

Academic Freedom and Tenure: The University of California at Los Angeles

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### Academic Freedom and Tenure:

# THE UNIVERSITY OF CALIFORNIA AT LOS ANGELES

## I. Introduction

This committee was requested to investigate all particulars related to Professor Angela Y. Davis's appointment and the termination of it. The committee conducted personal interviews in Los Angeles and San Diego on July 20, 21, and 22, 1970, in San Francisco on July 22, 1970, and in Berkeley on July 23, 1970. Among those interviewed were: William French Smith, Chairman of the

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[EDITOR'S NOTE: *This report reviews all developments from the date of negotiations leading to Miss Angela Y. Davis's initial appointment in March of 1969 up to the filing of a suit in the federal court by Miss Davis in July, 1970, subsequent to the Regents' action of June, 1970, denying reappointment to her. The widely publicized episodes at the Marin County Court House in the late summer of 1970 which gave rise to criminal charges against Miss Davis, as well as other developments since June of 1970, are beyond the purview of this report. The report focuses solely upon the issues connected with the Regents' initial attempt to terminate Miss Davis's appointment, her subsequent reinstatement under judicial order, and the Regents' later refusal in June, 1970, to reappoint her for 1970-71.*]

<sup>1</sup> The text of this report was written in the first instance by the investigating committee. In accordance with Association practice, the text was sent to the Association's Committee A on Academic Freedom and Tenure, to the teacher at whose request the investigation was conducted, to the administration of the University of California at Los Angeles, to the chapter president, and to other persons directly concerned in the report. In light of suggestions received, and with the editorial assistance of the Association's Washington Office staff, the report has been revised for publication.

Regents; DeWitt A. Higgs, former Chairman of the Regents; Robert Reynolds and William K. Coblentz, members of the Regents; Charles J. Hitch, President and a Regent of the University of California; Thomas Cunningham, General Counsel of the Regents; and Donald Reidhaar, Assistant General Counsel of the Regents. At the UCLA campus, the committee conferred with Chancellor Charles E. Young, Vice Chancellor David Saxon, Dean Philip Levine of the Division of Humanities, Professor Donald Kalish (former Chairman of the Department of Philosophy) and Professor David Kaplan (Acting Chairman of the Department of Philosophy). Former and current members of principal faculty committees at UCLA were also interviewed, in addition to a number of administrative and faculty persons with differing relationships to the case. Professors Harold Horowitz and Kenneth Karst of the UCLA Law School faculty, who had been participants in both on-campus and off-campus hearing procedures relative to Miss Davis's appointment, met with the investigating committee. It should be noted that in the committee's lengthy interview with Miss Davis herself, she was accompanied by Neil M. Herring, Esq., of the firm of Margolis and McTernan, which had served as her counsel during the hearing before the Committee on Privilege and Tenure, UCLA Division of the Academic Senate.

On August 6 and 7, 1970, the committee visited Sacramento, California, where interviews were held with three *ex-officio* members of the Board of Regents, Governor Ronald Reagan, Lieutenant Governor Ed Reinecke, and Superintendent of Public Instruction Max Rafferty.

All persons interviewed by the committee were most helpful, cooperative, and courteous.

### Chronology

By action formally taken at their June, 1970, meeting, the Regents of the University of California decided not to renew the appointment of Miss Angela Y. Davis for a second year as Acting Assistant Professor of Philosophy at UCLA. This decision followed a year-long controversy which involved complex and interrelated issues of academic freedom, academic due process, and academic governance at the University of California.

A brief chronology of the main stages in this controversy may be helpful as an introduction to the more extensive statement of the facts and issues that follows.

*March, 1969*—UCLA Philosophy Department proposes a temporary appointment to Miss Davis.

*April, 1969*—UCLA adds an offer of a summer research stipend for 1969, also potentially renewable for 1970. Miss Davis accepts the invitation.

*June, 1969*—The Dean of UCLA's Humanities Division sends official letter offering temporary appointment for one year, to begin July 1, 1969.

*July, 1969*—Newspaper reports identify Miss Davis as a member of the Communist Party. The Regents discuss whether to invoke a 1949 rule against employment of Communist Party members; they ask lawyer members of the Board to consult the General Counsel on the legality of the rule and ask the President of the University to investigate the facts. Vice Chancellor David S. Saxon writes Miss Davis to ask whether she is a Communist Party member.

*August, 1969*—Her summer, 1969, supplemental stipend is held up.

*September, 1969*—Miss Davis responds, under protest, that she is a Party member. The Regents vote to initiate termination of her appointment through regular procedures. Pursuant to these procedures, Miss Davis requests a hearing before the UCLA Committee on Privilege and Tenure. Her department chairman grants her request to teach a course during the fall quarter.

*October, 1969*—At a special meeting called in response to this change in Miss Davis's teaching schedule, the Regents vote that Miss Davis not be authorized to teach during the fall quarter. The UCLA Chancellor effectuates the Regents' policy that no credit be given for any course offered by Miss Davis. In a series of meetings the UCLA faculty protests the Regents' actions and tries to countermand the order denying credit.

The Assembly of the Academic Senate of the entire University of California initiates a mail ballot to the entire membership of the Academic Senate, to disavow 1950 actions of the Northern and Southern Sections of the Academic Senate against employment of members of the Communist Party (a ballot concluded, favorable to disavowal of the previous action, in December); the Assembly records as its own position the disavowal of the 1950 position.

In a lawsuit initiated by members of the UCLA faculty,

a California state court invalidates any action taken under the Regents' 1949 rule forbidding employment of Communists, on constitutional grounds. This action results in termination of proceedings before the Committee on Privilege and Tenure and restoration of academic credit for Miss Davis's course. During the month of October Miss Davis makes three recorded public speeches, two at campuses of the University of California and one off campus.

*November, 1969*—Some Regents raise questions about Miss Davis's public speeches as grounds for dismissal or nonrenewal of her appointment. The UCLA Chancellor assures them that her appointment is for one year only, and that he will initiate a "blue ribbon" committee review of all aspects of her performance.

*February, 1970*—Chancellor appoints confidential *Ad Hoc* Committee to investigate three specified questions concerning Miss Davis's performance in and outside the classroom. Miss Davis makes a fourth recorded speech, at the University of California at Santa Barbara.

*March, 1970*—Department of Philosophy recommends reappointment of Miss Davis for a second year.

*April, 1970*—*Ad Hoc* Committee reports to Chancellor, who sends copies of the report to Regents. Academic deans recommend against reappointment of Miss Davis on budgetary grounds.

*May, 1970*—Chancellor asks for recommendation on the merits divorced from budgetary considerations and receives favorable recommendations, including that of faculty Budget Committee. Chancellor reports at Regents' meeting that he intends to reappoint Miss Davis. Regents vote to relieve Chancellor and President of further authority over this appointment and refer the matter to a Committee of the Whole.

*June, 1970*—Committee of the Whole reports that Miss Davis should not be reappointed.

On the basis of this report, Regents decide, by a divided vote, not to reappoint Miss Davis.

## II. Statement of Facts

### *The Institutional Setting*

The University of California at Los Angeles, UCLA, is one of nine campuses of the University of California that give general undergraduate and graduate instruction. The University of California is governed, under provisions of the state constitution, by a single board of twenty-four Regents. Four of these are elected state officials—the Governor, Lieutenant Governor, Speaker of the Assembly, and Superintendent of Public Instruction—and four others serve *ex officio*; the remainder are appointed by the Governor for sixteen-year terms. The position of Regent of the University of California has long been regarded as one of great prestige in the state and among a Governor's most important appointments; it is frequently filled by successful figures from the world of business and the law, who often devote a great deal of time to their work as Regents.

The chief executive officer of the University system as

a whole is the President, who is also a Regent *ex officio*. The chief executive of each separate campus is the Chancellor. Standing Orders of the Regents in 1966 delegated to the President authority over decisions concerning academic personnel with the exception of overage and over-scale appointments not involved here. In April, 1969, the Standing Orders were amended to provide that tenure appointment and promotions be reported to the Regents before becoming effective; they become final in the absence of contrary action by the Regents within a specified period. Authority over appointments and salaries at the level of acting and regular assistant professors has been delegated by the President to the Chancellors of the various campuses.

During the relevant period, the President of the University of California has been Charles J. Hitch, and the Chancellor at UCLA has been Charles E. Young. The Chairman of the Department of Philosophy was Donald Kalish; the Dean of the College of Letters and Science, Franklin P. Rolfe; the Dean of the Division of Humanities within that College, Philip Levine. Mr. DeWitt A. Higgs, an attorney, was chairman of the Regents when the actions in the case were taken; the present chairman is Mr. William French Smith, also an attorney. Among the elected *ex officio* Regents, the Governor was Ronald Reagan, the Lieutenant Governor Ed Reinecke, and the Superintendent of Public Instruction Max Rafferty.

#### *University Policy toward Communist and Other Politically Related Activity*

In 1940, the Regents adopted a resolution ". . . that the Communist Party . . . gives its first loyalty to a foreign political movement and, perhaps, to a foreign government"; and "that membership in the Communist Party is incompatible with membership in the faculty of a State University."

In another resolution in 1949, the Regents reaffirmed the 1940 declaration and added:

Pursuant to this Policy the Regents direct that no member of the Communist Party shall be employed by the University.

Any person who is or shall become a member of the Communist Party or otherwise undertakes obligations or advocates doctrines inconsistent with this policy shall, after the facts have been established by the University Administration, and after the traditional consultation with the Committee on Privilege and Tenure of the Academic Senate in cases of members of the faculty, be deemed to have severed his connection with the University.

In March, 1950, the Academic Senate of the University voted its concurrence in the policy, and the following month the Regents resolved again to "confirm and emphasize" the policy and to express their gratification in the concurrence of the Academic Senate.

The standing disqualification of Communists appears to have remained unchanged and unexamined since 1949. In 1969, before the appointment of Miss Davis and for reasons not connected therewith, the Regents adopted an amendment to their Standing Order 102.1 governing appointments and promotions, to provide: "No political

test shall ever be considered in the appointment and promotion of any faculty member or employee."

#### *History of the Case*

*The Appointment.* On March 24, 1969, Professor Donald Kalish, Chairman of the Department of Philosophy of the University of California at Los Angeles, addressed to Miss Angela Davis, then a graduate student at the University of California at San Diego, a letter containing the following passage:

It is indeed a pleasure to extend to you, on behalf of the Department of Philosophy at UCLA, an invitation to join our faculty at the beginning of the academic year 1969-70. The appointment would be at the rank of Acting Assistant Professor. . . . The appointment is intended for two years (University regulations require that acting appointments be renewed each year, but this is a technicality). The question of a continued position at UCLA beyond the second year is left open now and will be considered while you are here.

The letter also states that a staff member in the Department of Philosophy must be in residence during three out of the four quarters during a year, and during the three quarters will teach a total of four courses, which might be distributed among the three quarters "in any pattern, as long as the Department offers a relatively balanced program in each quarter." Since Miss Davis had received a commitment of a fellowship from the San Diego campus for completion of her dissertation, and also an offer of a position from Swarthmore College, the Department, in order to improve its own offer from a financial point of view, requested summer support from a special Faculty Development Program, administered under the office of Assistant Vice Chancellor Charles Z. Wilson. In a letter to Chairman Kalish dated April 16, 1969, Vice Chancellor Wilson authorized a commitment for two summers, at a stipend of \$2,152 for each summer, with the proviso that the Department take responsibility for evaluation of the progress of her work, and that "the granting of the stipend for the second year will be based on the results of a review of Miss Davis's first-year effort." Miss Davis was informed of the content of this letter by telephone on April 21, 1969, and subsequently accepted the Department's offer.

Miss Davis had graduated magna cum laude from Brandeis University in 1965 with a B.A. degree, a major in French literature, and membership in Phi Beta Kappa. Her junior year had been spent at the Sorbonne, where she had received the *Certificat de la Littérature Française Contemporaine*. During her studies, her interest in philosophy had grown and she resolved to undertake graduate work in philosophy; her interest apparently was in part a consequence of classes with Professor Herbert Marcuse. She spent the years 1965-67 studying philosophy at the University of Frankfurt, Germany, working especially with Professor Theodor W. Adorno, specializing in German Idealism. She then enrolled at the San Diego campus of the University of California, received the M.A. degree and passed the qualifying examination for the Ph.D. in September, 1968. She was a teaching assistant from October, 1968, to June, 1969. At the time of her accept-

ance of the UCLA offer she was working under the supervision of Professor Herbert Marcuse on a dissertation on the problem of violence in German Idealism.

Upon Miss Davis's acceptance of the offer, Chairman Kalish wrote an official letter to the Dean of the Humanities Division, Philip Levine, recommending her appointment for the academic year 1969-70 at the rank of Acting Assistant Professor, Step II. "This recommendation," he wrote, "is the consequence of a Department motion to offer Miss Davis a position for the academic year 1969-70 and for the year 1970-71, and to consider the question of a continued position at UCLA beyond the second year during that time. The vote on this motion, by the total faculty in residence, was 6 in favor, 5 against, and 3 abstain."

The divided vote within the Department reflects the balance of considerations entering into the decision. Miss Davis's studies appeared to qualify her to teach courses in the fields of Nineteenth Century Philosophy, Existentialism, and Philosophy of Literature, which had been taught by Professor Hans Meyerhoff until his death in 1965. In accordance with a new University policy, it was also deemed desirable to recruit members of minority groups to the Department, and Miss Davis is a Negro. The strong orientation of the UCLA philosophy staff in analytical philosophy differs so sharply from the orientation of Miss Davis's primarily continental training in philosophy, however, that members of the UCLA Department found it difficult to reach an evaluation of her capabilities in philosophy. The result was the vote to give her a two-year trial as a "temporary" Acting Assistant Professor (a status explained below).

On June 3, 1969, Dean Levine wrote to Miss Davis inviting her officially to accept appointment as Acting Assistant Professor, Step II, for service "beginning July 1, 1969, and terminating June 30, 1970," and expressing his gratification that she was "temporarily" joining the growing UCLA faculty. The character of the commitment to Miss Davis resulting from this correspondence later became an issue in the controversy arising from her appointment.

Dean Levine had not been sent a copy of Chairman Kalish's letter of invitation to Miss Davis; the recollections of the two men differ on whether they had reached an oral understanding on the nature of the invitation that the Department in fact extended to Miss Davis. Dean Levine intended his letter to Miss Davis to offer a "self-terminating" appointment for one year only. The letter made no mention of expectations for a second year of service. On the other hand, it did not contradict the representations made earlier in the Chairman's letter; from the standpoint of the recipient, the informal and formal letters from the apparently responsible University sources were not inconsistent. Miss Davis accepted the invitation with the understanding that the appointment was for two years.

There is no doubt that the appointment as Acting Assistant Professor was "temporary" as distinguished from a "probationary" or "ladder" appointment. The official appointment forms at the University of California specify

the term of the appointment, which may be for one year or less. These forms are signed by the relevant dean. It is the position of the central administration that only the relevant dean, and not the chairman of a department, is authorized to make an appointment on behalf of the University, and that the legal commitment of the University is limited to what is specified on the official notice of appointment, irrespective of representations made by anyone else and specifically by department chairmen. In practice, however, commitments made by department chairmen are honored by the University, as indeed they must be if the chairmen are to conduct negotiations on the academic market. Chairman Kalish, on July 16, 1969, wrote to Vice Chancellor David Saxon a letter including the following passage: "The two-year appointment was an essential part of our negotiations with her (Miss Davis), and our Department's credibility would be seriously impaired if she fulfilled her normal obligations as an instructor during the academic year 1969-70, and her appointment was not renewed for the academic year 1970-71." Often there is an understanding between the deans and the department chairmen that an appointment will be renewed automatically at the end of the first year, although of course the appointment form contains no notice of this fact.

However this may be, it is the view of the administration of the University that the University had a commitment to Miss Davis for only one year, as specified in the notice signed by Dean Levine; in his final report to the Regents, on the other hand, Chancellor Young referred to the basis "in policy and common practice for a reasonable presumption of reappointment for a second year" and to "evidence in the file to indicate that Miss Davis was given reason to believe that in the normal course of events she could expect a one-year renewal." On the whole, however, the Chancellor did not press upon the Regents the point that obligations rise from a university's representations in the recruitment process—whether moral, or perhaps also legal—to the effect that renewal of an appointment may be expected if the appointee's performance has been satisfactory. According to some Regents, their understanding of this point would or might have made a difference in their views as to proper procedure in Miss Davis's case.

*Communist Party Membership.* Prior to July 1, 1969, no one concerned with Miss Davis's appointment was aware of her Communist Party affiliation. No question concerning her political affiliation came up in the very favorable evidence obtained from references and other sources, or in UCLA's consideration of her employment. After the commitment was made, some comment seems to have reached the Chancellor's office from an unidentified source (apparently from San Diego) that Miss Davis's activities in pursuit of racial equality might be "something of a problem," but this comment made no reference to Communism.

The assertion that the Department of Philosophy had employed a member of the Communist Party first appeared in a signed article in the *Daily Bruin*, the UCLA student daily, on July 1, 1969. On July 9, the *San Fran-*

*cisco Examiner* carried a story stating that Miss Davis was "a known Maoist" and "active in the SDS and the Black Panthers."

After consultations within the UCLA administration, President Hitch reviewed the matter at the Regents' meeting two days later, July 11, 1969, in relation to the Regents' 1949 rule against employment of Communists. He raised questions about the status of the 1949 rule in the light of two developments—doubts of the University General Counsel about the legality of the rule under more recent Supreme Court decisions, and the recent adoption of the Standing Order 102.1 that "No political test shall ever be considered in the appointment and promotion of any faculty member or employee."

While opinion among the Regents at this meeting was divided on both of these questions, a majority was not prepared to regard the 1949 rule as having been superseded by law or by their own more recent action. (The view that there is not an inconsistency between the 1949 rule and Standing Order 102.1, as explained in interviews with the investigating committee, is defended by the claim that the character of the Communist Party is so different from ordinary "political" activity or association that the flat exclusion of Communists from employment is not a "political test.") It was decided that members of the Board who were lawyers should meet informally with General Counsel to discuss the matter before the Board's next meeting in September, and that the President should make further investigation of the facts in the case.

Pursuant to this directive for further investigation of the facts, UCLA Vice Chancellor David S. Saxon wrote to Miss Davis, inquiring whether she was indeed a member of the Communist Party and informing her of the Regents' policy. Miss Davis was traveling, and a copy of this letter reached her only in late August. In a response dated September 5, Miss Davis first stated legal objections to the question posed by the Vice Chancellor's letter of inquiry. Her reply continued:

[My] answer is that I am now a member of the Communist Party. While I think this membership requires no justification here, I want you to know that as a black woman I feel an urgent need to find radical solutions to the problems of racial and national minorities in white capitalist United States. . . . It goes without saying, of course, that the advocacy of the Communist Party during my period of membership in it has, to my knowledge, fallen well within the guarantees of the First Amendment. Nor does my membership in the Communist Party involve me in any commitment to principle or position governing either my scholarship or my responsibilities as a teacher.

Miss Davis told the investigating committee that she was a member of the "Che Lumumba Club," an affiliate of the Communist Party, United States of America (CPUSA), for young black people in the Los Angeles area. She asserted that her views in this role were her own and that mere reiteration of rigid doctrine from central communist sources would be quite ineffective revolutionary leadership.

Meanwhile, on the basis of representations of some of the Regents, Chancellor Young had declined to sign Miss Davis's supplemental summer appointment. Her letter

also protested this action, and the action itself became one of the subjects of faculty protest in October. In the later course of events, the University did decide to pay the summer, 1969, stipend.

At the September 19, 1969, meeting of the Board of Regents, a resolution was presented by one of the lawyer members who had met in Los Angeles that, in view of the 1940 and 1949 resolutions of the Board and Miss Davis's admission that she was currently a Communist Party member, "the Regents direct the President to take steps to terminate Miss Davis's University appointment in accordance with regular procedures as prescribed in the Standing Orders of the Regents." Chancellor Young spoke in opposition to this motion. President Hitch pointed out that the rules of the University provide for a hearing, if requested, before the Committee on Privilege and Tenure, and that this hearing might take some time. The question was raised whether Miss Davis should be suspended from teaching duties until the hearing was completed, but it was reported that "a letter from her department chairman states that she will not teach during the fall quarter," and it was also reported by the Chairman of the Board and Regent Coblenz that the advice of lawyers who attended the *ad hoc* Los Angeles meeting was against suspension. The motion to terminate Miss Davis's appointment under the 1949 rule through the regular procedures was passed.

On September 20, President Hitch wrote Miss Davis that her appointment would be terminated as of September 29, unless prior to that time she requested a hearing before the Committee on Privilege and Tenure. Miss Davis did request such a hearing, and the hearings began on October 17, 1969.

On September 25, however, Chairman Kalish sent a letter to Vice Chancellor Saxon stating that after Miss Davis received the letter from President Hitch she had requested a change in the pattern of her teaching assignment:

Specifically, she requested that she be allowed to teach Philosophy 99 in the Fall Quarter (already scheduled and pre-enrolled but lacking an instructor) rather than in the Spring Quarter. The reasons she gave me for her request were that (a) she wanted the earliest opportunity to demonstrate to the University community her general academic competence and her ability to teach, and to refute by her conduct the charge that she would use the classroom to indoctrinate or for any other purpose inconsistent with the ethics of the academic profession, and that (b) she could not, under the present circumstances, utilize a Fall Quarter free of classroom responsibilities for intensive work on her dissertation. I granted Miss Davis's request, as I have invariably granted, during my five years as Chairman, similar requests from other members of our Department.

