

The College of Osteopathic Medicine and Surgery (Iowa)¹

Introduction

The College of Osteopathic Medicine and Surgery (COMS) was founded in 1899 as the Dr. S. S. Still College of Osteopathy. It assumed its present name in 1958. Located in Des Moines, Iowa, COMS, with a current student enrollment of about 525, trains osteopathic physicians and operates several clinics in the vicinity.

The College is accredited by the American Osteopathic Association and is a member of the American Association of Colleges of Osteopathic Medicine.

COMS is governed by a Board of Trustees of roughly fifty members, the majority of whom are doctors of osteopathy. About half of the Trustees comprise the Board of Directors, which has the authority to make most of the decisions normally made by a governing board.

In May, 1975, the administration of COMS took several actions against particular members of the faculty. Some were issued notice of substantial reduction

of salary. Some were notified of termination of appointment, effective in the middle of the following academic year, with one such termination to occur on the date of the individual's sixty-fifth birthday.

As a result, members of the Association's staff expressed concern to the administration of COMS over tenure and adequacy of academic due process in terminating tenure, adequacy of notice of termination of services, and procedural safeguards in imposing salary reductions. The administration declined to enter into discussion of these concerns with the Association's staff, leading the General Secretary to authorize an investigation by the undersigned *ad hoc* committee.

In a letter of December 5, 1975, the attorney for the COMS administration took the position that an investigation by AAUP might interfere with an impending election, in which an affiliate of the American Federation of Teachers was seeking to become the exclusive representative of the faculty for purposes of collective bargaining. The attorney also stated that litigation that had been initiated by two of the faculty members would result in a legal ruling on the contractual rights of the parties, thus making it inappropriate "for another body to make an investigation while the matter is pending before our local trial court."

After studying all the available documents, the *ad hoc* investigating committee visited Des Moines from January 19 to 21, 1976. Because the administration had stated that it was unwilling to cooperate with the investigation, the investigating committee did not visit the COMS campus. The committee chairman did tele-

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 sent to the Association's Committee A on Academic Freedom and Tenure, to the teachers at whose request the investigation was conducted, to the administration of the College of Osteopathic Medicine and Surgery, to the chapter president, and to other persons directly concerned in the report. In light of the responses received, the Association's staff has revised the report for publication.

phone the President on the morning of January 20, to reissue an invitation to meet with the committee. The President was not available to speak, but within a few minutes, an attorney representing COMS telephoned to say that the administration would not discuss the cases in question with the Association because a faculty organization affiliated with the American Federation of Teachers had several days earlier won the collective bargaining election. The investigating committee did meet with all but one of the faculty members who were parties to the cases at issue, with officers of the faculty, and with other faculty members.

The *ad hoc* committee has considered the objections raised by the administration of the College of Osteopathic Medicine and Surgery to its investigation. With respect to the collective bargaining representative, the AFT local organization encouraged the Association to proceed as planned, and the administration was aware of this. In any case, this investigating committee agrees with the conclusions of two earlier investigating committees (see "Academic Freedom and Tenure: Camden County College," *AAUP Bulletin*, 59 [September, 1973], p. 361, and "Academic Freedom and Tenure: Macomb County Community College [Michigan]: A Report on a Disciplinary Suspension," *AAUP Bulletin*, 62 [December, 1976], p. 376) that the existence of a collective bargaining agent for the faculty does not diminish "the need for the Association to assert generally accepted standards of the profession in matters of academic freedom and tenure."

With respect to the litigation, the *ad hoc* committee has had access to essential documentation, and it believes the administration's position has been sufficiently represented in the available materials. Furthermore, a number of points of concern to the Association were not subject to the litigation, the outcome of which would not affect the principles of academic freedom and tenure pursuant to which this investigation was conducted.

Background

From 1968 until 1971, Dr. Thomas Vigorito served as President of the College of Osteopathic Medicine and Surgery. During much of this period, faculty personnel policies consistent with the principles supported by the Association were set forth in the *Faculty Manual* of the College, approved by the faculty and the Board of Directors in December, 1969. The *Manual* established the maximum probationary period at seven years, although faculty members of professorial rank could expect tenure after three years of service. The *Manual* enunciated a commitment to academic freedom and provisions for academic due process and for timely notice in accord with Association standards.

In 1971, Dr. Vigorito was succeeded as President by Dr. J. Leonard Azneer. Shortly thereafter, a faculty committee was appointed by the administration to revise the 1969 *Faculty Manual*. President Azneer is reported as having proposed that the mandatory age for retirement be lowered from seventy to sixty-five, but he

is not known to have pressed for any other changes at the outset.

