

Report

Academic Freedom and Tenure Charleston Southern University (South Carolina)¹

I. Introduction

This report is concerned with the action taken by the administration of Charleston Southern University (CSU) to dismiss Professor Robert Rhodes Crout for cause in the middle of his eleventh year on the faculty. It will also concern itself with the nonreappointment of Professor David Aiken after six years of faculty service.

Charleston Southern University, founded in 1964 as the Baptist College at Charleston, began offering classes in fall 1965. The college changed its name to the current one in November 1990. Located sixteen miles north of Charleston, CSU describes itself as "an independent comprehensive university affiliated with the South Carolina Baptist Convention." According to CSU's statement of purpose, "The University was founded upon the principle that students should have an opportunity for a quality education under the guidance of Christian faculty." The university defines its mission as "promoting academic excellence in a Christian environment." The institution's twenty-five-member board of trustees is elected by the South Carolina Baptist Convention.

Accredited since 1970 by the Commission on Colleges of the Southern Association of Colleges and Schools, CSU awards the associate, bachelor's, and master's degrees. The university enrolls some 2,500 undergraduate and graduate students, who are served by a full-time teaching faculty of eighty-seven. Ten others (administrators, librarians, ROTC personnel) also have faculty status. As will be discussed below, the institution effectively lacks a system of faculty tenure.

Dr. Jairy C. Hunter, Jr., became the second president of Charleston Southern University in 1984. Throughout President

Hunter's sixteen years in office, Dr. A. Kennerley Bonnette has served as the university's chief academic officer. Dr. Harriette Magee, who retired in December 1999, served for ten years as CSU's first dean of the College of Arts and Sciences.

II. The Case of Professor Robert R. Crout

Dr. Robert Crout received his Ph.D. in history from the University of Georgia in 1977. Between 1978 and 1987, he held a series of research and editorial positions at Cornell University, Princeton University, and the University of Virginia. During the 1987-88 academic year, he served as an adjunct lecturer in history at the University of South Carolina, Aiken. The following year, he was a visiting assistant professor of history at Oregon State University. He was appointed to the faculty of Charleston Southern University as assistant professor of history in fall 1989. In 1993 he was promoted to the rank of associate professor. He served at CSU until his dismissal in fall 1999.

During his more than ten years of service at CSU, Professor Crout received largely favorable assessments of his academic performance and of his service contributions to the institution. In 1997 he applied for promotion to the rank of full professor and had the enthusiastic endorsement of his department chair, Professor David Rison, and the unanimous support of the faculty members on the Promotion and Tenure Committee. (The promotion process at Charleston Southern does not provide for faculty review at the departmental level.) Professor Rison described his colleague as an accomplished scholar, an "innovative and creative teacher," "very well respected by his peers," who "excels in service to his church and to his community." Among the letters written on behalf of Professor Crout's candidacy was one from the dean of students praising him for being a "student advocate and faithful supporter of student activities on and off the CSU campus," and a "model professor committed to CSU's mission and student development."

Despite this strong support for his promotion, Professor Crout was notified by letter of April 7, 1997, from Provost Bonnette that his application had been turned down. The only opposition on the faculty Promotion and Tenure Committee had come from Dean Magee, who recommended against his candidacy—a recommendation that was sustained by the

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 members at whose request the investigation was conducted, to the administration of the university, and to other persons directly concerned in the report. In the light of the responses received and with the editorial assistance of the staff, this final report has been prepared for publication.

provost and the president. On April 10 Professor Crout sought a review of the decision by the Faculty Grievance Committee, alleging that the dean had committed various procedural irregularities in the handling of his application and had given inadequate consideration to his qualifications.

Shortly after submitting his grievance, Professor Crout, at the suggestion of President Hunter, met with the dean and the provost to discuss their reasons for opposing his candidacy and to “draw up a prescription for [future] promotion.” Following that meeting, Provost Bonnette, by letter of May 9, provided Professor Crout with a written statement of those reasons. According to the provost, the dean had given Professor Crout a 7 (out of 10) in the “teaching” category because

she was disturbed by some students’ comments related to your sarcasm, condescending attitude, and remarks that made them feel stupid. She felt that was unworthy of someone aspiring to the highest rank among college faculty. She also pointed out that these types of comments had also been made in previous years and that she had discussed this with you in earlier conversations.

As further explanation for the opposition to Professor Crout’s candidacy, the provost cited an incident from late April 1996, which involved a CSU student teacher at a local high school and her supervising social studies teacher to whom, according to the provost, Professor Crout had been rude. At the time of this “embarrassing incident,” as he characterized it, Dr. Bonnette had thought it necessary to make apologies to the teacher and to administrators at the school for Professor Crout’s conduct in the matter. “The issue,” he wrote in his May 9 letter, “is judgment and my expectations of leadership and role modeling by the full professors on campus.” He charged Professor Crout with having committed a “serious lapse of judgment” and indicated that he did not like having “to worry about actions of full professors requiring me to apologize to teachers and principals.”

After the meeting with the dean and the provost, Professor Crout withdrew his grievance, and at their suggestion he did not apply for promotion during the 1997–98 academic year.

Professor Crout reapplied for promotion in fall 1998. This time, dozens of letters were written in support of his candidacy and addressed either to the provost or to the Promotion and Tenure Committee, by current and former CSU faculty members, administrators, staff, and students, and by professional colleagues from other institutions. These letters variously described Professor Crout as a “dedicated teacher,” a “caring professor,” a “consistent and dependable role model for faculty behavior,” a “tremendous mentor for the students,” an “exemplary scholar,” a “congenial colleague,” and someone who has “worked tirelessly on faculty committees.” One former chair of the Promotion and Tenure Committee wrote that Professor Crout “strongly exemplifies the concept of academic excellence in a Christian environment.” Once again, David Rison, Professor

Crout’s department chair, endorsed his candidacy, rating him “outstanding” in each of the areas of evaluation and noting that “all of [his] colleagues in the department support his promotion.”

In a November 9, 1998, letter to Professor Crout, written on the eve of her visit to observe his teaching, Dean Magee reminded him of the fact that she had previously expressed concern about what she said was his sarcastic and condescending attitude toward some students. “Robert,” she wrote, “I have in the past told you that the kinds of behavior noted by the students are not conducive to a good learning environment, and that they are behaviors that can be changed.” She went on, “The aforementioned problems of a derogatory and demeaning attitude felt by the students from you is one that only you may change.” Responding more than a month later, in a letter of December 22, Professor Crout took sharp issue with the dean’s use of what he termed “raw, anonymous student comment from student evaluation forms” to reach a judgment about his teaching.

While disturbing in isolation, [they] may be a lower form of hearsay when the originals are systematically destroyed and the comments are typed up as a group without [one’s] being able to identify which anonymous students responded to which question. It is also unfortunate indeed that we cannot determine the motivation for specific comments. . . . I also believe it would be imprudent to jump to any conclusions without strong corroborative evidence from several independent sources.

Professor Crout went on to assert that the dean’s characterization of his relationship with students was belied by much evidence to the contrary.

In her January 15, 1999, evaluation of Professor Crout for promotion, Dean Magee rated his performance as “outstanding” in all categories—teaching, scholarship, and service. In her comments on his teaching, she remarked that his “student evaluations, my observations, and those of his peers indicate that he is performing well in the classroom. There were no comments from students regarding sarcasm or [a] condescending attitude on his part.” Despite her positive ratings of his performance, the dean once again opposed Professor Crout’s promotion—a decision that was apparently prompted by an incident that had occurred the previous November 17. That afternoon, while sitting in his campus office, Professor Crout saw a person unknown to him going through papers on the desk of a colleague whose office was across the hall. Professor Crout called campus security, and an officer came to investigate the incident. The individual turned out to have been the work-study student of the professor in question. Two days after the incident, the dean met with Professor Crout to discuss the matter. The meeting did not go well. On December 14 the dean wrote a letter of apology to the mother of the student, and a week later Professor Crout (under

instructions from the dean) wrote to the student himself, expressing regret for “any distress this misunderstanding has caused you.”

