

Report

Academic Freedom and Tenure: Virginia State University¹

This report deals with actions taken by the administration of Virginia State University to dismiss two tenured members of the faculty, Sikiru Ade Olusoga and Jean R. Cobbs, after subjecting each of them to a post-tenure review process.

Virginia State University is located near Petersburg, Virginia, some twenty-five miles south of Richmond. Founded in 1882 as the Virginia Normal and Collegiate Institute, the institution changed its name to the Virginia Normal and Industrial Institute in 1902, to the Virginia State College for Negroes in 1930, to Virginia State College in 1946, and, finally, to Virginia State University in 1979. VSU is one of two land-grant institutions in the commonwealth of Virginia, and it was the first fully state-supported four-year historically black institution of higher education in the United States. Initially accredited by the Southern Association of Colleges and Schools (SACS) in 1933, the university currently awards the bachelor's and master's degrees and a certificate of advanced graduate study within five schools: Agriculture; Business; Engineering, Science, and Technology; Liberal Arts and Education; and Graduate Studies, Research, and Outreach. It has approximately 225 full-time faculty members, and it enrolls some 5,000 students.

The university's board of visitors, the institution's governing board, consists of twelve members appointed by the governor of Virginia. The current rector, who chairs the board, is Ronald C. Johnson, chief executive officer of Ronson Network Services Corporation. Eddie N. Moore, Jr., assumed his position as VSU's twelfth president in 1993. He had previously served in the Virginia state government as an assistant controller and then as the state's treasurer in the administration of Governor L. Douglas Wilder. W. Eric Thomas became provost and vice president for academic and student affairs at VSU in fall 2003, having previously been associate vice presi-

dent for undergraduate studies at Illinois State University. David Bejou, who had been vice provost for administration at VSU, was appointed interim dean of the School of Business in August 2003. W. Weldon Hill became dean of the School of Liberal Arts and Education in fall 2003; he was previously provost and senior vice president for academic affairs at Virginia Union University.

Professor Olusoga was awarded a BS in marketing by California State University, Los Angeles, in 1970, an MA by San Francisco State University in 1973, and a PhD in marketing by Arizona State University in 1989. He joined VSU's Department of Management and Marketing as an associate professor in 1992, and he was promoted to the rank of full professor and granted tenure in 1998. By letter dated May 6, 2004, Professor Olusoga was notified by Dr. Thomas that he was being dismissed from the faculty effective five days later.

Professor Cobbs, the other faculty member whose case is treated in this report, received a BS in sociology from Elizabeth City State University in North Carolina in 1965, an MS in social work from Virginia Commonwealth University in 1967, and an EdD in counseling and guidance from the College of William and Mary in 1979. She began teaching at VSU in the Department of Sociology and Social Work (now the Department of Sociology, Social Work, and Criminal Justice) in 1971, was granted tenure and promoted to associate professor in 1978, and was promoted to full professor in 1980. She was the founding director of the university's program in social work, a position she held from 1971 to 1995. During her tenure as director, the program was accredited by the Council on Social Work Education; it lost its accreditation in July 2001. Professor Cobbs also served as department chair from 1982 to 1994. She received a letter from Dr. Thomas dated December 23, 2004, terminating her services as of January 9, 2005. The administration changed her status from termination to suspension without pay after she filed an appeal on January 7.

The events surrounding the dismissals of Professor Olusoga and Professor Cobbs, described in the section that follows, led the Association's general secretary to authorize an investigation.

I. Background

The eleven-year presidency of Eddie Moore at Virginia State University has been marked by periods of turbulent relations

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 Virginia State University, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

between the administration and the faculty. These events included a January 2000 faculty vote of no confidence in the president and in Earl Yarborough, Sr., who was then provost; the governing board's August 2001 dissolution, at the administration's urging, of the university's elected Faculty Council, on the grounds that it had "failed to serve the best interest of the university"; the council's ultimate replacement by a revamped system of institutional governance; and a complaint against the administration that a group of senior faculty members submitted in July 2002 to SACS, alleging "numerous violations" of accreditation standards, especially those concerned with the faculty role in academic planning and evaluation. In addition to periodic confrontations with the faculty as a whole, the administration has had to contend with lawsuits by individual faculty members involving allegations of discrimination and retaliation, some of which have resulted in verdicts or settlements that have reportedly cost the state several million dollars.

Under a system of "pay for performance," Virginia State has a yearly process of faculty review. Each fall, faculty members are rated "outstanding," "noteworthy," "satisfactory," or "unsatisfactory" by their department chairs, a rating with which their dean may concur or disagree. The rating is supposed to determine their salary increases, if any. An overall "unsatisfactory" rating places a tenured faculty member into a post-tenure review process. After receiving such a rating, a faculty member is allowed under the faculty handbook to appeal the matter to a three-person faculty committee. If the committee affirms the rating, the faculty member has to prepare a one-year professional development plan in the spring semester for implementation at the beginning of the fall semester. At the end of the period of the plan, the faculty member can be deemed to have made satisfactory improvement, be kept in the review process, or face dismissal. A proposed dismissal can be appealed to a faculty committee and, ultimately, to the board of visitors.

1. THE CASE OF PROFESSOR OLUSOGA

In the first week of November 2003, Professor Olusoga, then in his twelfth year on the VSU faculty, was given a rating of outstanding by both his chair and his dean, based on his overall performance in teaching, research, and service during the 2002–03 academic year. They both recommended him for the highest salary increase (2.25 percent) provided for under VSU's "pay-for-performance salary increment" scale. In his previous four annual evaluations, Professor Olusoga's overall performance had twice been judged outstanding and twice noteworthy. At the end of the same week, at a meeting on November 7, the VSU board of visitors approved a new evaluation policy for the School of Business that had been proposed by the administration. This new policy, stated to be part of an effort to secure the school's accreditation by the Association to Advance Collegiate Schools of Business (AACSB), declared that

all faculty will be evaluated annually using the standards of AACSB for academically qualified (AQ) and professionally qualified (PQ). Any faculty member who is not AQ or PQ will automatically be given an *unsatisfactory* evaluation rating. This is regardless of rank or tenure status. A tenured faculty member in this situation will then subsequently enter the post-tenure review process. (Emphasis in original.)

The administration subsequently announced that the policy would "become effective immediately and [be] applied during the 2003–04 academic year." Less than three weeks after the board meeting, Dr. Thomas, by letter dated November 25, wrote to Professor Olusoga as follows:

A review of your vita by an outside, expert consultant has confirmed that you do not meet the standards for "academically qualified" or "professionally qualified" as established by the . . . AACSB. Accordingly, your evaluation rating for this year has been designated as *unsatisfactory*. There are at least two consequences associated with this unsatisfactory rating. One is that you will receive no salary increment. The other is that your department chair and dean will establish for you a Professional Development Plan to become academically qualified. I encourage you to work jointly with them in completing this plan. It is essential for your career at Virginia State University, and for the accreditation of the School of Business. (Emphasis in original.)

According to Professor Olusoga, the November 25 letter reached him without any prior warning. VSU had been engaged for several years in seeking AACSB accreditation for its School of Business. The original application had lapsed and then was reinstated by Dr. Thomas soon after he assumed office at VSU in July 2003. Accreditation of the business school was the one outstanding issue in an agreement between the state and the U.S. Department of Education's Office of Civil Rights designed to eradicate the effects of the former de jure segregation in public higher education in the state. According to the business school's 2003 annual report to the AACSB, President Moore, in a meeting in October, stated that the school's faculty members had made "insufficient progress . . . to properly maintain [their] personal academic qualifications"—an assertion contested during that meeting by Professor Olusoga, as chair of the business school's Intellectual Contribution Action Group.

VSU engaged two outside consultants to help reinvigorate the accreditation process: Richard E. Sorensen, dean of the Pamplin College of Business at Virginia Polytechnic Institute and State University, and Otis A. Thomas, dean of the School of Business and Management at Morgan State University in

Maryland. Resumes of all of the VSU business school faculty members had been sent to these consultants to be reviewed under AACSB standards and rated in terms of each faculty member's academic and professional qualifications. According to the AACSB standards, "academic qualifications" require a combination of original academic preparation (degree completion) and subsequent activities that maintain or prepare for current teaching responsibilities. "Professional qualifications" require both relevant academic preparation and relevant professional experience.