While the faculty committee was at work, the administration retained the services of an accounting and consulting firm. After visiting the campus, the firm in June, 1972, submitted a report. Excerpts from that report which the investigating committee has seen call for sweeping changes in the organization and educational program of the College. Among its recommendations are the following:

(1) That academic tenure should be abandoned and replaced by a "concept which encompasses necessary performance standards and requirements for all faculty members."

(2) That all faculty members should be presumed to be permanent employees of the College, subject, however, to annual faculty performance reviews undertaken by the administration, the Executive Faculty, and the students. If the performance of a faculty member is viewed thereby as unsatisfactory, an *ad hoc* judicial council consisting of the President, the Chairman of the Board of Trustees, and one Trustee appointed by the Chairman should be convened to hear testimony in the case and to take appropriate action.

(3) That all academic departments should be dissolved and all appointments, except for the Executive Faculty mentioned below, be simply in preclinical or clinical science.

(4) That the administration should appoint an Executive Faculty to help plan and administer the College's educational program. Each member of the Executive Faculty should be responsible for certain instructional units, which should be taught by teams chosen from the clinical and preclinical faculties. The Executive Faculty, under the chairmanship of the Dean, should serve as the Committee on Admission, the Committee on Curriculum, and the Committee on Academic Promotions.

Shortly after the consultant's report was submitted, President Azneer told the committee working on the *Faculty Manual* that he wanted it brought into conformity with the recommendations set forth in the report. The *Manual*, as issued later, reflected President Azneer's wishes quite closely. Tenure was abolished, and retention of faculty members was made contingent on the outcome of annual performance reviews. Additionally, the mandatory retirement age was lowered to sixty-five.

Individual Cases

*D. R. Celandor*²

On May 1, 1975, Dr. David Robert Celandor, tenured Professor of Biochemistry and member of the COMS faculty since 1961, was offered a contract reduc-

² Professor Celandor died on January 21, 1977.

ing his salary by about 30 percent for the following academic year. The letter from President Azneer setting forth these terms offered no explanation.

Professor Celander, who suffered from almost complete blindness, called on President Azneer on May 13 to discuss the matter. He was accompanied by Mrs. Celander, also a tenured professor at COMS. No accommodation was reached. On advice of his attorney, Professor Celander signed and returned his contract on May 16 with a covering letter saying that he was reserving all of his rights.

On July 28, Mrs. Celander met with Dr. Philip Pletcher, Vice President for Academic Affairs, at his request. Vice President Pletcher noted a number of complaints about Professor Celander's teaching and remarked that he was thinking of seeking review of some of Professor Celander's lectures. (Videotapes were routinely made of lectures given in the main lecture hall.) After some discussion, Mrs. Celander said that the administration should take up its concerns with her husband.

On August 28, Professor Celander, accompanied by three faculty colleagues, met with Vice President Pletcher, Dean Elizabeth A. Burrows, and an aide of President Azneer. Vice President Pletcher made a number of statements relating to Professor Celander's competence and then informed him that he was being suspended, effective immediately. He added that the tapes of some of Professor Celander's lectures would be reviewed, after which further steps would be taken. An August 29 memorandum from President Azneer to Professor Celander confirmed the suspension from teaching and other faculty responsibilities. It also stated that Vice President Pletcher was arranging to have tapes reviewed "for Biomedical content and/or other matters that may relate upon your professional posture," and that Professor Celander could have any of the tapes reviewed for his own purposes, without expense except for the actual cost of the tapes. President Azneer noted that he hoped "the review is favorable and that you can sufficiently demonstrate to everyone involved that you can in fact do a fine job of teaching and be dedicated to same to the end that you can come back to the faculty without any problems."

On September 22, attorneys representing the administration wrote to Professor Celander stating that the administration had reviewed tapes of his lectures and found his performance unsatisfactory "based on what it considers academic incompetence and unprofessional conduct" in the classroom. The letter continued as follows:

As you are aware, because the 1972 faculty handbook was never accepted by the Board of Trustees the [accounting and consulting firm's] recommendations incorporated into your employment contract and accepted by you on July 1, 1972 will govern the termination procedure. Since your performance has been judged to be unsatisfactory, the Dean and Vice President for Academic Affairs will cause to be convened an *Ad Hoc* Judicial Council consisting of the President, the Chairman of the Board of Trustees and one

Trustee appointed by the Chairman. This Council will hear testimony in your case and take whatever action is jointly believed to be indicated. You will, of course, be permitted the benefit of counsel at the hearing to be held October 22, 1975 at 2 o'clock p.m. in Dr. Leonard Azneer's office at the College of Osteopathic Medicine and Surgery. Please be advised that the decision of the Council should be considered as final and not appealable to any higher authority.