In the weeks that followed, Dean Magee and Professor Crout had a sharp exchange of letters, accompanied by conflicting accounts of the incident and of the surrounding events. In a letter to Professor Crout on January 14, 1999, the dean, commenting on their November 19 meeting on the incident, stated: “I was disturbed and offended by your behavior [at that meeting]. Your contentious, and at times combative, manner precluded an opportunity for a positive approach to the issue, and I was taken aback by your demeanor.” She questioned Professor Crout’s collegiality and his civility. With regard to the November 17 incident, the dean concluded her letter by referring to Dr. Bonnette’s previous remarks in May 1997 concerning Professor Crout’s allegedly poor judgment and the provost’s not wanting “to worry about actions of full professors” that require him to issue apologies on behalf of the university. “Once again,” she wrote, “an official of the University was put in the position of making apologies, this time to a parent, a student, and a staff member.” Dean Magee attached to the letter a copy of her notes on the incident and its aftermath.

In his response of January 25, which was accompanied by a document entitled “Report of Selected Errors and Omissions in Dr. Magee’s Summary of Incidents,” Professor Crout expressed the wish both that the dean’s letter had “not come at a point in time in which critical decisions are being made about my application for promotion to full professor,” and that her account had been “more complete and balanced.” Dean Magee, by letter of February 24, challenged the accuracy of several of Professor Crout’s own statements.

In early March, the Promotion and Tenure Committee, on which the dean herself served as an elected faculty member, met to consider candidates for promotion, including Professor Crout. In his case, in addition to the aforementioned letters of recommendation and the formal evaluations by Dean Magee and Professor Rison, the committee was afforded access to his entire personnel file, maintained in the provost’s office. Whereas two years earlier the other faculty members on the committee had declined to follow the dean’s lead and supported Professor Crout for promotion, this time the committee voted unanimously not to recommend him. One member of the Promotion and Tenure Committee stated to the undersigned investigating committee that the viewing of the personnel file had made a decisive difference.

The Promotion and Tenure Committee’s brief report on Professor Crout’s candidacy began by noting his “exemplary scholarship and many letters of support from colleagues from all over the country . . . [and his] good teaching evaluations, especially the improvements seen in these evaluations over the last year.” The committee made note of the “great number of supporting letters from CSU faculty, staff, and students, and Dr. Crout’s support for many campus activities.” The report went

on, however, despite the statement in Dean Magee’s January evaluation of Professor Crout that his student evaluations indicated “that he is performing well in the classroom,” to express concern over “some of Dr. Crout’s student evaluations. While overall they are good, there is a fairly wide divergence of student evaluations. While many students rate him as superior, a number each semester rate him poorly.” The report concluded:

The committee also feels that in several cases Dr. Crout has used poor judgment, . . . [and thereby] caused the university embarrassment. Two of these cases are recorded in the personnel files, others were presented as committee members discussed their own interactions with Dr. Crout. Dr. Crout’s application is supported by his department chair but not by his dean. The committee was unwilling to recommend Dr. Crout for promotion.

After informing Professor Crout of the Promotion and Tenure Committee’s negative recommendation, the provost invited him to withdraw his application from further consideration by the administration. Professor Crout reluctantly agreed to do so, but with the intention of applying once again the following academic year. Events that fall were to overtake his application.

Professor Crout was particularly stung by the denial of his second promotion application, which had been supported by dozens of letters and, he maintained, a significant number of publications and professional activities, clear progress in teaching, and leadership in numerous institutional initiatives such as a first-year seminar, a film series, a series of faculty coffees with President Hunter, and several suggestions for institutional grant opportunities. One member of the Promotion and Tenure Committee who spoke with the investigating committee attested to having been personally impressed by the quantity and quality of Professor Crout’s professional dossier and initially inclined to support him for promotion. In the course of the Promotion and Tenure Committee’s deliberations, according to this individual, Dean Magee injected Professor Crout’s personnel file into the proceedings. The result for that committee member was a negative rather than a positive vote.²

Thus the dean, who had already made a recommendation on Professor Crout’s candidacy, served as a voting member on a faculty committee charged with making an ostensibly independent assessment of the merits of his candidacy. The problem was exacerbated in this case, given Dean Magee’s contentious relationship with Professor Crout.

Professor Crout has alleged that the personal animus that the dean and the provost had developed toward him as a result of the incidents discussed above colored their judgment of his

2. It should be noted that Professor Crout has stated that at the time he was unaware of the existence of this file; by all accounts he had been given no opportunity to rebut claims and material contained in it.

overall academic performance and ultimately contributed significantly to their decision to dismiss him. In a letter to the Association's staff dated November 21, 1999, he stated that since 1996 the dean and the provost had "magnified every potential event involving me which could possibly be misinterpreted to my discredit."

In April 1997, following the rejection of his first application for promotion, largely owing to the dean's opposition, Professor Crout filed a complaint with the Faculty Grievance Committee in which he remarked on his perception of the dean's long-standing hostility toward him: "It has become obvious over the last two years," he wrote, "that Dr. Magee has expressed through her behavior and actions a personal antagonism toward me. A number of prominent faculty from diverse areas on campus should be able to attest to her hostile behavior toward me in public places and in committee meetings."

In a memorandum of September 28, 1999, addressed to the Promotion and Tenure Committee, Professor Crout, who had engaged an attorney and been afforded an opportunity to review the contents of the personnel file that was kept in the provost's office, complained that the file "was not a faithful record of official correspondence and actions but an amalgam of bits and pieces that included an incomplete collection of correspondence between me and some key university officials; . . . handwritten notations between administrators concerning me that were scribbled in the margins of documents (and of which I was unaware); and an e-mail message about me (that I never knew about)." He went on to complain that "some of this information was erroneous and highly prejudicial to which I should have had an opportunity to offer rebuttal or to ask for its correction or removal. Other correspondence between administrators and me that could have been supportive of my application (for example, notes of commendation) was missing."

On October 14, 1999, the university held a memorial service in its Lightsey Chapel in honor of Harold J. Overton, an associate professor who had recently died after a brief illness. At the time of his death, Professor Overton, who had served for twenty-seven years on the CSU faculty, was a senior member of the Department of English and chair of the Department of Languages and Visual Arts.³ According to the schedule contained in the printed program, toward the end of the service, after President Hunter was to deliver a eulogy, a period of time was set aside for "comments from faculty, staff, and friends." A microphone had been placed in the front of the chapel "for those who wish to express thoughts and sentiments about Dr. Overton."

One of those who spoke was Robert Crout, who had prepared extensive remarks about his longtime colleague and "loyal friend." Standing at the chapel lectern, he spoke for twenty-five minutes, reading from a text. Professor Crout referred to his late friend as a man of "honor and duty" who had led a "life of elo-

quent deeds," but whose "dedication and loyalty" to the university had gone unrewarded and unrecognized. He described various indignities and disappointments he said Professor Overton had endured during his long career at the institution. "It is shocking to realize," Professor Crout remarked, "that after coming to CSU twenty-seven years ago with a Ph.D., Harold was still making substantially under \$40,000 a year at the time of his death. . . . He never forgot that he was constantly living on the financial edge. What Harold never realized was that the constant stresses on his body were accumulating and taking their toll." "I'm sorry," Robert Crout concluded, "that we didn't honor you in life as well as we honor you today in death." The tone and content of his words are said to have moved many in the audience, but they also stunned and angered many others, including President Hunter.

A week after delivering his eulogy, Professor Crout was called to the office of his department chair, Professor Rison, one of the organizers of the memorial service, who handed him a letter sharply criticizing him for his comments. "What bothered me the most about your remarks about Harold," Professor Rison wrote, "is that you painted him as a victim. I never viewed Harold in that fashion, and I don't think that is the way Harold saw himself. . . . To think of ourselves only as victims makes us impotent. Harold did not think of himself in these terms; it demeans him to suggest that this was the substance of his life." Professor Rison (until then one of Professor Crout's strongest supporters in the university) went on to conclude:

I believe that your remarks about Harold were more about yourself than about him. If you wanted to berate the administration of CSU, that was not the time to do it. Make an appointment with Dr. Hunter or with Kenny and tell them what you think. Don't hide behind Harold. . . . You knew what you were doing and were purposeful in your cruelty. I am greatly disappointed in you.