Dr. Sorensen appears to have been primarily responsible for conducting the review of faculty credentials, which he undertook during summer 2003. According to Professor Olusoga, Dr. Sorensen met informally on one occasion with available members of the faculty during one of his visits to the VSU campus, and his reviews of faculty credentials focused mainly, if not exclusively, on research and scholarship. Faculty members were apparently not afforded an opportunity to respond to the consultant's evaluations before they were submitted to the VSU administration. In addition to Professor Olusoga, seven faculty members under review were initially found wanting.

At the hearing that was afforded to Professor Olusoga subsequent to his dismissal, which is discussed below, the provost was reported by the hearing panel to have given the following information regarding these eight faculty members in the business school: "Eventually two . . . moved to the department of economics, one retired, and two left the university. The three remaining faculty (tenured) had to submit to a Faculty Development Plan. . . . One faculty member qualified academically, one faculty member evidenced significant work in progress, and one faculty member (Professor Olusoga) was found academically not qualified."

In December 2003, after discussions with his immediate administrative superiors concerning his post-tenure review, Professor Olusoga was instructed by Dr. Bejou, the dean, to prepare a three-year professional development plan. (The investigating committee is unaware of the reasons why the dean required a three-year plan as opposed to the one-year plan called for under the university's post-tenure review policy.) By early January, Professor Olusoga had prepared the required plan, which he submitted "under protest" to his chair, his dean, and the provost.

In a letter dated January 17, 2004, addressed to the provost, Dr. Thomas, with copies to President Moore and Dr. Bejou, among others, Professor Olusoga, joined by two of his business-school colleagues who had also been placed into post-tenure review, challenged the administration's action. "This challenge," they wrote, "is based on our conclusion that the evaluation process was undermined by (a) usurpation of power; (b) implementation of the new policy retroactively; (c) disregard of established policy; and (d) gross violation of individual rights." Their letter apparently went unanswered.

Two months later, the dean informed Professor Olusoga that he would be evaluated on his performance under the just-produced plan. An evaluation meeting between Professor Olusoga and his chair and dean took place on March 29, at which, according to the dean, they "reviewed [Professor Olusoga's] progress toward fulfilling his 2003–04 faculty development plan." Following the meeting, Professor Olusoga received no written comments from the dean or the provost. The dean did, however, send the provost a confidential memorandum (which was disclosed to Professor Olusoga only in the course of his postdismissal hearing), expressing the view that Professor Olusoga "has not met his plan's requirement and did not offer an alternate plan for meeting his goals by the end of the 2003–04 academic year."

In an e-mail message dated April 21, Dr. Thomas wrote to Dr. Sorensen, the outside consultant who had reviewed the faculty members' credentials, informing him that Dr. Bejou had "deemed [Professor Olusoga] as making insufficient progress" and requesting him "to provide an independent, expert corroboration as to whether this is the case." On April 25, Dean Sorensen replied that it "does not appear that Dr. Olusoga is making adequate progress to be considered academically qualified at some future time." By contrast, an April 14 "progress report" from his department chair, Donatus Amaram, had stated that "Dr. Olusoga's performance in the last three months represents a significant improvement over his productivity in the previous year. It is my considered judgment that, at this rate, Dr. Olusoga will meet the requirements of the performance plan which he submitted in January 2004."

Professor Olusoga's development plan called for the following "intellectual contributions" in the 2003–04 academic year: (a) will strive toward submission of a journal article; (b) will strive toward submission or presentation of one or two proceedings papers; and (c) will strive toward making at least one presentation through the School of Business faculty research series.

Professor Amaram stated to the hearing committee that Professor Olusoga's one proceedings paper that had recently appeared was a substantial start, and that as the academic year ran until August, he had excellent prospects for making more progress by then.

Three weeks later, despite the positive assessment of Professor Olusoga's performance by his chair—who was removed from that position at the end of the 2003–04 academic year—and in the absence of any other assessment of his performance that had been communicated to him, Dr. Thomas notified Professor Olusoga of his dismissal with five days of notice. In his May 6 dismissal letter, cited above, the provost stated that Dr. Bejou had "determined that your progress is *not* sufficient to reach Academically Qualified status. This was further corroborated by a review of your progress by an expert consultant." (Emphasis in original.) According to the provost's

letter, Professor Olusoga's dismissal was "for good cause under, at least, the following provisions [of the Faculty Handbook]":

Refusal, continuing or repeated neglect, or inability to competently perform a faculty member's responsibility—teaching, scholarly research, creative activities, and professional service.

Unprofessional conduct that renders the faculty member unfit to continue as a member of the faculty or compromises the ability of the unit, school, or University to function or to fulfill its academic mission.

The letter further stated that "these are combined with your unsatisfactory post-tenure review."

In mid-May, after his dismissal had already taken effect, Professor Olusoga was afforded a hearing before the University Academic Appeals Panel (a different body from the one provided for in the Faculty Handbook), a five-person committee appointed by the provost, with one of its members an administrative officer. In its report of May 28, the panel, by a vote of 4 to 1, upheld the administration's decision to dismiss Professor Olusoga. In sustaining the decision, the majority, focusing entirely on the post-tenure review, found "evidence of below normal scholarly activity for the last five years . . . [and] a lack of satisfactory scholarly growth and little documentation of such growth." The charge of "unprofessional conduct" set forth in the provost's May 6 letter of dismissal appears not to have figured at all in the hearing panel's deliberations, and the administration does not appear to have pursued it any further. Professor Olusoga reports that he has never received any information in support of this charge.

The dissenting member of the panel, in addition to taking issue with the procedures followed by the administration in conducting Professor Olusoga's post-tenure review, noted that he "had been given an overall rating of 'Outstanding' three times and 'Noteworthy' twice in the five evaluations prior to the implementation of the new standards linked to AACSB requirements."

Professor Olusoga subsequently appealed the ruling of the panel's majority to President Moore, who rejected his appeal in a letter dated June 11, in which he stated that, based on his review of the documents, he "concur[red] with the decisions of both the provost and the . . . panel, and [that] the termination for cause stands."

On June 25, Professor Olusoga submitted a further appeal to the board of visitors "to reverse the illegal decision terminating my appointment at VSU." He complained that the new evaluation policy used in his case had been implemented retroactively, thereby turning a previously outstanding rating into an unsatisfactory one, and had improperly superseded existing provisions in the faculty handbook with regard to annual performance evaluations and the post-tenure review process. The

board, at its meeting on August 12 and 13, declined to reverse the president's decision.

2. THE CASE OF PROFESSOR COBBS

Professor Cobbs's academic career at VSU had been troubled since the early 1990s, by which time she had already served on the faculty for more than two decades. In April 1996, she wrote to the Association's staff that over the preceding three years she had experienced repeated acts of "professional, political, and personal harassment." In November of that year, she wrote to President Moore that "during the past several years, I have been the subject of continuous and systematic harassment and abuse by the current University administration." She cited as one instance of "abuse and harassment" her having been issued a terminal contract the previous May that was replaced the following month (after she had engaged an attorney and threatened litigation) with a contract that recognized her tenure. She also protested "unfair" performance evaluations, resulting in small or no salary increases, and her removal as director of the social work program "for false reasons without notice or opportunity to defend myself or verify the merits of the charges."

In 1996 and 1997, Professor Cobbs filed complaints with the Norfolk regional office of the Equal Employment Opportunity Commission (EEOC), which that office did not pursue. In fall 1998, she commenced legal action against the university, which she subsequently withdrew. In these several actions, she alleged that she had been wrongfully removed from the positions of chair of the Department of Sociology and Social Work and director of the program in social work, that she was "systematically denied" any meaningful involvement in the work of the department and of the university, and that members of the administration and of the department had defamed her to students, parents, other department colleagues, and professional peers.

Professor Cobbs has claimed that the reasons for these actions—and for the actions discussed below that were taken against her during the 2003–04 and 2004–05 academic years—involved her political beliefs and affiliations and her race and were also in retaliation for filing EEOC complaints and for testifying in support of a faculty colleague's lawsuit against the university. Professor Cobbs describes herself as a politically conservative African American who has been active in Republican Party circles at the local and state levels for many years. She claims that over the years, she incurred the displeasure of her administrative superiors for having challenged decisions they made and actions they took with regard to the program in social work.