Meanwhile, some tapes of Professor Celander's lectures had been sent to outside reviewers. Their September 30 reply to Vice President Pletcher was "not a formal report on the tapes you sent, but rather a personal letter to you." Expressing reservations about the procedures used in their own selection, the reviewers "hesitate[d] to offer a formal opinion. . . ." They stated that "the style was rambling and anecdotal with variations in the amount of biochemical content," although they "did not have a sufficient number of tapes to detect a change with time." Factual matter was characterized as "usually O.K." when present, but "the actual amount of biochemistry was small in comparison with other material." "A sparing use of lecture aids" was noted, as well as Professor Celander's "tendency to entertain, at the expense of teaching time," in which respect he resembled others known to the reviewers.

In a communication dated October 3, Dean Burrows informed Professor Celander that a special meeting of the Executive Council (a body consisting of the Dean of Academic Affairs, three other administrative officers, the Executive Faculty, and an elected faculty representative) would be held on October 8 to review his case (and that of Professor Stephen Perlowksi, to be discussed below). Later that meeting was canceled, as was a meeting of the Faculty Affairs Committee subsequently called to "evaluate the performance" of the two faculty members in order to make recommendations to the Executive Council.

In the meantime, Professors Celander and Perlowksi sought and obtained from an Iowa state court a temporary injunction barring the COMS administration, pending adjudication of their rights, from applying the procedures recommended by the consulting firm to the termination of their appointments.

On December 30, President Azneer wrote to Professor Celander informing him that his contract would not be renewed for the 1976-77 academic year, reminding him that he had been relieved of all teaching duties for the remainder of the current academic year, and instructing him to turn in his keys and other College property and remove his possessions from the campus. President Azneer added that the reasons for the actions had been discussed with Professor Celander who could, if he wished, pursue further discussion with Dean Burrows or Vice President Pletcher.

S. F. Perlowksi

Mr. Stephen F. Perlowksi, who holds an M.S. degree in clinical psychology from Memphis State University, was first appointed to the COMS faculty in 1967 as an Instructor of Psychology in the Department of Psy-

chiatry. He resigned as of September, 1969, to do further graduate work, and was reappointed the following July. He was promoted to the rank of Assistant Professor of Clinical Science (Psychiatry) in 1973. In the spring of 1975, Professor Perlowski was elected president of the faculty for the coming year.

Professor Perlowski's contract letter for the 1975-76 academic year, signed on May 1, 1975, by President Azneer, continued his appointment only through December 31, 1975. In a separate letter of the same date, President Azneer expressed regrets but gave no reason for the action. Professor Perlowski signed and returned the contract on May 16, with a letter stating that he reserved all of his rights in the matter.

During the summer, Professor Perlowski was active in trying to resolve the problems that had arisen between the administration and the faculty. He wrote to the Chairman of the Board of Trustees and met twice with members of the Board and of the administration. On October 21, Professor Perlowski wrote to Dean Burrows as an "injured party" and as Faculty President, to protest the Executive Faculty performance review scheduled for Professor Celander and himself. He objected to what he considered the lack of sufficient advance warning and pointed out that the procedures recommended in the consulting firm's report for evaluating the performance of *all* faculty members were being followed only for him and Professor Celander and then only after a decision to terminate their services had already been made. He stressed that what had been done did not conform to the provisions of the 1972 *Faculty Manual* or to the recommendations contained in the report of the consulting firm, and he declined to take part in the review. (The court injunction against the review was also obtained on October 21.)

On December 3, Professor Perlowski sent a long letter, signing it as Faculty President, to fifty-four members of the College's Board of Trustees. He had not asked for its approval by the faculty as a group, although he had discussed it with a number of faculty members. His letter accused Dr. Azneer of abuse of his presidential power. It referred to but did not discuss the controversies over faculty appointments. It claimed that the faculty was overworked and badly paid and that a curriculum which had been imposed on the faculty had not been successful. It charged serious administrative interference in matters relating to student admissions, grading, and graduation, and it concluded by asking the Board of Trustees to conduct a full-scale investigation.

