges that these matters were discussed in these prior meetings. Under such circumstances, the lack of written warnings, or of meeting notes summarizing warnings that had been issued orally, is a serious flaw.

In other respects, internal procedures were followed. Professor Hoffeditz was informed in his dismissal letter of his right to file a grievance within ten working days of the date of the notice of termination. In such a grievance, which involves the review of a severance action that has already been effected, the handbook provides that the president will convene an investigative panel

22. While the Association acknowledges circumstances under which a faculty member might not seek written reasons, if the faculty member requests them, they must be provided.

consisting of five tenured faculty members, though two of those are appointed by the president, raising conflict-of-interest concerns. The chair of the Faculty Committee to the President serves as chair of the panel.²³ Conflict-of-interest concerns are heightened when an administration has placed the burden of proof on the affected faculty member, in effect making the grievant guilty until proven innocent.

The faculty handbook is largely silent as to the specific procedures to be followed in an appeal hearing. The affected faculty member and the academic vice president are both to be afforded “an opportunity to make an oral and/or written presentation. The panel shall keep an electronic record of the proceeding.” Once the hearing is concluded, the panel is to issue a report with findings and conclusions and submit its “recommended disposition” to the president, who “shall relay his recommendation and decision as well as the recommendation and decision of the panel to the Academic Committee of the Trustees. Final decision rests with the Board of Trustees” (XIX.F). As specific rules and procedures were being developed throughout the fall, the panel’s chair, Professor Dolph, communicated with Professor Hoffeditz. The AAUP staff, apprised of these developments by Professor Hoffeditz, conveyed to the administration various concerns it had about these rules and procedures (see section III).

The investigating committee learned that the rules and procedures developed by the GIP were followed in at least the two sessions of the hearings at which Professor Hoffeditz and his faculty adviser were present. Faculty more generally told the committee that Professor Dolph and the panel had acted with integrity under remarkably difficult circumstances and in a climate of fear. Neither Professor Dolph nor other members of the panel, faculty members noted with appreciation, had breached confidentiality during or after the process.

Nevertheless, the rules and procedures adopted were highly unfavorable to justice or to the transparency of the process; and in most respects they stand in direct violation of the provisions set forth in the 1940 *Statement of Principles* and derivative Association-supported policy documents summarized above. Ultimately, the investigating committee never saw the evidence brought against Professor Hoffeditz and was unable to question those who did. We note, however, that the only relatively disinterested body to hear from both sides found the evidence against Professor Hoffeditz

inadequate to warrant dismissal. The vote for the GIP’s recommended disposition in favor of Professor Hoffeditz was less than unanimous but, in finding that there had been no violation of university doctrinal standards, its vote was unanimous. In finding for Professor Hoffeditz, even by a split decision, the panel found against his original severance.

In its report following the Hoffeditz hearing, the faculty panel issued findings regarding the university’s grievance process and the role of university counsel in the development of the panel’s rules and procedures. “The Faculty Handbook,” it found, “does not provide for a specific, consistent protocol for the severance of a tenured faculty member before severance occurs.” The handbook, it further found, “provides for a grievance process which is sparsely discussed. The university attorney has had significant influence on the process designed by the GIP. The dual role of the University attorney, serving as counsel to both the University and the GIP, gives rise to conflict-of-interest concerns for the GIP.”²⁴

B. THE HOFFEDITZ DISMISSAL: SUBSTANTIVE CONCERNS

In the absence of an adjudicative hearing of record prior to dismissal, as called for in the 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards*, and without access to the record of the hearing to appeal severance for cause, this investigating committee is hobbled in its ability to determine what the substantive issues really were in the Hoffeditz case. The report of the university’s grievance panel suggests there were aspects of the case outside the body of evidence seen by the investigating committee (for example, the human resources office is criticized in the panel’s conclusions). Nevertheless, a few substantive issues are clear. Regulation 5 of the Association’s *Recommended Institutional Regulations* provides that “[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers.”

According to the university’s faculty handbook, “Long-term continuation of service at Cedarville University is primarily considered on the basis of the faculty member’s spiritual interest, teaching effectiveness, and effective Christian relationships in the University family.” The handbook sets forth several grounds for severance for “just cause,” including “incompetence; . . . failure to perform assigned duties;

24. Dr. Rudd told the investigating committee that the trustees are committed to improving the faculty handbook and that the faculty will be involved in that process.

23. The administration twice unsuccessfully challenged the suitability of one of the elected faculty members.

breach of the terms and conditions of employment; . . . knowing or reckless violation of the canons of professional ethics of the University or of recognized canons of ethics of the faculty member's discipline or profession; departure in conduct or belief from the official doctrinal or conduct positions of the University; or moral turpitude (as construed in the light of the mission and goals of the University and the Bible)."

Paragraph 3e of the annual appointment agreement stipulates that the faculty member shall "concur fully with each and every provision of the Doctrinal Statement of the University." Paragraph 3f requires that the faculty member shall "refrain from publicly advocating views which are contrary to the Doctrinal Statement, corporate policies, and Community Covenant and General Workplace Standards of the University. While academic freedom and the positive interchange of ideas are encouraged, discussions of those views above described are appropriately held with administrat[ors] or in faculty and committee meetings."

The Cedarville administration does not appear to have questioned Professor Hoffeditz's competence as a teacher or scholar, and none of the charges in the letter of dismissal seem to have been related to the quality of his academic performance. The charges it set forth against him were grouped under three broad rubrics (detailed in section II): "Knowing Violation of the Canons of Professional Ethics," "Breach of the Terms and Conditions of Employment," and "Departure in Conduct or Belief from the Official Doctrinal or Conduct Positions of the University."