I believe that you have violated the spirit of community at CSU and have not provided a worthy example for the students, faculty, and staff.

Professor Rison sent copies of his letter to Dean Magee and Provost Bonnette.

One week later, by letter dated October 28, President Hunter wrote to notify Professor Crout that his services were being terminated, effective at the end of the fall semester. The eulogy, the president wrote, was a "lengthy negative diatribe regarding our colleague's purported personal finances, frustrations, and attitudes. . . . The reaction of the campus community has been one of shock, disbelief, anger, and the sense that you betrayed our friend and deceased faculty member." Echoing the words of Professor Rison, Dr. Hunter charged Professor Crout with having "used this time to remember and celebrate the life of another to vent your own personal frustration. You have irrevocably broken the collegial bonds that join us and have separated

3. For more on Professor Overton, see the *Chronicle of Higher Education*, 26 May 2000, A18-22.

yourself from our fellowship.” After citing the provision of the annual faculty contract that requires faculty members to “maintain a cooperative spirit with associates within the academic community,” and to “provide a worthy example to faculty, staff, students, and community,” the president informed Professor Crout that he concurred with the conclusion of the department chair, the dean, and the provost that Professor Crout had breached his contract and with their recommendation that he be dismissed. The president’s letter did not refer to the availability of any appeal process for contesting the proposed dismissal and thus made no mention of the existence of any deadline for invoking that process, but the letter did suggest that Professor Crout might wish to tender his resignation by November 12.

On Friday, October 29, before the letter of dismissal had been mailed to Professor Crout, Provost Bonnette made several efforts to contact Professor Crout to schedule a meeting on that day with him, along with Dean Magee and Professor Rison. The provost attempted to speak with Professor Crout as he left his morning class but discovered that the class had been dismissed early. He left messages at the departmental office and at Professor Crout’s home telephone; the messages did not mention dismissal but urged Professor Crout to contact the provost’s secretary concerning the meeting proposed for that day. Later in the day, not having received a response to his messages, and having been told by Professor Rison that Professor Crout had already left the campus and had said that he was too busy to attend the meeting, Provost Bonnette wrote a letter to Professor Crout, sent by registered mail. The provost recounted his unsuccessful efforts to arrange for a meeting that day to discuss the president’s letter of dismissal, which he enclosed. Noting that Professor Crout was scheduled to be away from the university from November 3 to 7, the provost (who had approved Professor Crout’s absence) stated that he would meet with him on Monday, November 1, if he so desired.

The registered letter did not reach Professor Crout until that Monday, and he did not respond at that time. The administration did not receive a response from Professor Crout until November 22, when he personally delivered a letter to the provost’s office. As he would later explain, he was about to leave town to play a significant role at an academic conference when he actually received the letter of dismissal, and he believed that he needed to consult with an attorney before responding.

The Charleston Southern University procedure for protesting a dismissal sets a ten-day time limit for filing a grievance with the Faculty Appeals Committee following notice of the proposed action.

In his November 22 letter, Professor Crout requested an opportunity to appeal his dismissal, but most of the letter consisted of a response to and rebuttal of the administration’s claims that he had misrepresented Harold Overton’s views. “Regarding the opinion that I have violated the spirit of community at CSU,” he wrote, “and have not provided a worthy example for students, faculty, and staff, I strongly disagree. There was no cru-

elty in anything, only the truth. . . . Every word I spoke was based not on my personal opinions but on facts and documents.” He pointed out that “there are a number of others of [Harold Overton’s] friends with whom he did discuss [these matters] who can substantiate everything that I claimed at the memorial service to be his expressed statements, attitudes, and beliefs.”

The provost responded on November 24 to Professor Crout’s request for belated access to the appeals process. He cited the provision of the handbook setting a ten-day time limit for an appeal and informed him that “the time during which you could have filed . . . has lapsed.” By letter of December 1, Professor Crout sought to explain the circumstances that accounted for the delay in filing an appeal and, after expressing “regret that some took offense at my remarks at Dr. Overton’s memorial service,” reiterated his request that the provost “grant an extension . . . as a reasonable request under these circumstances.” The next day the provost reaffirmed the administration’s previous position. “Your termination from the University,” he concluded, “remains effective at December 20, 1999.”

Following news of Professor Crout’s dismissal, the local press reported that a petition in his support was being circulated bearing the signatures of nearly two hundred students. In an interview with the *Chronicle of Higher Education* conducted after his dismissal had been effected, Professor Crout offered no apologies for what he had said at the memorial service. “To celebrate a person’s life is not merely to celebrate the high points . . . but [also] to celebrate the person’s struggles. A group of people browbeaten by fear and intimidation is not a community of anything. There is no community to violate.” The *Chronicle* wrote that Professor Crout believed “his firing was intended as a cautionary tale to other professors: ‘Keep silent or you might be thrown out of work in the middle of the academic year.’”

Professor Crout sought the Association’s advice and assistance in mid-November 1999, some two weeks after having been notified of his dismissal. Following the review of documents that Professor Crout sent to the Washington office, a member of the AAUP staff telephoned President Hunter on December 9, seeking to persuade him to waive the ten-day deadline for securing access to the appeals process. President Hunter declined to reconsider the administration’s position on the matter, whereupon the staff sent him a letter the next day, setting forth the Association’s concerns about serious departures from AAUP-recommended procedural standards in the action taken against Professor Crout. The staff emphasized that the case raised basic issues of academic due process as well as potential issues of academic freedom. The staff urged that Professor Crout be continued in his faculty position pending the administration’s demonstration of cause in a hearing of record before a faculty body.

An ensuing exchange of correspondence between the staff and the CSU administration failed to achieve a resolution of the Association’s concerns, whereupon the general secretary

authorized an investigation. The staff so advised President Hunter by letter of February 11, 2000. On March 28 the staff informed the president of the composition of this investigating committee and proposed dates for its visit to Charleston. On advice of counsel, the president initially indicated that, because of the potential for litigation, the administration would not participate in the investigation. After a further exchange of communications, however, the administration did agree to cooperate, with the interviews of key administrative officers to be conducted in the boardroom of a hospital across the street from the university rather than on the campus.

The undersigned committee visited Charleston on May 11 and 12, to investigate the issues posed by the dismissal of Professor Crout and to inquire into the nonreappointment of David Aiken, an assistant professor of English, who by then had also sought the Association's advice and assistance. His case is discussed in the next section of this report. The committee interviewed President Hunter, Provost Bonnette, Dean Magee, and Professor Rison, in the presence of university counsel. It met, in addition, with Professor Carol Drowota, chair of the Department of English, also in the presence of university counsel, at a local hotel, where the committee interviewed Professor Crout, Professor Aiken, and several current and retired members of the faculty.⁴

III. The Case of Professor David H. Aiken

Dr. David Aiken received his Ph.D. in English in 1976 from the State University of New York at Stony Brook. He began his appointment as an assistant professor in the Department of English at Charleston Southern University in fall 1993. Immediately prior to joining the CSU faculty, he had served for six academic years (1987–93) as a full-time instructor at the University of Georgia. Before then he had held successive appointments as a full-time faculty member at Bluefield College (Virginia) and Georgia State University.

Professor Aiken, whose first year of service at CSU was the last year of Professor George Niketas's term as department chair, has stated that during his first year at CSU his teaching and scholarship went well, and that he was rewarded with a 7 percent increase in salary. In fall 1994, in light of his many years of prior faculty service elsewhere, and based on the quality of his first-year performance, he was encouraged to apply for promotion to associate professor. In the course of that year, however, he had some disagreements with his new chair, Professor Drowota, over academic policy and other departmental matters, disagreements that he considered normal at the time. But in the spring he was informed that his candidacy for promotion had

been denied. By letter dated April 18, 1995, Provost Bonnette notified Professor Aiken of several “[p]roblems and/or deficiencies” in his performance. “Based on peers’ observation of your behavior and teaching,” the provost told him, “you will need to satisfy the conditions set forth below.”