It was not questioned by anyone that Chairman Kalish's action on this matter was well within his authority; there was some question among some members of the faculty and administration about its advisability.

The Regents reacted to announcement of this change in the plans of the Department of Philosophy with dispatch. Several Regents asked for a special meeting which was held on October 3, 1969; one of these Regents stated

that the reason for their request for a special meeting was that Miss Davis's new assignment to a fall quarter course contravened both the spirit and the letter of the Board's September action. At this special meeting Chancellor Young asserted that the September action contemplated no suspension of Miss Davis until after completion of hearing by the Committee on Privilege and Tenure, and he opposed any suspension at this meeting. President Hitch spoke at length in opposition to suspension, urging the Regents to be scrupulous in avoiding any action that might be construed as an infringement of academic due process.

Several speakers referred to the serious consequences which a summary suspension of Miss Davis by the Regents would evoke among the UCLA faculty. (The UCLA Academic Senate had, in fact, met only two days earlier, on October 1, and adopted a number of resolutions sponsored by its Committee on Academic Freedom and by others. These resolutions, among other things, condemned the Regents' September 19 decision to discharge Miss Davis, repudiated the 1950 support for the anti-Communist policy as having been superseded by later legal developments and as inconsistent with the principle that an individual's status should depend solely on his professional fitness to teach, authorized the Chairman of the Academic Senate to pursue legal action on behalf of the UCLA faculty, and expressed support for the Angela Davis Defense Fund.) The Board of Regents voted to continue Miss Davis's salary during the course of the discharge procedures, but to instruct the President that "during the Fall Quarter of 1969 Miss Davis shall be assigned to no teaching duties, and that she shall not be authorized to give instruction in any course. . . ."

In consequence, Chancellor Young directed the Registrar to accept no course enrollments that might result in credit for any course offered by Miss Davis. An emergency meeting of the Academic Senate was held on October 9 on motion of the Committee on Academic Courses and Curricula, which deemed the Regents' action an improper interference with standing authority delegated to the faculty. This meeting resulted in adoption, by mail ballot of the faculty, of a motion instructing "the Registrar to grant the usual academic credit for Philosophy 99 to all students registered in the course." However, Chancellor Young instructed the Registrar that this action had no effect and that his own earlier instructions were controlling.

On October 11, an emergency meeting of the Assembly of the Academic Senate of the entire University of California proposed to disavow the 1950 faculty endorsement of the Communist-disqualification rule; a motion to this effect was subsequently passed by mail ballot.

At this point the situation was altered drastically by a court decision. On October 3, three members of the faculty and two students had initiated a taxpayers' action in the Superior Court in Los Angeles County, attacking the constitutionality of the Regents' actions (*Karst v. Regents*). Miss Davis had thereafter become a legal party to this suit. On October 21 and 24 the court entered judg-

ments, enjoining the Regents from giving any effect to their resolutions disqualifying members of the Communist Party from employment by the University. The court relied on Article I, Sections 9 and 10, of the California Constitution, and on the First and Fourteenth Amendments of the Constitution of the United States.<sup>2</sup> The hearings of the Privilege and Tenure Committee were abruptly brought to a halt, and Chancellor Young directed the Registrar to accept regular enrollments for Miss Davis's course.

The interest of the Regents in Miss Davis did not, however, cease at this point. At the November 21 meeting, questions were raised about the propriety of the content of her recent public speeches, and about the exact terms of her employment. In response, Chancellor Young stated (1) that Miss Davis's appointment would end by its own terms on June 30, 1970, and that he had reaffirmed this in a letter (dated November 13) to the Department Chairman with a copy to Miss Davis; (2) that the Department would probably recommend appointment for a second year and that Miss Davis would probably assert an original understanding to that effect, but that nothing would be done concerning her reemployment without prior discussion with him; (3) that he would appoint a "blue ribbon" faculty committee to review all aspects of her performance. Regent William F. Smith took the view, shared by several others, that Miss Davis's reported public statements gave grounds for action by the Regents independently of the previous issue of membership in the Communist Party; and one Regent gave notice that he would ask to have her status placed on the agenda of every future Board meeting until the matter was disposed of.

*Appointment of Ad Hoc Committee.* On February 17, 1970, Chancellor Young, having first sought the recommendations of the faculty Committee on the Budget and Interdepartmental Relations, invited seven members of the faculty to serve as an *ad hoc* secret committee to investigate three allegations. The Committee was not requested to make any recommendation as to Miss Davis's reappointment. The Chancellor wrote: "If a Departmental recommendation for her continuation is initiated, that issue will be decided, as well it should, within the context of regular academic procedures, including the appropriate administrative and Senate reviews." He out-

<sup>2</sup> The Regents had also requested a change of venue, alleging that the proper place for the trial of such a suit was in Alameda County, site of the University's central administrative offices. The California Court of Appeal stayed the judgment of the Superior Court on that ground, without reaching the merits of the constitutional claims. The California Supreme Court reversed again, however, holding that venue was properly laid in Los Angeles County since the plaintiffs as taxpayers claimed an improper expenditure of public funds there. Since the alleged injury occurred in that county, the Superior Court situated there was the appropriate forum. (*Regents of the University of California v. Superior Court*, 3 Cal. 3rd 529, 91 Cal. Rptr. 57 (1970)). This decision did not reach the merits of the controversy. An appeal by the Regents from the summary judgments issued by the Superior Court is pending.

lined the mission of the Committee as that of investigating the truth of "allegations . . . to the effect that Miss Davis has, by word and deed, demonstrated her inability to live up to the responsibilities which must be accepted by members of the faculty in order for the University to fulfill its obligations within the context of academic freedom." He went on to say:

These allegations fall into three general categories:

1. That she has utilized her position in the classroom for the purpose of indoctrinating students;
2. That her extra-University commitments and activities interfere with her duties as a member of the faculty; and
3. That her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself.

I believe it is *essential* that these allegations be carefully examined in the context of University policies as well as a general understanding of the requirements of the academic community. It is my feeling that examination of the third category of the charges set forth above is especially crucial. I further believe that this examination must involve a careful reading and interpretation of the "Statement on Professional Ethics" issued by the American Association of University Professors which has been incorporated, by reference, into the "Instructions to Appointment and Promotion Committees" as well as Part I of the Resolution adopted by the entire membership of the Academic Senate pursuant to action taken by the Assembly of the Academic Senate on November 3, 1969 [Part II of which disavowed previous Senate resolutions supporting the Regents' policy against employment of members of the Communist Party].

Members of the Committee debated first whether to proceed under this charge or to disband at once, on the ground that their position was most anomalous, encroaching on functions regularly assigned the Committee on Privilege and Tenure as well as those of the departmental and administrative officers responsible for evaluation relevant to faculty appointments. The Committee decided, however, that it might usefully undertake an inquiry limited to the precise issues raised by the Chancellor's letter, and it proceeded, with the help of the Department of Philosophy, to assemble a great deal of material that might bear on those issues: course evaluations, letters from persons who had attended her lectures, transcriptions of Miss Davis's public speeches, and so on. (In addition to three speeches she had made in October, when the aborted decision to discharge her as a Communist first brought her to widespread notice, the transcriptions included a fourth speech made on the University's Santa Barbara campus on February 5, 1970. Excerpts from these speeches which were relied on in the Regents' decision are quoted in Addenda A and B, this report.) Because of its narrowly circumscribed view of its proper function, the committee also decided not to talk with Miss Davis or to hold hearings.

The report of the *Ad Hoc* Committee was presented in early April, 1970. It became of central importance in the disposition of the case and will be discussed below. At this point, there are two important points to be noticed about the work of the Committee. (1) The Committee considered its assignment limited to the question whether there were grounds on which the Chancellor might initiate

charges against Professor Davis. While the members assumed that the Chancellor might make the text of their report available to the Regents in explanation of his actions in this respect, they did not contemplate the possibility that the Regents might use it as the basis for making their own decision on Miss Davis's reappointment for 1970-71. (2) Since the Committee was secret, Miss Davis was not informed of the issues raised in the Chancellor's assignment to the Committee and was never given an opportunity to respond to those issues in any way, either before the *Ad Hoc* Committee or in any subsequent stage of her case in which its report played a role.

*The Recommendation on Reappointment.* Meanwhile, the process of forming an academic decision on Miss Davis's reappointment got under way, although the circumstances provided constant reminders that this was no usual renewal of a temporary, low-level academic appointment. As early as December 9, Vice Chancellor Saxon asked for a departmental appraisal of Miss Davis. (It will be remembered that her fall quarter course—Recurring Philosophical Themes in Black Literature—began under the Regents' proscription of course enrollment and credit until the court order of October 24.) On January 7, the Department responded that the regular procedures for thorough evaluation before reappointment were not applicable, since "Professor Davis's appointment was negotiated on the basis of two years, the second year being contingent only upon normal performance during the first," and a regular reappointment was to be considered only during the second year. Even the sort of evaluation relevant for temporary reappointment for the second year could also not yet be made, because the courses for which she was primarily employed were to be taught during the winter quarter.

The Department's recommendation of Miss Davis's reappointment to a second year as Acting Assistant Professor came in a letter of March 23 from Chairman Kalish to Dean Levine of the Division of Humanities. This recommendation, concurred in by all members of the Department present at the meeting (except for persons whose status in the Department normally caused them to abstain from voting), was supported by course evaluations and letters from faculty and graduate students who had attended at least some of Miss Davis's classes. The Chairman's letter stated that "her performance as a teacher during fall and winter quarters of this year raises no doubt that her reappointment is in order; in fact, the evidence available from those who have attended her classes indicates that she is exceptionally dedicated to and competent at teaching." With respect to Miss Davis's progress toward the doctorate, the letter stated that, while less than expected, her progress "given the distracting circumstances that developed" did include substantial reading and thought devoted to her dissertation topic; on the basis of her written report about her work on her dissertation, the Department also voted to recommend renewal of her research stipend for the summer of 1970.

A month passed before the Dean of the College of Letters and Science (Rolfe) and the divisional deans



took any action on this recommendation. UCLA had suffered a severe reduction in its requested budget for the coming year, a reduction which had led it to eliminate its summer quarter (distinct from the separately budgeted summer session) and which had lost the Division of Humanities thirty-nine positions. The Department of Philosophy had been notified in December that it had been cut back by three positions; two of the positions lost were unfilled at the time, and there was fear that loss of the third position would affect Miss Davis. At this time, however, a resignation occurred, of Associate Professor David Lewis; as a result, the cut in positions need not affect Miss Davis. The Department, however, wished to replace Associate Professor Lewis with someone in his specialty and therefore made inquiries whether the replacement of Lewis would result in their inability to fund Miss Davis. Inquiries at the office of the dean produced no response. Vice Chancellor Saxon was therefore approached on or about March 25, and he assured the Department that Miss Davis's case would be settled on the merits and not on the basis of unavailability of funding. The Department then requested the appointment of Professor Keith Donnellan, of Cornell University, to replace Lewis at a full professor rank. This request was approved by the deans without question. Evidently the financial stringency was not so great, in the eyes of the deans, as to prevent funding a full professor in the Department of Philosophy. Nevertheless, on April 22, budgetary considerations were very much emphasized by the deans, when their response to the Department's recommendation of reappointing Miss Davis was transmitted to Vice Chancellor Saxon in the form of two simultaneous memoranda, one from Levine to Rolfe and one from Rolfe to Saxon, which recited the budgetary situation and the established priorities for fifty-two positions in the College. Dean Levine's memorandum stated that if the budgetary problem were solved, it would then become necessary to take into account all available evidence relevant to Miss Davis's appointment for a second year (mentioning the existence of the unpublished report of the Chancellor's special committee), but that he would first want to know whether a position was to be available. Dean Rolfe's memorandum to the Vice Chancellor concluded that, in the absence of a vacant position, his only recourse would be to request special funding, but to do so for Miss Davis in precedence over fifty-two needed positions would not be in the best interests of the College.

The UCLA administration, however, had available a separate fund for the Faculty Development Program, designed for the purpose of attracting members of minority groups to the UCLA faculty, from which a temporary appointment for Miss Davis in the Philosophy Department could be funded directly, outside the College's budget. At a meeting with Vice Chancellor Saxon on May 1, therefore, the deans were instructed to "review the departmental recommendation and all other pertinent data, including the report of the *Ad Hoc* Committee, prior to recommending on her academic qualifications for reappointment." On May 4, Dean Rolfe responded to the Vice Chancellor in a brief memorandum that "in my

opinion her qualifications are unquestionable. She was well qualified, academically, for the position to which she was appointed last year, and I know of no evidence that she is not at least as well qualified now."

During the course of some of the foregoing events, the Chancellor had sought the advice of the most important committee on the UCLA campus, the Committee on Budget and Interdepartmental Affairs, on the reappointment of Miss Davis—a most unusual step, for this Committee does not normally concern itself with routine or lower level appointments. This Committee, which had before it the report of the Chancellor's *Ad Hoc* Committee, as well as recommendations of the deans to the Chancellor, and that of the Department of Philosophy, considered Miss Davis's reappointment in an unusual plenary session (decisions usually being made by subcommittees). This Committee reached a consensus and on May 5 Saxon received from its chairman a recommendation that Miss Davis be reappointed for a second year, and that, if necessary to meet the budgetary questions raised by the deans, funds should be provided from the Faculty Development Program. According to the testimony of the chairman of this Committee, the argument against reappointment for lack of funding was a spurious argument. The Committee stated in its recommendation that "we have placed emphasis on her record of teaching excellence and strong academic training, accomplishment, and promise. It is customary in many departments at UCLA to reappoint qualified Acting Assistant Professors for the second year while they are still in the process of their Ph.D. dissertations."

It is pertinent to note, in view of the subsequent emphasis (see below) laid by the Regents on Miss Davis's lack of progress with her dissertation in their report explaining their refusal to reappoint, that the AAUP committee inquired of the chairman of the Committee on the Budget and Interdepartmental Affairs what kind of progress with the dissertation is normally required of persons in the situation of Miss Davis. He replied that progress with the dissertation is normally "hoped for," but that, unless the relevant department affirmed that progress was so slow as to interfere with the person's teaching performance, his Committee would not raise questions about it.

The foregoing recommendations of the Department of Philosophy, the deans, and the Standing Faculty Committee, together with the report of the *Ad Hoc* Committee, constituted the record on which the Chancellor concluded that Miss Davis should receive a second temporary appointment, funded through the Faculty Development Program, for 1970-71.

*Regents' Denial of Reappointment.* Chancellor Young made a preliminary report on the progress of the case at the April meeting of the Regents. He had prepared for this meeting a *précis* of the report of his *Ad Hoc* Committee, and he explained his view of the significance of the *Ad Hoc* Committee's report. Some members of the Board expressed an interest in seeing the entire report; in response, copies of the report were sent to all members of the Board late in April. Thus individual Regents had

time to read and form a judgment on that report before the May meeting.

Chancellor Young reported his decision about reappointment to the Regents at their regular meeting on May 15, 1970. At that meeting, the Chancellor read a prepared statement which included the following:

I am placing before you today my intended decision on the proposed reappointment of Miss Angela Davis along with a summary of the reasoning which has led me to this decision. I do so in accordance with our earlier understanding that I would make my intentions known to you before taking effective action.

I plan today, after this report to you, to approve the departmental recommendation for Miss Davis' reappointment to a second one-year, self-terminating appointment as Acting Assistant Professor for the period July 1, 1970, through June 30, 1971.

The statement explained that, while Miss Davis's temporary appointment had been for one year only, renewal of appointments for a second year "is a frequent occurrence and is considered a routine matter . . . if the pertinent academic criteria have been satisfied." He pointed out that, of the three acting assistant professors appointed under the Faculty Development Program, two had been reappointed for a second year:

Thus there is a basis in policy and common practice for a reasonable presumption of reappointment for a second year. In addition, there is evidence in the file to indicate that Miss Davis was given reason to believe that in the normal course of events she could expect a one-year renewal.

The statement went on to report the favorable appraisals by relevant committees and officers of Miss Davis's academic qualifications and performance; it noted that funding from the Faculty Development Program would result in no disturbance of the budgetary priorities discussed in the earlier letter from the Dean of the College of Letters and Science. It reviewed the conclusions of the *Ad Hoc* Committee, including those concerning Miss Davis's extracurricular speeches, which in the Committee's view should "be taken into account, together with all other relevant factors, by the appropriate faculty and administrative authorities when consideration is given to the renewal of Miss Davis's present contract of employment." The Chancellor concluded:

The favorable evaluations of the Deans and Budget Committee testify to their conviction that these allegations do not constitute sufficient grounds for denial of reappointment. Such a denial would be based on public utterances which apparently are neither unlawful in their substance or form, nor in any way violations of University regulations.

This summarizes the administrative and faculty recommendations which I have received concerning the proposed reappointment of Miss Davis. On the question of satisfaction of academic criteria for reappointment, I am satisfied that there can be only one decision—that reached unanimously by all of my advisers in the personnel process. The budgetary question raised by the Deans is not an issue with respect to this proposed reappointment, because the position will be funded from resources which are specifically earmarked for support of the campus-wide Faculty Development Program and which are not available for any other purpose. I have concluded, therefore, that there are no

permissible grounds for refusal of the departmental recommendation, and that on the basis of the applicable criteria Miss Davis should be reappointed for a second one-year, self-terminating appointment under the Faculty Development Program.

Following the Chancellor's report, the Regents adopted the following resolution:

The Regents hereby relieve the President of the University, the Chancellor of the Los Angeles campus and all other administrative officers of any further authority or responsibility in connection with the reappointment or nonreappointment of Acting Assistant Professor Angela Davis, and direct that the Board of Regents, acting as a Committee of the Whole, review the record relating to this matter and recommend appropriate action to the Board at its next regular meeting.

Pursuant to this action, the Board met in Committee of the Whole on June 8, 1970. It took no additional evidence but limited itself to the record on which Chancellor Young had made his recommendation. It considered and made some changes in a draft prepared by its staff, and finally voted to report the recommendation "that Acting Professor Angela Davis not be reappointed to the faculty of the University of California."

The report of the Committee of the Whole, which carries the date of June 19, 1970, was adopted by the Regents at their regular meeting on that date; this adoption constituted an authoritative decision of the University of California not to reappoint Miss Davis. Six Regents, including President Hitch, voted against this action; two of them issued dissenting statements. The reports of the Chancellor's *Ad Hoc* Committee and the Regents' Committee of the Whole, as well as the dissenting statements of Regents William K. Coblenz and Frederick Dutton, are appended in full as integral parts of this report (Addenda A, B, C, and D, respectively). It will be noted that the reports of the Regents' Committee of the Whole and the *Ad Hoc* Committee include extensive quotation from Miss Davis's speeches.

The course of events at and after the Regents' May meeting caused renewed expressions of concern and protest on the UCLA campus. On May 18 the UCLA Academic Senate adopted a number of resolutions which denounced the Regents' decision to supersede the Chancellor's delegated authority in this case and requested an investigation by the American Association of University Professors; moreover, in the expectation of a final adverse decision by the Regents, they expressed the intention of the Senate to assure that Miss Davis would receive her salary and benefits during the coming academic year, that she be provided a time and place to teach on the campus, and that students be given credit for her courses. On the same day, the acting chairman of the Department of Philosophy filed a complaint with the Committee on Privilege and Tenure. This was followed by a formal complaint by counsel for Miss Davis. However, counsel for the University objected that, under the Standing Orders, the jurisdiction of the Committee on Privilege and Tenure over matters other than termination of a contract before its expiration extended only to members of the

Academic Senate (which does not include acting assistant professors). Furthermore, counsel pointed out that the administration must be accorded appropriate time to acknowledge notification of, and to respond to, a request for a hearing, as specified in By-Law 112 of the Academic Senate. Therefore, in view of the fact that provision of the necessary time would carry the Committee beyond the end of the academic year, at which time Miss Davis would no longer be on the faculty at all, the Committee on Privilege and Tenure removed the complaint of Miss Davis from its agenda, and so informed her attorneys. On June 8, 1970, the Committee on its own made a brief report to the Academic Senate deploring the Regents' May action to supersede Chancellor Young's authority in a particular instance as a violation of the privileges of the academic community, and as a blow to faculty morale. On that date, also, the Association's chapter on the University's Davis campus wrote the national office to request an investigation by Committee T; the letter was subsequently directed to the investigating committee. Upon the Regents' final decision on June 19, the UCLA Academic Freedom Committee issued a statement deeply pessimistic about the "demoralization" caused by this action; the University's statewide Academic Freedom Committee also condemned the decision.

### III. The Regents' Decision: A Discussion

As will appear, the foregoing record, leading to the Regents' reversal of the Chancellor's decision on Miss Davis's reappointment, gives rise to both of the issues that are the classic concern of the Association's Committee on Academic Freedom and Tenure: Was the decision made in violation of applicable principles of academic freedom and academic due process?

#### *The Ad Hoc Committee Report*

Chancellor Young's instructions of February 18, 1970, to the *Ad Hoc* Committee, asked the Committee to examine, in the light of the University's policies and the AAUP's *Statement on Professional Ethics*, three allegations against Professor Davis:

1. That she has utilized her position in the classroom for the purpose of indoctrinating students;
2. That her extra-University commitments and activities interfere with her duties as a member of the faculty; and
3. That her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself.