The GIP, in its report to the president, found that there had been

no written documentation of any communication between Dr. Hoffeditz and Vice President Milliman, the Board of Trustees, or any administrator/supervisor, prior to termination. The administration did not issue written reprimands, warnings, or plans of correction. The Faculty Handbook neither authorizes nor prohibits interventions. But the University asserts on its webpage that "The recent personnel actions come only after every other option has been exhausted."

Related to the foregoing was the GIP's finding that "[t]he University gathered information to sever Dr. Hoffeditz but did not confront him with it or give him an opportunity to respond or to file a pre-severance grievance." Indeed, university counsel Haffey acknowledged to the investigating committee that the administration had engaged a private investigator, mentioned obliquely in the GIP report, for the purpose of "gather[ing] information in order to determine whether allegations [against Professor Hoffeditz and others] were

true" at about the time Professor Hoffeditz received tenure and promotion in January 2006. According to Mr. Haffey, the investigation was not carried out through established channels of academic supervision, because in the administration's judgment the dean and department chair "would not have been useful." Asked to explain this comment, Mr. Haffey added, "There was not loyalty to the vice president, and they would not have followed instructions." Only after several months of observation, Mr. Haffey told the committee, was it evident that there were "sufficient grounds for termination." The relevant chair, Professor Cragoe, and the dean, Professor Riggs—both viewed as doctrinally conservative—were out of office by the end of January 2007 (see section II). To hire a private investigator, bypassing the dean and the chair for no better reason than that they could not be counted on to do the administration's bidding, is a shocking and destructive breach in the relationship of trust that should obtain between university administrators and faculty members, and it represents an especially egregious attitude of disrespect for those who have been appointed to internal administrative positions.

With regard to the charges against Professor Hoffeditz, in one of its key findings of fact, the panel observed, "Uncorroborated single-witness testimony has been submitted to the GIP as evidence in support of the University's termination of Dr. Hoffeditz. The University provided no witnesses and relatively little direct evidence in the form of signed statements. The GIP invited two Trustees as witnesses, but they declined to appear."

The evidence brought to bear during the hearing did not convince a majority of the members of the GIP, the only faculty group to have heard the evidence, that Professor Hoffeditz had engaged in the alleged misconduct with which the administration had charged him, or that his alleged misbehavior was so serious or of such magnitude as to constitute grounds for dismissal. As previously noted, no hearing record was available for the investigating committee to review. The committee was provided with no evidence of misconduct by Professor Hoffeditz, not by Mr. Haffey or Dr. Rudd and not by interviewees who disagreed with his doctrinal conservatism or by others who took no position on these matters. Nothing the committee learned about his conduct could be construed as "directly and substantially" compromising his fitness to continue on the Cedarville faculty.

In the view of the investigating committee, the Hoffeditz case was not an isolated episode but reflected continuing tensions over the theological matters described above. The GIP, writing in February 2008, described the university as going through "a unique period

of turbulence . . . , given root by a Bible department unable to resolve its longstanding interpersonal and philosophical differences.” From one perspective, a vocal group of faculty charged that the university, ever since the arrival of President Brown, had been increasingly moving to broaden the institution’s doctrinal positions and to embrace a “postmodern” or “post-foundational” epistemology and had thus been “drifting away from its historic conservative theological position and identity as a Baptist university . . . to an interdenominational institution of higher education” with relaxed standards and rules. These same critics—Professor Hoffeditz prominent among them—complained about the manner in which the administration handled these perceived shifts. Some alleged that the administration discourages open dialogue and bypasses the faculty in a deliberate effort to misrepresent the university as holding fast to its traditional views. Some also alleged that several faculty members in the Bible department, unhappy to have their postmodern views challenged by those who advocate foundationalism, represent themselves to administrators of like mind as “victimized” and their colleagues as “hostile.” Members of the Cedarville student body joined in the criticism about the direction of the university and its leadership.

The administration and members of the Bible department who support it have taken issue with that perspective. They have accused conservative faculty members of sowing dissension and fomenting discord. According to a statement entitled “A Response to Concerns” that was posted on the Bible department’s Web site in 2007, “the current discussions within the department do not involve issues of doctrinal deviation . . . [but rather are] about Cedarville’s heritage and commitment to allowing faculty members the freedom to hold a *diversity* of opinions within the *unity* of our doctrinal statement.” The statement goes on to commend the efforts of the administration to resolve the situation: “To foster an environment that returns the . . . department to its heritage of collegiality and academic dialogue within the bounds of biblical truth, the academic vice president is involved in an ongoing process to facilitate discussion, renew trust, and restore relationships.”²⁵

C. CEDARVILLE UNIVERSITY: GOVERNANCE CONCERNS

1. *Structural issues.* According to the Association’s

25. Cedarville University, “Understanding the Issues,” <http://www.cedarville.edu/academics/avp/truth/response.cfm> (accessed September 12, 2007).

statement *On the Relationship of Faculty Governance to Academic Freedom*,

a sound system of institutional governance is a necessary condition for the protection of faculty rights and thereby for the most productive exercise of essential faculty freedoms. Correspondingly, the protection of the academic freedom of faculty members in addressing issues of institutional governance is a prerequisite for the practice of governance unhampered by fear of retribution.

As emphasized in Cedarville’s self-study and also in the GIP report, President Brown and most of his cabinet are relatively new in their positions at a time when Cedarville’s demographics are changing. It cannot be easy to follow a president who, throughout his twenty-five years in office, is said to have enjoyed widespread respect and affection. Faculty members told the investigating committee that conversations with the former president, who listened politely to complaints but seldom complied with faculty requests, were nevertheless reassuring in the way that a kindly father might reassure an unhappy child—that such conversations provided a “steam valve” for discontent that no longer exists. To the investigating committee, a benevolent academic autocracy seems less to be desired than a healthy system of shared governance and mutual accountability. But it reportedly served the needs of Cedarville’s faculty, students, and supporting community in its time, and indeed has been a common pattern not only at religious colleges but at smaller institutions of many kinds.