In February 1999, following an unsatisfactory performance evaluation from her department chair, to which she objected on both substantive and procedural grounds, Professor Cobbs was notified by Samuel L. Creighton, her dean at the time,

that she would be subject to the university's post-tenure review process. Responding to the dean, Professor Cobbs protested that the review was an "unwarranted and arbitrary act . . . of intimidation and continued harassment . . . intended to embarrass and cause me harm." Under the university's existing procedures for post-tenure review, discussed above, a three-person faculty committee was convened to review Professor Cobbs's performance. In its report dated May 24, 1999, the committee identified several procedural flaws in the evaluation of her classroom performance, and it concluded that the post-tenure review should "be terminated immediately." The administration took no further action at that time.

Although Professor Cobbs experienced other difficulties with the administration over the next few years, she was not faced with a further threat of a post-tenure review until fall 2003. In a memorandum dated November 21, the chair of her department, Mokerrom Hossain, issued a negative evaluation of her professional work, "due to [her] lack of performance in the areas of research and community service." While assessing her performance as unsatisfactory in each of those two areas, he deemed her teaching performance as satisfactory. At the time of the evaluation, Professor Cobbs's annual "weight-scale" percentages, which designated her "relative weight distribution" (amount of work time to be spent) in the areas of teaching, research, and service, were respectively 75, 10, and 15 percent, as they had been for several years running. Professor Cobbs took sharp issue with her chair's negative evaluation, and in a December 9 memorandum to Professor Hossain she requested "an immediate appeal and redress."

Dr. Thomas informed Professor Cobbs by letter dated December 15, 2003, that she would receive no salary increase for the next academic year, and that she would "have to enter a post-tenure review process." The provost also emphasized the need for her to work with Professor Hossain and Dr. Weldon Hill, dean of her school, on the preparation of a professional development plan, which both of them would have to approve. Professor Cobbs met with the provost on January 13, 2004, to discuss his December 15 letter and the administration's decision to place her into post-tenure review, to which she objected on both professional and personal grounds, as she had done more than four years earlier.

During the fall 2003 semester, as well as the previous spring semester, Professor Cobbs had found it necessary to take a leave of absence to care for her critically ill husband, who died in late January 2004. She complained about what she describes as "insensitive and outrageous treatment" by the administration. She reports that at her meeting with Dr. Thomas on January 13, he told her that she "had been placed into post-tenure review because [she] had failed to make plans for [her] classes when [she] was out"—charges she flatly denied.

The source of some of the difficulties with her absences appears to have been a change in the system for accruing leave

time for VSU faculty. The investigating committee is unable to sort out the intricacies of this dispute, but it did review records produced by Professor Cobbs showing what appeared to be the sudden disappearance of hundreds of hours of accrued leave time. As a result, the time Professor Cobbs took off to care for her husband seems to have exceeded what the VSU administration claimed was her allotment. Moreover, there seems to be some question about whether sick leave could be used to care for family members. In any case, Professor Cobbs's pay was docked for several weeks of "unauthorized" leave, adding to her sense of grievance.

By letter of March 11, 2004, written as a result of her failure by that date to prepare a development plan (required, according to the handbook, by the end of the spring), the provost notified Professor Cobbs that her "faculty contract, normally issued in April, will be held and not issued until [her] approved Professional Development Plan is submitted to this office." Throughout the spring, Professor Cobbs continued to challenge the administration's actions, arguing that she had been denied due process. (In the meantime, she filed another complaint with the EEOC, updating one that she had filed earlier, alleging "ongoing retaliatory actions from administration officials." On February 27, the EEOC had issued her a right-to-sue letter based on her charge of retaliation.)

In an undated letter that she reports having delivered to the department chair's office on the afternoon of April 14, Professor Cobbs offered a one-paragraph "improvement plan," while again protesting the chair's negative evaluation of her performance and the administration's denial to her of any opportunity to appeal her placement into the post-tenure review process (an opportunity she had in 1999). That same day, Professor Hossain responded to her letter, stating that she had failed to "provide any 'development plan' or strategies or measures that you are going to take during the coming academic year to improve your performance in the areas" in which she was found to be deficient. He concluded, "You are still in noncompliance with the requirements of the post-tenure review process, because you have not submitted a 'development plan' as outlined by the provost."

The next day, she submitted what she termed "a comprehensive faculty development plan," setting forth her objectives and her plans for accomplishing them, with a cover memorandum reiterating her objections to her treatment by the administration. She sent copies of the memorandum and the attached plan to President Moore, Dr. Thomas, and Dr. Hill. On April 20, Professor Cobbs wrote to the president and the provost requesting that her "tenured contract be released." (On May 10, when she had not yet received her contract, she submitted another complaint to the regional office of the EEOC.)

On May 24, Professor Hossain rejected her plan as "generally vague" and as failing "to maximize the opportunity for you to demonstrate your effectiveness in the areas which require

improvement.” He went on to offer his own “specific observations and suggestions.” In a subsequent memorandum, dated June 1, following receipt of a May 26 memorandum from Professor Cobbs in which she again complained about the process and about the instructions issued to her, Professor Hossain wrote, “Please be advised that this process cannot go on indefinitely. Your approved Faculty Development Plan must be established by July 15, 2004. If you do not have a [workable] plan by this date, you will not be issued a faculty contract for the coming year.”

On July 15, Professor Cobbs submitted a revised and expanded plan, in which she set forth her objectives in the areas of instruction, research and scholarship, and professional and community service for the 2004–05 academic year, along with her plans for accomplishing them. In doing so, she continued to raise questions and concerns about the process.

On July 29, Professor Hossain signed Professor Cobbs’s revised development plan, including an accompanying “weight-scale” distribution form, with the percentages for instruction, research, and service still listed respectively as 75, 10, and 15, and he forwarded the documents on to Dr. Hill. The dean, in a memorandum to the chair dated August 3, indicated that his own endorsement of the latest plan was contingent on Professor Cobbs’s accepting “some minor emendations,” intended to “give greater prominence [to] our main aims: (1) to facilitate Dr. Cobbs’[s] professional development and (2) to enhance instruction/student learning opportunities.” The dean’s proposed changes included a recalibration of Professor Cobbs’s weight scale to 60, 20, and 20 percent on the grounds that “the progenitors of this post-tenure review are unsatisfactory ratings in research and service.”

The dean also provided his own two-page tabulated list of specific “research objectives” and “service objectives” for Professor Cobbs to meet, along with stated “assessment measures” (with “official documentation required”) and “implementation strategies.” Under his version of her plan, Professor Cobbs was expected to satisfy several of the key stated objectives—including a scholarly paper accepted for publication in a refereed journal and a research proposal for outside funding—“by December 2004.” The dean concluded his memorandum by stating that, “inasmuch as an acceptable form of this plan was not submitted prior to the 15 July 2004 deadline, we will have to immediately petition Provost Thomas for an extension. (I cannot be certain that this request will be granted.)”

On August 9, Professor Cobbs met with Professor Hossain and Dr. Hill to discuss the dean’s revised version of her development plan. Two days later, she wrote to the dean, expressing appreciation for the meeting but also taking strong exception to the change in the distribution of her designated workload allocation and characterizing the “time frame allocated . . . , the expectations, and the requirements [as] excessive and outrageous” and as “a blueprint for failure.”

She also complained that the administration was imposing requirements upon her to which no other faculty members were being held. Responding by letter dated August 17, the dean stated that the “emendations [he had] recommended relative to the content and format of [her faculty development plan] were offered solely to enhance the clarity of objectives, assessment measures, and timelines toward achieving the aims of the [plan].” While noting that she was “in no way compelled to agree with” either his recommendations or those of Professor Hossain, he reiterated his previous concerns that her proposed plan was “unclear with particular regard to assessment measures and timelines.” He called on her to “submit immediately a revised plan that addresses these concerns,” and he stated that he would “forward it to Provost Thomas with [a] full endorsement or nonendorsement (with rationale) for his disposition.”