The question of whether Miss Davis should be reappointed for another year was excluded from the instructions. In its report, the *Ad Hoc* Committee emphasized that, in view of its secret nature, its limited task was to advise the Chancellor whether to file formal charges against her.

On the first allegation, the report reviewed Professor Davis's written lectures and the appraisal of colleagues who attended her lectures, as well as student evaluation forms; it concluded that the allegation of misuse of the classroom was unfounded. Likewise, the Committee

found no evidence that Miss Davis's extracurricular action had caused her to neglect her teaching; on the contrary, it was pointed out that Miss Davis took decidedly more than usual pains with her teaching—a good many of her lectures were written out, and she voluntarily divided an overenrolled class and taught it in two groups instead of one. These conclusions were subsequently accepted by the Regents.

The third allegation presented more difficulty because of its phrasing. The Committee evidently decided to construe it both in a narrower literal manner and in a broader manner on account of the subsequent paragraph in which they were advised to examine AAUP's standards; thus they attempted, in their report, both to appraise the allegation exactly as stated, and also more broadly to determine whether the character of Miss Davis's extramural speeches constituted ground for disciplinary action as being evidence of failure to meet her responsibilities as a member of the faculty of UCLA.

The *Ad Hoc* Committee report began with extensive quotations from the AAUP *Statement on Professional Ethics*, the 1940 *Statement of Principles*, the 1963 "Advisory Letter No. 11 on Extramural Utterances" (quoting Professor Ralph F. Fuchs), and the statement on academic freedom entitled "Relevant General Principles" which is included in the 1956 special report on "Academic Freedom and Tenure in the Quest for National Security." On the basis of the evidence of Miss Davis's public statements available in the form of transcribed tape recordings of her speeches in October, 1969, and in February, 1970, the Committee report proceeded to analyze the speeches with regard to (1) her commitment to Communism (she denied being directed or "rigidified" in consequence of her party membership); (2) academic freedom, which she regards as an "empty concept" and a "real farce" if divorced from freedom of political action, or if "exploited" to maintain such views as the genetic inferiority of black people; (3) educational reform (she holds education is "inherently political" and political values should be made explicit in the classroom, and also that the Regents have "usurped" the power to determine educational policy for dominant political goals); (4) her views of the University ("an outmoded feudal institution") and of the Regents ("unscrupulous demagogues" intent upon representing and maintaining the "prevailing oppression"); and (5) mass demonstrations, which she believed necessary to secure the objectives she supports, and to which she ascribes the favorable decision of the Superior Court in the October, 1969, lawsuit to enjoin her dismissal.<sup>3</sup>

On the basis of the quotations the Committee first attempted to answer the exact third question raised in Chancellor Young's instructions. It concluded that Miss Davis's views did not "substantiate the first two charges," since they found expression only in her public speeches outside the classroom. There remained the question whether her concept of academic freedom would "ulti-

<sup>3</sup> Addenda A and B to the present report quote liberally from Miss Davis's extramural utterances.

mately be destructive of that freedom itself"—an essentially abstract and analytical question not directly related to any consequences from Miss Davis's own expression of that concept. Here the Committee concluded that "even if Miss Davis's speeches and views suggest a willingness to deny others the same freedoms which are invoked to protect her, we must recognize that to use this to punish her would *actually* abrogate freedom of speech, whereas she has merely *talked* about doing so."

The Chancellor's Committee also appraised the speeches on the basis of AAUP standards for responsible conduct of faculty members. With respect to AAUP admonition to show due "respect to the opinion of others" the Committee expressed doubt of the usefulness of the standard and concluded that although Miss Davis was "less than fair in her characterization of the views of fellow scholars whom she has denounced," this was insufficient basis for formal disciplinary action. Next, with reference to the AAUP admonition that faculty members must be careful not to represent their views as expressing the views or policies of their institution, the Committee found that in her public speeches Miss Davis could certainly not be mistaken for "an institutional spokesman." The AAUP statements admonish members of a faculty to "show appropriate restraint" in their extramural utterances, and not to make false statements deliberately, and on these points the Committee found that "she has frequently sacrificed accuracy and fairness for the sake of rhetorical effect." It found further that she had not, however, incited her audiences to illegal action. The Committee noted with regret the excessive resort to lurid imagery and hyperbole in contemporary extremist rhetoric; but while it found some of her public utterances "distasteful and reprehensible," it did not consider them to justify disciplinary action.

The *Ad Hoc* Committee's overall conclusion, then, was that there was no basis for initiating formal disciplinary charges against Miss Davis under any of the three allegations. With respect to the third of them, however, the Committee found that "Miss Davis's choice of language in some of her public statements is inconsistent with accepted standards of appropriate restraint in the exercise of academic freedom, even though the statements are not likely to lead to the destruction of those standards." Accordingly, the Committee recommended that (as stated in one place of the report) her statements "be carefully considered in the context of the full-scale evaluation of Miss Davis's record of performance by the appropriate faculty administrative authorities at the appropriate time;" and again (as stated in the final summary) "that they be taken into account, together with all relevant factors, by the appropriate faculty and administrative authorities when consideration is given to renewal of Miss Davis's present contract of employment."

#### *The Report of the Regents' Committee of the Whole*

The report of the Committee of the Whole (see Addendum B) consists essentially of three parts: first, a preamble justifying Regental intervention in the case; second, the explanation of their reasons for not relying on the rec-

ommendations of the relevant faculty and administrative committees or authorities; and, finally, the development of three substantive reasons for nonreappointment: (1) the objectionable character of Miss Davis's public utterances; (2) her lack of progress with her dissertation; and (3) the existence of prior claims on the limited budget of the University.

First, the preamble. The report of the Committee says, "the Regents for many years have entrusted to the administration, acting with the advice of the faculty, authority to make nontenured faculty appointments, except special categories such as Regents Professors and over-age appointments. This authority has been delegated and the Board of Regents has no present intention of altering this delegation." The reason the report states for the decision to intervene in this case is: "At the same time, members of the Board of Regents have not only the constitutional right but also the constitutional duty to act in those rare instances where it appears that great harm to the University would result from a failure of the Board to act." The report does not specify in what the "great harm" to the University might consist in the case of Miss Davis.

The Regents' report then reviewed the various recommendations which had come to Chancellor Young from the Department of Philosophy, the deans, and from the faculty Budget Committee—recommendations on which he had based his decision to reappoint Miss Davis—and in each instance the report reaches the conclusion that these participants in the decision to reappoint had either given no consideration to Miss Davis's extracurricular statements and activities, or else had given little consideration to her progress on her dissertation. As a result, the Regents expressed doubt about the Chancellor's statement, in his announcement of intention to reappoint her, that "favorable evaluations of the Deans and Budget Committee testify to their conviction that these allegations [of unprofessional conduct discussed in the *Ad Hoc* Committee report] do not constitute sufficient grounds for denial of reappointment."

The report, having already concluded that it is the duty of the Regents to intervene in personnel matters when great harm to the University is threatened, and having concluded that there were defects, in the case of Miss Davis, in the procedure normally relied upon for reaching institutional personnel decisions, went on to state substantive reasons for a conclusion of their own, and to recommend the nonreappointment of Miss Davis. This part of the Regents' report records concern with the lack of progress of Miss Davis with her dissertation, and with giving her reappointment in the face of their view of other more pressing demands upon the budget. It further affirmed what, as will appear below, is the central stated reason for the conclusion: "That the above quoted statements and others contained in the four public speeches reviewed by the *Ad Hoc* Committee and this committee are so extreme, so antithetical to the protection of academic freedom and so obviously deliberately false in several respects as to be inconsistent with qualification for appointment to the faculty of the University of California."

### *The Factors in the Decision of the Regents*

The investigating committee in its interviews with members of the Regents sought further light on the factors and their relative weight in the decision of the Regents.

In the remarks which follow, the committee faces the difficulty of attributing to any group the view of its members, each of whom has his own individual views which to some extent differ from those of other members. The committee interviewed eight of the twenty-four Regents, including the past and present chairman, the President of the University, and three of the politically elected *ex officio* Regents. The committee found no hesitation on the part of these Regents to offer explanations of their own thinking about the case; they were naturally cautious in describing what they believed to be the views of others. We shall refer to "some Regents" or "one Regent" unless repetition by a number of sources supports the more general statement of fact or positions.

What, then, were the factors or considerations offered, and how influential were they in the decision?

(1) *Extracurricular utterances.* Members of the majority who voted against Miss Davis's reappointment placed primary stress on her transcribed public speeches and particularly on the selected passages from them that were represented in the report of Chancellor Young's *Ad Hoc* Committee. The former chairman of the Regents read to the AAUP investigating committee lengthy excerpts from the *Ad Hoc* Committee's report, which he had also read aloud at the Regents' meeting. Most of those interviewed left no doubt that to their minds Miss Davis's extracurricular utterances were the main basis of their decision on the merits. Under Part IV of this report, "Analysis and Evaluation," it will be pertinent to inquire which feature of the statements was said to justify the adverse action: their ideological content, their mode of expression, or the context in which they were made. The Regents knew, of course, that Miss Davis's speeches were made to large audiences, sometimes to several hundreds or thousands of students, and in a context of widespread concern throughout California with radicalism and disruption on the University's campuses. The record on which the Regents acted, however, consisted solely of the transcribed text of the speeches themselves. The criticism stated in the report of the Regents' Committee of the Whole confines itself to content analysis, without basing its adverse conclusions on the circumstances of Miss Davis's public appearances.

(2) *Progress toward the doctorate.* The report of the Regents' Committee of the Whole also included, among the reasons for adverse action, expression of concern about Miss Davis's scholarly efforts, particularly in pursuit of her doctoral dissertation. This consideration seems to the investigating committee unquestionably a mere makeweight in support of a decision reached on other grounds. With one exception, the Regents conceded that they would not normally second-guess the Department or the Chancellor about an acting assistant professor on such questions. (Regent Rafferty did tell the investigating

committee that he opposed reappointing Miss Davis because he regarded her as obviously unqualified without the doctorate, and as having been misleading in creating an impression that she would probably receive a doctorate within a short space of time; her political views, he said, had nothing to do with his decision about her.) Moreover, neither the Regents nor the administrative officers of the University normally take any notice of the progress of a first-year staff member with his dissertation, since the teaching of four new courses during an academic year demands almost all the beginning teacher's time; in the case of Miss Davis there was even less than normal time for research on account of the distractions arising from the earlier action of the Regents.

(3) *Availability of funds in the budget of the College.* The report of the Committee of the Whole also includes expression of concern about the budgetary priorities of the College of Letters and Science. In view of the clear statement of Chancellor Young in his presentation to the Board that her salary would be funded from a source earmarked for the salaries of individuals from minority groups and not available for other priorities, however, it is impossible to believe that the Regents' extraordinary action was motivated to any significant extent whatever by a concern with personnel priorities at UCLA.

(4) *Assumption about the obligation of the University to Miss Davis.* In the stated view of the Regents, their action was simply a decision not to make a new appointment; it was not seen as a decision to terminate an appointment for cause, or as a decision to abrogate a two-year commitment. It is clear that some of the Regents interviewed by the investigating committee were at least not clearly familiar with the correspondence between Miss Davis and the chairman of the Department of Philosophy, and some Regents indicated that if they had been aware of the fact that the original commitment to Miss Davis was as strong as appears from the Department's letter to her, this might have made a difference to their decision.

(5) *Party membership.* In recounting the course of events, several Regents stressed that after the abortive attempt to invoke the 1949 rule against the employment of Communists, the question of Miss Davis's Party membership did not again enter their consideration of the case. In fact, they say that on one or two occasions upon which some Regent made reference to this Party membership, his comment was ruled out of order. The Regents interviewed assert that they conscientiously laid this fact aside after the order of the Superior Court and did not allow it to affect their deliberation; in their view the same was the case with a majority of the Regents. The investigating committee cannot say that a majority of the Regents voted to accept the report and recommendation of the Committee of the Whole solely as a device for enforcing the earlier anti-Communist policy against Miss Davis.

On the other hand, it would be overly simple to say that the Regents' knowledge of Miss Davis's Party membership played no role at all in their decision. Although the main stated reason for the Regents' action was the public

speeches of Miss Davis, several Regents conceded that the extracurricular speeches of an acting assistant professor would not have become a topic for extraordinary Board action but for the earlier history of the case involving the Party membership. Thus the Regents' actions concerning Miss Davis in September, 1969, and in May and June, 1970, were in reality linked, although not in the sense that she was denied reappointment because of her Communist affiliations. Regent Reagan told the investigating committee that "no one would have paid any attention to Miss Davis" except for her "announcement" that she was a Communist. At the May meeting of the Regents, he stated that the University had violated its rules, that Miss Davis should never have been hired, and that she had to go. Of course, the awareness of her Party membership might have had less influence under other circumstances; but the fact is that there was great publicity in the state of California given the actions of the Regents and the Superior Court in the fall of 1969, and the reactions of the faculty and Miss Davis had made her a *cause célèbre*. Regent Smith perhaps put the matter most succinctly when he said, "We had her in our lap and could not get rid of her." Although the court order theoretically had stopped dismissal under the anti-Communist rule in October, as early as November Regent Smith stated his view, at the meeting of the Regents, that her actions gave independent cause to discharge her. Some Regents thought it their duty to take command of the case because continual publicity about radical activism on the University campuses was damaging the best interests of the University, including its financial support by the electorate.

What role, then, did knowledge of Miss Davis's Communist Party membership play in the action of the Board? It would be unwarranted to say that this awareness was the sole reason for the Regental action; at least it is possible that, as Regents Reagan and Smith put it, if Miss Davis had abstained from making inflammatory public statements, her conduct would have left the Regents no basis on which to reverse the decision of the Chancellor. Nor is it warranted to say that the reasons stated by the Regents are a mere pretext for a preconceived determination to get rid of a Communist faculty member. On the other hand, if Miss Davis had never acknowledged Communist Party membership and had never become an object of Board attention on that account, her political statements would not have precipitated intervention by the Regents. The Regents' knowledge of Miss Davis's Communist Party membership probably, as some Regents' comments indicate, colored their later reaction to her public speeches and predisposed them to take an adverse decision in response to those speeches.

(6) *The actions of the Chancellor.* Chancellor Young's reports to the Regents may inadvertently have helped to incline the Board in the direction of the decision it finally made. The Chancellor reported in December that Miss Davis's appointment would automatically terminate on June 30, 1970, and he did not express his views in such a way as to contradict an impression some Regents said

was formed on the basis of his remarks, that he would probably allow the appointment to expire. His recommendation of reappointment at the May meeting therefore seemed to some Regents to have been in conflict with his earlier position, and may thus have aroused some impatience. Furthermore, some Regents, including Regent Reagan, stated, from their reading of a press interview with the Chancellor printed in the *Los Angeles Times*, that the Chancellor had in effect asked the Regents to take the responsibility for action. There is, however, no basis to conclude that the outcome of the Regents' action would have been different in the absence of any of these factors.

#### IV. Analysis and Evaluation

It is worthwhile to recall the status of the evaluations of the AAUP and the responsibility of its fact-finding committees. The AAUP is not—and *a fortiori* its Committee A and investigating committees are not—a court of law. Therefore, although there are many legal aspects of the present case, ranging from compliance with the First Amendment to compliance with the Regents' own rules (and it should be remembered that the internal standards and processes of public institutions have the status of administrative law), the AAUP and its committees are obviously not making legal decisions. Rather, the distinctive interest of the AAUP is in whether appropriate professional and institutional standards have been adhered to, whether or not these standards may also be controlling as a matter of law.

The present is not the place for philosophical disquisition on the normative force of the standards which have been developed by the AAUP over the years for the conduct of both academic staff members and the educational institutions which employ them. It must suffice to say that the AAUP has devoted a great deal of attention to the formulation of such standards, in the light of the role of educational institutions in the community; it has attempted to identify and to formulate practices which are essential if higher education is to make its best contribution to the national life. These standards are reasonably well-known among members of the several branches of educational institutions; they have become recognized as appropriate standards, with moral force comparable to the force of the moral right to freedom of speech. Although AAUP standards do not become the internal rules of an institution by their own force but only if they are adopted as such, they are in fact often given this status, as the use of them by Chancellor Young and the Regents in this case illustrates. The precise formulation of these standards is to be found in the various statements of the AAUP, published in its *Bulletin*. It is not here suggested that all of these statements have equal force.

Bearing in mind this summary understanding of the status of AAUP standards, the present investigating committee sought to respond to the following question: "Did the University of California depart from the standards of the AAUP and in so doing did it violate Professor Davis's academic freedom or her right to academic due process?"

### Academic Freedom

It is unquestionably contrary to the standards of the AAUP for a faculty member to be discharged, or for re-appointment to be denied,<sup>4</sup> for any of the following reasons or for a combination of them: membership *per se* in a political party including the Communist Party, the holding or expressing of views favoring revolutionary activity to the extent that these are not contrary to law, or being a political liability in a state either because of well-publicized membership in the Communist Party or because of lawful advocacy of revolutionary activity. These considerations may appropriately be grouped together as impermissible "political considerations." However, the principal reason offered in explanation for the nonreappointment of Professor Davis, as stated above, was the extramural speeches she made after the Regents' abortive effort to discharge her for Communist Party membership. According to the report of the Committee of the Whole and the testimony of most of the Regents interviewed, the crucial fact was that these speeches showed that, by the standards of the AAUP, Miss Davis did not meet the responsibilities of a member of the faculty. In support of its conclusion, did the report in fact follow the pertinent standards of AAUP on the propriety and relevance of extramural speeches for institutional discipline?

It is important to stress that this narrow question is restricted to the evidence on which the Committee of the Whole acted. It does not go to the broader question of the total merits of Miss Davis's case as they might have been determined upon a full record of evidence, including her own testimony, bearing on all aspects of her performance and activities, such as might have been developed by the Committee on Privilege and Tenure.<sup>5</sup> The question concerns the action that was in fact taken, not whether under different circumstances the same consequences might ultimately have resulted.

Since there have been repeated references to AAUP standards with respect to extramural utterances and faculty responsibilities in general—in the report of the Regents' Committee of the Whole and in interviews of the Association's investigating committee with interested parties—it is important to examine in some detail the relevant policy statements of the AAUP.

(1) In the 1940 *Statement of Principles on Academic Freedom and Tenure*, we read the following:

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he

<sup>4</sup> See 1968 *Recommended Institutional Regulations on Academic Freedom and Tenure*, section 5(a) and 10, *AAUP Bulletin*, Winter, 1968, pp. 448-452; also, "Academic Freedom and Tenure in the Quest for National Security," *AAUP Bulletin*, Spring, 1956, p. 61.

<sup>5</sup> For further discussion of matters related to issues of academic freedom and academic due process in this case, see pages 396-400 of this report.

should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

(2) A conference of representatives of the AAUP and of the Association of American Colleges in November, 1940, agreed on certain interpretations of the 1940 *Statement*, which read in part as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

(3) The Association's 1966 *Statement on Professional Ethics* further affirms (*AAUP Bulletin*, Autumn, 1966, pp. 290-291):

As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. . . .

As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

(4) A statement approved by Committee A of the Association in 1964 reads in part as follows (*AAUP Bulletin*, Spring, 1965, p. 29):

The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar. In the absence of weighty evidence of unfitness, the administration should not prefer charges; and if it is not clearly proved in the hearing that the faculty member is unfit for his position, the faculty committee should make a finding in favor of the faculty member concerned.

Committee A asserts that it will view with particular gravity an administrative or broad reversal of a favorable faculty committee hearing judgment in a case involving extramural utterances.

(5) Perhaps of less authority is the content of a 1963 "Advisory Letter from the Washington Office" on extramural utterances (*AAUP Bulletin*, Winter, 1963, pp. 393, 394), quoted in part by Chancellor Young's *Ad Hoc*

Committee, which contains the following:

It is the view of this office that the term "appropriate restraint," as used above, refers solely to choice of language and to other aspects of the manner in which a statement is made. It does not refer to the substance of a teacher's remarks. It does not refer to the time and place of his utterance. . . .

In conclusion, this office wishes to stress the fact that the disciplining of a faculty member for exercising the rights of free speech guaranteed to him as a citizen by the Constitution of the United States necessarily raises such fundamental issues that institutions are cautioned to take such actions only under extraordinary circumstances. Neither the error nor the unpopularity of ideas or opinions may provide an adequate basis for such disciplinary action, whatever temporary embarrassment these views may bring to the institution.

This same advisory letter quotes with approval a statement by Professor Ralph F. Fuchs, made in the *AAUP Bulletin* (Spring, 1963, pp. 41-42):

. . . institutional discipline for an utterance allegedly violating the "standards of academic responsibility" in the 1940 *Statement of Principles* cannot validly call in question the facts or opinions set forth by a faculty member. A violation may consist of serious intemperateness of expression, intentional falsehood, incitement of misconduct, or conceivably some other impropriety of circumstance. It may not lie, however, in the error or unpopularity, even though gross, of the ideas contained in the utterance.