Cedarville’s governance system under its new president is evidently still in a process of adjustment. The 2007 reaccreditation self-study states:

As the new administration settles into the current climate of growth and change, administrators/managers will clearly articulate the model by which campus operations will function and communicate. That model may be a flow-chart model, chain-of-command model, democratic model, family model, another model, or any combination of these.

The predominant model presented in the university’s existing publicity materials—the Web site, the 2007–08 *Academic Catalog*, and the self-study report—is that of a relatively hierarchical family. In a family, however, undemocratic elements are balanced by the security of lifelong and irrevocable membership. Without such security, procedural protections are essential. Vice President Ruby’s remark that the administration had

long told the Bible department to “get along, play nice,” and Vice President Milliman’s reference to himself as “headmaster of the faculty” (below) are troubling, therefore, since they imply that those who do not fit in may be cast out. Equally troubling is the readiness of administrators to summon not only students but also faculty members who have voiced criticism of university policies, asking them to recant and apologize for their criticisms.

One of the most serious and pervasive issues facing Cedarville is communication, which is of particular relevance in the present case because the GIP found that Professor Hoffeditz had gone outside designated channels of communication. By the end of its interview process, the investigating committee had heard abundant oral testimony, reinforcing documentary evidence, that communication channels at Cedarville University have not functioned properly in either direction in years. In 2005, based on 2004 workplace survey results, Cedarville placed second in its class and was designated by *Christianity Today* as “one of the 40 best Christian places to work.” The self-study noted a three-year decline, however, in four of the six survey dimensions, including “My organization involves employees in decisions that affect them” and “My organization conducts its activities openly and honestly.” In 2006, Cedarville did not place in its class, and in 2007 it did not participate in the survey at all. The self-study steering committee sent a survey in spring 2005 to thirty-six “middle-management personnel,” who gave their lowest rating to communication on campus. Comments cited in the accompanying discussion (“channels of command,” “chain of command”) seem to the investigating committee more appropriate to a regiment or corporation than to an academic institution that values the participation of faculty in decisions.

In November 2005, faculty in the social sciences and history, meeting with the academic vice president, requested that they receive “copies of the minutes recorded in the meetings of the deans’ council and the administrative council, when the administrative council has discussed and acted upon matters related to the Academic Division.” The administrative council agreed to consider the request, but the minutes have not been distributed. Minutes of the Faculty Committee to the President over the 2007–08 academic year show that communication failure has continued to be a key issue of concern, contributing to faculty insecurity and mistrust. Minutes of the Faculty Committee to the President meetings of October 15, 2007, December 3, 2007, and January 29, 2008, refer to low faculty morale and ongo-

ing concerns with communication. For example, the third set of minutes records, “If you have a disagreement and do not agree with the response from administration what would be the second step in [the] process, given the principles of Matthew 18? . . . [T]here does not seem to be such a second st[e]p without being in jeopardy of being in violation of the Community Covenant (or so is the general impression).”

A related difficulty for faculty seeking change—or hoping to avoid it—is that Cedarville has no effective faculty voice. In fall 2005, the Faculty Committee to the President had made a series of constructive suggestions for governance. It “recommended the formation of a faculty senate, the inclusion of a faculty member on the administrative council, and increased faculty contact with the board of trustees,” according to the self-study report. The following spring, President Brown requested that the committee shift its discussion of governance and communication to the academic vice president during spring 2006. Addressing the potential for a faculty senate, Vice President Milliman “described his role as the headmaster of the faculty; and as such, he serves as the voice of the faculty to the administration and governing bodies. He further expressed his expectation that revitalizing the educational policies committee will be a positive change.”²⁶ Meanwhile, President Brown said the trustees thought “faculty representatives could be given a set time to meet with the board,” but the practice had not yet begun when the investigating committee visited the campus in May 2008. A proposal had recently been made to increase from two to four the number of representatives to the Faculty Committee to the President from the School of Biblical and Theological Studies, now purged of its conservative faction. But this proposal was soundly defeated by the faculty, an indication, the committee was told, that the influence of the department was waning rather than waxing. “We’ve had enough of those Bible guys,” said a faculty member.

2. *Unilateral imposition of contract terms.* The contracts issued in March 2007 set forth terms and conditions substantially different from those contained in previous annual contracts.²⁷ Those issued in 2005 and 2006 required, inter alia, that the faculty member refrain from publicly advocating views that are contrary to the “Doctrinal Statement, corporate policies, and

26. Accreditation Self-Study Report, 47.

27. University counsel Haffey provided the investigating committee with copies of Professor Hoffeditz’s three contracts issued in the years 2005–07.

Standards of Conduct of the University.”²⁸ In 2007, although “Truth and Certainty” was not mentioned, the terms and conditions of faculty contracts had changed without appropriate faculty involvement in the process, and without faculty approval, to include the “Doctrinal Statement, corporate policies, and Community Covenant and General Workplace Standards of the University.” One statement from the latter document is extraordinary, and appears in bold:

Any conduct which the University, in its sole and absolute discretion, feels is contrary to its purposes, goals, and/or mission, and which may reflect adversely on the institution, its employees, or any of its students is subject for review and possible disciplinary measure[s] up to and including discharge from employment.