Professor Perlowski attended the next regular meeting of the Board of Directors of the College, in his capacity as Faculty President, on December 6. At this meeting the Board adopted a resolution suspending him from any further services and instructing him to vacate his office, turn in his keys and any other College property in his possession, leave the campus, and return only to get his final check at 10:00 A.M. on December 8.

By a vote of twenty-six for, eleven against, and one abstaining, the General Faculty, at a special meeting on

December 11, approved a letter to the Board of Directors expressing its shock at the action taken against Professor Perlowski and stating that it considered the action to be not merely against Professor Perlowski but a rejection of the legitimate grievances of the faculty, presented by the faculty's representative.

Other Cases

The investigating committee, in the course of its inquiries, learned of other cases reflecting serious difficulties in respect to tenure, due process, and the timing of notice at the college of Osteopathic Medicine and Surgery.

A tenured faculty member who had been at the College since 1952 was offered an appointment for the 1975-76 academic year with salary reduced by 26 percent from its previous level. The contract letter included an addendum indicating that the salary reduction would be restored if, as in past years, grant funds to support the teaching of his subject were obtained. (The College had had such grants prior to 1973, but the faculty member had never been told that his salary depended on them.) The administration later offered an amended contract under which he would receive 50 percent of the fees collected for services rendered by him to certain patients. The faculty member described these terms as unsatisfactory because of the time that he would spend caring for patients instead of in teaching and research. He later decided to accept the arrangement but subsequently resigned to take another position.

Another faculty member, who had attained tenure, was advised on December 31, 1975, in the wake of a dispute over assignments, that his work had been found unsatisfactory and that his appointment would be terminated at the conclusion of the current academic year.

Still another faculty member, an assistant professor with three years of service, was told in May, 1975, that his appointment would extend only to February 3, 1976 (when he would reach age 65), and that in the interim his salary would be reduced by 60 percent below its previous level. He signed this contract, but later resigned to take another post.

Issues

The Abolition of Tenure

In many ways, the issues posed by the particular cases discussed in this report stem from the initial decision by the administration to implement the recommendations of the consulting firm with respect to tenure. In accepting the recommendation to abandon tenure and replace it with a "concept which encompasses necessary performance standards," the administration took for itself the license to act unilaterally to remove members of the faculty. Free of the obligation to set forth specific charges and to assume the burden of proof in submitting those charges to the test of an adversary proceeding before a duly constituted faculty committee, the administration could—under the consulting firm's recommended approach—dismiss a fac-

ulty member for any reason or for no reason, with only the most limited checks on its authority.

The general community of institutions and scholars which comprises higher education has long regarded the tenure system, as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative documents, as basic to the maintenance of academic freedom. Responsible authorities (see, for example, *Faculty Tenure: The Report and Recommendations of the Commission on Academic Tenure in Higher Education*, [San Francisco: Jossey-Bass, 1973]) have recognized this and have called for continued acceptance of the basic principles of tenure as vital to the integrity of an institution of higher learning. The tenure system, properly administered, *does* encompass "necessary performance standards" by providing requisite procedural safeguards to test assertions that a faculty member's professional fitness is below acceptable levels.

Prior to 1972, the College of Osteopathic Medicine and Surgery had a workable tenure system, limited only by the capability of those who administered it. In abolishing that system and substituting a policy which allowed for arbitrary administrative action against faculty, the administration deprived academic freedom of its most important protection.

Issues in the Case of Professor Celandor

The 1940 *Statement of Principles on Academic Freedom and Tenure* is a joint document of the Association of American Colleges and AAUP, and it carries the endorsement of over one hundred scholarly and educational organizations. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, also a joint product of the AAC and AAUP, delineates the procedure for academic due process called for in the 1940 *Statement*. These statements specify that a tenured faculty member is entitled, in cases of potential dismissal, to (a) a statement of charges framed with reasonable particularity, (b) a hearing on those charges before a duly constituted faculty committee, with the burden of proof assumed by the administration, (c) appellate review by the governing board, and (d) at least a year of terminal service or salary following formal action to dismiss.

None of these protections was provided to Professor Celandor when the administration acted to dismiss him. His efforts and those of faculty committees to secure specific charges and a proper hearing proved unavailing.

Professor Celandor's suspension and salary reduction are also of basic concern. It is the position of the Association that major sanctions other than dismissal require due process similar to that called for by dismissal. Under Regulation 7(a) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*:

If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a

severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 [dismissal procedures] shall govern such a proceeding.

It will be recalled that when suspension and salary reduction were imposed upon Professor Celandor, they were not announced as a prelude to dismissal. As such, each of these actions, under Association standards, required affordance of due process prior to implementation, but the administration simply acted unilaterally.