On Monday, August 23, the first day of classes for the fall semester, Professor Cobbs met with the dean in his office, and she says they agreed that the plan that she and her chair had signed, but that the dean declined to approve, would be forwarded to the provost. According to Professor Cobbs, the timing of her meeting with the dean prevented her from teaching her classes that day, but she did teach them on Tuesday and Wednesday of that week and was planning to do so on Thursday as well. On that morning, however, Professor Hossain, stating that he was writing on instructions of the dean, handed Professor Cobbs a memorandum directing her to cease teaching her classes until she signed a contract for the 2004–05 academic year. No such contract had as yet been proffered to her.

A week later, by letter dated September 3, the office of human resources, citing her purported “separation from state service on May 10, 2004,” notified Professor Cobbs that her “participation with the State Health Benefits Program will end effective August 31, 2004, due to your separation.” The letter also stated that her other benefits were likewise terminated. Professor Cobbs’s written and oral protests about these actions, as well as her requests for clarification about her employment status that she directed to the president, the provost, the dean, and the office of human resources, proved unavailing. A September 9 memorandum she wrote to human resources questioned the basis for the withdrawal of benefits: “I have received no official reason or notification that I have been terminated. Nor have I done anything that would warrant the same. Until such time that I give cause for dismissal, I expect for my benefits to remain intact.”

Although she continued to go to her office regularly during the month of September, Professor Cobbs did not teach her classes, which were reassigned to others, and she did not receive any salary payments. On September 17, she had what she described as a “positive meeting” with Dr. Hill, at the end of which she signed her faculty development plan as revised by

the dean. On September 27, following a conversation that a member of the AAUP staff had with President Moore regarding Professor Cobbs's apparent dismissal from the VSU faculty and a letter that the staff sent electronically to the president conveying the Association's concerns about the matter, the administration issued her a contract. It was signed by the provost, with an expiration date of January 9, 2005, and included a typed notation indicating that she was "in post-tenure review."

During the fall, Professor Cobbs worked to meet the requirements of her approved development plan. In November, after she had received from Dr. Hill what she understood was a promise of modest financial support for these efforts, he informed her that he had no money in his budget for that purpose.

By letter dated December 16, 2004, as stated above, Dr. Thomas notified Professor Cobbs that her services as a tenured member of the VSU faculty were being terminated as of January 9, 2005. The provost's letter stated that in the judgment of Professor Cobbs's department chair and dean, she had "made little or no progress under [her] Faculty Development Plan, especially in the area of scholarly research and related matters, even though," he wrote, she had been "given 100 percent release time away from classroom instruction so that [she] could pursue such endeavors." As a consequence, he wrote (using the identical language he had used in the letter of dismissal he had written the previous May to Professor Olusoga), she was being "terminated for good cause under, at least, the following provisions [of the VSU Faculty Handbook]":

Refusal, continuing or repeated neglect, or inability to competently perform a faculty member's responsibility—teaching, scholarly research/creative activities, and professional service.

Unprofessional conduct that renders the faculty member unfit to continue as a member of the faculty or compromises the ability of the unit, school, or University to function or to fulfill its academic mission.

He concluded, "These grounds are combined with your unsatisfactory evaluation and Post-Tenure Review."

In a response dated January 3, 2005, addressed to President Moore, Dr. Thomas, and Mr. Johnson (the board chair), among others, Professor Cobbs requested that she "be provided all avenues of appeal and that the grievance process be initiated immediately." She also requested a hearing before the personnel committee of the board of visitors. She concluded by requesting "information that substantiates the charges that I have not made progress on the Faculty Development Plan, that should not [have been] applied in the first place, and that I have demonstrated Unprofessional Conduct. I take these

charges and allegations seriously. I have provided leadership and my reputation is being ruined."

Not having received a response to her memorandum, Professor Cobbs wrote again to the provost by letter of January 15, reiterating her concern about the unspecified, but "very serious allegations" contained in the provost's dismissal letter. She again requested "the particulars that constitute good cause for termination of [her] employment after more than thirty-three years of outstanding service," so that she "might be able to vigorously defend [her]self." The provost did not respond. In the meantime, Professor Cobbs's request to appeal to the board of visitors was rejected on grounds that she had not exhausted available campus procedures.

Professor Cobbs then appealed her dismissal to the Appeals Subcommittee of the Committee on Reconciliation, a five-member body appointed by the provost. The panel, initially convened on January 20, 2005, met five more times during February and March. In its report of March 21, the committee, by vote of 4 to 1, upheld the administration's decision to dismiss Professor Cobbs. The majority found "evidence of low scholarly activity and growth, and no documentation of such growth." It also found (quoting from the provost's letter of December 16, 2004) "evidence of conduct that compromises the ability of the department, school, and University to function or to fulfill its academic mission specific to her discipline." The report did not elaborate on these findings.

The dissenting member of the committee found "several significant procedural errors that violated due process during the development and implementation of [Professor Cobbs's] 'Faculty Development Plan.'" He also found that "the 'unsatisfactory' evaluation that placed Dr. Cobbs into [post-tenure review] was done by only one faculty member, without review by other faculty in the department or school, despite formal requests for appeal [by Professor Cobbs] and numerous complaints that process was not followed."

Professor Cobbs's subsequent appeals, successively to President Moore and to the VSU board of visitors, were rejected.

3. THE ASSOCIATION'S INVOLVEMENT

Professor Cobbs first approached the Association for assistance in April 1996 and then periodically thereafter as a result of various adverse actions that she reported having been taken against her. In August 1999, the staff wrote to the VSU administration following the denial of a salary increase to Professor Cobbs for the 1999–2000 academic year (and in previous years) and the administration's decision to initiate a process of post-tenure review. The staff's letter, noting that the faculty panel charged with conducting the review in her case had determined that Professor Cobbs had not been given a proper evaluation and had recommended termination of the post-tenure review process, urged the administration to follow the panel's recommendation. President Moore declined in his

reply to address these concerns, but the post-tenure review in her case was in fact halted.

The staff's next involvement with matters at VSU occurred in fall 2001, following a request from the local AAUP chapter and other faculty members at the university. The staff wrote to President Moore and Mr. Johnson (the board chair) in December 2001 to protest actions taken by the board of visitors to dissolve the elected Faculty Council and to replace it with an interim University Council, consisting of administrators, staff members, and students as well as faculty, "organized and operated under the leadership of the . . . President." The board, acting on the administration's recommendation, had called for the development of a wholly new system of governance for the university, a process that was undertaken by a presidentially appointed task force.

While the Association continued to hear periodically from the campus AAUP chapter about perceived problems with governance at the university, the next specific request for assistance did not come until early June 2004, when Professor Olusoga approached the staff soon after his dismissal had been effected and submitted extensive documentation relating to his situation. The staff wrote a series of letters to the VSU administration, setting forth the Association's concerns about the issues of tenure and academic due process posed by his case. The staff repeatedly urged that the administration rescind the May 6 notice of dismissal it had issued to Professor Olusoga, and that any further action it contemplated taking in his case be in accordance with standards of academic due process. With the Association's concerns relating to the case remaining unresolved, the staff informed the VSU administration by letter of September 9 that an investigation had been authorized.

In mid-September 2004, the staff heard again from Professor Cobbs, as a result of her having been advised by the VSU Office of Human Resources of her "separation from state service" as of the previous May 10. The staff wrote to President Moore about Professor Cobbs's case on September 21, urging her reinstatement pending affordance of academic due process. President Moore telephoned in reply to say that Professor Cobbs had not been dismissed and was continuing to receive her salary, but without assigned duties. The investigating committee notes, however, that the contract issued to her on September 28, 2004, was only for the fall semester, and that her suspension from duties since the end of that semester has been without salary.

By letter of November 1, the staff informed the administration of the membership of the undersigned investigating committee and proposed dates for its visit to the university. Responding to subsequent letters from the staff concerning the visit, President Moore wrote on December 8 that on advice of university counsel

because Professors Cobbs and Olusoga have ongoing personnel disputes with the University, it would be inappropriate for the University's Provost, any staff who supervised these individuals, or me to discuss any matter relating to their employment with you or any representative of the American Association of University Professors. Additionally, for the same reason, counsel has advised me that it would be inappropriate for members of the Academic Appeals Panel, or member of the University's Board of Visitors to discuss any matter involving these individuals' employment by the University.