The terms and conditions imposed in 2007 appear to override faculty tenure. In effect, these new provisions give prior notice that there will be no prior notice concerning whatever offends some future administrator, who can act at his or her discretion. The recurring claim that it was *conduct*, not doctrine, that forced the severance of tenured faculty, along with emphasis on *conduct* in the statement above, makes it appear to faculty members that the dismissal of Professor Hoffeditz and his colleague was an implementation of this new policy.

The university’s official faculty personnel policies, set forth in chapter 2 of the faculty handbook, are a part of all regular faculty contracts, and much of the language of the previous standards of conduct (2005, 2006) merely quoted the faculty handbook. Language in the newly imposed documents appears to have been imported instead from the manual for nonacademic staff. The timing of their implementation seems to have been irregular as well. During the 2006–07 academic year, the faculty community covenant was distributed after contracts had been signed (a community covenant had appeared in the staff handbook from June 2005). One faculty member told the investigating committee that the covenant had been intended in good faith to encourage faculty to be “less legalistic” but was now being “used as a stick to beat us.” Some went further, suggesting that the new Community Covenant and General Workplace Standards (“Any conduct which the University, in its sole and absolute discretion, feels . . .”)

28. The investigating committee inquired of Mr. Haffey, Dr. Rudd, and some of the faculty members it interviewed about what these corporate policies are and where a copy could be found, but no one knew.

were devised to make it easier for the administration to entrap faculty by broadening conduct to include protected speech. The General Workplace Standards document was partly a revision of the earlier standards of conduct, but it now incorporated provisions approved by the trustees in January 2006 for the staff manual and January 2007 for the faculty handbook. In amending the faculty handbook, the faculty’s Educational Policies Committee is supposed to act as “liaison between the faculty and the President/Board of Trustees in an effort to achieve consensus of all parties” whether suggested revisions arise from faculty, the president, or the trustees, but the investigating committee was informed that nothing like this committee consultation procedure has been followed in recent years.²⁹ Dr. Rudd said he intended to bring faculty into the amendment process that lies ahead, and the investigating committee welcomed his words.

D. ACADEMIC FREEDOM CONCERNS

The GIP included among its findings of fact:

The University alleges that Dr. Hoffeditz “advocated a position contrary to the University’s Doctrinal Statement,” but the GIP concludes that Dr. Hoffeditz did not violate the University Doctrinal Statement nor did he deny any specific points in the doctrinal statement. The GIP understands the University position to be that Dr. Hoffeditz insisted that his colleagues adhere to doctrinal positions that are not in the doctrinal statement and in so doing he promotes a departure from the Doctrinal Statement.

In this unanimous finding of the GIP, exculpatory of Professor Hoffeditz, one glimpses the relation between academic freedom and conduct. While some of his colleagues in the Bible department held that the university’s doctrinal statement allowed a range of different positions on the topic of truth and certainty, and others that “certainty” is impossible for human beings, Professor Hoffeditz and his conservative colleagues held that Christians can have certainty about Biblical doctrine. The misconduct with which Professor Hoffeditz

29. Mr. Haffey consulted the bylaws (inaccessible without passwords) for the investigating committee, but they are less specific than the faculty handbook about amendments. He said also that the Educational Policies Committee has devolved into two committees since the printing of the handbook, and that the Web version of the General Workplace Standards includes a clerical error: the trustees approved them in January 2007, not May.

was charged by the university, specified and rejected unanimously in the above-quoted finding, was his *insistence*. Of the eleven specific charges set forth in Professor Hoffeditz's termination letter, called "misconduct" by the administration, all eleven refer to acts of speech.³⁰ One must ask where, if not in the Bible department of a university, controversial theological issues should be taken seriously, debated, clarified, and moved forward. To be respectful of another's differing position is not to ignore it but to challenge it, thereby enabling it to become stronger against its opposition.

Dilating on the nature of academic freedom at Cedarville in his meeting with students on February 8, 2006, Vice President Milliman had articulated a similar position to the one attributed to him in the GIP finding:

We have a policy of academic freedom within the realm of our doctrinal statement. . . . [E]verybody on our faculty affirms that doctrinal statement. And we and all faculty members are to respect and defend other faculty members' right to freedom within that. The problem is not doctrine. *The problem is collegiality and a denial of academic freedom.* And what was the precipitation of it all? We think—and you may disagree, and I would expect you to disagree because I was a student once—that, unfortunately, we believe and we are convinced that faculty members have created an environment in which students have been manipulated to take up that cause. And that has reached its pinnacle with the student letters that went out signed by a lot of you. (Emphasis added.)

The university has repeatedly said that academic freedom was not at issue, and that it was Professor Hoffeditz's conduct that led to his dismissal. The investigating committee found credible the claims of some faculty members that the term "conduct" was being employed synonymously with "collegiality," and that any disagreement whatever on theological questions was viewed as divisive. The vice president's unqualified assertion that "the problem is collegiality and denial of academic freedom" is egregious, implying that one person's exercise of academic freedom, in stating an opinion on a disputed issue, crosses the line into culpable misconduct and infringes another's academic freedom simply because

30. "You have made statements" appears five times; other phrases are equally telling: "expressing your disagreement . . . you have defended . . . you have advocated . . . [y]ou have introduced topics . . . [y]ou have publicly advocated . . . [y]ou have discussed . . . using speech . . . criticism . . . using speech."

another colleague is offended or made to feel defensive by the statement. By holding each member of an academic community to the unattainable, and undesirable, goal of ruffling no one's feathers, such a view is incompatible with the tenets of academic freedom as understood in the rest of academia.