You must be cooperative and demonstrate team work within the department and the University. Especially, you need to cooperate with the chairperson in the following areas: adherence to course descriptions, proper preparation of book orders, proper preparation and filing of syllabi . . . and office procedures. The university expects individual faculty to participate in collegial, consensus-building decisions for the benefit of the University family.

You need to follow proper channels of communication. You must obtain the signature of the chairperson on requests for books and budget items (including supplies) as well as other forms as required. You need to discuss curriculum matters with the chairperson and follow proper procedures in effecting curriculum change or approval. You need to comply with requests of the chair on other matters affecting the department.

Dr. Bonnette's April 18 letter was attached to the contract for the 1995–96 academic year that President Hunter issued to Professor Aiken that same day in which he noted that “[t]he Department Chair, Dean, and Provost have identified in . . . [that] letter some specific actions and expectations which must be achieved.”

Professor Aiken took issue with his administrative superiors' characterization of his performance, and in fall 1995 he applied again for promotion to associate professor. His candidacy received the endorsement of his senior English department colleague, Professor Harold Overton, who praised Professor Aiken as “a dedicated teacher and as an active, publishing scholar. . . . Because of his enthusiasm and active accomplishments as a research scholar and a teacher, he has emerged as an excellent role model and advisor for students who harbor an incipient desire to become creative writers and scholars.” Professor Overton went on to comment favorably on his junior colleague's “very active presence in the English department [and] on faculty committees,” and on his having “worked hard and successfully in creating connections between the University and the community.” Professor Niketas, one year into retirement, also wrote a strong letter of support, as did the director of Graduate Studies in Education, Professor Martha Watson, who described Professor Aiken as “a valued and welcomed resource to our English faculty,” and as someone who “has contributed to our campus and community life while maintaining a credible focus on professional development and growth.”

Once more, Professor Aiken's application for promotion was opposed by his chair and the dean, and their negative recommendations again prevailed. Soon after learning of the rejection

4. Responding to a prepublication draft of this report, President Hunter “commend[ed] the professional manner in which the two AAUP visitors . . . conducted the review process. While the University does not agree with the final conclusions in the report,” he wrote, “we believe for the most part that the facts presented by the visiting committee are clear and objective.”

of his candidacy, he met with President Hunter and then with Provost Bonnette to explore "what I must do to merit the term collegial." Despite the negative promotion decision, in Professor Aiken's contract for the 1996–97 academic year, the president included the following statement:

Previously your Department Chair, Dean, and Provost identified and discussed with you specific problems and deficiencies. It is evident that you are making progress in correcting these problems and deficiencies and that more time will be required to monitor your progress. Specifically, you must continue to be cooperative and demonstrate team work within the English department and the University by adhering to course descriptions, properly preparing and submitting book orders and syllabi, and following office procedures.

During the following two years, Professor Aiken did not reapply for promotion. In spring 1997, he was issued his 1997–98 contract, which made reference to his continuing "progress in correcting . . . problems and deficiencies." The next year, in a letter dated April 24, 1998, Provost Bonnette expressed pleasure at hearing that Professor Aiken had been "addressing [the] concerns" previously raised by his administrative superiors and that he was "living up to the University's expectation that individual faculty participate in collegial, consensus-building decisions which benefit the University's faculty, staff, and students." The provost went on to encourage Professor Aiken "to work cooperatively with your Department Chair on matters affecting the English department and with your Dean on matters affecting the University."

In fall 1998, having received a more positive performance evaluation from the provost and a modest salary increase, Professor Aiken submitted his third application for promotion to associate professor. His candidacy was supported by the dean of the School of Education, Dr. Jonathan Parker, who praised him as an "outstanding colleague" and as "an excellent teacher, a recognized scholar, and a committed Christian. From my perspective he is an ideal model for junior faculty to emulate, and is most deserving of promotion to the associate level. I recommend him without hesitation, reservation, or qualification." As he had previously, Professor Overton submitted a strong endorsement, emphasizing Professor Aiken's qualities as "a dedicated teacher," who has "enriched the English curriculum," and as "an active, publishing scholar."

Professor Drowota, however, once more recommended against Professor Aiken's promotion in her evaluation dated December 31, 1998. With respect to his teaching performance (which she rated as 7 out of 10), she remarked as follows: "Students generally comment that Dr. Aiken is an interesting professor and lecturer and makes classes interesting. Faculty in the English Department remain concerned, however, that Dr. Aiken's emphases differ from those of the rest of the department

with respect to topics covered and assignments given." As for his scholarship (rated 8, in the "outstanding" range), she commented that "Dr. Aiken is an active researcher, publisher, and presenter in Southern literature. He holds positions of leadership in specialized organizations such as the Simms Society, S[outh] C[arolina] Poetry Society, and S[outh] C[arolina] Academy of Authors." In the third category, "Collegiate/Community/Church Services" (rated 7), she observed that "Dr. Aiken provides much service off-campus in the community and church. At times he has rendered admirable service on campus. Often his service on campus has been affected, however, by his not working cooperatively with colleagues and students." Dean Magee largely followed the chair's lead. In particular, she gave Professor Aiken a rating of 7 in teaching, commenting that, "while Dr. Aiken's student evaluations are, for the most part, high, and my observations indicate that he employs a variety of teaching methods, the Chairperson of the Department of English indicates that she is not satisfied with his performance." She did, however, rate him "outstanding" (8 and 9, respectively) in the areas of scholarship and service.

The recommendations of Professor Drowota and Dean Magee were forwarded to the six-member Promotion and Tenure Committee—a body on which they both sat as elected members. The committee voted unanimously not to recommend Professor Aiken for promotion. According to its report:

The committee noted Dr. Aiken's extensive record of publications and speaking engagements. However, Dr. Aiken does not receive the support of his departmental peers, chair, or dean. The committee noted several problems including the failure to follow approved departmental policies and core course guidelines. In addition, it was noted that Dr. Aiken had been removed from several departmental duties. The committee was unwilling to recommend Dr. Aiken for promotion.

By letter of March 12, 1999, Provost Bonnette notified Professor Aiken of the Promotion and Tenure Committee's action and sent him copies of the Drowota and Magee evaluations and the committee's brief report. In the weeks immediately following, Professor Aiken endeavored to appeal the negative recommendation. On April 14 he met with the president and the provost and complained to them about what he considered to be misrepresentations of his academic record and his conduct as a member of the English faculty. The next day, on their advice, he wrote a letter to Dean Magee, with copies to Dr. Hunter and Dr. Bonnette, setting forth his specific concerns about the evaluation and promotion processes. On April 16 Professor Aiken met with Professor Drowota, who informed him that she was recommending to the president and provost that he be issued a terminal contract, a decision that he also was to appeal.

A series of additional meetings and exchanges of correspondence ensued. By letter of May 21, President Hunter informed

Professor Aiken that the previous decision to deny him promotion would stand. One week later, on May 28, the president, following Professor Drowota's recommendation (subsequently concurred in by the dean and the provost) issued Professor Aiken a terminal contract. No reasons were stated. A flurry of further appeals—written and oral—to both Dr. Bonnette and Dr. Hunter proved unavailing. By letter of June 18, 1999, the president notified Professor Aiken that the decision to issue him a terminal contract would not be reversed. The CSU regulations make no provision for any further avenues of appeal.

In fall 1999, Professor Aiken filed a complaint of age and gender discrimination, subsequently amended in February 2000, with the Equal Employment Opportunity Commission. As of this writing, the matter is still pending. In spring 2000, having learned of the Association's involvement in the case of Professor Crout, Professor Aiken sought the AAUP's advice and assistance. He alleged that the decision to issue him a terminal contract resulted in significant part from considerations violative of his academic freedom, relating to displeasure with his alleged negativity toward certain administrative officers and faculty colleagues and with his choices of topics and readings in the introductory literature courses he was assigned to teach.