The investigating committee visited the campus on December 16, 2004, with its invitation to the administration for a meeting having been declined. When the committee arrived on campus, it found that a classroom in the School of Engineering, Science, and Technology that had been scheduled by the AAUP chapter president for meetings with faculty members was locked and guarded by a VSU staff member. The chapter president referred the committee's inquiries to the school's dean, who declined to provide his permission for its use. The committee thereupon moved to a nearby faculty lounge. The hallway outside the classroom and lounge were covered by security cameras, which could be monitored by the dean in his office. Twenty faculty members nonetheless did meet with the committee.

The investigating committee regrets the unwillingness of the president and other administrative officers at VSU to cooperate with the investigation. The committee believes, nonetheless, that the available documentation and the interviews it conducted provide sufficient information to assess the issues of concern, make findings, and reach the conclusions that follow.

II. Issues

In this section, the committee considers several issues related to the two dismissals.

1. POST-TENURE REVIEW

In 1983, the Association adopted a policy that sharply criticized systems of periodic review of the performance of tenured faculty members:

The Association believes that periodic formal institutional evaluation of each postprobationary faculty member would bring scant benefit, would incur unacceptable costs, not only in money and time, but also in dampening of creativity and of collegial relationships, and would threaten academic freedom.

The Association emphasizes that no procedure for evaluation of faculty should be used to weaken or undermine the principles of academic freedom and tenure. The Association cautions particularly against allowing any gen-

eral system of evaluation to be used as grounds for dismissal or other disciplinary sanctions. The imposition of such sanctions is governed by other established procedures, enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, that provide the necessary safeguards of academic due process.²

In a 1999 report, *Post-Tenure Review: An AAUP Response*, the preparation of which was prompted by the widespread consideration and adoption of post-tenure review policies in the academic community, the Association declared that “post-tenure review ought to be aimed not at accountability, but at faculty development.” The report continued:

Post-tenure review must be developed and carried out by faculty. Post-tenure review must not be a reevaluation of tenure, nor may it be used to shift the burden of proof from an institution’s administration (to show cause for dismissal) to the individual faculty member (to show cause why he or she should be retained). Post-tenure review must be conducted according to standards that protect academic freedom and the quality of education.

The document went on to set forth “practical recommendations for faculty at institutions where post-tenure review is being considered or has been put into effect.” The report emphasized that

in the event that recurring evaluations reveal continuing and persistent problems with a faculty member’s performance that do not lend themselves to improvement after several efforts, and that call into question his or her ability to function in that position, then other possibilities, such as a mutually agreeable reassignment to other duties or separation, should be explored. If these are not practicable, or if no other solution acceptable to the parties can be found, then the administration should invoke peer consideration regarding any contemplated sanctions.

The report concluded that

the standard for dismissal or other severe sanction remains that of adequate cause, and the mere fact of successive negative reviews does not in any way diminish the obligation of the institution to show such cause in a separate forum before an appropriately constituted hearing body of peers convened for that purpose. Evaluation records may

be admissible but rebuttable as to accuracy. Even if they are accurate, the administration is still required to bear the burden of proof and demonstrate through an adversarial proceeding not only that the negative evaluations rest on fact, but also that the facts rise to the level of adequate cause for dismissal or other severe sanction. The faculty member must be afforded the full procedural safeguards set forth in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the *Recommended Institutional Regulations on Academic Freedom and Tenure*, which include, among other safeguards, the opportunity to confront and cross-examine adverse witnesses.

The 2004 edition of the VSU Faculty Handbook sets forth the following policy on “Post-Tenure–Continuing Contract Review”:

All faculty in every category (including tenured and non-tenured) are evaluated annually. These annual reviews are considered to be one element of the university’s post-tenure/continuing contract review process affecting all tenured faculty. The major appraisal areas include teaching, advisement, scholarly activities, research and professional service, as appropriate. The primary purpose of the evaluation is for professional development and continuous improvement in teaching and scholarly productivity, research, and service. The department chair or director makes an assessment of the faculty member’s overall performance. The performance is rated as outstanding, noteworthy, satisfactory, or unsatisfactory.

Failure to meet the established university performance criteria will result in an overall rating of unsatisfactory. Tenured/continuing contract faculty receiving an unsatisfactory rating will be subject to the post-tenure review process. . . . This process may result in dismissal for cause, as set forth in the *Faculty Handbook*, Section 2.13. Such faculty are required to develop a one-year Faculty Development Plan in collaboration with the department chair or director and dean. A copy of the plan is submitted to the provost. The purpose of the Faculty Development Plan is the alleviation of problems noted by the department chair or director and dean. Support mechanisms are established to assist the faculty member throughout the Faculty Development Year. Guidelines and procedures for the Post-Tenure /Continuing Contract Review process are described in full in the *Academic Procedures Manual*.

The VSU procedures for post-tenure review, which were developed jointly by the administration and the Faculty Council and adopted as official policy in April 1997, provide for a multistep process. The Association was informed that the

2. The 1940 *Statement* and the 1958 *Statement* were issued jointly by the AAUP and the Association of American Colleges and Universities.

procedures are still in effect. The process is to begin with a faculty committee of three tenured faculty members at the department or school level reviewing relevant documents to determine if the overall unsatisfactory rating that triggered the review was justified. If the department or school committee determines that the rating was not justified, the committee is to report to the chair with an explanation, and “the post-tenure review is terminated without prejudice to the faculty member.”

If the committee finds that the unsatisfactory rating was justified, “then it develops a one-year professional development plan in collaboration with the faculty member and department chair that addresses the identified weaknesses. This plan is shared with the school dean [or] director. Throughout the year, the chair and dean are responsible for assisting the faculty member and monitoring the plan.”

There is also provision for the faculty member to challenge the committee’s concurrence with the unsatisfactory evaluation by appealing to an ad hoc school or university committee of three tenured professors, which may terminate the process if it finds that the unsatisfactory evaluation was not justified. If the appeal is unsuccessful, the process continues and the policy provides that, at the end of one year of professional development, the department or school committee, working in collaboration with the department chair, will submit a final report on the faculty member’s progress and make one of three recommendations: “continue with the plan and extend it one more year”; “recommend termination of the faculty member for cause”; or “determine that the faculty member has completed the post-tenure review process.”

The policy concludes as follows: “All professional development plans for the post-tenure review process should be developed during the spring semester following the annual performance evaluation and implemented at the beginning of the next academic year, and be in effect [until] the end of the academic year.”

The VSU post-tenure review process just described places some emphasis on faculty development and on the role of the faculty in particular cases. Nonetheless, the investigating committee finds the policy seriously flawed when measured against AAUP-supported standards. First, the policy makes no provision for faculty peer involvement in the original performance evaluation that triggers the post-tenure-review process. Responsibility for that assessment rests entirely with the department chair and the dean. While provision is made for faculty review of the initial evaluation before the post-tenure-review process is implemented, the burden is effectively placed on the faculty member to overcome the negative assessment.

Second, and even more troubling, the policy provides that an unsatisfactory post-tenure review can stand alone as grounds for dismissal. Lastly, although provision is made for an appeal process, the policy does not require the administration to

demonstrate that the faculty member’s overall performance is in fact so deficient as to constitute adequate cause for dismissal.

Post-Tenure Review in the Case of Professor Olusoga. As previously discussed, the VSU board of visitors, at its meeting on November 7, 2003, approved an amendment to the university’s existing post-tenure review policy as it pertained to faculty in the School of Business. The policy under which Professor Olusoga was reevaluated was instituted without any prior discussion with the faculty of the business school and was applied immediately and retroactively to each faculty member’s performance of the previous year. Only a short time earlier, Professor Olusoga’s performance had been judged as “outstanding” by both his department chair and the dean.

The new evaluation policy did not include any specific procedures to be followed in applying the standards of the Association to Advance Collegiate Schools of Business, nor did the amendment adopted by the board of visitors appear to carry any implication that the existing post-tenure-review procedures were to be superseded or disregarded. The AACSB standards do not provide any specific guidelines concerning the number of publications or other “intellectual contributions” required for classification as academically qualified. Although they mention publications as the common means of demonstrating intellectual contributions, they also recognize other means, such as conference presentations.