It is obvious that the several admonitions about professional conduct espoused by the AAUP carry different importance; for instance, a professor would hardly be disciplined for failing to carry into action the charge "to further public understanding of academic freedom," and the violation could hardly be more than venial if sometimes he does not show "respect for the opinions of others" especially if he can demonstrate that these are poorly founded. More important, it was debated, in the 1963 report on the Koch case at the University of Illinois,<sup>6</sup> whether any of the admonitions in the cited paragraph from the 1940 *Statement* are mandatory in the sense that violations of them can be proper grounds for institutional discipline. At that time the investigating committee thought that these standards are admonitory only, and that university sanctions cannot be applied where legal sanctions would not be. Committee A, however, held that the 1940 paragraph and the following "Interpretation" had been a concession to the view of the Association of American Colleges that a statement of "academic responsibility" in extramural utterance should qualify the assurance of the professor's freedom as a citizen from institutional constraints, and affirmed that violation of the standards cited in the 1940 *Statement* can be a legitimate prima facie ground for institutional disciplinary action, when the proper procedural safeguards are provided. Subsequently the 1964 *Statement on Extramural Utterances* substantially moved to the position we believe implicit in the 1940 "Interpretation": that in charges based on extramural utterances, the faculty member's *unfitness for his position, clearly proved on his entire*

<sup>6</sup> *AAUP Bulletin*, Spring, 1963, pp. 25-43.

*record, must be the controlling test, and that any fault with respect to extramural utterance can be at most evidence bearing on his fitness for his position.* Finally, the 1966 *Statement on Professional Ethics* (which was incorporated in the institutional instructions at UCLA) elaborates on the admonitions of the 1940 *Statement*, particularly with respect to intellectual honesty (its first paragraph), respect for the free inquiry and opinions of others (quoted above), and furthering public understanding of academic freedom (also quoted above). But its preamble says that the statement, which is "necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the variety of obligations assumed by all members of the profession." It allows that a violation might be sufficiently serious to merit dismissal, but avoids further explicitness, except to refer back to the 1940 *Statement* (and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*) for a discussion of proper procedures in case a dismissal action is begun.

It is only fair to recognize that, in the development of the Association's position on faculty responsibility in cases involving extramural utterances as a professional obligation enforceable by institutional sanctions, grounds for reasonable differences in interpretations have occurred. Nevertheless, at the time of Miss Davis's appointment the position of the Association clearly held that (1) although violation of any one of the various admonitions listed may be viewed as a fault, its only force in an institutional disciplinary action is as *evidence bearing on the person's fitness for his position*, and (2) that the controlling criterion for a dismissal action is the person's unfitness for his position, clearly proved on the entire record. Extramural utterances, the 1964 *Statement* observed, rarely bear on an individual's fitness for his position.

This interpretation was essentially followed by the Chancellor's *Ad Hoc* Committee, which concluded that in effect it was being asked "to determine whether Miss Davis's public statements demonstrate her unfitness to teach. . . ." Its conclusion, that there was no ground for initiating disciplinary action against Miss Davis, must be construed to be an affirmation that her extramural statements did not establish her unfitness to teach on the record as a whole. Chancellor Young accepted this conclusion.

In examining the report of the Regents about Professor Davis's fitness, two considerations need to be emphasized. First, the report's statement of the grounds for adverse action based on extramural utterances must necessarily select, for quotation and analysis, the most controversial statements found in the transcripts of her speeches; these are included in the statements of the Committee of the Whole of the Regents (Addendum B of this report). Second, the position of contemporary radical rhetoric needs to be considered in relation to standards of academic responsibility. Students of this rhetoric have described it as seeking to express an uncompromising confrontation of the rhetorical adversary, indifferent to



the reasoned persuasion and eventual accommodation sought by other conventions of public address. Regent William K. Coblenz, in dissenting from the Regents' report, stated the difficulty in penalizing Miss Davis for the vituperation, name-calling, and bad taste in her polemics (Addendum C of this report): "In this day and age when the decibel level of political debate . . . has reached the heights it has, it is unrealistic and disingenuous to demand as a condition of employment that the professor address political rallies in the muted cadences of scholarly exchanges." Some distinction can be recognized between written, or prepared, texts, and extemporaneous remarks. Miss Davis, who in her classroom and in her interview with the present investigating committee has shown herself entirely capable of thoughtful and soft-spoken discourse, explained her platform terminology by reference to her personal background, and to the needs of communicating to her audiences a view of reality which inheres in the choice of style and would not be conveyed by "respectable" synonyms. When asked how she would judge this style if used publicly by her own professors or, now, her older colleagues, she replied that it would depend on whether it appeared as a natural expression of the person's background or as a false note, adopted only as a tactic.

Turning now to the precise reason stated by the Regents for their reversal of Chancellor Young's decision to reappoint Professor Davis, we find that the crucial sentence contains three distinct charges: (1) that her speeches were "extreme," (2) that they were "antithetical to the protection of academic freedom;" and (3) that they were "obviously deliberately false in several respects."

The mere characterization of a speech as "extreme" conveys no criticism cognizable under AAUP standards. If this adjective refers to the substance of political views expressed by a speaker, the charge is unacceptable, as shown by the excerpts from those standards that were cited in the *Ad Hoc* Committee's report and which were before the Regents. For instance, the *Ad Hoc* Committee quoted these passages: "A violation . . . may not lie, however, in the error or unpopularity, even though gross, of the ideas contained in the utterance. . . . Neither the error nor the unpopularity of ideas or opinion may provide an adequate basis for such disciplinary action, whatever temporary embarrassment these views may bring to the institution." The same would be true if the adjective "extreme" were meant to describe the intensity of the speaker's expression of such views. Conceivably the ambiguous epithet "extreme" was not meant to allude to the substance or intensity of Miss Davis's political views. But at least it must be said that this charge fails to articulate a tenable ground for adverse action.

The second stated charge, that Miss Davis's statements were "antithetical to the protection of academic freedom," also suffers from the defect of imprecision. On the record reviewed by the Committee of the Whole, this criticism appears to be not that her *statements* posed a threat to the protection of academic freedom, but that the substance of her views was inconsistent with an accep-

table concept of academic freedom. Presumably the Regents meant to charge a violation of the AAUP admonition to "respect and defend the free inquiry of her associates" or "to promote conditions of free inquiry and to further public understanding of academic freedom."

The *Ad Hoc* Committee had explicitly rejected this charge as a ground for disciplinary action. It noted that Miss Davis had taken no action to the detriment of academic freedom, beyond speaking unfavorably about academic freedom as it is understood in the profession. For instance, in a part of her Santa Barbara speech on February 5, 1970, which the Regents' report does not quote, Miss Davis said of Professor Arthur Jensen that "He's maintaining that he has the right to talk about things like the genetic inferiority of black men." This quotation may be read as implying that, in her view, Professor Jensen has no such right, or that she thinks he has abused the right. Certainly her statement was not a defense of Professor Jensen's right to free inquiry and to publish his findings, though it must be said that its point was not so much to attack him as, rather, to illustrate her criticism of established concepts of academic freedom. But criticism of the AAUP doctrine about academic freedom, or even utterances which on full inquiry were found to transgress the AAUP standard, would not *ipso facto* establish unfitness for an academic position.

The final charge in the crucial sentence asserts that Miss Davis's statements were "obviously deliberately false in several respects." The report of the Committee of the Whole does not specify which of her statements were of this kind. The Chairman of the Regents at the time of the decision, an attorney devoted to the maintenance of professional ethics in his own profession, cited to the Association's investigating committee as a flagrantly irresponsible falsehood Miss Davis's assertion that the Superior Court's decision in her favor had resulted from the pressure of mass demonstrations.

The judgment that this assertion, beyond being baseless in fact, represented "deliberate" falsehood is of course an inference. Inferences about knowledge and intent must sometimes be based on the evidence of behavior; but if an inference of "deliberate falsehood" may be based solely upon the statement itself, without any hearing or other effort to determine the speaker's own explanation of his knowledge or intent, the AAUP requirement that the falsehood must be "deliberate" would lose most of its force. To the investigating committee, Miss Davis, with some embarrassment, did not defend the factual accuracy of the quoted statement but sought to explain her intention in context by reference to contemporaneous events in another court.

Though the three elements of the charges which the report of the Regents' Committee of the Whole levied against Professor Davis's extracurricular statements do not individually withstand literal analysis, they might be construed, when taken together with earlier passages in the report, so as substantially to amount to a charge—under the AAUP standard of "appropriate restraint"—of

serious intemperance and inaccuracy of expression. Of course, if such a different charge were made out, it again remains necessary to establish that it proves the speaker, on the whole record, to be unfit for his academic position.

It is important, particularly in the contemporary context, to emphasize that there are two distinct requirements for any adverse decision founded on charges of infraction of AAUP standards of professional responsibility in extramural utterance: first, that the statements fall short of AAUP standards, and second, that this default in professional responsibility, when taken with the remainder of the record, shows the faculty member's unfitness for his position. The report of the Committee of the Whole attempts only at most to show that the first of these requirements was met in the case of their adverse decision; no attempt whatever is made to establish the necessary relationship between the intemperateness of Miss Davis's extracurricular speeches and her unfitness for academic position. The failure of the report even to attempt to establish this relationship was perhaps the result of an assumption, on the part of members of the Board of Regents, that it was unnecessary—that, when a charge is based on an infraction of AAUP's own admonitions to faculty members, the imposition of institutional sanctions cannot be a violation of academic freedom. While this mistaken assumption may have existed and may explain the failure of the report of the Committee of the Whole to attempt to meet the second of the two requirements, the fact remains that the assumption was inaccurate and that the report does not make out an argument sufficient to meet the second requirement for an adverse decision.

What is required by the concept "fitness for one's position?" Most obviously, it means the capability and the willingness to carry out the duties of the position. First among these, for most academic personnel, are the duties of a competent and responsible teacher. The *Ad Hoc* Committee found, and the Regents do not deny, that in this respect Professor Davis performed well. Depending on his discipline, rank, or assignment, and the practices of the institution, a faculty member's position may involve other responsibilities, in research, in advising students, in sharing departmental chores or administrative duties, and the like. To meet the AAUP's standard of unfitness, then, the faculty member's shortcoming must be shown to bear some identified relation to his capacity or willingness to perform the responsibilities, broadly conceived, to his students, to his colleagues, to his discipline, or to the functions of his institution, that pertain to his assignment. The concept cannot be reduced to a generalized judgment of "unsuitability" at large. AAUP standards of responsibility identify objectionable features in extramural speech, and their presence in any serious degree is *prima facie* evidence to trigger an inquiry into the speaker's fitness for an academic position, but it does not by itself establish unfitness.

Thus, under the quoted principles, institutional sanctions imposed for extramural utterances can be a violation

of academic freedom even when the utterances themselves fall short of the standards of the profession; for it is central to that freedom that the faculty member, when speaking as a citizen, "should be free from institutional censorship or discipline" except insofar as his behavior is shown, on the whole record, to be incompatible with fitness for his position.<sup>7</sup> To this extent the decision—not to reappoint Miss Davis on the charge that her speeches were "so extreme, so antithetical to the protection of academic freedom, and so obviously deliberately false in several respects as to be inconsistent with qualification for appointment to the faculty of the University of California," without any analysis relating this charge to her unfitness for the duties of her position—did constitute such a violation.

The foregoing conclusion refers to the action of the Regents on the record before them. It expresses no *de novo* judgment either upon Miss Davis's speeches or upon her fitness to teach. Conceivably a case might have been made, upon full proceedings and upon a careful analysis, to show that Miss Davis was so indifferent to truth or falsehood or to other criteria of rational discourse in pursuit of political goals as to demonstrate unfitness to teach on the whole record. This was not done. But the question points also to the importance, for academic freedom, of the Regents' action in taking the decision out of normal University channels.

At some stage in a contested argument over academic responsibility and fitness to teach, appeal must be made to someone's judgment in applying what are necessarily somewhat imprecise standards for the limits of propriety of extramural controversy. The judgment to be made is how far the condemned polemics fall below a professionally tolerable norm, and about the gravity, the frequency, and other circumstances of the incidents along with other evidence bearing on the speaker's overall academic responsibility. It is entirely possible, even likely, that the balance might be struck differently on the same evidence by leaders of the academic community and by members of a governing board, especially where political and other public controversy is involved. Academic judges may have a higher tolerance for verbal contention, however farfetched or indiscreet, for reasons that go beyond mere guild loyalty; but they may be more concerned with evidence of charlatanism or overall quality in the speaker's total academic performance. Presumably, on the other hand, controversial extramural utterance will be of concern to a lay governing board precisely to the extent that it is a matter of public rather than academic controversy. To that extent, the judgment of such a board under an identical general standard is likely to focus on those aspects of the total conduct that outrage public sensibilities and to undervalue those that relate to pro-

<sup>7</sup> For published reports by the AAUP on cases involving institutional sanctions imposed for extramural utterances, see: (1) Auburn University (*AAUP Bulletin*, Spring, 1958, 158-169); (2) University of Illinois (*AAUP Bulletin*, Spring, 1963, pp. 25-43); and (3) University of Florida (*AAUP Bulletin*, Winter, 1970, pp. 405-422).

fessional performance within the academic discipline. In the light of these considerations, the wisdom of the AAUP procedural standards—which require careful exchange of views between faculty committees, administrations, and governing boards in disciplinary actions of the present kind—is apparent; these standards were manifestly not adhered to in the case of Miss Davis.

The importance to academic freedom of the question who makes the judgment of academic responsibility is accentuated when the judgment is made without any opportunity of participation by the person being judged. In the evaluation of transcribed recordings of stump speeches, meaning and intention may be open to explanation or defense. The speaker may wish to balance the total impression by evidence of his other written or spoken views. When facts are not in dispute, the proper meaning of the applicable standards may yet be open to argument. We repeat that these elements of judgment go to the substance of the standards of academic freedom and responsibility, quite apart from procedural fairness. They alone make judgment under an imprecise standard tolerable.

The foregoing analysis applies principles that should govern any assessment, no matter how well intentioned, of a faculty member's extramural utterances by his institution. It would appear unrealistic, however, to ignore altogether the view of an essentially political motivation of the Regents' action which is widely expressed in the California press and among faculty members—the view that the final decision was the foreordained result of an unvarying determination by a majority of the Regents to get rid of a faculty member who was a member of a Communist group, who made radical speeches, and whose presence at UCLA had become a political liability in the State of California. Evidence for this view of their action is found in the extramural utterances of some Regents not among those interviewed by the committee, as reflected in press statements, published letters to the editor, and the like. The character of the report of the Committee of the Whole and the procedures of its initiation and adoption do nothing to dispel this imputation that the report presents the Regents' justification rather than the motivating premises of their action. The record of board minutes and other testimony show persistent eagerness throughout the year, on the part of some Regents, to find a legally acceptable means of removing Miss Davis from the faculty. Moreover, conclusions such as that various UCLA officials had not adequately considered the criticism of her speeches by the *Ad Hoc* Committee, or her progress with her dissertation, were based merely on obviously summary written documents, when it would have been easy to ascertain by testimony, by requesting a report, or even by a telephone call, the extent to which this criticism had in fact been taken into account. Similarly, if the Regents were concerned about the import of or possible ambiguities in, the report of the faculty *Ad Hoc* Committee, they might easily have dispelled these by questioning the chairman of that Committee at the May meeting; in fact, however, no questions or comments were directed to him.

Nevertheless, the investigating committee intends no more than to take cognizance of this line of criticism of the Regents' action. The committee's report rests on its preceding analysis of that action.

#### *Academic Due Process*

It is undisputed that the unfavorable decision was taken by the Regents without the procedural safeguards (a hearing before a faculty-elected committee, before which the defendant has an opportunity to hear and answer charges made against him) that would apply, under the University's own rules as well as AAUP standards, to a termination for cause. (These safeguards were observed in the procedures involved in the initial termination of her appointment in September, 1969.) The official position of the University throughout has been that Miss Davis's temporary appointment was self-terminating on June 30, 1970, and that the question before the Chancellor and before the Board in May and June, 1970, was equivalent to deciding on making a new appointment.

This position cannot be maintained under the Association's standards. First, the University's original negotiation with Miss Davis resulted in the mutual understanding, expressed in the Department Chairman's March 24, 1969, letter of appointment, which included these statements: "The appointment would be at the rank of Acting Assistant Professor. . . . The appointment is intended for two years (University regulations require that acting appointments be renewed each year, but this is a technicality). The question of a continued position at UCLA beyond the second year is left open now and will be considered while you are here." If University administrators failed to countermand this understanding before her appointment because of lapse of communication between the Chairman and the Dean, the University cannot charge that lapse against the faculty member. Chancellor Young in fact referred to the "reasonable presumption of reappointment" as well as the particular assurances given Miss Davis when he presented his report to the Regents.

There is a second reason why, according to AAUP standards, Miss Davis was entitled to a regular faculty hearing in connection with the decision not to reappoint. According to the AAUP policy document, "Academic Freedom and Tenure in the Quest for National Security" (*AAUP Bulletin*, Spring, 1956, p. 61), ". . . no opportunity for hearing is normally required in connection with failure to reappoint. If, however, there are reasonable grounds to believe that a nontenured staff member was denied reappointment for reasons that violate academic freedom, there should be a hearing before a faculty committee. In such a hearing the burden of proof is on the persons who assert that there were improper reasons for the failure to reappoint." Again, according to the AAUP 1968 *Recommended Institutional Regulations on Academic Freedom and Tenure*, if a person believes that "considerations violative of academic freedom significantly contributed to a decision not to reappoint him," he has a right to consideration of his claim by an appropriate committee; and if this committee so recommends, a full-scale hearing will be provided under the usual

regulations for the case of dismissal of tenured members of the staff except that the complainant "is responsible for stating the grounds upon which he bases his allegations, and the burden of proof shall rest with him. If he succeeds in establishing a prima facie case, it is incumbent upon those who made the decision not to reappoint him to come forward with evidence in support of their decision."

In pursuance of these policy statements, on May 22, 1970, Miss Davis did file a complaint with the Committee on Privilege and Tenure, asserting, among other things, that "the refusal of the Board of Regents to accept the report of the Chancellor of UCLA that complainant should be reappointed for her second academic year was a grave invasion of academic freedom affecting both complainant and all members of the faculty of UCLA." In consequence, according to the above regulation a committee determination should have been made whether to grant her a hearing. This was never done, for reasons stated above (p. 387).

Moreover, it is hardly contested that the Regents' decision to assume direct authority over what normally would be a low-level appointment was a decision to deny reappointment for cause. Indeed, the official position that they had acted only on a wholly discretionary appointment was not maintained consistently by several Regents in interviews with the investigating committee. The cause for the denial of reappointment was one involving highly controversial questions of academic freedom and responsibility. It would have been one thing, if, for instance, the Department of Philosophy had found it necessary, in good faith, to tell Miss Davis that the budget provision under which she had been appointed was withdrawn for the coming year and no other funds were provided. It is quite another, when, after favorable recommendations on academic grounds, a normally expected reappointment is denied on grounds of unprofessional conduct in extramural utterances. These are issues of exceptional sensitivity whose determination requires procedural safeguards even in decisions on renewal of an annual appointment. This requirement of academic due process in decisions involving academic freedom and responsibility is a necessary protection of academic freedom itself.

Can there be any question whether Miss Davis did receive all the due process relevant in cases of this sort? It is true that "due process" need not necessarily mean the precise procedures used in dismissal of tenured professors for cause. Since 1968 the Association has, in fact, been developing less formal recommended procedures for use when academic freedom is alleged to have been violated in a decision against reappointment.<sup>8</sup> In the University of California's decision on Professor Davis, however, it is not claimed that due process was accorded her in any form; rather, the assertion is that the decision did not call for due process. Thus she was not informed of the allegations stated in the Chancellor's instructions to the secret *Ad Hoc* Committee; that Committee did not

<sup>8</sup> See sections 10 and 15 of *Recommended Institutional Regulations on Academic Freedom and Tenure (AAUP Bulletin, Winter, 1968, pp. 451-452)*.

interview her; she was not given an opportunity to read and comment on the Committee's analysis of her extra-curricular statements on which the administration was to make its decisions, and she was not asked to do so by the Committee of the Whole after the Regents voted to make their own decision on the facts that were before the administration.

The evaluation made by the *Ad Hoc* Committee was that of her academic colleagues. But it was made in the course of a preliminary investigation, not a hearing. A secret investigation is not due process, as the *Ad Hoc* Committee took great pains to point out. And when the report of that secret investigation was used, still without notice or hearing, to deny her reappointment on the grounds of her speeches, the judgment was no longer even that of academic colleagues. This would have been so whether the Chancellor or the Regents made the adverse decision.

Everything considered, the conclusion of the investigating committee is that the Regents of the University of California violated recognized principles of due process in the case of Miss Davis.

#### *The Self-restraint of Governing Boards*

The governance of American institutions of higher education traditionally includes participation by a governing board, administrative officials, the faculty, and to some extent the students. Full cooperation, confidence, and understanding among these groups is necessary for optimal planning and operation of the institution.

In the cooperative enterprise in which all these four groups should participate, it is recognized that some areas of decision are the primary responsibility of one group, others of another. These areas were identified in a *Statement on Government of Colleges and Universities* which was jointly formulated by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, and approved on October 29, 1966, by the Council of the Association. This Statement articulates standards for the role of faculty, administrators, and governing boards in personnel decisions.<sup>9</sup>

<sup>9</sup> The Statement reads as follows:

The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The Board should undertake appropriate self-limitation. . . . The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. . . . Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The

Does the University of California conform to this standard? Since 1966 the Regents had delegated responsibility over faculty status to the President except for over-age, over-scale, and special Regental chair appointments. But, as a result of the discussion involving the over-age continuation of Professor Herbert Marcuse, of the San Diego Department of Philosophy, on April 18, 1969, the Standing Orders of the Regents were modified, so that now all appointments and promotions of tenure rank are submitted to the Board. This withdrawal of authority from the President was no mere formality; at the July, 1970, meeting of the Board, the promotions of two faculty members were held up, one of them Professor David Kaplan, Vice-Chairman of the UCLA Department of Philosophy who had been active in support of Miss Davis. Professor Kaplan later received the promotion.