The Association's staff, after reviewing documents it received from Professor Aiken, wrote to President Hunter on April 21, 2000, pointing out that Professor Aiken "should have been afforded opportunity for a hearing before a faculty body. So, too, should any faculty member notified of nonreappointment who believed that the decision was based on inadequate or impermissible considerations." The staff subsequently informed the administration that Professor Aiken would be meeting with the investigating committee.

IV. Issues

1. Procedural Concerns Relating to the Dismissal of Professor Crout

The 1940 *Statement of Principles on Academic Freedom and Tenure* calls for the following safeguards of academic due process in cases involving dismissal for cause:

Termination for cause of a continuous appointment or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other schol-

ars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

These due process requirements are elaborated in the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* of the AAUP and the Association of American Colleges and Universities and in Regulations 5, 6, and 8 of the AAUP's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. Of special relevance are the requirements of (a) an adjudicative hearing of record before a committee of faculty peers, in which the burden is on the administration to demonstrate adequacy of cause by clear and convincing evidence in the record considered as a whole and to relate the charges directly and substantially to the fitness of the faculty member to continue in his or her professional capacity, and (b) opportunity for the affected faculty member to be represented by legal counsel.

The official policies of Charleston Southern University state that "if a nontenured faculty member violates the terms and conditions of his contract, his employment may be terminated before the end of his contract year with corresponding loss of salary." The regulations provide for opportunity to submit a grievance to the Faculty Appeals Committee in the case "of a tenured faculty member who is terminated or given notice of nonrenewal under the terms of his/her contract, or of a nontenured faculty member who is terminated for violation of the terms and conditions of his/her contract before the end of his/her contract."

According to the regulations, "A grievance by a faculty member must be filed in writing within ten days from the time the grievant becomes aware of the action or event forming the basis for the grievance. . . . The grievant should also submit a proposed solution to his or her grievance." The appeals committee "is composed of five members who have tenure and are elected annually by the faculty." (The regulations do not preclude administrative officers with faculty tenure from serving on the committee.) The committee's "recommendations . . . are advisory to the President of the University."

As for the hearing procedures, the handbook provides that the "Faculty Appeals Committee shall conduct whatever hearings, interrogations, investigations, and fact findings it deems necessary to prepare a recommendation for the resolution of the grievance. . . . Attorneys may not appear with or on behalf of the grievant, witnesses, or the University. . . . The Faculty Appeals Committee shall submit to the President, in writing, the final report containing its findings of fact, conclusions (based upon the findings of fact), and recommendations. Findings of fact and conclusions should be based upon the preponderance of the evidence with the grievant carrying the responsibility of proof."

The procedures set forth in the CSU regulations do not comport with Association-supported standards in several key respects, notably, in not providing for a pretermination hearing of record, in placing the burden of proof on the “grievant” to demonstrate why he or she should not be dismissed, in permitting administrators who operate in other institutional forums involving the grievant to serve on the appeals committee, and in denying opportunity for legal representation.⁵ The investigating committee finds the deficiencies in the CSU procedures to be so fundamental, pervasive, and severe that it would not have faulted Professor Crout had he declined to be a party to them and insisted instead on procedures more closely akin to those called for under the 1940 and 1958 *Statements*.

As discussed above, Professor Crout was notified by letter of October 28, 1999, from President Hunter, that his services were being terminated effective at the end of the fall semester. The president’s letter made no mention of any appeal process. There is some dispute about the reasons for Professor Crout’s delay in requesting an appeal. By his account, Professor Crout was unusually busy at the time he was notified, handling last-minute responsibilities for a professional meeting over which he was presiding, and upon his return from that meeting he became ill. Further delays resulted from his requests for advice from attorneys and his search for a suitable one.

The administration takes the position that Professor Crout was doubtless aware of the applicable provisions of the handbook, and that he had the responsibility for adhering to its stated deadline for filing a timely appeal. The investigating committee recognizes that Professor Crout clearly failed to meet the stated deadline, but it believes that the administration, given the gravity of a dismissal for cause, should nonetheless have agreed to waive the ten-day provision. As previously noted, even if Professor Crout had availed himself of the grievance procedures set forth in the CSU regulations within the requisite time limit, those procedures would not have provided anything resembling the hearing called for under the Association’s recommended standards. Withal, a hearing, for all its procedural deficiencies, would at least have afforded Professor Crout an opportunity to place his side of the case on the record. He was given no such opportunity.

There is the further issue of the lack of a faculty hearing on whether Professor Crout’s conduct was, as the administration alleged, in breach of his contract and, if so, whether the breach was of such a magnitude as to constitute adequate cause for dismissal. In a letter of January 21, 2000, to the Association’s staff, Provost Bonnette stated:

The issue considered by the University was whether Dr. Crout’s conduct constituted a breach of an agreement. That determination requires an exercise of judgment or interpre-

tation by the University in light of the clear factual record. Dr. Crout’s disagreement with the University’s judgment does not transform the determination made by the University into a dispute over facts. The University followed the procedures published in the Faculty Handbook and these well-established procedures were available for Dr. Crout’s use. He did not take advantage of those procedures.

The decision that Dr. Crout had breached his contract is clear. Over the past years, his inappropriate behavior has been well documented, has resulted in many hours of personal conversation, warnings given, and prescriptions for change provided.

The investigating committee finds that the determination of whether Professor Crout’s conduct in delivering the remarks at the Overton memorial service and in earlier incidents constituted grave cause, warranting his dismissal, should have been a matter for review by a faculty body. Even if the “facts” were not in dispute, their interpretation and the weight to be given to them in the context of Professor Crout’s record considered as a whole certainly were. The investigating committee finds that the administration, in denying Professor Crout opportunity for faculty review of the charges against him, and in declining to accept or assume the burden of demonstrating adequacy of cause for its action in an appropriate proceeding, thereby denied Professor Crout his rights under the 1940 *Statement of Principles on Academic Freedom and Tenure*.

2. Considerations of Academic Freedom in the Dismissal of Professor Crout

According to the 1940 *Statement of Principles*,

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate self-restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

The Association’s 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* provides that faculty members should be free to speak out “on matters having to do with their institution and its policies,” and that they should be able “to express their professional opinions without fear of reprisal.” Regulation 5(a) of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* further provides that “dismissal will not be used to restrain faculty members in their

5. Dean Magee recommended Professor Crout’s dismissal, having previously—in her capacity both as dean and as a member of the Promotion and Tenure Committee—recommended against his promotion.

exercise of academic freedom or other rights of American citizens.”

The CSU Faculty Handbook includes a section that reproduces almost verbatim the “academic freedom” provisions of the 1940 *Statement of Principles*. At the same time, the final paragraph of the contract issued annually to all members of the CSU faculty states that they “will advance [the university’s] purpose, institutional goals, and objectives, will uphold its policies, will support the mission, vision, and philosophy of the institution, [and] will maintain a cooperative spirit with associates within the academic community.” They are also expected to “provide a worthy example to faculty, staff, students, and community.” (Emphasis added.) The breach of these provisions of the contract, according to the Faculty Handbook, “will be determined by the President.”

In his letter of dismissal, President Hunter stated that the action to terminate the services of Professor Crout had been precipitated by Professor Crout’s remarks at the Overton memorial service. The president also cited the two prior incidents involving Professor Crout, one in April 1996, the other in November 1998, which involved alleged lapses in professional judgment that had caused the university “embarrassment” and resulted in the administration’s “having to apologize for [his] actions.” The administration considered Professor Crout’s conduct at the memorial service to have been the most egregious of these several incidents, the proverbial “last straw,” and accused him of a breach of contract for having failed to “maintain a cooperative spirit with associates within the academic community” or to “provide a worthy example to faculty, staff, students, and community.” It also faulted him for having used the occasion of his late colleague’s memorial service as a means of launching an attack on the policies and practices of the CSU administration.

An issue to be addressed by the investigating committee is whether the remarks that Professor Crout delivered at the memorial service for Professor Overton warranted protection under the principles of academic freedom. Had Professor Crout spoken as he did in a faculty meeting, it seems clear to the committee that they would. Did his remarks also warrant protection in this kind of forum, or at any other similar event sponsored by the university for ceremonial purposes?