If the vice president had been available to meet with the investigating committee, he might have offered a more benign interpretation of the remark quoted above. Lacking the opportunity to interview him or any of the university's other administrators, the committee struggled to understand what limits Cedarville principals intended to set for faculty debate. University counsel Haffey and board chair Rudd provided little clarification. Would it be a breach of collegiality deserving of disciplinary action, the committee asked them, if one faculty member spoke to another in a forceful tone that struck bystanders as discourteous? Was this the sort of "conduct" that triggered dismissal in the Hoffeditz case, we asked? No, it was nothing as trivial as this, we were told. Was it, then, misconduct so patent and willful that immediate action was necessary, such as a credible threat of physical violence to a colleague or a student? No, we were told, it was not so blatant an offense as this. We remain uncertain, therefore, just what sort of "damage to students" was at issue. The committee was privy to no evidence or explanation of conduct causing or threatening such damage, nor did the letter to Professor Hoffeditz from Vice President Milliman setting out the reasons for his dismissal contain any reference to conduct putting students at risk of harm. It bears repeating that none of the GIP findings referred to harm done, or threatened, to students.

1. *The "limitations clause" in the 1940 Statement of Principles.* Paragraph 2 of the "Academic Freedom" section of the 1940 *Statement* provides that

[t]eachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

According to the second sentence, customarily referred to as the "limitations clause," church-related institutions may impose restrictions on faculty without violating the 1940 *Statement* if the specific limitations are (a) related to institutional mission and are (b) made known in writing at the time of initial appointment. When the current faculty handbook was printed in 2003, Cedarville

University's published doctrinal statement, together with mandatory preappointment interview questions, ensured compliance with the 1940 *Statement*. If the university did *not* hold itself to this standard of academic freedom in its representation of itself "in bulletins, catalogues, and other pronouncements," the Association's general secretary would have declined to authorize an investigation.³¹

If an investigation is authorized in a case involving a church-related institution, the committee of inquiry is obliged to consider the "degree of specificity of the limitation and whether the institution afforded sufficient procedural safeguards to ensure that the application of its rules was adequately cabined." In both those respects, the committee has identified grave problems. In recent years, broadly worded documents of dubious authority, discussed above, have been imposed on the faculty, failing the criterion of "adequate specificity" and thus placing limitations on the academic freedom of faculty members. With respect to procedural safeguards, which provide a second line of defense for academic freedom when policies are open to differing interpretations, the academic due process specified in the faculty handbook is wholly insufficient to protect faculty from arbitrary application and selective enforcement of administrative edicts, as the Hoffeditz case has made obvious.

According to the statement on academic freedom in the Cedarville University faculty handbook,

It is the duty of faculty members to discuss course material as fully and fairly as possible. A faculty member is free to examine and discuss with students different points of view relative to the subject matter involved, but in the teaching role a faculty member may not advocate a position contrary to the University's doctrinal statement or standards of conduct which are annually affirmed. Controversial matters not pertaining [to] the academic discipline of a given faculty member [are] not appropriate material[s] to introduce into the classroom. (XII.A)

The board resolution of October 2006, "Truth and Certainty," has nothing to say about the freedom of faculty, only that "[i]t is policy established by the Board of Trustees that no instruction be given in any form by Cedarville University that is inconsistent with this posi-

tion." This policy curtails the academic freedom granted by the handbook in that it was neither made known to members of the faculty at the time of their appointments nor approved by the faculty before it was imposed on them. Nor is it something all could sign with a clear conscience. In view of the doctrinal controversy in the media before, during, and after the dismissal of Professor Hoffeditz, it would be difficult to make a plausible case that there was clarity about truth and certainty at any time. Moreover, the least ambiguous statement is the executive summary issued some twenty months after the resolution was approved. The irony is that it expresses the conservative position after many of the university's conservatives had been demoted, squeezed out, not retained, or dismissed.

Paragraph 3f of the annual faculty appointment agreement notes, "While academic freedom and the positive interchange of ideas are encouraged, discussions of those views above described are appropriately held with administrators or in faculty and committee meetings." However, "when theological differences exist within these boundaries, mutual respect and gracious interaction will be the rule." Following the action it took to dismiss Professor Hoffeditz, the board of trustees issued a statement in which it also affirmed the university's "commit[ment] to allowing faculty members the freedom to hold a diversity of opinions within the unity of its doctrinal statement. The recent actions," it added, "uphold the University's high expectations and clear guidelines regarding collegiality, professional ethics, and academic freedom."

A member of the Cedarville faculty for seven years at the time he was dismissed, Professor Hoffeditz was no doubt aware of, and understood, the explicit limitations on his academic freedom set forth in the university's policies and the consequences of contravening those constraints. As discussed above, among the charges of misconduct that the Cedarville University administration made against Professor Hoffeditz were accusations that he had advocated views contrary to the university's doctrinal statement and violated other key institutional documents to which he had professed his adherence. Professor Hoffeditz has sharply denied that he ever did so. From his perspective, he spoke out on theological, philosophical, and pedagogical matters of crucial importance to Cedarville University and the education of its students, and he attempted to engage in and encourage debate on campus about issues of concern, all the while remaining within the bounds of the university's doctrinal and other statements. The hearing panel, as previously noted, sided with Professor

31. The "Limitations" Clause in the 1940 *Statement of Principles on Academic Freedom and Tenure: Some Operating Guidelines* was approved in 1999 by Committee A, and the Association-supported guidelines referred to in this section are detailed there. These guidelines are quoted in the following paragraph as well.

Hoffeditz, unanimously finding that he did not violate the doctrinal statement or any “specific points” within it.