The above change in Standing Orders left in the hands of the President the "appointment, promotions, demotions, and dismissals of all other faculty members or employees, except as otherwise provided in the By-Laws and Standing Orders. . . ." It is this delegation which the Regents in effect suspended in the case of Miss Davis.

In general, then, at the University of California the responsibility for faculty status is not a matter with which the Board of Regents concerns itself. It is clear that the Board of Regents has no intention of attempting to assess the academic merits of all proposals for appointment and promotion which are put before it. In what kinds of instance and for what reasons, then, does the Board propose to exercise its control? By the nature of public boards, unfortunately, a case tends to be "exceptional" by public criteria other than its academic importance. In personnel matters, initiatives by the Regents tend to occur when a faculty member is politically controversial; in California, this has meant radicalism of the left.

In the case of Miss Davis the Regents did not follow the standard of the AAUP in the respect that, after refusing to accept the recommendations of the Department of Philosophy, of other officials or committees concerned with reappointments, and of the Chancellor in their own initial decision, they did not give the faculty an opportunity for stating its own views before proceeding to final action. In the judgment of the investigating committee, in their handling of the case of Miss Davis, the Regents of the University of California moved far from acceptable

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primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

standards of self-restraint on the part of a governing board.

#### *The Internal Institutional Performance*

The foregoing has focused on the decision of the Regents, and its failure to conform to the standards of AAUP. It would be misleading, however, to imply that all the administrative processes of UCLA functioned perfectly until the Regental level was reached.

(1) There was some sort of unusual misunderstanding between the Department of Philosophy and the deans about the extent of the University's commitment to a second year's appointment for Miss Davis. The Department maintained unwaveringly throughout the year that there was a promise to her for a second year, contingent only on "normal performance" during the first. The deans disagreed, although the Department first learned of their attitude in November, 1969. According to the minutes of the November 21, 1969, meeting of the Regents, Chancellor Young reported that "the Dean has pointed out to the Chairman that the appointment could be only for one year and that, beyond the legal considerations involved, he and his colleagues serving as a committee on appointments for the entire Division had serious reservations about the appointment and would in no instance regard it to be more than a one-year appointment." This attitude of the deans is surprising. Given the distinction of the UCLA Department of Philosophy and its traditionally high standards of appointments, one would not expect the deans to second-guess its evaluation of the philosophical talents of an acting assistant professor, nor to pass over without mention, in their simultaneous memoranda of April 22, 1970, on Miss Davis's appointment, any professional (as distinguished from legal) responsibility that might have been incurred in the Department's original commitment to her.

The Chancellor, too, in his statements to the Regents prior to May, 1970, apparently made no mention of any such good-faith commitment arising from the circumstances of Miss Davis's original appointment. In addition to his report in November, 1969, quoted above, he had written in his charge to his *Ad Hoc* Committee that "There is also the question as to whether Miss Davis should be reappointed beyond the current one-year term which expires on June 30 of this year. . . ." This sentence was included in a much-abbreviated *précis* of the *Ad Hoc* Committee's report which he presented to the April meeting of the Regents. Thus it was natural for the Regents to believe, as late as that date, that all responsible parties within UCLA saw no obligations toward Miss Davis beyond the year for which she had been technically and officially appointed, and that the *Ad Hoc* Committee's recommendation to take her speeches into account at the time of reappointment referred to the decision about to face the Chancellor with respect to 1970-71. In fact, however, the view within UCLA was not so unambiguous.<sup>10</sup> Eventually Chancellor Young did, as noted above,

<sup>10</sup> For instance, the chairman of the Chancellor's *Ad Hoc* Committee told the present investigating committee with some dismay that it had been his own unstated assumption,

express the case for recognizing a University obligation for a reappointment in his May 15, 1970, statement to the Regents announcing his decision to reappoint her. This clarification, however, came rather late in the day as far as crystallization of the Regents' attitude was concerned.

(2) On Chancellor Young's shoulders fell the heavy burden of representing, and doing what he could to preserve, the principles of academic freedom, of due process, and of the existing delegation to the administration and the faculty of responsibility for personnel decisions at UCLA. He was under great pressure from both the Board and the faculty. During the course of the year, the Chancellor gradually abandoned hope that presenting information and reasons could lead to resolution of Miss Davis's case in accordance with the basic principles in which he believed; he came to believe that the case could be settled only in court.

The view that the outcome in the Board of Regents would have been the same whatever the Chancellor might have said is shared by virtually everyone interviewed by the investigating committee, and the committee has no reason to doubt that judgment by those closest to the scene. Nevertheless, one may regret the brevity of the Chancellor's clear statement of May 15, 1970, and the absence, during the entire course of events, of any communication to the Regents, from the responsible officers of the University, comprising a full-scale defense of the administration's right, upon faculty consultation and careful review at all levels, to make final decisions about individual academic personnel.

A clear statement of the applicability of governing standards of academic freedom to nontenured as well as to tenured faculty members; a discussion of the kind of academic due process applicable even to a reappointment, when the cause for questioning an expected reappointment is alleged misconduct, and particularly when it involves issues of academic freedom—these are missing items that one would hope to see in the record of an institution of the stature of the University of California. The Chancellor might also have explained at greater length the extent to which the internal review had taken into account all the relevant facts, including the report of his *Ad Hoc* Committee, and his own reasons for deciding that Miss Davis's controversial conduct was, on the whole record, insufficient ground to deny her reappointment.

Again, there is no reason to think that the eventual decision of the Regents would have been different if these full-scale statements had been made. Indeed, they might even have antagonized some Regents. But the value of making such a record is not to be discounted by anticipating its futility, if the principles of this Association are not to be sacrificed *ad hoc* to the political assessments of administrators, no matter how accurate and well-intentioned.

(3) Finally, it appears from interviews with the in-

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probably shared by some of his colleagues on the Committee, that this recommendation referred to the end of the assumed second year of Miss Davis's service, when a decision might be made whether to offer her a regular appointment.

vestigating committee that in the whole elaborate process of institutional decision apparently no one above the level of the department chairman knew Miss Davis personally or ever spoke with her concerning her work, her activities, or her future. From the first day of her employment, when she was identified as a Communist, Miss Davis became for UCLA an issue on which to divide, and a case to be processed, with full documentation of everyone's position. It would seem that when the conduct of an otherwise competent faculty member is under scrutiny for possible departures from accepted standards of professional responsibility the matter should be raised with the faculty member in some informal manner at an early stage before becoming the subject of full-dress investigatory or disciplinary procedures.<sup>11</sup> Nothing of the kind seems to have been done in the case of Miss Davis. Consequently, she was offered no indication of the view which the institution would take of her activities (after the first effort to discharge her under the anti-Communist regulation) and no informal or formal opportunity to comment on the matters which were under investigation and on which the decision on her future would be made.

In part, this depersonalization of the institutional process may be an inevitable cost of the sheer size of universities like UCLA. To some extent, however, it must be attributed to a highly developed state of tension pervading the University of California with respect to the issues exemplified by this case.

#### V. Academic Freedom at the University of California

While the investigating committee directed its inquiry only to the case of Professor Davis, interviews with Regents and faculty members as well as published press comments often placed the case in a wider context. Indeed, it would be difficult to understand the action of the Regents of a vast, nine-campus university in overruling the carefully considered decision of a chancellor on a minor, temporary reappointment if it were only an isolated incident in an otherwise untroubled setting.

The context is, of course, quite otherwise.

The University of California has a long history of preoccupation with political nonconformism, highlighted, for instance, by the 1940 statement of policy and the 1949 anti-Communist regulation, the contemporaneous controversy over faculty loyalty oaths, and the 1964 "Free Speech Movement" at Berkeley which is generally regarded as the first episode in the new student activism. In recent years, controversy has broadened from the radicalism of students to that of some faculty members. Decisions concerning the employment of specific instructors such as Professor Herbert Marcuse at San Diego, and the conduct of specific classes, such as a course including lectures by Eldridge Cleaver, have engaged the direct attention of the Regents. Moreover, in addition to the inherently divisive nature of such controversies, those

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<sup>11</sup> See procedural recommendation 1 in the *Statement on Procedural Standards in Faculty Dismissal Proceedings* (*AAUP Bulletin*, Winter, 1968, p. 440).

concerning the University of California have often become political issues in California elections.

In this setting, many of the Regents and large segments of the academic community have come to regard each other in an adversary relationship. The Regents are alarmed at what they see as a precipitate decline in institutional self-discipline—illustrated by such developments as political “strikes,” disruption of University activities, and “reconstitution” of courses—and feel responsible for reestablishing control. Some faculty members are prone to see each Regental intervention in a matter normally delegated to academic self-government as politically motivated, punitive, and repressive of academic freedom.

It is not here suggested that individual faculty members at the University of California are afraid to participate in political activities of their choice, or to express their political views lest their positions be in jeopardy. Nor could this report responsibly generalize about conditions that might be expected to differ at the University's nine separate campuses, headed by separate administrations, several of whom have reputations for defending high standards of academic freedom. Yet one effect of the apprehensions engendered by administrative and Regental preoccupation with issues of this kind is to breed a certain atmosphere of suspicion and hostility among faculty members themselves; the UCLA Department of Philosophy, for instance, seemed to be resented in various quarters as a source of trouble because of the political activism of some of its outstanding members.

This report cannot pursue the broader dimensions of this contemporary problem, which is not peculiar to California. In its context, however, the case of Professor Davis does carry significant lessons about the health of academic freedom at the University of California.

1. *The practice of selective intervention.* Individual Regents invariably assured the investigating committee that the Regents are committed to the principle of delegation and decentralization, limiting themselves to making general policy and intervening in specific decisions only in “rare instances,” as the Committee of the Whole stated it. Such was their view of the intervention in the case of Miss Davis, about the objectionable character of which we have commented, in connection with the topic of the proper self-restraint of governing boards. But it is worthwhile to observe further that a practice which reserves direct intervention in personnel decisions for “exceptional” cases of intense political controversy has obvious consequences for the atmosphere of academic freedom at the University. The investigating committee is persuaded that the Board would be discharging its responsibilities most effectively if it delegated personnel authority without exception and held the responsible administrators fully accountable for their decisions. But if a Board nevertheless insists on retaining final authority in “rare instances” it is doubly important that such exceptional personnel action be taken in accordance with the standards set by the AAUP (see above, p. 402) which call for a responsible dialogue between faculty, administration, and Board, before final action is taken, if the destructive consequences

for an institution's sense of academic freedom are to be minimized.<sup>12</sup>

The extraordinarily bitter and sustained reaction of the faculty to the actions of the Regents throughout the Angela Davis case shows that these consequences have not been held to a minimum at the University of California.

2. *The anti-Communist rule.* The 1949 rule that established an automatic disqualification of all members of the Communist Party from employment at the University of California is not consistent with the standards of the Association.<sup>13</sup> The Regents were advised of the legal impropriety of the rule when the question arose at the very origin of the present case. They had the opportunity to treat it as an outdated and dormant relic of the 1940's which had been superseded by their recent enlightened Standing Order prohibiting political tests for employment. To the extent that Communist Party membership raises doubts about an instructor's intellectual integrity and independence, the inquiry could and properly should be directed to that issue itself and not foreclosed by the irrebuttable presumption of a “per se” rule.

Instead the Regents have chosen to reassert their 1949 rule, in disregard of their own standing order 102.1 (stating “no political test shall ever be considered in the appointment of any faculty member or employee”), in disregard of AAUP standards, and in express speculation on the chance that a change in Supreme Court Justices might bring a weakening of the First Amendment. This is not the view of the values of individual freedom and individual accountability that one may expect of the leaders of a great intellectual institution. That more than an abstract “test case” of the anti-Communist policy was involved was dramatized by the overreaction of the Regents in intervening to withdraw credit when Miss Davis was given a fall quarter course—a step which can hardly be explained by the intrinsic importance of the question of credit but only as an angry blow at presumptuous academic insubordination.

We conclude this section with the reminder that academic freedom cannot flourish when governing boards and faculties confront each other as if they were adversaries. The University of California has long been among the greatest of all public academic institutions. Its status under the state constitution and the long terms of its Regents have been claimed to promise some guarantees of its independence from the pressures of transient political controversy. The record does not bear out this hope. It is indispensable that the Regents and the faculties in California, as at other institutions, find means of communication that will enable them to regain a sense of being engaged in a common enterprise with a shared commitment to intellectual freedom.

<sup>12</sup> See procedural recommendation 7, *Statement on Procedural Standards in Faculty Dismissal Proceedings* (op. cit.); and section V of *Statement on Government of Colleges and Universities* (AAUP Bulletin, Winter, 1966, pp. 378-379).

<sup>13</sup> See *Report of the Special Committee, “Academic Freedom and Tenure in the Quest for National Security”* (AAUP Bulletin, Spring, 1956, pp. 50-61).

## VI. Conclusions

The investigating committee reports the following findings and conclusions:

1. Professor Davis held a temporary, one-year appointment from July 1, 1969, to June 30, 1970, which she accepted upon the express representations by the responsible department chairman that renewal for a second year was expected and, assuming normally satisfactory performance, would be a technicality.

2. The attempt in September, 1969, to terminate Miss Davis's appointment under the 1949 rule against employment of Communist Party members originated as a policy decision to enforce or to test that rule; it was to be carried out through normal institutional procedures. The rule itself is inconsistent with the standards supported by the AAUP.

3. The Regents' October action prohibiting Professor Davis from teaching any course pending her discharge went beyond the needs of testing the policy against employment of Communists and was taken without regard to established institutional or AAUP procedures concerning faculty status.

4. The *Ad Hoc* Committee appointed by the UCLA Chancellor functioned strictly as an investigating committee in its procedure and in its understanding of its assignment. Its confidential inquiry into possible grounds of charges against Miss Davis was not intended to and could not serve as a procedural basis for adverse action against her; rather, it was made in contemplation of initiating possible due process procedures.

5. The Chancellor's *Ad Hoc* Committee made a careful assessment of Professor Davis's extracurricular statements in relation to the questions posed by Chancellor Young and to AAUP standards of academic freedom and responsibility. The committee concluded that some of Miss Davis's public statements offended against good taste, and that in some instances her "choice of language" was inconsistent with "accepted standards of appropriate restraint in the exercise of academic freedom," but that she had not so far exceeded permissible limits as to merit special disciplinary action by the University. In so doing, they gave a negative answer to their question whether her extramural statements indicated that she was unfit for her position. They did, however, recommend that the character of her extramural statements be taken into account, along with all other evidence, in later decisions to be made about her reappointment.

6. In adding its conclusion that Miss Davis's extramural statements, though insufficient to justify disciplinary charges against her, should be "taken into account" in consideration of her future employment, the *Ad Hoc* Committee's report might be taken to imply that standards of permissible extramural utterance are stricter for nontenured than for tenured faculty members. If such an inequality between nontenured and tenured faculty members is implied, the implication is inconsistent with the AAUP principle of equal standards of academic freedom and responsibility for all faculty members. Furthermore, if, as is possible, this implication played a

role in the later decision of the Regents, that action is insofar inconsistent with the standards of the AAUP.<sup>14</sup>

7. Professor Davis's membership in the Communist "Che Lumumba Club" precipitated the Regents' decision to deny her reappointment insofar as it led to their initial effort in September, 1969, to discharge her and to their continuing insistence on maintaining a direct surveillance over her status at UCLA. Determination to get rid of a professed Communist faculty member may also have motivated some Regents in the actions of the following May and June to reverse the Chancellor's decision on reappointment.

8. The basis for the decision of the majority of the Regents, however, was the content of her extracurricular speeches subsequent to the events of September and October, as set forth in the report of the Committee of the Whole (Addendum B). This stated basis was not a mere pretext for achieving the original objective of enforcing the anti-Communist rule. However, the references in that report to Miss Davis's scholarly progress and to the priorities within the institution are plainly makeweights that may be disregarded as grounds for engaging the attention of the Regents or for overruling the normal dis-

<sup>14</sup> President Charles Hitch offered the following observation on this paragraph, meriting a clarification and response by Committee A:

I am disturbed by what appears to me to be the view in the AAUP report that, if something in an appointee's record is not good cause for a dismissal, it cannot be a sufficient reason for nonreappointment. Unless a distinction is maintained between these two things, the whole concept of probationary appointments, as distinguished from tenure appointments, is in grave danger, and the consequences for an institution's ability to build a high quality faculty through screening and selective retention are most serious.

First, with regard to the investigating committee's point, Committee A believes that the investigating committee means only to offer its own clarification that tenured and nontenured members of the faculty are indeed entitled to the same full measure of academic freedom. It does not conclude that the UCLA faculty committee report truly implies anything to the contrary, but merely that it "might be taken" that way (emphasis added).

Second, unless the investigating committee's reiteration of the accepted principle of parity of academic freedom between tenured and nontenured faculty has been misunderstood, it is difficult to see in what way its unexceptionable restatement of that principle at all affects "an institution's ability to build a high quality faculty through screening and selective retention." In considering a person either for initial appointment or for reappointment, a number of factors may of course be taken into account other than those which would bear upon the appropriateness of determining whether a member of the faculty should be dismissed. Nothing in the investigating committee's statement of principle respecting the equal protection of academic freedom for nontenured faculty members is meant to affect an institution's prerogative to give weight to a wide variety of factors "to build a high quality faculty through screening and selective retention." It is solely in the appropriate consideration of these *other* factors, however, rather than in some differential standards of academic freedom, that our common interest in building high quality faculties may safely be fulfilled consistent with the uniform maintenance of academic freedom.



cretion of the Chancellor. The features of the extra-curricular speeches to which the Regents took exception, and which appear to be a main basis for their unfavorable decision, are features which in most instances were not shown to be violations of AAUP standards of academic responsibility; and in any case the Regents failed to show that they demonstrated, in the light of the whole record, unfitness for a position on the faculty of the University.<sup>15</sup> Consequently, the unfavorable decision of the Regents in reliance on these features of the speeches must be judged to be a violation of Miss Davis's academic freedom.

9. Professor Davis was offered no opportunity to explain or comment on matters which were charged against her, either by the confidential *Ad Hoc* Committee or at any stage of the subsequent disposition of her case on the basis of the committee's report. It is conceded that this disposition did not meet the requirements of academic due process that would apply in a case of termination for cause.

10. The claim that the actions of the Regents in denying reappointment to Professor Davis were a simple exercise of discretion not to employ her will not stand serious examination. Under AAUP principles it was a decision that required academic due process, though not necessarily the precise institutional procedures provided for discharge cases, because (1) in the initial appointment of Miss Davis, the university had given her substantial expectations that it would be renewed for a second year; and (2) there was a *prima facie* case on her behalf that

<sup>15</sup> Such statements would, moreover, appear to be protected by the First and Fourteenth Amendments against governmental infringement, under recent United States Supreme Court decisions. In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the Court declared that government employees could not be discharged for making statements highly critical of policies of the department or agency in which they worked, even if those statements were shown to be false, unless they were made with actual malice or in reckless disregard of the truth. The California courts have similarly recognized the public employee's right to engage in a broad range of even intemperate criticism of official policy. See *Belshaw v. City of Berkeley*, 54 Cal. Rptr. 727 (1966). While the cases deal almost exclusively with statements attacking government superiors and their policies, the constitutional protections are surely no less broad for statements more remote from the employment relationship.

the reason for nonreappointment was one involving her academic freedom.

As a consequence of the above facts and of the preceding conclusion, it is clear that the University of California violated Miss Davis's right to academic due process.

11. The sequence of events in the case of Professor Davis—including the Regent's decision to assert their old automatic disqualification of Communists (despite their new Standing Order against political tests), the departures from the principle of decentralized authority and faculty responsibility in matters of high political visibility, the extensive and sustained reaction of the University of California faculties against the course of events, and the bitter division within the Board of Regents displayed by the dissents from their recent decisions—all testify to the conclusion that substantial efforts must be made to re-establish at the University of California the unquestioned sense of academic freedom that is essential to a great university.

Richard Brandt (Philosophy), the University of Michigan; *Chairman*.

Hans A. Linde (Law), University of Oregon  
*Investigating Committee*

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

William W. Van Alstyne (Law), Duke University,  
*Chairman*

*Members:* Richard P. Adams (English), Tulane University; Ralph S. Brown, Jr. (Law), Yale University; Clark Byse (Law), Harvard University; Bertram H. Davis (English), Washington Office, *ex officio*; David Fellman (Political Science), University of Wisconsin; William P. Fidler (English), Washington Office; C. William Heywood (History), Cornell College; William J. Kilgore (Philosophy), Baylor University; Hans A. Linde (Law), University of Oregon; Walter P. Metzger (History), Columbia University; John R. Phillips (English), Western Michigan University; Winton U. Solberg (History), University of Illinois.

Not voting in this instance: Sanford H. Kadish (Law), University of California, Berkeley; Robert M. O'Neil (Law), University of California, Berkeley.

## ADDENDUM A

### Report of Chancellor Young's Ad Hoc Committee

#### CHANCELLOR CHARLES E. YOUNG

The undersigned members of the *ad hoc* committee appointed by you in your memorandum of 17 February 1970 herewith submit their report.

#### I

Your memorandum asks the committee carefully to examine, "in the context of University policies as well as a general understanding of the requirements of the academic community," the following three general allegations against Acting

Assistant Professor of Philosophy, Angela Y. Davis:

1. That she has utilized her position in the classroom for the purpose of indoctrinating students;
2. That her extra-University commitments and activities interfere with her duties as a member of the faculty; and
3. That her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself.