Factors supporting an affirmative interpretation center on two considerations: the nature of the memorial service and the content of the remarks. Aspects of the memorial service that placed it within the ambit of academic freedom include the service’s organization by a university committee appointed by the provost; its taking place on the campus; the inclusion of the university’s name, logo, and motto on the program; and the prominent role given to the president, faculty, and staff in the program. The investigating committee is troubled by the implications of restricting freedom of speech in a forum so clearly identified with the university. Could such restrictions apply to other kinds of university-sponsored public events held on campus? If community standards of good taste are substituted for principles of free speech, does that amount to censorship

violative of academic freedom? These questions resist a categorical answer.

In the course of its interviews, the investigating committee gathered evidence concerning the assertion that Professor Crout misrepresented the situation of the late Professor Overton, and that he simply used the occasion to advance his own agenda. Only one current or former faculty member who was interviewed disputed any aspect of the content of Professor Crout’s remarks, namely, his conclusion that Professor Overton’s death was attributable to overwork and job-related stress; this person cited instead Professor Overton’s chronic eschewal of medical care. None of Harold Overton’s former faculty colleagues interviewed by the committee disputed that he had been overworked and underpaid. While some interpreted Professor Crout’s action as an attempt to further a personal agenda, one that was probably influenced by the recent denial of his application for promotion to full professor, the majority perceived Professor Crout as having said things that needed to be said, given that Professor Overton’s situation was typical of others at CSU. One expressed pride in Professor Crout’s courage in “standing up for” a faculty member who had not done so for himself.

Concerning the forum that Professor Crout had chosen for the delivery of his remarks, all of the administrators who spoke with the investigating committee and even a large majority of the faculty members whom the committee interviewed expressed the view that the setting and the occasion were inappropriate. Several faculty members, however, did indicate that similar remarks had been made in more appropriate forums by Professor Crout and others to little or no apparent effect, and that if Professor Crout’s choice of venue had been influenced by his frustration at the perceived lack of adequate response, such frustration would be understandable. Several also observed that Professor Crout might have been influenced by grief that he felt at the sudden loss of a close colleague and friend.

Weighing against an interpretation of Professor Crout’s remarks as coming within the ambit of academic freedom is the view, expressed by many, that Professor Crout had exceeded the boundaries of good taste. This view characterizes him as having failed to exercise the self-restraint called for under the 1940 *Statement of Principles*, particularly in light of the presence of some students and local community members in the audience.

The investigating committee appreciates the fact that people could be (and clearly were) offended by the setting and manner in which Professor Crout chose to express his views. It believes, however, that his remarks were entitled to protection under principles of academic freedom. The program for the memorial service made explicit provision for “comments from faculty, staff, and friends” who “wish to express thoughts and sentiments about Dr. Overton.” Speakers were apparently invited to address the assembly without preconditions as to what could be said.

Professor Crout delivered his remarks, which were certainly germane to the subject. Upon hearing those remarks, the administration objected to their content. Dismissal for such speech

would contravene the provision that “dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.” Tolerance of criticism is a crucial component of the academic environment and of an institution’s ultimate vitality. To the extent that the Charleston Southern University administration acted against Professor Crout because of displeasure with his criticism of it at the memorial service, the investigating committee finds that it acted for reasons violative of his academic freedom.

3. Adequacy of Cause for the Dismissal of Professor Crout

The investigating committee next addresses the substantive issue of whether the administration’s allegations against Professor Crout, if sustained, were of such gravity as to warrant the extreme penalty of dismissal. The documents available to the committee referred to two episodes, described earlier in this report, which were among those cited by Provost Bonnette in correspondence with the Association’s staff. According to Provost Bonnette, the decision to terminate Professor Crout’s services “did not involve his classroom performance or his scholarly/research-related activities.” And it “was not based on one incident but on a series of instances.”

The first incident involving Professor Crout concerned a charge of rudeness to a social-studies teacher in a local high school who was supervising a CSU student teacher. In his letter of April 30, 1996, to Dr. Bonnette, Professor Crout gave a lengthy account of the episode, including many details in which he sought to put his conduct in a more favorable light than the provost ultimately did. With reference to the precipitating action—a telephone call from Professor Crout to the school in which he asserted that he was simply leaving a message for the student teacher to call him back but the school staff believed that he was calling the student teacher out of the classroom to the phone—Professor Crout acknowledged that his hanging up may have been “misunderstood” by the student teacher “as being premature and abrupt.”

In response to this first phone call, Professor Crout received a recorded telephone message from the supervising teacher that he considered “shocking” and “outrageous” and as “questioning my integrity.” His response was to leave with her assistant the message, “The same to you, Ma’am.” In his April 30 letter to the provost, Professor Crout indicated that he “probably should have left the matter there,” that is, not made that remark. He also expressed empathy for Dr. Bonnette’s perceived need to issue an immediate apology and noted a range of possible exacerbating factors in the supervising teacher’s situation. He concluded by requesting advice about “how the matter should develop from this point” and “suggestions on any action I can take to restore CSU’s valuable relationship” with the high school. The provost, both by his own account and by Professor Crout’s, did not confer with Professor Crout before responding to the high school teacher.

In the view of the investigating committee, while some might

question the wisdom or appropriateness of the remark that Professor Crout acknowledges having made (and for which he had expressed some regrets after the fact) and what preceded it, the episode fell far short of misconduct serious enough to be cited as a factor in dismissing him three and a half years later.

The 1998 incident involving the work-study student included a number of complicating background factors, including the understandable concerns of the student’s parents as well as the newness of the student to the job, the hiring professor’s previous lack of work-study help, recent directives from the campus security office to report all suspicious activity, and various prior episodes of campus crime. Some in the larger academic community might have preferred to attempt further informal efforts to identify a student seen in a faculty office before calling campus security, while others might believe they would have been acting reasonably had they responded as Professor Crout did. In this situation, as in the previous one, the investigating committee encountered no evidence that university officials attempted to present circumstances mitigating Professor Crout’s behavior to the complaining party.

In her account of a telephone call she made by way of an apology to the student’s parents, Dean Magee endorsed the response of campus security, while implying that Professor Crout’s contacting the security office was inappropriate. Dean Magee later complained that Professor Crout’s letter of apology had not included the exact wording that she had specified; Professor Crout’s response was that he had received advice from legal counsel that such wording as the dean had proposed “might jeopardize the school’s and my own legal situation.” In reply, the dean instructed Professor Crout to contact her or the provost on legal matters so that they might be referred to university counsel.

In the view of the investigating committee, fault may be found with both sides in their respective handling of the episodes described. In this second episode, as in the earlier one, Professor Crout may have reacted precipitately under the circumstances. For its part, the administration seems to have been more concerned with apologizing to a member of the extended community than with seeking to appreciate the position of the professor. The investigating committee was struck by the entrenchment of both sides in their positions over time. The two incidents, each of which involved (at worst) minor lapses in professional judgment by Professor Crout, were immediately viewed by the administration, ostensibly because of its own purported “embarrassment,” but also because of the prior difficulties the provost and the dean had encountered with Professor Crout, as evidence of misconduct for which they issued him formal reprimands. Separately, and together, these incidents also became the principal reason for the rejection of Professor Crout’s two promotion candidacies. The administration’s handling of these two incidents and the prominent role they played in the denial of his applications for promotion—despite his generally acknowledged academic achievements—seem to have further embittered Professor Crout

toward his administrative superiors and heightened the already existing tensions between them.

As to the citing of the two episodes in connection with the action to dismiss Professor Crout, the administrative officers, when they met with the investigating committee, acknowledged that there was no repetition of behavior for which he had been reprimanded. Rather, Provost Bonnette remarked, Professor Crout would go on to do something new that was equally or more offensive. He said that he felt he could not predict what Professor Crout would do next, that the Overton eulogy was finally too much, warranting action to put an end to such episodes.