It is clear to the investigating committee that doctrinal issues figured prominently in the charges that the administration brought against Professor Hoffeditz. Specific charges relating to such issues were included in the dismissal letter he received from Vice President Milliman, and his alleged violations of applicable institutional policies were the only specific charges addressed by the hearing panel. President Brown is reported in *Christianity Today* to have said (April 3, 2008, brackets in original): “[The trustees] examined all of the evidence and the testimonies and so on and were convinced without a shadow of a doubt that he had violated his contract. It was not over doctrinal, theological issues at all.” If this account is accurate, the president’s words appear disingenuous. The trustees heard President Brown’s own report; according to university counsel, no one else had been given the evidence and testimony confiscated by the administration, nor could the trustees have made their decision in a single day had they been expected to familiarize themselves with the voluminous evidence.

In his remarks in *Christianity Today* President Brown continues, “[Standards] involved how you treat each other, how you talk about each other, what’s acceptable, and what’s not. [Those standards] among others were violated.” The unspecified standards to which President Brown appeals are not the standards of the Cedarville University faculty handbook. Thus the statement posted by the trustees, in upholding Professor Hoffeditz’s dismissal—“[t]his decision by the Board was unrelated to any theological issues”—seems highly dubious. In the absence of any evidence that Professor Hoffeditz mistreated colleagues, spoke of them inappropriately, or criticized the administration improperly, and in the presence of numerous statements emphasizing his efforts to address controversial issues privately with colleagues, including statements by faculty on the other side of the truth and certainty issue, President Brown’s reported comments are inexplicable to the investigating committee.

2. *Academic freedom and the dismissal of Professor Hoffeditz.* Other issues of academic freedom arise because of how Professor Hoffeditz’s insistence that his views on truth and certainty were correct were perceived by certain departmental colleagues who found him arrogant, divisive, and a nuisance, and wanted him out.

As noted above, the academic freedom section of the 1940 *Statement of Principles* provides that “teachers . . . should be careful not to introduce into their teaching

controversial matter which has no relation to their subject.” A 1970 interpretive comment on this provision observed: “The intent of this statement is not to discourage what is ‘controversial.’ Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.” A recent report of the Association’s Committee A on the subject of “Freedom in the Classroom” further observed that “[t]he 1940 *Statement* should not be interpreted as excluding controversial matter from the classroom; any such exclusion would be contrary to the essence of higher education. The statement should be interpreted as excluding ‘irrelevant’ matter, whether controversial or not.”

The Cedarville University regulations quoted earlier include a provision that “[c]ontroversial matters not pertaining [to] the academic discipline of a given faculty member [are] not appropriate material[s] to introduce into the classroom.” The statement on “Professional Ethics” in the faculty handbook further provides that faculty members “do not bring into the classroom personal differences of opinion to enlist student sympathy against established school policy or to provoke sharp criticism against fellow faculty members.” Among the previously cited charges made against Professor Hoffeditz was that he “introduced topics and material not pertaining to [his] academic discipline that are controversial and not appropriate material to introduce into the classroom.” He was also charged with having “made statements to students expressing [his] disagreement with established school policy and the judgment of the senior administration in spiritual matters, and when confronted, [he has] defended [his] absolute ‘right’ to do so.” In addition, he was charged with having “made statements to students to provoke sharp criticism against fellow faculty members” with whom he disagrees. The GIP, however, made no findings on these vague charges (nor on most others). The panel did reach a unanimous finding, however, that was highly critical of the type and dearth of evidence (“uncorroborated single-witness testimony”) presented by the administration to support the charges it made against Professor Hoffeditz.

Conservative faculty members said they welcomed open discussion of doctrinal issues and viewed such discussion as healthy in a university. Some said that the Cedarville administration, in misguided efforts to achieve unity and to present a harmonious appearance to its external constituents (congregations that provide financial support and send their high school graduates

to Cedarville), eschewed even legitimate controversy. One person's honest question, however, can be received as an intrusion by another, and faculty members on the other side of the truth and certainty debate apparently felt personally attacked by questions about their theological views or the readings they assigned. When students took the issues seriously, they were viewed as having been "manipulated."

The investigating committee was told by university counsel Haffey that there was compelling evidence for the charges but that, with the prospect of litigation looming, he could not share the evidence with the committee. Maintaining confidentiality in disciplinary and personnel proceedings is essential, and it is understandable that not all evidence presented to the hearing committee can be provided to an outside panel of inquiry. It is wholly unacceptable, however, to deny the individual accused of misconduct access to all relevant evidence brought forward against him. Moreover, the evidence presented to the hearing panel did not in fact persuade it to render a judgment upholding the allegations.

The general academic community recognizes the right of a faculty member, as an officer of an educational institution, to participate actively, and speak forth freely—without fear of reprisal or retaliation—on matters of central concern to the institution's educational mission. The Association's *Statement on Government of Colleges and Universities* affirms that the right of anyone affiliated with an academic institution "to speak on general educational questions or about the administration and operation of the individual's own institution is a part of that person's right as a citizen and should not be abridged by the institution." The Association's 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* recognizes that "[t]he academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies," and that academic freedom is an "essential [condition] for effective governance." Also, "The protection of the academic freedom of faculty members in addressing issues of institutional governance is a prerequisite for the practice of governance unhampered by fear of retribution." The document goes on to state that "it is . . . essential that faculty members have the academic freedom to express their professional opinions without fear of reprisal." Regulation 5a of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* further provides that "[d]ismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens."

Vice President Milliman's letter of July 7, 2007, notifying Professor Hoffeditz of his dismissal, charged him with being "disrespectful of the opinions and positions of other faculty members that vary from [his] own"; of having "made statements and exhibited behavior that does not demonstrate Christian love and objectivity in the professional judgment of colleagues"; of having "made statements advocating change in the institution in a manner not provided for by University policies"; of having "us[ed] speech that is neither 'wholesome' nor 'uplifting'"; and of having "engag[ed] in conduct that constitutes distrust, damaging criticism, disrespect, unethical conduct, and irreverence." He was accused, in addition, of having violated the university's faculty and staff community covenant "by failing to engage in 'redemptive expressions of confrontation and forgiveness.'" The statement that the Bible department posted on its Web site in fall 2007 in response to the controversy surrounding Professor Hoffeditz and his similarly situated colleague complained that "honest dialogue about differences in theological interpretation . . . had been replaced with labeling, misrepresentation, and negative communication among faculty colleagues."