Your memorandum also commends to the committee for

"careful reading and interpretation," the "Statement on Professional Ethics" issued by the American Association of University Professors [AAUP] which has been incorporated by reference, into the 'Instructions to Appointment and Promotion Committees' as well as Part I of the Resolution adopted by the entire membership of the Academic Senate pursuant to action taken by the Assembly of the Academic Senate on November 3, 1969. . . ." Copies of the AAUP statement and of the Senate resolution are appended to this report as Appendix A and Appendix B, respectively.

Further, your memorandum excludes from our consideration two related aspects of this case: "the applicability, desirability and constitutionality of Regental resolutions prohibiting the employment by the University of members of the Communist Party, USA," and "the question as to whether Miss Davis should be reappointed beyond the current one-year term which expires on June 30 of this year (assuming that she is not terminated in accordance with the Regents' initial action)." You observe that the first of these questions is presently being litigated in the State courts, and that the second, if initiated by the Department of Philosophy at the appropriate time, "will be decided, as well it should, within the context of regular academic procedures, including the appropriate administrative and Senate reviews."

Finally, your memorandum asks the committee to examine the issues raised as a consequence of the allegations previously set forth, and to report to you its conclusions regarding their merit and any action it believes you or other administrative officers should take as a result.

We feel it important, at the outset, to emphasize the limited functions of this committee. We cannot properly pass judgment on Miss Davis' qualifications for retention or promotion; that is the responsibility principally of the Department of Philosophy and the Committee on Budget and Interdepartmental Relations. We cannot properly recommend that disciplinary action be taken against Miss Davis; that is the responsibility, in the first instance, of the Committee on Privilege and Tenure. Indeed, our status as a secret committee precludes our recommending that any discipline be imposed upon Miss Davis, because due process requires that she be informed of the charges against her and given a hearing before any such prejudicial action is taken. Our function, as we see it, is to analyze the accusations and supporting evidence against Miss Davis within the existing framework of AAUP and University policies, to give you our opinion as to what course of action appears to be warranted by the regulations and established academic values, and to advise you whether to file formal charges against her with the Committee on Privilege and Tenure. Only by thus limiting our role can we supplement rather than undermine the established procedures of the Academic Senate.

## II

We turn now to consideration of the three general allegations, quoted above, which, as paraphrased by you, are "to the effect that Miss Davis has, by word and deed, demonstrated her inability to live up to the responsibilities which must be accepted by members of the faculty in order for the University to fulfill its obligation within the context of academic freedom." We shall discuss these allegations seriatim.

A. The first allegation is that Miss Davis has "utilized her position in the classroom for the purpose of indoctrinating students." We take it that the word "indoctrinating" is here used in a pejorative sense and is meant to suggest that Miss Davis has consciously attempted through her lectures and classroom discussion to imbue her students by improper means with a partisan or sectarian point of view.

In this connection the following excerpt from the AAUP *Statement on Professional Ethics* (see Appendix A) is pertinent:

I. The professor, guided by a deep conviction of the worth and

dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. . . . He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. . . . He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct. . . .

To similar effect is the Academic Senate resolution (see Appendix B), which states in part:

The Senate affirms that a faculty member has a[n] . . . obligation to allow and encourage free expression of viewpoints other than his own, and that an individual whose academic performance is demonstrably not consistent with these standards or whose commitments or obligations demonstrably prevent independent scholarship and the free pursuit of truth should not be employed by the University.

We think it significant that the AAUP statement emphasizes the teacher's responsibility to seek and to state the truth "as he sees it." Implicit in this dictum is the understanding that "truth" is elusive, that it assumes various and often contradictory guises, depending on the perceptions of its pursuers, that one scholar's reasoned and discriminating conclusions may appear to another to be only uninformed and prejudiced opinions, and that a teacher's integrity, as distinguished from his ability, must be judged by the dedication with which he searches for truth, rather than by his perception of truth.

The foregoing observations have a direct bearing on the issue of indoctrination. All teaching is a form of indoctrination; even when a teacher states the truth "as he sees it," he is indoctrinating his students. We note in passing that one of the most common and best documented criticisms of our educational system is that it is based on a number of stated or unarticulated premises about our own society which students are expected to accept without question or discussion. This, too, is indoctrination. It is difficult to avoid the conclusion that those accused of indoctrinating are so designated primarily or exclusively because their perceptions of "truth" do not accord with the perceptions of their accusers. But when used in the most derogatory sense, the term indoctrination suggests either an authoritarian dictation of ideological or sectarian "truth" or a sly and subtle implantation of ideas, the full significance of which is not made clear to the listener or reader. It is only in this latter sense that we can appropriately consider the charges presented here.

We now turn to the specific case of Miss Davis. Whatever may be said in criticism of her personal philosophy, she cannot fairly be charged with concealing her true purposes or of seeking to influence the thinking of her students in subtle or covert ways. In a highly publicized address at Pauley Pavilion on 8 October, 1969, she said in part:

I can't and I won't keep my political opinions out of the classroom. I think they belong there. Now I've come to the conclusion that the elimination of racism, human suffering can only come about with socialism. Since knowledge should provide answers to these problems, I feel that I have every right when the occasion presents itself, that is, when it's relevant to what is at hand, to say to my students, "I have given these things a lot of thought and my conclusion is that only some form of communism is going to solve our basic human problems." And I want them to think about it, to criticize, to say whether they think I'm right; and to present other solutions perhaps which they feel might be better. Now, this is the process of education. It's supposed to be a free atmosphere where everything can be subjected to a critical attitude. And I think the critical attitude is truly the mark of an educated person.

Miss Davis' first course at UCLA, given in the Fall Quarter of the current academic year, was entitled "Recurring Philosophical Themes in Black Literature." The main themes treated in the course were the concepts of freedom and liberation. The assigned reading was standard and unexceptionable. Although members of the *ad hoc* committee did not attend her classes, we have reviewed some fourteen of her lectures, which she wrote out in full in advance of class sessions. Our review encompassed only the evidence of her manner of teaching; we did not conceive our function to include an ap-

praisal of Miss Davis' scholarly abilities or a judgment on the soundness of her ideological views.

The lectures in "Recurring Philosophical Themes" that we have read are scholarly and rather restrained in tone, with frequent references not only to the assigned materials but also to observations on such themes as freedom, liberation, resistance, and death by ancient and modern philosophers, including Plato, Socrates, Kant, Hegel, Marx, Engels, Sartre, Camus, and others. Her interpretation of social forces and events is frankly Marxist, but it cannot be characterized as doctrinaire. Written into the formal lectures from time to time are appeals to her students to challenge any of her views they question or oppose during the weekly one-hour discussion periods.

In addition to reviewing Miss Davis' written lectures for the course in "Recurring Philosophical Themes," we have had the benefit of several written appraisals of her classroom performance in that course by two senior Philosophy professors and one graduate student. The first appraisal is by a professor who attended two of the lectures, the first without the prior knowledge of Miss Davis. The subject on both occasions was the work of Frantz Fanon. The appraisal follows:

The lectures were admirably clear and well-organized. . . . principally a laying out of Fanon's views. This was done, I believe, eminently well.

The hour discussion, following the lecture, was opened with a request for questions and with an emphasis on the need for analysis. . . . Professor Davis' responses were mainly devoted to clarifying Fanon's position and explaining how he might respond to criticisms. She was always soft-spoken and modest in the suggestions she put forward. She drew the students out and when she disagreed with a view that was expressed she set out the reasons for her disagreement clearly. . . .

There was absolutely nothing that could be remotely regarded as indoctrination. Indeed, the heavy and apparent emphasis was on getting the students to think for themselves. I found that they were doing this to a commendable degree.

The second professor attended approximately one third of the class meetings in this course. His observations follow:

The lectures were primarily presentations of the views of the authors being studied. Since these works were totally unfamiliar to almost all of the students—including the minority students who comprised about one third of the class—a greater proportion of time was required for the exposition, as contrasted with the analysis or criticism, of their views. Where Miss Davis presented her own analysis of the materials her remarks were carefully enclosed in explicit references to that fact and interlaced with urging the students to develop and present their own views. I have rarely seen such scrupulous attempts to separate exposition from editorial comment. Even in the discussions Miss Davis tended to serve more as a referee—some discussions were fairly heated for a time—and representative of the author under current study than as a partisan participant.

I do not wish to overemphasize this point; she was not reluctant to express her own views, especially in response to a direct and relevant question, but there was absolutely no introduction of personal views political or otherwise.

The graduate student, in the third year of a Chancellor's Teaching Fellowship, was enrolled in this course; he expressed the opinion that Miss Davis "is an exceedingly fine teacher and scholar." He continued:

She presents this material in an illuminating style—relating it to the contemporary scene without sacrificing either historical accuracy or philosophical rigour. Her rapport with students is very high. . . . She encourages classroom participation and open discussion of all issues relevant to the academic subject matter.

In the Winter Quarter Miss Davis taught two upper division courses: "Kant and Idealism" and "Dialectical Materialism." We have not seen any lectures or notes prepared by her for these courses. We do have, however, a written appraisal of her classroom performance in the first of these by another member of the Department who has himself taught the course a number of times and is thoroughly familiar with the material. Noting that he himself takes a somewhat different approach to the subject matter, the professor adds that Miss Davis' treatment "has led me to raise important questions about Kant's theory that otherwise I might not have considered." Concerning Miss Davis' teaching methods, the professor reports:

Professor Davis' primary teaching method so far has been to initiate discussion and informal explanation of the text by having brief student reports. Usually the reports (which are expositions of assigned reading) take only a few minutes, and they are followed by questions,

criticism, and general discussion in which Professor Davis and the other students take part. Unless it is handled well, this teaching method can be deadening: it risks disorganization, irrelevancy, the favoring of the few talkative students, and general apathy (especially when the reports are of poor quality). Professor Davis, however, does an excellent job with this technique, as well in fact as anyone I have seen. Students are interested and take part readily. Discussion is not dominated by a few but is joined by almost all the students. Professor Davis has managed to encourage a reasonable, questioning attitude. Questions and comments which need to be raised but would be repressed by a more authoritarian teacher are elicited and treated with respect. Moreover, Professor Davis uses the occasion of student questions to give helpful explanatory comments on the text, to stress important points, and to keep the discussion on the track. In effect, she manages to fulfill most of the functions of a formal lecture with a more informal style. (She does give some formal lectures too.)

The discussion, as well as Professor Davis' remarks, have been focused on Kant's moral and political philosophy as expressed in his *Metaphysics of Morals*, Part I, i.e., "The Metaphysical Elements of Justice." Here Kant writes about justice, law, property, punishment, sovereignty, war, etc. No one could teach this work, which is a classic, without talking about political, and often controversial matters. Nevertheless, Professor Davis has kept the discussion centered upon Kant's views and has not brought in irrelevant political opinions. She often defends Kant, with whom she disagrees on many points, from students who criticize him with too little understanding. While she often illustrates points with examples from history, she has not often mentioned current American issues (even when these would be pertinent). When directly asked for her views about something controversial, she responds if it is relevant to the subject; but even then she makes quite explicit that she is "merely stating (her) perspective." She has mentioned criticisms made by Marx but only at relevant points and not dogmatically. In the same [context?] she has mentioned Rousseau, Locke, Mill and other democratic theorists. Professor Davis' manner in treating her subject has been in the best tradition of university teaching: she has been calm and reasonable, ready to listen, willing to retract or modify a statement when good objections are raised, seeking to understand before criticizing.

A senior Philosophy professor who attended Miss Davis' course in "Dialectical Materialism" has provided a brief written description and comment:

Subjects discussed related to materials that had been assigned. Students gave reports. Discussion was open and reasonably vigorous. . . . I sometimes had the feeling that if Miss Davis had been willing to interpose her own views more energetically, the class would have had more cohesion and direction. My impression is that Miss Davis adheres quite rigidly to the conventional proprieties of classroom activity.

A graduate student in Sociology who took Miss Davis' course in "Dialectical Materialism" has offered the following comment in respect of the allegation contained in a recent letter in the *Daily Bruin* (4 March 1970) that Miss Davis did not present the "opposite" point of view:

. . . How does one present the opposite point of view in a course on dialectical materialism? Which opposite point of view should be presented? Does this requirement hold for all other courses and all other professors? If it were, at least half of the present faculty should have been fired long ago.

To present all sides to any question, furthermore, is undesirable even if it were possible. The best a university can offer is the widest variety of opinion and belief—best accomplished, in my view, by hiring professors of the widest possible variety of opinion and belief. Miss Davis, however, is objective, a different issue. Where difference in interpretation is possible, she helps to clarify the choices involved and issues raised. And a course in dialectical materialism taught by someone sympathetic to this broad position is surely sensible. We do not lack for criticism and even distortion of this view in the university, to say nothing of the coverage of the mass media.

I have come to realize, after many years as a student that each professor has something different to "profess" even if it amounts to a glorification of neutrality. I would much rather know the philosophical and political position held by a professor from the beginning of a course, than to have to spend weeks uncovering that position by inference.

We anticipate that some may be inclined to discount the favorable appraisals of Miss Davis' classroom performance by her senior colleagues in the Department of Philosophy on the ground that the latter are prejudiced in her favor and perhaps share her ideological predilections. We do not ourselves share that opinion. Although we feel bound to hold in confidence the names of those persons whose appraisals we have quoted, we can say that we know them to be scholars of demonstrated ability and integrity who differ substantially with many of the views held by Miss Davis. Moreover, their observations are entirely consistent with Miss Davis' own publicly expressed opinions about her personal role as a teacher. In an interview published in the newspaper, *Soul* (December 15, 1969), she was asked to comment on the reference to teaching in her Pauley Pavilion speech, previously cited. Her response, as reported by her interviewer, Dr. Agnes Moreland Jackson, Associate Professor of English

at Pitzer College, is wholly consistent with her previous public utterances and with the observations of her colleagues:

In her course, "Recurring Philosophical Themes in Black Literature" . . . she feels it to be her responsibility as an educator "to talk about the way in which a Marxist would see these philosophical problems" and their possible solutions. She would conduct such discussions not to indoctrinate the students, not to say that Marxist solutions are the only solutions, "but merely to throw something out into the atmosphere of the classroom where the students can think."

Student criticisms, student opinions on whether she might be wrong, student alternatives—all these Miss Davis welcomes and will continue to invite in her classroom. She described herself as "open for change in every juncture" and said that her ideology, her philosophy "isn't something which I consider a static thing." Miss Davis emphasized, however, that "where it is relevant to . . . materials" under discussion in the classroom, she will present her political ideas, her philosophical viewpoint, but "solely for the purpose of exposing the students to new kinds of ideas" about the validity of which they can decide independently.

Distinguishing between education and indoctrination, Miss Davis stated her view that "true education" develops people's ability "to make independent judgments on what's going on in the world." Inasmuch as prevailing political opinions are usually the basis of classroom discussions, she concluded, "it's high time . . . to present some other ideas."

The Department of Philosophy regularly distributes to all students an evaluation form which asks questions and invites comments on the quality of the course and the instructor. A copy of this form is appended to this report as Appendix C. Filling out and returning the form is voluntary; those who respond do so anonymously. The number of returns from students in "Recurring Philosophical Themes" was too small to have any significance. The number of responses in "Kant and Idealism" and "Dialectical Materialism," however, was fifty-two out of a combined enrollment of approximately 150, or slightly better than one-third. A review of the fifty-two responses yields the following facts:

In "Kant and Idealism" there were approximately sixty-eight students. Of the eighteen respondents in that course slightly more than half were women. Most were seniors, majoring in Philosophy, but there were also majors in Bacteriology, Chemistry, History, Political Science, Psychology, and Theatre Arts. The average grade point average of the respondents was about 3.0. Responses to the questionnaire were uniformly favorable and most were enthusiastic. In "Dialectical Materialism" there were about eighty-two students enrolled and thirty-four responses. The respondents, mostly men, included four graduate students; the largest single group were juniors. Philosophy was the predominant major, but the other disciplines mentioned above were also represented. The average grade point average of the respondents was about 3.3. Responses were favorable and enthusiastic, with only one exception; a graduate student in Physiology complained that "a critical and open examination of Marx's assumptions was not encouraged or sought." A large number of other respondents, however, reported the exact opposite.

It is possible, of course, that this great enthusiasm for Miss Davis simply reflected satisfaction on the part of the respondents because they had heard in her classes what they expected and wanted to hear. It is apparent from the responses, however, that many students had challenged Miss Davis' theories and had been given the opportunity to express their own points of view; and a number of respondents said they wished more time had been devoted to lectures by Miss Davis and less to student discussion.

On the basis of all the evidence available to it, the committee unanimously concludes that Miss Davis has not "utilized her position in the classroom for the purpose of indoctrinating students," in the sense implied by that allegation. Accordingly, we recommend against the filing of any formal charges against her based on that accusation.

B. The second allegation against Miss Davis is that "her extra-University commitments and activities interfere with her duties as a member of the faculty." On this subject the AAUP *Statement on Professional Ethics* declares in relevant part:

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. . . . He determines the amount and

character of the work he does outside his institution with due regard to his paramount responsibilities within it. . . .

The University has no written policy in respect of the outside activities of its faculty, but it has always been understood that a faculty member's first responsibility is to the University: he may not engage in outside activities which significantly diminish his effectiveness as a teacher or scholar, or which are inconsistent with his obligations as a member of the University community. So long as he conforms to these standards, however, he is free to determine the amount and character of his outside activities, and in this latter regard, subject to the limitations discussed in section II-C, *infra*, he stands on equal footing with all citizens.

In the context of this report we are concerned primarily with the effects, if any, of Miss Davis' outside activities on her teaching. Whether those activities may have adversely affected her scholarly work in general, and her progress on her doctoral dissertation in particular, is a question beyond both our competence to evaluate and the legitimate scope of our inquiry. It is, rather, one to be decided "within the context of regular academic procedures," beginning in the Department of Philosophy, and "including the appropriate administrative and Senate reviews."

Evidence to support the allegation, insofar as it applies to Miss Davis' teaching, is virtually nonexistent. We have previously alluded to her practice of writing out her lectures in advance, a painstaking and time-consuming exercise that betokens a conscientious rather than an indifferent attitude toward her pedagogical obligations. One of the graduate students whose appraisal was previously quoted reports that Miss Davis "is well organized, keeps her students informed of course-goals, provides more than ample office hours for student consultation, and uses assignments constructively rather than as just means to rank students for grading purposes." We are further informed that during the Fall Quarter, Miss Davis' classes were canceled twice, but on neither occasion was this done because of a conflicting outside speaking engagement. Both were made up by means of an additional class meeting and several review sessions later in the quarter. So far as her two Winter Quarter courses are concerned, not only did she meet every scheduled class and make herself readily available to students outside of her scheduled office hours, but also, on her own initiative, she split each course in two, thus doubling the number of her teaching hours in order to work with smaller groups of students. This record, whether judged by an absolute or a relative standard, reveals a conscientious commitment to her teaching obligations.

It is obvious that Miss Davis has appeared outside the University at various rallies and has made speeches which have been accorded unusually extensive coverage by the news media. Given all the circumstances surrounding her employment by the University, everything she says and does outside of class has some news value. We can readily understand, therefore, why some persons who have heard about her outside activities, but are not informed about her teaching and scholarly pursuits, might conclude that she is neglecting the latter in favor of the former. Moreover, this perception is apt to be heightened in the case of those who disapprove of what Miss Davis is reported to have said in her public addresses. On the basis of the factual record, however, we unanimously conclude that the allegation that her outside commitments and activities have interfered with her teaching responsibilities lacks credible evidentiary support. Accordingly, we recommend against the filing of any formal charges against her based on that accusation.

C. The final allegation against Miss Davis is that "her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself." We propose to consider this charge by examining first the implications of the concept of academic freedom, second, the evidence regarding the character of Miss Davis'

public statements, and third, the issues posed by her statements in the light of the meaning of academic freedom.

It is at once apparent that this accusation must be analyzed and evaluated within a definitional framework: that of the "concept of academic freedom." This concept has been continuously examined and debated over a period of many years and in a wide variety of contexts. Some of the most carefully considered statements on the subject are to be found in the *Policy Documents and Reports of the American Association of University Professors* (September, 1969), from which we shall quote appropriate excerpts.

The relevant portion of the *AAUP Statement on Professional Ethics* declares:

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. . . .

\* \* \*

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

A more specific *AAUP Statement of Principles on Academic Freedom* (1940) declares in pertinent part:

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. . . .

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

A useful gloss on the foregoing Statement is to be found in *AAUP Advisory Letter No. 11 on Extramural Utterances* [*AAUP Bulletin*, Winter, 1963, p. 393], which reads in pertinent part:

Two questions are raised relating to the application of the term "appropriate restraint" to the extramural utterances of a faculty member in the above admonition: (1) does the term "appropriate restraint" relate only to manner or mode of expression, and (2) is there a special obligation on the part of the faculty member to refrain from extramural utterances that may embarrass the institution in its relationships with the community, alumni, legislature, and Board of Trustees? Although the second question may be answered categorically in the negative, i.e., there is no special obligation to refrain from extramural utterances that may "embarrass" these groups, the first question requires some explanation.

It is the view of this Office that the term "appropriate restraint," as used above, refers solely to choice of language and to other aspects of the manner in which a statement is made. It does not refer to the substance of a teacher's remarks. It does not refer to the times and place of his utterance.