The information made available to Professor Olusoga after his dismissal had been effected indicates to the investigating committee that his contributions in the categories that were listed in the AACSB guidelines had been understated. In a document the dean compiled in connection with the accreditation process, he listed the publications and other “intellectual contributions” of the business school faculty during the relevant evaluation period. Professor Olusoga was credited with no contributions in either category, even though his resume shows at least three publications in refereed conference proceedings. Moreover, according to Professor Olusoga, other categories in which he scored well, such as presentations at conferences, were not included in the dean’s tabulation, although the AACSB standards refer to them as indicators of “intellectual outputs.” In the memorandum he wrote following his March 29 meeting with Professor Olusoga, Dr. Bejou stated that Professor Olusoga “needs at least two or three journal articles and from five to seven conference papers by the end of this academic year [2003–04] to be deemed Academically Qualified (AQ).” Nowhere do the AACSB standards require such productivity in the few months from the formulation of a development plan to the end of the academic year; in the investigating committee’s judgment, such an expectation was clearly unreasonable.

The investigating committee has not been able to determine how the outside consultants were chosen, what standards they used to conduct their evaluations, or why they were entrusted

to assess Professor Olusoga's credentials and those of his colleagues in the business school, contrary to VSU's own procedures. The AACSB standards, so far as the investigating committee was able to determine, call for extensive faculty involvement in the accreditation process. The VSU administration appears to have deferred to the judgment of its outside consultants, particularly Dr. Sorensen, as to whether or not Professor Olusoga was "professionally qualified" under AACSB standards.

In delegating such a judgment to an administrator at another institution, and in not allowing for a process of peer review within VSU, the administration proceeded in disregard of the principles and standards set forth in the *Statement on Government of Colleges and Universities* and other Association policies specifying the faculty's primary role in making academic decisions and determining faculty status. Moreover, Professor Olusoga was given no opportunity to respond to the consultant's initial evaluation of his qualifications before the post-tenure-review process went forward; at no time, not even during his post-dismissal hearing, was he provided with more than a summary statement of the conclusions of the consultant as to the purported inadequacy of his performance.

Professor Olusoga contends that the post-tenure review in his case "represent[ed] a rush to judgment." He was given only two months, from November until January, to develop his plan, on which he was then evaluated in March, contrary to VSU's written procedures, which call for the plan to be developed "in the spring" and to be implemented during the following academic year, with an evaluation of the faculty member's performance to be conducted thereafter. The existing procedures also call for the review to be the responsibility of a faculty committee, which did not exist in Professor Olusoga's case, and the department chair, who gave him a favorable review. Instead, the dean (who had previously evaluated his overall performance as "outstanding") and the provost, on the strength of the outside consultant's opinion, found his progress to be unsatisfactory. Professor Olusoga protested the compressed timeline, the lack of VSU faculty involvement in the review process, and the administration's failure to afford him an opportunity to contest the evaluation and the resulting decision to dismiss him before that decision was made.

The majority report of the appeals panel (which held a hearing after his dismissal had been effected) consisted of a two-sentence affirmation of the administration's position that his post-tenure review revealed unsatisfactory performance. The minority report, by contrast, discussed at length what its author termed "procedural irregularities . . . that raise questions about due process in this case and about tenure at VSU." The minority report observed that "[t]he Procedures for Post-Tenure Review (PTR), as approved by the Faculty Council in 1997, describe a sequence of enumerated steps to be taken once a

faculty member is placed in PTR as the result of an unsatisfactory rating." It went on to note the deficiencies described above.

The investigating committee finds that the summary nature of the appeals panel's majority report, especially in light of the fact that Professor Olusoga was not allowed to hear the evidence (if any) presented by the dean and the provost, denied him due process. It certainly hampered effective further appeal. The investigating committee finds further that the post-tenure-review process that was carried out in the case of Professor Olusoga, initiated on the basis of a recommendation by an outside consultant, treated him as if he were a candidate for retention, with the burden placed on him to show why he should be retained, and was thus inimical to basic principles of faculty tenure.

Post-Tenure Review in the Case of Professor Cobbs. During her last five years as a member of the VSU faculty, Professor Cobbs was twice placed into post-tenure review. As discussed earlier, she first went through the process during the 1999–2000 academic year, but the process was aborted when a faculty committee found that serious procedural irregularities had occurred. The above-cited 1997 procedures for post-tenure review appear to have been followed on that occasion.

The post-tenure review to which Professor Cobbs was subjected beginning in the middle of the 2003–04 academic year was quite different. None of the steps set forth in the 1997 document seem to have been followed. In particular, Professor Cobbs reports that she was issued notice of dismissal without a faculty committee having been involved at any stage of the evaluation and review process. For nearly a year, she sought to challenge the chair's "unsatisfactory" rating of her overall performance, the administration's resulting decision to place her in post-tenure review, the requirement that she prepare a development plan, the necessity of producing multiple versions of the plan, and the process by which her failure to submit an officially approved plan became the basis for withholding her contract for the 2004–05 academic year. She also complained about the administration's failure to afford her the one year called for in the post-tenure-review policy to carry out her development plan and the denial of any substantial assistance to meet the requirements of the plan before she received the December 16 notification of dismissal. It is not clear on what basis the unsatisfactory determination was made that resulted in the decision to dismiss. Her repeated protests were completely disregarded.

The investigating committee finds that the administration's application of the post-tenure review process to Professor Cobbs's case was unreasonable and unfair. It further finds that the administration's decision to condition the issuance of a further contract on her submission of an approved post-tenure review development plan was at odds with VSU's own post-tenure-review policy, and that, in treating Professor Cobbs, as

it did Professor Olusoga, as a candidate for retention, the administration acted in violation of basic principles of faculty tenure.

In both the case of Professor Olusoga and that of Professor Cobbs, the VSU administration altered the university's existing post-tenure-review procedures, to their disadvantage and potentially to the disadvantage of other tenured faculty members at the institution. The investigating committee finds that the administration's actions in this regard, with termination of tenured faculty appointments in the balance, represented gross departures from academic due process.

2. PROCEDURAL CONCERNS IN THE TWO DISMISSALS

According to the 1940 *Statement of Principles*,

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. . . . 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 procedures, as amplified in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (and in the AAUP's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*), set forth a number of particular requirements: the presentation of specific charges only after other avenues of recourse have been pursued, a hearing of record before an elected faculty body, and the right to confront and cross-examine witnesses. In the case of dismissal, the burden of proof rests with the administration to demonstrate adequacy of cause by clear and convincing evidence in the record considered as a whole.

The Case of Professor Olusoga. The hearing in Professor Olusoga's case involved a number of departures from Association-supported standards as well as from the procedures called for in VSU's official policies. The situation was complicated by the fact that the procedures roughly followed were apparently those set forth in the 1995 Faculty Handbook, even though the grounds for dismissal invoked by the provost in his May 9, 2004, letter to Professor Olusoga were from the list set

forth in the 2004 edition, as the 1995 handbook is silent on the subject of post-tenure review.

The 2004 edition specifies that the Appeals Subcommittee of the Faculty Senate Committee on Reconciliation should "hear appeals relating to . . . termination" and is silent on the composition of the committee. However, that committee is not the one that heard the appeal. The 1995 edition provides for a hearing before the University Academic Appeals Panel, established by the president, and describes the committee as "consisting of five faculty members holding tenure or continuing contract status, no more than one of whom shall be at the level of department chair or above." The 1995 policy also required that "at least three of the president's appointments . . . be made from a list of candidates submitted by the Faculty Affairs Committee of the Faculty Council," a body that no longer exists. Although Professor Olusoga's hearing was before the appeals panel, that body was not constituted in accordance with the 1995 handbook. Professor Olusoga appealed to both committees, but the choice of which committee heard the appeal was not up to him. The investigating committee was unable to learn who made the decision as to which body would hear the appeal or why the appeals panel was selected.