There is no doubt that the actions taken against Professor Hoffeditz resulted in significant measure from displeasure—on the part of members of the board of trustees, of officers of the administration, and of faculty colleagues on the other side of the truth and certainty dispute—not only with his dissenting from the views of others but also with the allegedly uncollegial manner in which he dissented. His manner, however, even if irritating or infuriating to others, is not *conduct* in the pertinent sense. "Gadflies, critics of institutional practices or collegial norms, even the occasional malcontent, have all been known to play an invaluable and constructive role in the life of academic departments and institutions," as the Association's statement *On Collegiality as a Criterion for Faculty Evaluation* says. It further warns:

Collegiality may be confused with the expectation that a faculty member display "enthusiasm" or "dedication," evince "a constructive attitude" that will "foster harmony," or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member's right to dissent from the judgments of colleagues and administrators.

In the case of Professor Hoffeditz, as one member of the university tenure committee told the investigating

committee, “collegiality was the real issue; conduct is collegiality here.” In its report the GIP found that “collegiality” is not defined at Cedarville.

Professor Hoffeditz’s criticisms of the decisions and actions of administrative officers and faculty colleagues and the manner in which he communicated that criticism were significant factors in the decision to dismiss him. It is the one charge, of the many made by the administration, that the grievance panel found credible. Although the panel criticized the administration for offering only “[u]ncorroborated, single-witness testimony,” it went on to say, “[a]ssuming that testimony accounts are accurate . . . Dr. Hoffeditz has inappropriately criticized University policy and fellow faculty by going outside designated channels for the registering of his concerns.” (The operation of those channels is discussed above under governance concerns.) The investigating committee heard evidence from three of Professor Hoffeditz’s former colleagues, and read evidence from two others, that he attempted to address disagreements with colleagues privately, “following Matthew 18.” Students, in their postings to one another, no less than in their letters about Professor Hoffeditz, said he did not attack colleagues or mention their names in his classes. No evidence to the contrary has been presented to the undersigned investigating committee—or to Professor Hoffeditz—so the committee is in no position to speak definitively here. However, this aspect of the case has all the hallmarks of an alleged lack of “collegiality” *represented* as “misconduct.”

3. *The climate for academic freedom at Cedarville University.* Current and former members of the Cedarville University faculty have complained about an inhospitable atmosphere at the college for raising objections to the administration’s operation of the institution, a low threshold of tolerance within the administration for dissent, and a sense of insecurity among the faculty about what might happen to them should they speak out. The investigating committee found abundant evidence of outright fear among faculty, inside and outside the Bible department, regardless of theological orientation or degree of involvement in theological matters. The faculty’s lack of a meaningful role in governance and ignorance of individual faculty rights, the administration’s lack of transparency, and the university’s fear of losing constituency approval, discussed above—all of which have contributed to the fearful atmosphere—need not be rehearsed here. One of the most serious mistakes of the administration was to bring a private investigator onto campus with the intent of surreptitiously gathering evidence of misconduct. Perhaps there are cir-

cumstances in which such a tactic would be appropriate, for example, to confirm or disconfirm allegations of fraud or tampering with academic records, when grave harm to the institution is threatened and the individual suspected of misconduct is in a position to falsify institutional records in such a way as to destroy needed evidence. Even in such cases, however, there is no excuse for bypassing those who have been entrusted with the responsibility for supervision of the individual suspected of misconduct. And in the present case, there was nothing secret about the alleged misconduct, and no possibility that needed evidence could be destroyed. It is hardly surprising, therefore, that the administration’s action only exacerbated an atmosphere of mistrust. As rumors spread that someone had been hired to dig up dirt in the Bible department, faculty in some other schools thought their deans, in league with the administration in ousting malcontents, were asking leading questions of faculty and staff.

The looming threat of litigation has cast a pall as well.³² As the GIP concluded, “The case has had a debilitating effect on the CU community and threatens to keep the institution on a collision course with itself for the foreseeable future: due in part to the adversarial nature of the grievance process neither side will admit wrongdoing.”

The January 2008 open letter from the Coalition of the Concerned had by then raised some of the issues relevant to what one faculty member calls “our climate of fear”: “lack of confidence in the administrative governance”; “academic and personnel decisions . . . more and more autocratic”; “reluctance on the part of the faculty to disagree with administration policies and decisions for fear of retribution”; and unilateral action against dissenting faculty members. The coalition noted that, in addition to the dismissals of Professor Hoffeditz and his colleague, three other “theologically conservative” faculty members in the Department of Biblical Education “were either terminated or resigned at the

32. On July 3, 2008, David Hoffeditz filed suit in the Greene County (Ohio) Court of Common Pleas for “breach of contract, fraud, violation of the covenant of good faith and defamation due to his wrongful termination from tenured employment with Cedarville University.” Expressing disappointment that a suit had been filed, a spokesperson for the university was quoted in the local press as stating that “[w]e believe Dr. Hoffeditz’s claims are unmerited and the university will aggressively defend itself. We believe it’s an attempt by Dr. Hoffeditz to make the university pay an undeserved financial settlement.”

conclusion of the 2006–07 academic year” and that “[t]here is the fear that other theologically conservative faculty members within the Department and the general faculty may be terminated.” Finally, they observed that “[t]here is the perception that tenure has become meaningless due to recent tenure decisions and the termination of two tenured faculty members.” The president objected strenuously at the time by e-mail to all faculty. According to a member of the faculty, an interim dean went even further. The dean’s “e-mail describing the Coalition of Concerned Faculty as sinners who need to repent ended faculty neutrality,” the investigating committee was told, “and the division is campuswide. The administration is on the warpath against conservatives.”