. . . The most explicit recent statement on this question has been provided by Professor Ralph F. Fuchs, one of the most eminent leaders of the Association, in a comment appearing in the Committee A statement published in the report on "Academic Freedom and Tenure: The University of Illinois," *AAUP Bulletin* (March, 1963).

In his statement, Professor Fuchs emphasized that institutional discipline for an utterance allegedly violating the "standard of academic responsibility" in the 1940 *Statement of Principles* cannot validly call in question the facts or opinions set forth by a faculty member. A violation may consist of serious intemperateness of expression, intentional falsehood, incitement of misconduct, or conceivably some other impropriety of circumstances. It may not lie, however, in the error or unpopularity, even though gross, of the ideas contained in an utterance.

It thus appears that a determination concerning alleged violation of the standard of academic responsibility may not be made except on the basis of the criteria elaborated above.

In conclusion, this Office wishes to stress the fact that the disciplining of a faculty member for exercising the rights of free speech guaranteed to him as a citizen by the Constitution of the United States necessarily raises such fundamental issues that institutions are cautioned to take such action only under extraordinary circumstances. Neither the error nor the unpopularity of ideas or opinions may provide an adequate basis for such disciplinary action, whatever temporary embarrassment these views may bring to the institution. Moreover, and generally speaking, college and university professors ought not to be disciplined for failure to adhere to any narrowly defined or absolute standard of conduct. A careful distinction should

be drawn at all times between those common instances of relatively insignificant disregard of the admonitions cited above and those rare instances which do in fact raise "grave doubts" about a faculty member's fitness to teach.

In 1956 the AAUP adopted a section of a special committee report on academic freedom entitled "Relevant General Principles." Section 1 of Relevant General Principles, headed "The justification of academic freedom," is supplied in full text in Appendix D, attached to this report. Two shorter sections which have a direct bearing on the specific matter before us are quoted immediately below:

### 3. Vigilance against subversion of the educational process

The academic community has a duty to defend society and itself from subversion of the educational process by dishonest tactics, including political conspiracies to deceive students and lead them unwittingly into acceptance of dogmas or false causes. Any member of the academic profession who has given reasonable evidence that he uses such tactics should be proceeded against forthwith, and should be expelled from his position if his guilt is established by rational procedure. Instances in the use of such tactics in the past by secret Communist groups in a few institutions seem to have occurred, and vigilance against the danger of their occurrence in the future is clearly required.

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### 11. Faculty members not on tenure

Academic freedom should be accorded not only to faculty members with tenure but also, during the terms of their appointments, to others with probationary or temporary status who are engaged in teaching or research. Moreover, neither reappointment nor promotion to tenure status should be denied, nor any other adverse action taken, for reasons that violate academic freedom. Dismissal or other adverse action prior to the expiration of a term appointment requires the same procedures as does the dismissal of a faculty member with tenure. . . .

The policy on academic freedom of the Academic Senate of the University of California conforms with that of the AAUP. The Senate resolution of 3 November, 1969, recognizes that "a faculty member, in the discharge of his University responsibilities, must adhere to accepted standards of professional conduct, as judged by competent peers." It further declares that

the fitness of a faculty member to teach is to be judged on the basis of his own professional qualifications and his own professional conduct, not the conduct of his associates in any political, social or sectarian organization; no political test shall be employed nor shall mere membership in any organization be a factor in the appointment, promotion, or dismissal of any faculty member or academic employee.

This *ad hoc* committee is asked to determine whether Miss Davis' public statements demonstrate her unfitness to teach on the basis of four speeches, transcripts of which have been submitted to us. These transcripts appear to have been made from tape recordings or re-recordings. We have no means of determining whether they are accurate; that they have been edited by the recorders or transcribers is evidenced by the underscoring of some words and the insertion of explanatory comments, such as "[Unintelligible phrase]." We also cannot be sure that these speeches are fairly representative of Miss Davis' public statements, although they seem to be completely consistent with each other.

Three of the four addresses—two in Los Angeles and one in Berkeley—were delivered in October, 1969, at the time when public controversy over Miss Davis' appointment was at its peak. The fourth was given in February, 1970, in Santa Barbara. Each of these speeches ranges over a number of topics, but certain common patterns emerge. These patterns may be summarized in the following way:

(1) *Membership in the Communist Party, USA.* Miss Davis has publicly and repeatedly identified herself as a member of the Che Lumumba Club, "an all-black collective . . . committed to the struggle for Black liberation," of the Communist Party. At the same time, she declared in her Pauley Pavilion speech on 8 October 1969:

So when I said they [the Regents] were right, that my membership in the Communist Party says something about the kind of mind I have, I didn't mean . . . that I receive directives from the party as to how to conduct my class, or that my mind has been rigidified by my experiences in the party; that I would be incapable of free thought.

Miss Davis currently believes that capitalism is incapable of solving the basic problems of our society, and that "only under a socialist reorganization of society can we even begin to deal with these basic material problems, to say nothing of

eradicating the individualistic, competitive racist mentality of the people in this country." (Pauley Pavilion speech)

(2) *Academic freedom.* Miss Davis appears to consider academic freedom, as conventionally defined, as "an empty concept which professors use to guarantee their right to work undisturbed by the real world, undisturbed by the real problems of this society." (Berkeley speech, 24 October, 1969) "It means the ivory tower intellectuals . . . whose only interest consists in deciphering Third Century manuscripts. . . . And these people who see academic freedom as being the freedom from the pressures of society . . . do not realize that they are also unconscious perhaps . . . accomplices in the exploitation and oppression of man." (*People's World* speech, October, 1969)

Her definition of the term is more expansive:

academic freedom is an empty concept unless we connect it with social and political freedoms—the real basis of academic freedom in this country. Now, the freedom to teach, the freedom to learn, is totally impotent if it is not accompanied by the freedom to act in a way that is consonant with the principle one believes in. [Berkeley speech]

For her, all economic and social conditions which adversely affect the quality of education experienced by minority groups in our society are violations of their academic freedom. Similarly, the punishment of Negro and Mexican-American students and faculty who demonstrate in protest against "the abuses of racism . . . obviously interfering in the process of their learning" violates their academic freedom. (*Ibid.*)

Miss Davis appears to believe that academic freedom carries obligations that are qualitatively different from those identified by the AAUP and by the Academic Senate of this University. Specifically, academic freedom is meaningless unless it is used to espouse political and social freedoms, "to unveil the predominant, oppressive ideas and acts of this country" (*Ibid.*), and "to begin to develop not only criticism but positive solutions and . . . to carry out these paths in the universities." Otherwise, academic freedom is a "real farce." (*People's World* speech) She recently declared that Professor William Allen (suspended from the University of California, Santa Barbara)

was fired because he's anti-imperialist, because he's anti-racist, because he refuses to go along with what most of those senile people in anthropology do when they talk about going over and studying people's cultures. He tried to point out that the real problem in this world and Latin America and throughout the third world lies in the imperialist aggression of the United States and the other capitalist countries of the west. [Santa Barbara speech, 5 February, 1970]

Miss Davis has repeatedly singled out as an "exploiter" of academic freedom Professor Arthur Jensen, University of California, Berkeley, because "he is maintaining that it can be scientifically demonstrated that black people are genetically inferior to white people. . . . He's maintaining that he has the right to talk about things like the genetic inferiority of black men." (*Ibid.*)

(3) *The need for educational reform.* Miss Davis is highly critical of policies and practices at all levels of our educational system. She views punitive actions against Negro and Mexican-American militants in schools, colleges, and universities as "signs of a conspiracy . . . whose [sic] present goal appears to be the destruction of the very possibility of education in this state." (Pauley Pavilion speech) Her own philosophy of education is succinctly stated in the following passage from the same speech:

Now I think the goal of the educational process is to create human beings who have human concerns; human beings who know and understand themselves and are able to pass judgment on what's going on around them. Education should not mold the mind according to a prefabricated architectural plan. It should rather liberate the mind . . . from established definitions and plans. The mind has to be liberated merely in order to perceive the world; to see the society; to understand what its advantages are, what its disadvantages are.

An ineluctable consequence of her views, as noted in section II-A, *supra*, is that "political opinions should be brought into the classroom":

I think that education itself is inherently political. Its goal ought to be political; it ought to create human beings who possess a genuine

concern for their fellow human beings, and who will use the knowledge they acquire in order to conquer nature, but to conquer nature for the purpose of freeing man . . . from enslaving necessities. [*Ibid.*]

My position is that knowledge has to transcend the immediate political reality for . . . the purpose of transforming it; for the purpose of setting the stage for the elimination of human suffering and misery; for the abolition of racism; for the creation of a society which reflects the interests of the people who constitute the society. [*Ibid.*]

Miss Davis asserts that the Governor and the Regents have "usurped" the power to determine what students should be taught, because "it's to their advantage that students are brought up on stagnant and rigidified ideas," and that "the mind of the future be the force and reflection of their interests, interests of the few people who have economic and political power in this country." (Berkeley speech) At present "the University is structured . . . so that students end up becoming robots." (Santa Barbara speech) At "this juncture in history, the students are the ones who really have the morals and experience to determine what kind of education we need." (*Ibid.*)

(4) *The University and the Board of Regents.* In Miss Davis' view the University is "an outmoded feudal institution" (Santa Barbara speech) and "has become political in a very overt sense."

It's become political as far as politics are defined by the controlling political apparatus in this country. No one . . . can deny . . . that universities continually receive research grants from the government which are directly related to defense. Research grants which force the scholar to develop more efficient means of, for example, furthering the war in Vietnam. [Pauley Pavilion speech]

She asserts that the Regents, whom she characterizes as "unscrupulous demagogues" (Berkeley speech), "intend to keep the knowledge developed in the university in the service of the prevailing oppression"; that they "have all the power in the universities" by virtue of "their immoral usurpation of power which rightly belongs to those who have the knowledge and the experience to pass rational . . . judgments about the way in which education ought to be carried out." (Pauley Pavilion speech) The Regents, who, in her opinion, represent only a rich and oppressive minority in our society, "have illegally established a tyranny over the University of California."

They were afraid of Eldridge Cleaver. The regents . . . have allowed the police force and the military to prevent those people whom they [were] supposed to be representing from making use of the property which belongs to them. They killed, they brutalized, they murdered human beings who had more than a right, I think, to establish a park for the people, on the land which rightfully belongs to the people. [*Ibid.*]

(5) *Mass protests and demonstrations.* Miss Davis believes in the efficacy and necessity of mass demonstrations as a means to secure the objectives she supports. In her Berkeley speech she made the following statement about the Superior Court decision in Los Angeles setting aside the Regents' decision to dismiss her from the University because of her membership in the Communist Party:

We ought to ask for and consider the reason for this decision. The decision came about only because of mass pressure, only because of the fact that all over the State there were demonstrations, there were indications that we would take over. And I think the judge who made the decision realized this when he said he wanted to . . . effect the decision within a few hours because otherwise he knew it was going to be decided in the streets. I think he was right, and what we have to do at this point is to use that decision . . . in order to escalate the struggle in the society.

Miss Davis devoted a large portion of her Santa Barbara speech to the matter of mass protests and demonstrations:

Are we going to write resolutions and condemn them [State and Federal authorities] for their brutality [against Negroes, Mexican-Americans, students], or are we going to openly declare war on them?

And that's what we have to start talking about [a general strike], demonstrative actions which show pig forces what we can do—even though we don't do it then—but what we can do.

This is the way we have to begin to conceive of our actions, we have to talk about offensive action. . . . And it's really nothing more than the demonstration of what can be done once we really get ourselves together, once we really are able to raise the level of consciousness in all the people so we can move in a united fashion to overthrow this whole system, to overthrow . . . the government.

\* \* \*

And you should realize that a strike is potential force; that's exactly what it is. We should call . . . things by their name. When people start saying that we are out to subvert, that we are subversive, we should say, "Hell, yes, we are subversive. Hell, yes, and we're going to continue to be . . . subversive until we have subverted this whole damn system of oppression."

We turn now to a consideration of the final allegation against Miss Davis in the light of the evidence summarized above and the prevailing standards adopted by the AAUP and the University. The first standard we wish to discuss is a professor's obligations deriving from "common membership in the community of scholars." The question is whether Miss Davis "respects and defends the free inquiry" of her associates and in the "exchange and criticism of ideas . . . shows due respect for the opinions of others." On the limited evidence available, it seems clear that she does not hesitate to attack the motives, methods, and conclusions of those with whom she disagrees. Thus, the anthropologists at Santa Barbara who voted not to renew the appointment of a junior colleague are themselves dismissed as "senile," and a professor who, after years of study, published a lengthy article outlining an hypothesis that certain kinds of learning abilities vary in measurable degrees between races and are due primarily to genetic rather than social factors, is denounced as a racist and an "exploiter" of academic freedom.

It is a matter for consideration, however, whether the requirement of showing "due respect" for the opinions of others in the exchange and criticism of ideas is not a rather shaky standard to repair to; indeed, it seems to be more honored in the breach than in the observance. Scholarly debates are not always conducted in the genteel tradition; they are often characterized by free-swinging, even savage, personal attacks on the judgment, credibility or integrity of others. Some of the world's greatest theologians, philosophers, artists, and scientists have been formidable polemicists, heaping scorn, ridicule, and contempt on their intellectual adversaries.

Moreover, there is the question whether one should be obligated to pay "due respect" to the proponent of a theory or assertion which one sincerely believes to be vicious and evil or even simply arrant nonsense. It is understandable that Miss Davis should be intellectually and emotionally allergic to theories she interprets as suggesting that Negroes are racially inferior. Indeed, she asserts her right to condemn such theories and to express her hostility and contempt for those who advocate them. Although we think she has been less than fair in her characterization of the views of fellow scholars whom she has denounced, we also believe that this is an insufficient basis for formal disciplinary action against her.

A far more serious question is whether Miss Davis "respects and defends the free inquiry" of her associates. On this point the record is ambiguous. While denouncing a fellow professor as a racist and an "exploiter" of academic freedom, she has stopped short, at least in her public speeches, of denying his right to teach, to pursue his research interests, and to publish the results.

Even assuming for the sake of argument, however, that Miss Davis' conception of academic freedom does not include protection of the right of free inquiry by those whose views she believes to be evil and destructive, we do not see how that conception "substantiates the first two charges" discussed in sections II-A and II-B, *supra*. One of the most striking characteristics of Miss Davis' conduct is the very sharp difference between her classroom behavior and her public statements. As previously indicated, the evidence submitted to us shows that her teaching has been unexceptionable; in her dealings with students she has maintained an objective and rather restrained posture. Her public speeches, on the other hand, have been characterized by a notable lack of restraint and the use of, to say the least, extravagant and inflammatory rhetoric. As we view the situation, even if the conception of academic freedom explicated by Miss Davis in her public statements would justify curtailment of someone else's freedom of inquiry, there has been no reflection of that belief in her teach-

ing activities. What remains, then, is the question whether her assumed conception of academic freedom "would ultimately be destructive of that freedom itself."

The debate over the distinction between liberty and license and the alleged need to suppress the speech and other activities, especially in educational institutions, of those who would deny freedom to others is as old as civilization. Different societies have sought to deal with the problem in widely varying ways. In totalitarian countries academic freedom has been abolished. In the United States we have on occasion witnessed regrettable assaults on academic freedom both by those who sincerely believed that they were preserving it and by those who simply did not believe in its necessity. But the theory of our Constitution, supported by most of the people most of the time, is, in the words of Justice Holmes, "that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market," and that "we should be eternally vigilant against attempts to check the expression of opinions we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

Miss Davis would, of course, deny the incompatibility of her views with intellectual freedom. To paraphrase Professor Fritz Machlup's discussion of this type of problem in his essay, "On Some Misconceptions Concerning Academic Freedom," if we, on empirical and analytical grounds, are convinced of this incompatibility while she denies it, we are bound to conclude that she is either naive or dishonest. The toleration of honest error, however naive, is surely the essence of intellectual freedom, and although some may suspect that Miss Davis is intellectually dishonest, such a charge is more easily made than proved. However, even if Miss Davis' speeches and views suggest a willingness to deny to others the same freedoms which are invoked to protect her, we must recognize that to use this to punish her would *actually* abrogate freedom of speech, whereas she has merely *talked* about doing so. We conclude, therefore, that on balance the conception of academic freedom embodied in the AAUP Statements and the Senate resolution previously quoted will be strengthened, not weakened, if it is invoked to protect rather than to punish the expression of ideas, however self-contradictory, intolerant, erroneous, or unpopular they may be. The tradition of free speech and inquiry in this country is not so fragile that it will succumb to assaults by a comparatively few extremists of the left or the right.

Another issue is whether in her public utterances Miss Davis has been accurate, has exercised "appropriate restraint," and has made every effort to indicate that she "is not an institutional spokesman." Inasmuch as she has repeatedly attacked and defied the Regents, the officers, and the policies of the University, it seems obvious that she has eschewed the role of self-appointed institutional spokesman; no observer could reasonably conclude otherwise. On the other hand, she has frequently sacrificed accuracy and fairness for the sake of rhetorical effect. We deem particularly offensive such utterances as her statement that the Regents "killed . . . brutalized . . . [and] murdered" the "people's park" demonstrators (Pauley Pavilion speech), and her repeated characterization of the police as "pigs." (Santa Barbara speech) Regrettably, the use of lurid imagery and the excessive resort to hyperbole have become the hallmark of extremist rhetoric. Its use is by no means confined to the militant left. Compared with some of the writings of Classics Professor Revilo P. Oliver of the University of Illinois in the John Birch publication, *American Opinion*, for example, most of what Miss Davis has said in public seems rather bland. We cite this fact not for the purpose of condoning Miss Davis' style, but merely to emphasize its unfortunate pervasiveness in public debate. Distasteful and reprehensible though some of her public utterances undoubtedly are, we do not think they are so seriously intem-

perate as to justify disciplinary action.

Miss Davis has been publicly accused of using her position to incite others to engage in misconduct. In particular, her Santa Barbara speech of 5 February, 1970, is cited as a contributory cause of the destructive rioting which occurred in that city three weeks later. The question of what constitutes illegal "incitement" has proved to be one of extreme difficulty. Part of the problem is, in the words of Justice Holmes, that "Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth." But when a speaker goes beyond the presentation or advocacy of ideas and directly urges others to engage in illegal acts, such as riot and revolution, his speech may, under certain conditions, lawfully be suppressed and the speaker himself may be punished. The test of illegality, however, is a sensitive one that can be applied only in the context of a trial upon a criminal indictment. It would be manifestly improper, therefore, for the University to discipline Miss Davis for inciting wrongful conduct unless and until she had been convicted of that offense in the appropriate forum. In the event of such conviction, however, we think disciplinary action by the University would be a necessary and desirable consequence. In this respect we agree with the following statement of President Hitch made in the course of his recent remarks to the Regents on student unrest:

The university teacher has not only the obligations of his academic competence but the demand upon him to be the representative of whatever passes for mature wisdom to this troubled time. It is not enough to argue that all speech and doctrine has the minimal constitutional protections of the First Amendment, which, of course, is no less true within the universities than in American society at large. The University must at one and the same time be even more zealously libertarian than the community at large and a great deal more alert to the philosophical and moral content of speech than is the community at large. And when rhetoric translates into violence upon the university or the surrounding community, we must treat that violence with particular vigor, not only as destructive of democratic institutions but as peculiarly poisoning to the moral foundations of the university and to its responsibility for the maturation of the young. The university teacher who participates in coercive revolutionary organization and action is betraying—in a special and particular sense beyond his normal obligations as a citizen—his charge to act as a responsible teacher. He must be the object of disciplinary attention by his colleagues.

We think the irrelevancy of Miss Davis' nontenure status as a faculty member to the issue before us is sufficiently obvious that no further comment is required. We fully concur in the AAUP policy statement on this point previously quoted.

Recapitulating our views on the third charge, which we interpret as embodying two separate propositions, we unanimously conclude, first, that Miss Davis' public statements, however interpreted, do not substantiate the accusations either that she utilized her position in the classroom for the purpose of indoctrinating students or that her extra-University commitments and activities interfere with her duties as a member of the faculty. As indicated in the foregoing discussion, we think her concept of academic freedom, as evidenced by her public speeches, is unrelated to her actual performance on campus as a teacher. Second, whether Miss Davis' "concept of academic freedom" would, as you have put it, "ultimately be destructive of that essential freedom itself" is a question of considerable complexity. In formulating our judgment we have proceeded on the assumption that a concept of academic freedom that rejects traditional academic values presents no threat unless it becomes prevailing doctrine; and it is our unanimous conviction that the best way to prevent it from becoming prevailing doctrine is to allow its free and lawful expression in competition with the philosophy embodied in the principles and resolutions adopted by the AAUP and the Academic Senate.

We have recognized, also, that there are some reasonable limitations on the manner in which a University faculty member may exercise his academic freedom. Without attempting to establish specific standards in that regard, we are satisfied that Miss Davis, although offending against good taste, has not so far exceeded permissible limits as to merit special disciplinary action by the University. Accordingly, we recommend

against the filing of any formal charges against her based on those accusations. We wish to emphasize, however, that our recommendation carries no endorsement of Miss Davis' public utterances, some of which we unanimously deplore. Her statements should, we think, be carefully considered in the context of a full-scale evaluation of Miss Davis' record of performance by the appropriate faculty and administrative authorities at the appropriate time.