In addition, the suspension was, in effect, a dismissal, since it was never lifted, and since Professor Celandor's services concluded while he remained under suspension. The Association's position, as set forth in Regulation 5(c)(1) of the *Recommended Institutional Regulations*, is that "a suspension which is intended to be final is a dismissal, and will be treated as such." Finally, although the 1958 *Statement on Procedural Standards* requires that suspension, in the context of dismissal, be justified in terms of a threat of immediate harm posed by the faculty member's continuance, no threat of harm was suggested by the administration.

The investigating committee finds that Professor Celandor's salary reduction, suspension, and dismissal from his tenured position were effected by the administration without affording him any of the fundamental protections of academic due process.

Issues in the Case of Professor Perlowski

The notice issued to Professor Perlowski, in May, 1975, of termination of services on December 31, 1975, came at the end of his seventh year of full-time service at the College of Osteopathic Medicine and Surgery. This notice was deficient in that the 1940 *Statement* calls for notice at least a year prior to the conclusion of a seven-year maximum period of probation. It also failed to provide the minimum one-year advance notification required by the accepted standards of the profession for all who have served two or more years in an institution; it called for cessation of service in the midst of an academic year, at a time when academic posts are particularly difficult to secure; and it neither followed nor was accompanied by any explanation or reference to the "necessary performance standards" which the COMS administration was presumably endorsing.

Later, the COMS Board of Directors, in response to Professor Perlowski's vigorous representation of faculty grievances in his capacity as Faculty President, ordered Professor Perlowski off the campus on two days' notice. In so doing, the Board violated Professor Perlowski's academic freedom and left a chilling message with the faculty as a whole about the Board's intentions and expectations concerning the faculty role in institutional government.

Other Issues

In a variety of other ways, the administration and the Board have manifested their disregard for the rights of faculty. As outlined above, the administration moved

against the salaries or positions of faculty members by arbitrarily reducing salaries, giving notice on a schedule which failed to conform to accepted standards, and unilaterally issuing notice of termination to tenured faculty.³

Conclusions

1. The administration of the College of Osteopathic Medicine and Surgery, in reducing the salary of Professor D. R. Celander, and in suspending and later in dismissing him, violated his rights under the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative policies and procedural standards.

2. The administration and Board of Directors of the College of Osteopathic Medicine and Surgery, in ban-

³ The administration of the College of Osteopathic Medicine and Surgery, responding to an invitation to comment on a prepublication draft of this report, stated that the collective bargaining agreement currently in force at COMS includes "voluminous and extensive" provisions on tenure and a "complex grievance procedure."

The collective bargaining agreement has a number of features which are in keeping with the provisions for tenure in the 1940 *Statement of Principles*. The agreement provides for a maximum probationary period of seven years, with allowance for credit for prior service elsewhere. Dismissals are to be subject to "the Grievance Procedure through arbitration," but "the burden of proof for justifying such decisions shall rest with the College." Faculty members who had previously attained tenure were again to "be awarded tenure effective upon the date of this contract becoming a signed agreement," and all faculty members "who would have been eligible for tenure under the provisions of the Faculty Manual of 1969" were now again to be eligible for tenure.

ishing Professor S. F. Perlowski from the campus, violated his academic freedom under the 1940 *Statement of Principles on Academic Freedom and Tenure*. The notice to Professor Perlowski of the termination of his services, coming at the end of his seventh year of service and effective in the middle of the eighth year, also departed from the 1940 *Statement of Principles* and derivative policies and procedural standards.

John Dyer-Bennet (Mathematics), Carleton College,
Chairman

Kalman Goldberg (Economics), Bradley University

Investigating Committee

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

Clark Byse (Law), Harvard University, *Chairman*.

Members: Ralph S. Brown, Jr., (Law), Yale University; Bertram H. Davis (English), Florida State University; William J. Kilgore (Philosophy), Baylor University; Jordan E. Kurland (History and Russian), Washington Office, *ex officio*; Walter P. Metzger (History), Columbia University; Terrance Sandalow (Law), University of Michigan; Joseph E. Schwartz (Political Science), Washington Office; Winton U. Solberg (History), University of Illinois; Peter O. Steiner (Economics), University of Michigan, *ex officio*; Carol Simpson Stern (Interpretation), Northwestern University; Judith J. Thomson (Philosophy), Massachusetts Institute of Technology; William W. Van Alstyne (Law), Duke University; Robert K. Webb (History), University of Maryland, Baltimore County.