As described above, the AAUP's recommended standards call for a hearing committee in a faculty dismissal case to consist of elected members of the faculty, with no officer of the administration selecting those who serve and no administrative officers serving on the committee. By contrast, Dr. Thomas appointed the five individuals who served on Professor Olusoga's appeals panel, and one member chosen to serve on the committee was an officer of the administration.

Fundamental to academic due process, under Association-supported standards, is the requirement that the hearing in a dismissal case take place before dismissal is effected. Indeed, VSU's dismissal procedures themselves provide that the appointment of a faculty member "will not be terminated while the appeal is pending." The provost's letter of May 6 to Professor Olusoga, however, notified him that his dismissal was to take effect on May 11. The appeals panel did not convene to hear his case until May 17 and continued on May 25, 26, and 27. The burden of proof, which should have rested with the administration to demonstrate adequacy of cause for its proposed action before Professor Olusoga was dismissed, was in effect placed on him to demonstrate why he should not have been released.

Like the AAUP's recommended standards, the university's procedures further provide that "both parties may examine or cross-examine witnesses as the panel may determine to be fair and appropriate." Professor Olusoga reports that he was not invited to be present when the provost and the dean testified before the hearing panel, and that he was denied the opportunity to confront and cross-examine these two witnesses, whose testimony was presumably most central to the case. He is not aware of whether other witnesses may also have testified in his

absence, and he did not even receive the taped recording of the testimony that was given in his presence.

While the university's dismissal procedures, similar to Association-appointed standards of academic due process, state that a "taped or transcribed record of the hearing will be maintained and made available to the parties," when Professor Olusoga requested the tapes of the panel's hearings, the chair of the panel informed him that the "tapes proved unlistenable because of a malfunction in the cassette player." The unavailability of a record of the hearing served to impair his subsequent appeal to the president and then to the board of visitors, both of which appeals were rejected.

The investigating committee finds that in several key respects the procedures that were followed in the hearing afforded to Professor Olusoga failed to comport with Association-recommended standards and often with VSU's own stated policies. Taken together, these severe deficiencies in the hearing procedures served to deny Professor Olusoga the protections of academic due process to which he was entitled as a tenured member of the faculty.

The Case of Professor Cobbs. When Professor Cobbs appealed the decision to terminate her appointment as conveyed to her by the December 16, 2004, letter from Dr. Thomas, she was effectively dismissed by being placed on suspension without pay as of January 9, 2005. She had earlier petitioned a faculty committee for redress concerning the previous actions of the administration in placing her on post-tenure review and suspending her from classroom duties (that suspension is discussed below). Her subsequent appeal of the dismissal before another faculty body, conducted under procedures similar to those followed in the Olusoga case, and similarly flawed, proved unavailing. Had it resulted in her reinstatement to the faculty, however, the outcome still would not have remedied the denial of due process involved in taking the action to dismiss her before a hearing took place.

3. SUBSTANTIVE CONCERNS

The committee identified the following substantive concerns in the cases of Professors Olusoga and Cobbs.

The Case of Professor Olusoga. As for the substantive grounds for dismissing Professor Olusoga, Dr. Thomas, in his May 6, 2004, letter of dismissal, stated that the action was "for good cause." He cited two provisions of the Faculty Handbook, one having to do with "refusal, continued or repeated neglect, or inability to competently perform a faculty member's responsibility—teaching, scholarly research/creative activities and professional service," the other concerned with "unprofessional conduct that renders the faculty member unfit to continue as a member of the faculty or compromises the ability of the unit, school, or University to function or to fulfill its academic mission." He concluded by asserting that "these are combined with your unsatisfactory post-tenure review."

According to Professor Olusoga, the first two grounds were never pursued by the administration during the course of his hearing. He ended up being dismissed because of an "unsatisfactory post-tenure review," despite his most recent five years of "outstanding" or "noteworthy" performance in teaching, research, and service. The negative assessment of his performance, so far as the investigating committee was able to determine, related exclusively to his research (no concerns having been expressed regarding his teaching or service), as judged by his dean and an outside consultant, but contrary to the assessment of his department chair. The same dean had assessed his performance in the area of research, scholarship, and "creative activities" as outstanding only a few months earlier, when he signed Professor Olusoga's annual performance evaluation and recommended him for the highest salary raise allowed under VSU's policies.

The investigating committee finds that dismissal of Professor Olusoga resulted from an unfairly retroactive application of standards imposed by the administration without faculty consultation, standards which varied substantially from those that had previously been applied and that the faculty could expect would continue to be applied. The justification that the specific counting of publications was required by AACSB accreditation standards is not supported by reference to the standards themselves. Although the unspecified charges of incompetence and unprofessional conduct were apparently not pursued, their unsupported listing as grounds for dismissal caused considerable anguish and potential professional harm to Professor Olusoga.

The Case of Professor Cobbs. As recounted earlier in this report, Professor Cobbs, over the years, has repeatedly claimed that the administration acted against her because of her political beliefs and her race and in retaliation for testifying in a colleague's lawsuit. The investigating committee considers these to be serious allegations, but the administration's decision not to meet with the committee has precluded the committee's weighing of their merits. What is clear to the investigating committee, however, is that although an allegedly "unsatisfactory" performance record in the area of service was cited against her, the major emphasis in the administration's stated case against Professor Cobbs, as in its case against Professor Olusoga, was on her research record.

Professor Cobbs has stated that her "areas of research interest have always been related to teaching and curriculum development," and that over the years she did a great deal of work in those areas. She reports that she was initially appointed to the VSU faculty with an understanding that the university was primarily a teaching institution, and that she would not be expected to engage in research leading to publications or presentations at professional meetings. In fact, her doctoral degree was not a research degree. Her responsibilities were concentrated almost entirely on teaching and service as well as on directing and securing funding support for the social work

program and related community-service outreach programs. Until her difficulties in the early 1990s, there seems to have been little question that she carried out these various academic responsibilities satisfactorily.

The development plan established for her by the dean, however, contemplated substantial involvement in research that would result in a peer-reviewed publication under what surely was an unreasonable time frame. Moreover, as stated in the minority report on her postdismissal appeal, "it appears that Dr. Cobbs was asked to do what no one else in the Sociology Department has ever done, [that is], publish, in a refereed journal, work done while employed at Virginia State University."

According to the university's official policy, every faculty member undergoes an annual evaluation, the purpose of which is professional development and "continuous improvement." Under that policy, tenured faculty members who receive an overall unsatisfactory rating are placed in post-tenure review. But an evaluation that faults a tenured faculty member for not doing work she had not previously been expected to do, and a post-tenure review that calls upon her to develop a plan to carry out the new responsibilities, is patently unfair to the individual and antithetical to the stated purpose of both the annual evaluation and the review. Indeed, the investigating committee finds that the very requirement that a tenured faculty member produce a development plan acceptable to his or her administrative superiors, with the failure to do so constituting grounds for suspension and potential dismissal, undermines principles of tenure.

Whatever shortcomings were perceived in Professor Cobbs's performance—and none, so far as the investigating committee is aware, were identified in her principal areas of teaching and service—the committee finds that she should not have been sanctioned for purportedly failing to develop a satisfactory research program. The first action against Professor Cobbs resulting from post-tenure review was her suspension (with pay) from teaching and most of her other academic duties during the fall 2004 semester.

Association-supported policies regarding the suspension of faculty members from their teaching or other academic duties have their origin in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The criterion for suspension set forth there is that "immediate harm to the faculty member or others is threatened by the faculty member's continuance." No such harm was alleged or demonstrated. Professor Cobbs had originally been scheduled to teach a full load of courses during the 2004–05 academic year, and indeed had begun teaching her classes in the fall, when she was notified that, until she signed a contract—a document that had not yet been issued to her—she must "refrain from taking classes." She was subsequently issued a contract, for that semester only, but her fall classes had already been reassigned to others.

In a telephone conversation with a member of the Association's staff in mid-September, President Moore stated that the basis for this action had to do with Professor Cobbs's alleged failure to prepare an approved faculty development plan as part of the university's post-tenure-review process. As noted above, after having made several efforts to devise an acceptable plan, Professor Cobbs submitted one that received the approval of her department chair (all that was required under VSU's written procedures), though not that of her dean, before the beginning of the fall semester. She questioned why she should have been suspended from her normal duties—especially in teaching, where her performance had not been an issue—while she was working out the details of her development plan with the administration.