The faculty members interviewed, with the exception of those who also hold administrative appointments, fell into two groups on the general issue of Robert Crout's dismissal. Almost everyone had heard something about various episodes involving Professor Crout; all were careful to make clear whether their knowledge was firsthand or at a greater remove, and all refrained from giving details of any episodes of which they did not have direct knowledge. Some faculty members viewed such episodes as part of the eccentricity and disagreeableness that occur in academic life. While they did not necessarily agree with or defend Professor Crout's actions, they were tolerant of them in an individual who was a valued member of the academic community, someone who devoted much time, energy, and evident passion to a broad range of activities of benefit to the university and to the profession. For them, Professor Crout's achievements as a scholar and teacher should have outweighed episodes of social friction, and academic freedom should have outweighed a "personality clash."

For other faculty members with whom the investigating committee spoke, however, the situation presented a conflict between the professor's right to exercise his academic freedom and the institution's right to choose employees who conform with its own behavioral expectations. It appeared to the investigating committee that some of this latter group could not reconcile the conflict, while others believed that the best solution was for the professor to seek a more congenial institution.

It is clear that Professor Crout's actions involving the larger community did on occasion result in situations that the administration felt an obligation to address. What is more complex is the relationship between the social norms of a particular community and the principles of an academic institution. The investigating committee perceived a strong tendency at CSU to view the relationship of the university and its faculty members as more social than academic. The committee's attention was drawn to this characterization by the repeated use of the terms "family" and "family members" by both faculty members and administrators in their references to the university community. Several faculty members, for example, characterized Professor Crout's remarks at the memorial service as akin to one member of a family speaking rudely or disrespectfully to another. Further evidence may be found in President Hunter's charge that Professor Crout had separated himself "from our fellowship," and

Professor Rison's statement, "I believe that you have violated the spirit of community at CSU."

Thus it is not surprising that the administration seemed chiefly concerned with meeting the behavioral expectations of community members. Such considerations also seem to have been the principal factors in the administration's decisions to deny Professor Crout's two applications for promotion. Provost Bonnette has repeatedly stated that Professor Crout's dismissal had nothing to do with deficiencies in his academic performance; the same apparently held true in the denials of promotion. When asked by the investigating committee what quality or qualities the successful candidate would have, Provost Bonnette emphasized unwavering loyalty to the institution.

The investigating committee does not believe that the Overton eulogy and the two previous incidents came at all close to providing adequate grounds for dismissing Professor Crout, particularly in light of his many productive professional activities. The committee finds that the administration failed to meet the stipulation that adequacy of cause for dismissal be demonstrated by clear and convincing evidence in the record considered as a whole and that the cause be directly and substantially related to the fitness of the faculty member to continue in his or her professional capacity.

4. Notice or Severance Salary

Regulation 8 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, addressing severance arrangements when an appointment is terminated, states that, in all cases except those in which a faculty committee has reached a finding of moral turpitude, "the faculty member will receive salary or notice in accordance with the following schedule: . . . at least one year if the decision is reached after eighteen months of probationary service or if the faculty member has tenure." (The concept of "moral turpitude," according to Interpretive Comment 9 on the 1940 *Statement of Principles*, "identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.")

The CSU Faculty Handbook provides that "if a nontenured faculty member violates the terms and conditions of his contract, his employment may be terminated before the end of his contract year with corresponding loss of salary." Professor Crout, issued notice of termination of services by letter of October 28, 1999, to take effect on December 20, carried out his regular academic duties through the end of the fall 1999 semester. He did not receive any salary thereafter.

It may be that some at CSU who favored dismissing Professor Crout would characterize his behavior as morally turpitudinous.

In the view of the investigating committee, however, the conduct that was the basis for dismissing Professor Crout did not, by any reasonable standard of the “academic community generally,” involve moral turpitude. The committee thus finds that the scant notice and lack of severance salary given to Professor Crout, while it may have been consistent with the university’s own regulations, was seriously inadequate when measured against applicable Association-supported standards.

5. Tenure and Applicable Standards

The 1940 *Statement of Principles* calls for a maximum period of probation not to exceed seven years, with service beyond that period constituting continuous appointment or tenure. The CSU regulations provide for a system of academic tenure, defined as “the contractual assurance given to experienced faculty members which warrants expectation of continued employment from year to year in a professorial position, unless there exists cause or reason for termination, as those terms are defined in the tenured faculty contract.” The regulations, however, do not set forth a maximum period of service prior to the granting of tenure. Indeed, under the university’s official policies, while “seven years of full-time teaching experience in a regionally accredited college or university is required before the faculty member is eligible for consideration for tenure,” faculty members can—and, in point of fact, many do—serve beyond seven years on annual appointments that are indefinitely renewable at the pleasure of the administration. According to the Faculty Handbook, “Until a faculty member is granted tenure, he serves on a year-to-year basis and his services may be terminated with the expiration of any year’s contract without prejudice either to him or to the institution.”

The investigating committee finds that Professor Crout, having been a full-time faculty member at Charleston Southern University for more than ten years, had served well beyond the 1940 *Statement’s* seven-year maximum period of probation and was thus entitled under that document to the protections of academic due process that accrue with tenure. In the event, the question of Professor Crout’s tenure status is not germane to this case, because under the 1940 *Statement* the dismissal of any faculty member within the term of an appointment requires afford-ance of the same protections of academic due process.

The Association has long emphasized that retaining post-probationary faculty members on indefinitely renewable term appointments is inimical to the principles of academic freedom and tenure. As noted above, a considerable number of long-serving faculty members at Charleston Southern University have never been granted tenure, and, under the CSU policies, can be issued notice of nonreappointment at any point without having recourse to any appeals process. The investigating committee finds that this practice has a potentially chilling effect on the CSU faculty’s exercise of academic freedom. Among many of those the committee interviewed, this effect has been exacerbated by the dismissal of Professor Crout without demonstration of adequate cause.

Of even greater concern, the investigating committee finds that, despite the use of the term, a genuine system of faculty tenure—as that concept is understood in the general academic community—does not exist at Charleston Southern University. Plainly, as noted above, the regulations of Charleston Southern University do not assure to faculty members, even those with formal “tenure,” a rebuttable presumption of professional excellence and hence any degree of professional security. Indeed, faculty members at Charleston Southern, whatever their status, would appear to be in a state of perpetual insecurity, subject to dismissal without the administration’s having to bear the burden of proving adequacy of cause.

6. The Climate for Academic Freedom at Charleston Southern University

The investigating committee, prompted by the issues raised by the dismissal of Professor Crout, inquired into general conditions for academic freedom at CSU. In addition, documents the Association’s staff had provided to the committee indicated that current and former members of the Charleston Southern faculty have complained about an inhospitable atmosphere at CSU for exercising one’s academic freedom in the classroom and for criticizing the administration and its operation of the institution. They described a sense of insecurity among the faculty about what might happen to them should they speak out. These concerns were further evidenced by the worry expressed by many interviewees about preserving the confidentiality of their testimony. The investigating committee also noted that administrative officers with whom they spoke made repeated reference to the fact that they did not know which faculty members the committee was interviewing, references that struck the committee as troublesome.

A major source of information for the investigating committee concerning the climate at CSU were the responses to faculty surveys conducted in recent years by the university’s Faculty Welfare Committee. Nearly 90 percent of the faculty completed at least part of the survey conducted in spring 1998, the results of which were compiled in numerical “results summaries” and in written comments grouped by topics. In the table labeled “sources of stress” and offering the three categories “extensive,” “some-what,” and “not at all,” administrators were placed in the first category by twenty respondents, in the second by nineteen, and in the third by twenty-nine. By contrast, colleagues were placed in the first category by three respondents, in the second by seven-teen, and in the third by forty-three. Under the rubric “faculty professional development,” faculty respondents commented as follows: “Promotion and tenure are granted arbitrarily despite a regular process.” “Teaching excellence has no relation to promotion and financial reward.” “Faculty should not be encouraged by the formal guidelines of promotion and tenure. In reality people will (*if ever*) be promoted or tenured when the administration decides [they] are talking the ‘party line’ or in step with them. There is no merit, and faculty recommendations have *no* weight! This is

very disheartening!!” “We understand procedures only too well. Merit has no place, only obedience.” (Emphasis in original.)