In mid-February 2008, Professor Hoffeditz informed the staff that two faculty members in the Bible department who had served as witnesses during his grievance hearing, Professors Richard Blumenstock and James Bjornstad, were both served official warnings by the leaders of the School of Biblical and Theological Studies for signing the letter distributed by the Coalition of the Concerned. The investigating committee was urged repeatedly by a variety of faculty members with whom it met to look into the plight of these two respected faculty members who had been subjected to internal discipline by the new leadership of the Bible department without being afforded the opportunity to reply to accusations. They were permanently stripped of all classes, students, and advisees, and barred from department meetings; their colleagues were instructed not to speak to them or introduce job candidates to them. The investigating committee was unable to secure further details, and no one with a leadership role in the Bible department was willing to meet with the committee to explain what appear to be quite extraordinary and ad hoc disciplinary measures.

As the staff of the Association’s Washington office made arrangements for the investigating committee’s site visit, some potential interviewees expressed fears that the administration would retaliate against those willing to speak about Cedarville to an external body or might “stake out” the local hotels. One pointed out that the president had already said that “to take disagreements to outsiders is unbiblical.” Three of Professor Hoffeditz’s intended witnesses had declined to appear at his hearing for fear of administrative reprisals. Dr. Rudd and Mr. Haffey appear to have quelled some worries through their own willingness to meet with the committee, but the staff arranged for interviews to take place away from the campus, in neighboring Springfield.

Nevertheless, one current faculty member drove to a nearby hotel and walked to the interview site, entering by a side door. Another hid in a vending area until the corridor emptied of anyone who might recognize him or her.

The pattern at Cedarville of demotions, reassignments, terminations pretenure and post-tenure, and vague oral warnings about conduct—all in one ideological direction—have generated understandable fears of retaliation among faculty as well as students. Current Cedarville faculty members who met with the investigating committee said that they considered it unsafe to use campus telephones: “Everybody’s on their home phones at night, talking about all that’s happening.” E-mail, too, is considered insecure; two faculty members believed that their e-mail accounts had already been subject to selective deletions. Guilt by association is thought to be rampant: “My [superior] warned me not to eat lunch with those guys,” said one, referring to faculty who ate lunch at the campus cafeteria with Professor Hoffeditz, “because the admin[istration] would think I’m against them.” Another said, “If I wanted to have lunch with colleagues, I’d make sure it was at the Chinese place off-campus.” A conservative member of the faculty who missed an event was phoned with condolences from other faculty who assumed that “absent” meant “ousted.” A condition referred to as “professional deadlock” was used to describe faculty who have lost the approval of the administration: “they’re stuck; they’ll never get a raise or a promotion.” It is evident that, in the eyes of many members of the faculty, the university’s stated commitment to an open and collegial process for the resolution of theological and academic disagreements is a hollow promise.

E. NOTICE OR SEVERANCE SALARY

Regulation 8 of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* calls for at least a year of notice or severance salary following the dismissal of a tenured faculty member, such notice or severance salary to become effective only after a hearing on adequacy of cause. Thus, under the Association’s recommended standards, Professor Hoffeditz was entitled to a year’s salary to begin after a hearing on cause.

The Cedarville University regulations appear to have no provisions regarding notice or severance salary in a dismissal for cause. Section XI.D of the faculty handbook states that “[i]f the University determines to terminate [the] contractual rights of a faculty member. . . , the University shall provide the faculty member with

written notice of such determination no less than thirty (30) calendar days prior to the effective date of such termination.” In the case of Professor Hoffeditz, the vice president for academic affairs, by letter dated July 7, 2007, notified him that his dismissal was to take effect thirty days later, at which point the payment of his salary and benefits would have ceased. Professor Hoffeditz has stated that only through the intervention of his attorney did he succeed in remaining on the university’s payroll and also receive benefits for most of the 2007–08 academic year. On April 4, 2008, the day that the board of trustees rendered a final decision on his grievance, the university ceased paying him any further salary, in contravention of Association-supported standards described above.

V. Conclusions

1. The administration of Cedarville University acted in disregard of procedural safeguards set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the derivative 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* in dismissing Professor David Hoffeditz without having first demonstrated cause for its action in an adjudicative hearing of record before a duly constituted faculty body.
2. Cedarville University’s stated procedures for contesting dismissal for cause denied Professor Hoffeditz academic due process by (a) misdirecting the burden of proof onto him, (b) not affording him a hearing before a body of faculty peers, (c) denying him access to the evidence and the witnesses against him, and (d) failing to provide for a final appeal to the board of trustees.
3. The administration’s subsequent confiscation of all the evidence and the only record of the proceedings, contrary to the agreed-upon rules and procedures, warrants condemnation for having changed a hearing of record into an exercise in futility, crippling Professor Hoffeditz’s opportunity for appeal.
4. The administration’s charges against Professor Hoffeditz far exceeded the limitations on academic freedom to which Cedarville University lays claim, resulting in a dismissal that violated his exercise of academic freedom within his area of academic competence.
5. The absence of meaningful shared governance under the current administration at Cedarville University, combined with the administration’s bypassing of established channels of academic decision making, and the lack of procedural safe-

guards against dismissal, has resulted in a sense of insecurity and mistrust among the faculty that is inimical to academic freedom. ☞

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Calvin College
Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

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