The investigating committee can find no justification for the administration's suspending Professor Cobbs from her teaching duties, even with pay. So far as the committee is aware, the administration made no claim that her continuance in those duties represented a threat of immediate harm. Following the conclusion of the fall semester, Professor Cobbs was notified by Dr. Thomas, in a letter dated December 16, that she was being dismissed for cause effective January 9, 2005, the date of the expiration of her existing contract.

4. NOTICE OR SEVERANCE SALARY

Under the 1940 *Statement of Principles*, "Teachers on continuous appointments 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." The VSU regulations appear to have no provisions regarding notice or severance salary in a dismissal for cause.

In the case of Professor Olusoga, the provost, by letter dated May 6, 2004, notified him that his dismissal was to take effect five days later, on May 11. He received the salary due him for what remained of the 2003–04 academic year, but the university ceased paying him any further salary thereafter. Although the letter of dismissal included the charge of "professional misconduct," Professor Olusoga reports that no specific misconduct was ever cited, the charge was not pursued in his postdismissal hearing, and it was not referred to in the hearing panel's report. A specific cause for dismissal in the VSU handbook is "moral turpitude," but this charge was never mentioned in the case of Professor Olusoga.

In the case of Professor Cobbs, she was notified by letter dated December 16, 2004, that she was being dismissed from the faculty effective January 9, 2005. In her case, as in that of Professor Olusoga, the letter of dismissal included the charge of "professional misconduct." The letter did not go on to specify any misconduct on Professor Cobbs's part. Her repeated requests for the "particulars" went unanswered. In her case, nonetheless, the majority of the hearing panel, without offering

any specification, and citing language taken from the provost's letter of dismissal, found "evidence of conduct that compromises the ability of the department, school, and university to function or to fulfill its academic mission specific to her discipline."

The investigating committee is unaware of any conduct by either professor that could reasonably be construed as involving moral turpitude. Accordingly, the committee finds that the VSU administration acted in violation of the provisions in the 1940 *Statement of Principles* regarding notice or severance salary by ceasing further salary payments to Professors Olusoga and Cobbs shortly after the initial notification of dismissal that was issued to them.

5. THE FACULTY ROLE IN INSTITUTIONAL GOVERNANCE

Generally accepted standards of academic government are enunciated in the Association's 1966 *Statement on Government of Colleges and Universities*. That document rests on the premise of appropriately shared responsibility and cooperative action among governing board, administration, and faculty in determining educational policy and in resolving educational problems within the academic institution. It also refers to "an inescapable interdependence" in this relationship that requires "adequate communication among these components, and full opportunity for appropriate joint planning and effort."

For nearly a quarter century before summer 2001, the faculty at VSU had been represented in institutional governance primarily through an elected Faculty Council and a system of largely elected faculty committees. Under President Moore, the Faculty Council was frequently at loggerheads with the administration and the board of visitors over various academic policy matters for which the faculty had come to expect it would have primary responsibility. Faculty members at the university complained about what Faculty Council officers characterized as the president's "authoritarian approach to leadership" and "a climate of distrust, secrecy, punitiveness, and professional disrespect." The council sponsored the January 2000 vote of no confidence in President Moore and others in his administration. At a meeting of the board of visitors in April 2001, following another year of bitter exchanges and confrontations, the administration called on the board to conduct "a formal assessment and evaluation of the effectiveness of the Faculty Council," which it charged with "generat[ing] a chronic air of negativism." On August 3, 2001, the board of visitors, without having undertaken an evaluation process and without having given prior notice to the faculty, adopted a resolution that dissolved the Faculty Council on grounds that it had "failed to serve the best interests of the university."

Subsequent to the Faculty Council's dissolution, a new system of institutional governance was developed by a presidentially appointed task force and put in place during the 2002–03 academic year. It includes a University Council and a Faculty Senate subordinate to it. According to VSU's official docu-

ments, the institution's current "system of shared governance" is "based on the core values of (1) informed and inclusive decision making; (2) transparency and clarity of operations and decision making; (3) open lines of communication between and among all components and members of the VSU community; (4) accountability; (5) mutual respect and trust."

Despite this official characterization of the current VSU governance system, members of the faculty complain about what they perceive as a continuing pattern of administration—and board—indifference toward or disregard for the legitimate role of the faculty in institutional decision making and a lack of sensitivity to faculty needs and concerns. Certainly, the action with respect to the institution of new evaluation standards in the School of Business without faculty consultation serves as an example of this administrative behavior. Other specific faculty complaints about actions taken with little faculty consultation include the mergers of departments, new regulations for the selection of department chairs, and the establishment and discontinuance of academic programs. Disregard of faculty recommendations, both positive and negative, with respect to tenure has also caused concern.

Of most immediate concern, however, the actions of the administration in disregarding VSU's own faculty-developed regulations in the evaluation, post-tenure review, and dismissal of Professors Olusoga and Cobbs appear to have further eroded faculty confidence in the commitment of the administration to shared governance and fair treatment of faculty. The investigating committee sees the immediate issue of governance at VSU to be President Moore's and the governing board's authoritarian practices regarding university government.³

III. Conclusions

1. The system of post-tenure review at Virginia State University, as the administration implemented it in the cases of Professors Sikiru Ade Olusoga and Jean R. Cobbs, made no provision for faculty peer involvement in the performance evaluation that triggered the post-tenure review process, permitted an unsatisfactory evaluation effectively to stand alone as grounds for dismissal, and shifted the burden of proof for retention from the administration to the affected faculty member. The process that was followed leaves tenured faculty vulnerable to dismissal without affordance of academic due process as called for under Association-supported standards. The two cases, although arising under different post-tenure review policies, exemplify in stark terms the deficiencies of a system of post-tenure review if an administration decides to use such a system to act against tenured members of the faculty whom it wishes to dismiss.

3. The VSU administration, responding to a prepublication draft of this report, stated that the text contained factual errors and misstatements but that it was prevented from addressing these matters "due to legal considerations." A further invitation for specific corrections or comments went unanswered.

2. The administration of Virginia State University acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the derivative 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* in dismissing Professors Olusoga and Cobbs from their tenured faculty positions without having first demonstrated cause for its action in a hearing of record before a duly constituted faculty body.

3. The VSU administration wrongfully suspended Professor Cobbs from her teaching duties by doing so without any evidence that her continuance represented a threat of immediate harm as required in the 1958 *Statement on Procedural Standards*.

4. The virtual absence of notice in the dismissals of Professors Olusoga and Cobbs and the failure of the administration to provide them with severance salary constitute severe departures from the applicable provisions of the 1940 *Statement of Principles*.

5. The Virginia State University administration's practices are seriously deficient in meeting the standards for faculty participation in institutional governance under principles of shared authority, as enunciated in the *Statement on Government of Colleges and Universities*.

MARY W. GRAY (Mathematics and Statistics)
American University, *chair*

WARNER LAWSON, JR. (Law)
Howard University

MARGARET KLAYTON MI (Business Administration)
University of Mary Washington
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; MARY L. HEEN (Law), University of Richmond; EVELYN BROOKS HIGGINBOTHAM (Afro-American Studies and Divinity), Harvard University; DAVID A. HOLLINGER (History), University of California, Berkeley; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), Yale University; ADOLPH L. REED (Political Science), University of Pennsylvania; CHRISTOPHER M. STORER (Philosophy), DeAnza College; DONALD R. WAGNER (Political Science), State University of West Georgia; MARTHA S. WEST (Law), University of California, Davis; JANE BUCK (Psychology), Delaware State University, *ex officio*; ROGER W. BOWEN (Political Science), AAUP Washington Office, *ex officio*; DAVID M. RABBAN (Law), University of Texas, *ex officio*; ERNST BENJAMIN (Political Science), Washington, D.C., consultant; JOAN E. BERTIN (Public Health), Columbia University, consultant; MATTHEW W. FINKIN (Law), University of Illinois, consultant; ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; LAWRENCE S. POSTON (English), University of Illinois at Chicago, consultant; GREGORY F. SCHOLTZ (English), Wartburg College, liaison from Assembly of State Conferences. ✍