The subject of “academic freedom” evoked the following remarks: “There seems to be little support for academic freedom.” “A difference of opinion will get you in trouble with the administration! They want one opinion, and everyone to voice that one opinion.” “Faculty are only ‘free’ to the extent that the issues with which they deal are nonthreatening to the SBC [Southern Baptist Convention] and like supporters.” “It seems that a large amount of business is carried out in secret. We need more open forums to make sure that communication is improved between faculty and administration.”

One former faculty member, Dr. A. J. Conyers, now professor of theology at Baylor University, writing to Professor Crout in November 1999 about his own memories of the treatment of Harold Overton, described CSU as “a place in which administrative decisions were arbitrary, often unfair, and in which the word of those in authority could not be trusted. It made it a very difficult place in which to chair a department and maintain any kind of integrity with those for whom I felt responsibility as a supervisor and colleague.”

The concerns catalogued above are heightened by the fact that the university lacks any procedure whereby nontenured faculty members issued notice of nonreappointment who allege that the adverse decision was based on considerations violative of academic freedom can seek review of their claim by a faculty body. (That is a key issue raised by the nonreappointment of Professor David Aiken; see below.)

In assessing the climate for academic freedom, the investigating committee took note of an additional matter relating to the actual conduct of this investigation. The administration, after initially declining to cooperate, ultimately agreed to do so, but with the interviews to take place off the CSU campus. According to university counsel, “The off-campus location has been selected in order to minimize any disruption in the University exam schedule.” In this connection, the statement by President Hunter in his February 24, 2000, letter to the staff should be noted: “The education processes at our university have already been disrupted greatly due to the circumstances surrounding Dr. Crout. Clearly, we must take every precaution to prevent further interruptions on campus.” The committee has already noted the repeated remarks of administrators as to their lack of knowledge of the faculty members being interviewed.

On the strength of this evidence, at least in part the result of the absence of a genuine system of academic tenure, the investigating committee finds that conditions for the exercise of academic freedom are unhealthy at Charleston Southern University.

7. The Nonreappointment of Professor Aiken

The Association’s *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* entitles probationary faculty members contesting a decision against reappointment to

appeal to a committee of faculty members not previously involved in the case. When violation of academic freedom is alleged, as it was by Professor Aiken, Regulation 10 of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* provides for preliminary review of the allegation by an elected faculty body in order to determine if, in the committee’s judgment, the faculty member has a sufficiently credible case to warrant a hearing of record where “those who made the decision not to reappoint” might be called upon to “come forward with evidence in support of their decision.”

The procedures set forth in the Charleston Southern University Faculty Handbook provide in cases of denial of reappointment only for successive administrative appeals and make no provision for review by a faculty body. In spring 1998, as was noted above, Professor Aiken was successively denied promotion to associate professor and then denied reappointment. He attempted to contest both decisions through oral and written appeals to his dean, the provost, and the president, and he was turned down at every stage of the process.

According to both Professor Aiken and Professor Drowota, chair of the Department of English, a chief point of disagreement was the content of some syllabi for elementary courses, for which certain standard components were recommended by the department. Professors Aiken and Drowota both acknowledged that Professor Aiken’s syllabi were at variance with the recommended elements in their emphasis on poetry and on two non-canonical writers; at issue was whether or not principles of academic freedom permitted Professor Aiken to undertake such changes. Professor Drowota also repeatedly criticized Professor Aiken for lack of collegiality and cooperativeness—criticisms that were echoed by the dean and reiterated in successive annual evaluations by the provost and president and that figured directly in all three decisions to deny him promotion.

In the written appeal of the third negative promotion decision that he addressed to Dean Magee on April 15, 1999, Professor Aiken insisted, “My evaluations do not reflect the modifications I have made [to syllabi] when asked to do so. I have changed syllab[i] and added authors upon the request of my Chair. I have tried and am continuing to try to meet with her approval.” A month and a half later, in his written appeal to the provost of the terminal contract issued to him by the president, Professor Aiken stated again, “I have made every change my Chair has asked me to make. I have changed my syllabus to reflect her wishes. I have added authors she wanted me to include in my teaching. I have turned in my book orders on time, especially since she got upset because I was once late. . . . As I have told you, the Dean . . . , and my chair, I am willing to do whatever changing I must to conform to your wishes.”

However good Professor Aiken’s intentions may have been and whatever changes he may have made to his syllabi, the investigating committee determined that some of his syllabi continued to vary from department-established guidelines. (Professor Aiken has stated that he had helped to draft the

recommended guidelines and believed that his syllabi were within the spirit, if not the letter, of their provisions.)

The investigating committee does not have an independent assessment of the quality of Professor Aiken's academic performance, which appears not to have been at significant issue. The committee is struck, however, by the repeated emphasis by his administrative superiors on issues of cooperation and collegiality and by the discrepancy between the chair's judgment of these qualities and that of other faculty colleagues who strongly endorsed his candidacy for promotion. Whatever the nature and frequency of his disagreements with Professor Drowota, in his last two or three years, the provost and president made repeated references to "progress" Professor Aiken had been making in addressing the perceived "problems and deficiencies" in his dealings with his chair; these more positive assessments were reflected in generally higher salary increases. Indeed, Professor Drowota had herself rated him no lower than a 7 (out of 10) in his teaching, and the dean ranked him as outstanding in both scholarship and service. And yet, within days of his initiating an impassioned appeal of the third negative promotion decision, Professor Drowota told Professor Aiken that she was recommending that he be issued a terminal contract. His request for a statement of reasons for not being reappointed was denied.

The investigating committee is troubled by the administration's action against Professor Aiken and by its refusal to state its reasons. The available record before the committee indicates that over the years Professor Aiken had incurred the displeasure of his chair and that the dean, the provost, and the president were willing to defer to her negative judgments about his conduct as a member of the faculty.

The investigating committee finds that the failure of the administration to provide reasons for its action against Professor Aiken and to afford him opportunity for faculty review of his allegation that he was denied reappointment for reasons violative of academic freedom, thus allowing the allegation to stand un rebutted, speaks poorly for academic freedom and due process at Charleston Southern University.

V. Conclusions

1. The administration of Charleston Southern University acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in dismissing Professor Robert R. Crout without having demonstrated cause for its action in a hearing of record before a faculty committee.

2. To the extent that the administration acted against Professor Crout because of displeasure with his criticism of it in remarks at a memorial service, it acted for reasons violative of Professor Crout's academic freedom.

3. The seven weeks of notice of dismissal provided to Professor Crout was severely inadequate when measured against the one year called for in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

4. The policies on tenure at Charleston Southern University do not in fact provide a tenure system: faculty members can serve indefinitely on renewable-term appointments and can have their appointments terminated without demonstration of cause or a faculty hearing.

5. The current policies and practices at Charleston Southern University contribute to an atmosphere that inhibits the exercise of academic freedom.

6. The administration of Charleston Southern University acted in disregard of the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* by not affording Professor David Aiken reasons for its decision to deny him reappointment and opportunity for faculty review of his allegation that the decision resulted in significant part from considerations violative of his academic freedom.

LINDA L. CARROLL (Italian)
Tulane University, *chair*

JOHN C. SHELLEY (Religion)
Furman University
Investigating Committee

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

JOAN WALLACH SCOTT (History), Institute for Advanced Study, *chair*

Members: JEFFREY HALPERN (Anthropology), Rider University; LAURA KALMAN (History), University of California, Santa Barbara; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), University of California, Berkeley; LINDA RAY PRATT (English), University of Nebraska-Lincoln; DONALD R. WAGNER (Political Science), State University of West Georgia; JANE L. BUCK (Psychology), Delaware State University, *ex officio*; MARY A. BURGAN (English), AAUP Washington Office, *ex officio*; MARTIN D. SNYDER (Classics), AAUP Washington Office, *ex officio*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; ROBERT M. O'NEIL (Law), University of Virginia, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; BEULAH M. WOODFIN (Biochemistry), University of New Mexico, *liaison* from Assembly of State Conferences.