### III

Following is a summary of our principal findings and conclusions:

1. The function of this secret, *ad hoc* committee is necessarily limited to analyzing the accusations and supporting evidence against Acting Assistant Professor of Philosophy Angela Y. Davis within the existing framework of AAUP and University policies, to express an opinion as to what course of action appears to be warranted by the regulations and established academic values, and to advise you whether to file formal charges against her with the Committee on Privilege and Tenure. For this committee to judge Miss Davis' qualifications as a teacher or scholar would be to usurp the functions of the Department of Philosophy and the Committee on Budget and Interdepartmental Relations. A judgment by this committee that Miss Davis' conduct, on or off the campus, warrants that she be dismissed or otherwise disciplined would similarly encroach on the authority of the Committee on Privilege and Tenure. Established University procedures and the requirements of due process make it clear that no discipline can be imposed on Miss Davis without first informing her of the charges against her and affording her a hearing before the Committee on Privilege and Tenure. We recommend, therefore, that in any future cases of a like nature the secret *ad hoc* committee's functions be expressly limited in the letter of appointment to those set forth above.

2. On the basis of all the submitted evidence we find as follows:

(a) That the charge "that she has utilized her position in the classroom for the purpose of indoctrinating students" is not substantiated;

(b) That the charge that her extra-University commitments and activities interfere with her duties as a member of the faculty is not substantiated; and

(c) That evidence supporting the charge "that her public statements demonstrate her commitment to a concept of academic freedom which . . . would ultimately be destructive of that essential freedom itself" does not warrant special disciplinary action by the University against her.

Accordingly, we recommend against the filing of any formal charges against her based on those accusations.

3. We also find, however, that Miss Davis' choice of language in some of her public statements is inconsistent with accepted standards of appropriate restraint in the exercise of academic freedom, even though the statements themselves are not likely to lead to the destruction of those standards. Accordingly, we recommend that they be taken into account, together with all other relevant factors, by the appropriate faculty and administrative authorities when consideration is given to the renewal of Miss Davis' present contract of employment.

4. We have made no affirmative findings regarding Miss Davis' relative merits as a teacher and scholar, or whether she has made satisfactory progress toward the securing of her doctorate. Our finding that she has not impermissibly indoctrinated students has but limited relevance to her competence as a teacher; our finding that her extra-University commitments and activities have not interfered with her duties as a member of the faculty applies only to the meeting of her teaching obligations and has no reference to her scholarly capabilities.

Respectfully submitted,

[Names of Committee members were omitted in the copy of the report supplied to the AAUP]



## ADDENDUM B

### Report of the Regents' Committee of the Whole

To: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

The committee of the whole of The Regents submits the following report and recommends that it be accepted and adopted by the Board:

The committee of the whole has reviewed carefully the record relating to the reappointment or nonreappointment of Acting Assistant Professor Angela Davis and submits this report and recommendation to the Board of Regents for its consideration and action.

The question presented is whether Angela Davis is to be re-employed by the University. The present consideration does not involve any question of whether she is to be disciplined or discharged. Her present term of employment, according to the record, expires on June 30, 1970.

The committee has not considered, or considered to be relevant to its findings or conclusions, the membership of Angela Davis in the Communist Party or the circumstances in which previous actions were taken by the Board relating to her membership in the Communist Party.

For the reasons discussed below, this committee recommends that Miss Davis not be reappointed.

This committee of the whole takes note of the criticisms and apprehensions which have been expressed concerning the action of the Board of Regents in reserving to itself decision-making authority in this matter. The Regents for many years have entrusted to the administration, acting with the advice of the faculty, authority to make nontenured faculty appointments, except special categories such as Regents Professors and over-age appointments. This authority has been delegated and the Board of Regents has no present intention of altering this delegation. At the same time, members of the Board of Regents have not only the constitutional right but also the constitutional duty to act in those rare instances where it appears that great harm to the University would result from a failure of the Board to act.

#### The Report of the Faculty Ad Hoc Committee

The most penetrating inquiry which has been made regarding the propriety of the classroom and extramural activities of Miss Davis is that contained in the report of the *ad hoc* faculty committee submitted to the Chancellor, we understand, shortly prior to the April, 1970, Regents' meeting. That committee inquired into the following general allegations against Miss Davis:

1. That she has utilized her position in the classroom for the purpose of indoctrinating students;
2. That her extra-University commitments and activities interfere with her duties as a member of the faculty; and
3. That her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself.

As to the first allegation regarding classroom indoctrination, the committee's finding was that:

On the basis of all the evidence available to it, the committee unanimously concludes that Miss Davis has not "utilized her position in the classroom for the purpose of indoctrinating students."

This committee accepts the finding of the *ad hoc* committee that during the period from the time Miss Davis commenced teaching in the Fall of 1969 to the date of the *ad hoc* committee's report—approximately seven months—the charge that she utilized her position in the classroom for the purpose of indoctrinating students was not substantiated.

With regard to the second allegation that Miss Davis' "extra-University commitments and activities interfere with her duties as a member of the faculty," the *ad hoc* committee concluded:

On the basis of the factual record, however, we unanimously conclude that the allegation that her outside commitments and activities have interfered with her teaching responsibilities lacks credible evidentiary support.

This committee also accepts the finding of the *ad hoc* committee that the charge that Miss Davis' extra-University commitments and activities interfered with her duties as a teacher during the period it reviewed was not substantiated.

It is to be noted, however, that the *ad hoc* committee limited its inquiry to only the question of whether her outside activities interfered with her teaching duties. As stated by the committee:

In the context of this report we are concerned primarily with the effects, if any, of Miss Davis' outside activities on her teaching. Whether those activities may have adversely affected her scholarly work in general, and her progress on her doctoral dissertation in particular, is a question beyond both our competence to evaluate and the legitimate scope of our inquiry.

The third allegation considered by the *ad hoc* committee was:

That her public statements demonstrate her commitment to a concept of academic freedom which substantiates the first two charges and would ultimately be destructive of that essential freedom itself.

In considering this general allegation, the *ad hoc* committee reviewed the transcripts of four speeches given by Miss Davis: At Pauley Pavilion, UCLA, on October 8, 1969; at a *People's World* banquet in Santa Monica on October 12, 1969; at the Lower Plaza of the Berkeley campus on October 24, 1969; and at Campbell Hall on the Santa Barbara campus on February 5, 1970.

The *ad hoc* committee considered the statements in those speeches in the light of policies of the American Association of University Professors. These include the AAUP *Statement on Professional Ethics* which provides in relevant part that:

As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. . . .

And that:

As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

The *ad hoc* committee also considered the AAUP *Statement of Principles on Academic Freedom*, 1940, which provides that the college or university teacher,

As a man of learning and an educational officer, . . . should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

The *ad hoc* committee report also refers to the AAUP Advisory Letter No. 11 on Extramural Utterances which states that:

A violation (of the requirement to exercise "appropriate restraint") may consist of serious intemperateness of expression, intentional falsehood, incitement of misconduct, or conceivably some other impropriety of circumstances.

and:

A careful distinction should be drawn at all times between those common instances of relatively insignificant disregard of the admonitions cited above and those rare instances which do in fact raise "grave doubts" about a faculty member's fitness to teach.

Commenting upon Miss Davis' speeches the *ad hoc* committee observed that: "Each of the speeches ranges over a number of topics, but certain common patterns emerge." Specifically with respect to the academic freedom implications of her public statements, the *ad hoc* committee states that:

Miss Davis appears to consider academic freedom, as conventionally defined, as "an empty concept which professors use to guarantee their

right to work undisturbed by the real world, undisturbed by the real problems of this society."

and [that Miss Davis also stated]:

It means the ivory tower intellectuals . . . whose only interest consists in deciphering Third Century manuscripts. . . . And these people who see academic freedom as being the freedom from the pressures of society . . . do not realize that they are also unconscious perhaps . . . accomplices in the exploitation and oppression of man.

And further that:

Miss Davis appears to believe that academic freedom carries obligations that are qualitatively different from those identified by the AAUP and by the Academic Senate of this University. Specifically, academic freedom is meaningless unless it is used to espouse political and social freedoms, "to unveil the predominant, oppressive ideas and acts of this country" and "to begin to develop not only criticism but positive solutions and . . . to carry out those paths in the universities! Otherwise, academic freedom is a 'real farce.'"

The *ad hoc* committee's report then sets forth a number of excerpts from Miss Davis' speeches. They include the following:

[1.] Bill Allen (Assistant Professor William Allen, who had been notified of nonreappointment by the Santa Barbara campus) . . . was fired because he's anti-imperialist, because he's anti-racist, because he refuses to go along with what most of those senile people in anthropology do when they talk about going over and studying people's cultures. He tried to point out that the real problem in this world and Latin America and throughout the third world lies in the imperialist aggression of the United States and the other capitalist countries of the west. (Santa Barbara speech, 5 February, 1970)

[2.] I think that education itself is inherently political. Its goal ought to be political; it ought to create human beings who possess a genuine concern for their fellow human beings, and who will use the knowledge they acquire in order to conquer nature, but to conquer nature for the purpose of freeing man . . . from enslaving necessities. (Pauley Pavilion speech)

[3.] The regents . . . have allowed the police force and the military to prevent those people whom they (were) supposed to be representing from making use of the property which belongs to them. They killed, they brutalized, they murdered human beings who had more than a right, I think, to establish a park for the people, on the land which rightfully belongs to the people. (Pauley Pavilion Speech)

[4.] We ought to ask for and consider the reason for this decision (of the Los Angeles Superior Court holding unconstitutional the Regents' policy of excluding members of the Communist Party from the University's faculty). The decision came about only because of mass pressure, only because of the fact that all over the State there were demonstrations, there were indications that we would take over. And I think the judge who made the decision realized this when he said he wanted to . . . effect the decision within a few hours because otherwise he knew it was going to be decided in the streets. I think he was right, and what we have to do at this point is to use that decision . . . in order to escalate the struggle in the society.

[5.] Are we going to write resolutions and condemn them (State and Federal authorities) for their brutality (against Negroes, Mexican-Americans, students), or are we going to openly declare war on them?

\* \* \*

And that's what we have to start talking about (a general strike), demonstrative actions which show pig forces what we can do—even though we don't do it then—but what we can do.

\* \* \*

This is the way we have to begin to conceive of our actions, we have to talk about offensive action. . . . And it's really nothing more than the demonstration of what can be done once we really get ourselves together, once we really organize ourselves, once we really are able to raise the level of consciousness in all the people so we can move in a united fashion to overthrow this whole system, to overthrow . . . the government.

\* \* \*

And you should realize that a strike is potential force; that's exactly what it is. We should call . . . things by their name. When people start saying that we are out to subvert, that we are subversive, we should say, "Hell, yes, we are subversive. Hell, yes, and we're going to continue to be . . . subversive until we have subverted this whole damn system of oppression." (Santa Barbara Speech)

The *ad hoc* committee observed that:

On the limited evidence available, it seems clear that she does not hesitate to attack the motives, methods, and conclusions of those with whom she disagrees. Thus, the anthropologists at Santa Barbara who voted not to renew the appointment of a junior colleague are themselves dismissed as "senile," and a professor who, after years of study, published a lengthy article outlining an hypothesis that certain kinds of learning abilities vary in measurable degrees between races and are due primarily to genetic rather than social factors, is denounced as a racist and an "exploiter" of academic freedom.

that:

. . . we think she has been less than fair in her characterization of the views of fellow scholars whom she has denounced, . . .

that:

Her public speeches, . . . have been characterized by notable lack of restraint and the use of, to say the least, extravagant and inflammatory rhetoric.

that:

. . . she has frequently sacrificed accuracy and fairness for the sake of rhetorical effect. We deem particularly offensive such utterances as her statement that the Regents "killed . . . brutalized . . . (and) murdered" the "people's park" demonstrators (Pauley Pavilion speech) and her repeated characterization of the police as "pigs." (Santa Barbara speech)

and that such utterances are, "distasteful and reprehensible."

The *ad hoc* committee was charged with recommending whether formal charges or other disciplinary action should be taken against Miss Davis. It recommended against such action. However, it should be emphasized that the *ad hoc* committee nowhere recommends that she be reemployed. On the contrary, it made the following recommendation:

We also find . . . that Miss Davis' choice of language in some of her public statements is inconsistent with accepted standards of appropriate restraint in the exercise of academic freedom, even though the statements themselves are not likely to lead to the destruction of those standards. Accordingly, we recommend that they be taken into account, together with all other relevant factors, by the appropriate faculty and administrative authorities when consideration is given to the renewal of Miss Davis' present contract of employment.

This committee of the whole agrees with the observations and the foregoing findings and recommendation of the *ad hoc* committee.

#### The Department of Philosophy Recommendation

The Department of Philosophy, by a vote of fourteen ayes, three abstentions, has recommended that Miss Davis be reappointed for the academic year 1970-71 at the rank and step of her present employment, Acting Assistant Professor, Step II. The Departmental recommendation was based principally upon reports of her teaching effectiveness submitted by students and faculty observers. In general, these reports were commendatory of her teaching. Some were highly laudatory and called for her retention. One student's evaluation, however, concluded that her teaching was biased in favor of Marxism and was ". . . indoctrination, not open critical teaching."

The Departmental recommendation is nearly devoid of information concerning Miss Davis' research activities. In that regard it states simply:

Miss Davis has made less progress toward the completion of her Ph.D. than either she or the Department expected at the time she was appointed (April, 1969); however, given the distracting circumstances that developed during the latter part of the Summer and most of the Fall quarters, she has done a remarkable amount of reading on and given considerable thought to her dissertation subject—a Kantian theory of force. Indeed, on the basis of the written report she has submitted, all but one member of our Department present at the March 19th meeting voted in favor of a Departmental recommendation that Miss Davis be granted again this summer, through the Faculty Development Program, a summer stipend.

The report and recommendation of the Philosophy Department was made prior to the *ad hoc* committee report and it does not mention extramural statements or activities of Miss Davis.

#### Review by the Deans—Division of Humanities and College of Letters and Science

The Departmental recommendation was reviewed by the Dean of the Division of Humanities (the Division within the College of Letters and Science which includes the Department of Philosophy), and by the Dean of the College of Letters and Science. The letter of April 22, 1970, from the Dean of the Division of Humanities to the Dean of the College of Letters and Science points out the reductions in faculty positions which have been imposed as a result of recent financial stringency. It concludes that, "If the additional F.T.E. were to become available, the needs for which they were intended would, in my judgment, claim priority over the proposed appointment of Miss Angela Davis." That letter also notes that a full appraisal of Miss Davis' academic qualifications could not then be made by the Dean since, "There exists a report prepared by a special committee appointed by the Chancellor on Miss Davis' professional conduct" which he did not have, and "Moreover, the Department of Philosophy

has not provided this office with a detailed account and evaluation of Miss Davis' progress on her dissertation since last year." The Dean of the Division of Humanities concluded that, "Obviously, all this evidence must be examined before a recommendation regarding her appointment can be properly made. . . ."

The Dean of the College of Letters and Science submitted a letter dated April 22, 1970, to the Vice Chancellor calling attention to the ". . . present critical staffing situation in the College" and declining to recommend the proposed reappointment of Miss Davis. The Dean's letter concludes:

There being no vacant provision in the College to which the appointment in question can be assigned, the only resource would be to ask you to provide special funding for it. But if I were to request such a provision, I would be elevating this appointment to the Number 1 priority of the College and giving it sudden precedence over fifty-two already needed positions in nearly every Department of the College. In my opinion, to do so would be unfair and not in the best interests of the College of Letters and Science. I therefore do not recommend the appointment. If any additional funds are made available to the College, they should be applied to a reduction of the list of staffing needs already established.

Thereafter the Vice Chancellor requested the Deans to report on Miss Davis' academic qualifications without regard to budgetary considerations. In response, the Dean of the College of Letters and Science submitted a letter dated May 4, 1970, to the Vice Chancellor, the full text of which reads:

In response to your question regarding the academic qualifications of Miss Angela Davis for reappointment to the position of Acting Assistant Professor, I must reply that in my opinion her qualifications are unquestionable. She was well qualified, academically, for the position to which she was appointed last year, and I know of no evidence that she is not at least as well qualified now.

It thus appears from the record that this appraisal was made without regard to either Miss Davis' progress on her dissertation or her extramural statements and activities. It should also be noted that this letter contains no recommendation that Miss Davis be reappointed.

#### Recommendation of the Budget Committee

On May 5, 1970, the Chairman of the Committee on Budget and Interdepartmental Affairs of the Los Angeles Division of the Academic Senate, submitted to the Vice Chancellor the following recommendation:

The Budget Committee recommends the reappointment of Miss Angela Davis as Acting Assistant Professor II for a one-year term, 7-1-70 to 6-30-71. In making this recommendation we have placed emphasis on her record of teaching excellence and strong academic training, accomplishment, and promise. It is customary in many departments at UCLA to reappoint qualified acting assistant professors for the second year while they are still in the process of completing their Ph.D. dissertations.

The Budget Committee further concluded that:

We cannot accept as valid the argument that Miss Davis should not be reappointed for budgetary reasons,

because of its view that the

. . . priorities expressed by campus faculty development program take precedence.

Thus it appears from its report that the Budget Committee gave little, if any, consideration to Miss Davis' dissertation progress and none to her extramural statements and activities. Nor does it appear that consideration was given to other criteria normally applied to University appointments, such as professional accomplishment, research, and University and public service.

#### The Chancellor's Proposed Action

As you know, at the May 15, 1970, meeting of the Board, the Chancellor made a statement in which he said:

I have concluded, therefore, that there are no permissible grounds for refusal of the departmental recommendation, and that on the basis of the applicable criteria Miss Davis should be reappointed for a second one-year, self-terminating appointment under the Faculty Development Program.

In his statement, the Chancellor observed that:

The Department based its recommendations (for reappointment) on a

formal appraisal of her performance during this current year, drawing on evaluations by faculty members and students of her performance in the courses she has taught.

This indicates that the Department considered only classroom performance and did not consider Miss Davis' extramural statements and activities, and, possibly, did not consider her progress on the dissertation in making its recommendation.

We also note that while the Chancellor's statement says, "This report (of the *ad hoc* committee) was made available to both the Deans and the Budget Committee prior to their review of the Department proposal for reappointment," there is no mention of the contents of the *ad hoc* committee's report in either the letter from the Dean of the College of Letters and Science to the Vice Chancellor of May 4, 1970, commenting upon Angela Davis' academic qualifications, or in the letter from the Chairman of the Budget Committee to the Vice Chancellor of May 5, 1970, recommending Miss Davis' reappointment. Thus, we have some difficulty with the Chancellor's conclusion that:

The favorable evaluations of the Deans and Budget Committee testify to their conviction that these allegations (of unprofessional conduct discussed in the *ad hoc* committee report) do not constitute sufficient grounds for denial of reappointment.

#### Conclusion and Recommendation

It is the conclusion of this Committee that the finding and recommendation of the *ad hoc* committee that Miss Davis' extramural activities be taken into account in connection with consideration of her reemployment were not given sufficient consideration in the reviews and recommendations which have been made for the reappointment of Miss Davis. It is our view that the above quoted statements and others contained in the four public speeches reviewed by the *ad hoc* committee and this committee are so extreme, so antithetical to the protection of academic freedom and so obviously deliberately false in several respects as to be inconsistent with qualification for appointment to the faculty of the University of California.

It is also a matter of concern to this committee that, as indicated above, the record indicates such little attention to Miss Davis' progress or lack of progress on her dissertation. We note that in her Pauley Pavilion speech of October 8, 1969, Miss Davis announced that, "I myself was supposed to have my Ph.D. dissertation finished by the end of this quarter, but obviously that's not going to be the case," because, as she went on to explain, she would be devoting her time and energies to political purposes. The Departmental recommendation of March 23, 1970, acknowledges that, "Miss Davis has made less progress toward the completion of her Ph.D. than either she or the Department expected at the time she was appointed (April, 1969)." The Dean of the Division of Humanities, in his letter of April 22, 1970, observed that, "Moreover, the Department of Philosophy has not provided this office with a detailed account and evaluation of Miss Davis' progress on her dissertation since last year." And, "Obviously, all this evidence must be examined before a recommendation regarding her appointment can be properly made. . . ." The record contains no indication that such evidence of her progress on the dissertation was considered in the review process.

This committee is also concerned with the proposal for giving this appointment an unwarranted priority in the face of other established and more pressing faculty staffing needs within the Division of Humanities and throughout the College of Letters and Science. This committee concurs with views of the Dean of the College of Letters and Science that approval of this proposal ". . . would be elevating this appointment to the Number One priority of the College and giving it sudden precedence over fifty-two already needed positions in nearly every Department of the College"; that such action, ". . . would be unfair and not in the best interests of the College of Letters and Science"; and that, "If any additional funds are made available to the College, they should be

applied to a reduction of the list of staffing needs already established."

In light of the foregoing, this committee recommends that Acting Assistant Professor Angela Davis not be reappointed

to the faculty of the University of California.

Dated: June 19, 1970.

COMMITTEE OF THE WHOLE OF THE REGENTS  
OF THE UNIVERSITY OF CALIFORNIA

## ADDENDUM C

### Dissenting Statement of Regent William K. Coblentz

Two salient propositions emerge from the Board of Regents' decision seeking to justify its action in refusing to continue Miss Angela Davis' appointment for a second year. First, the record leaves no room for doubt that the majority of the Board singled out Angela Davis for special treatment because of her admitted membership in the Communist Party; sought to discharge her (until prevented by court order from so doing) because of her admitted membership in the Communist Party; and now, under the most transparently improvised cover, are seeking to deny her a renewal for that identical reason. Second, that improvised cover—constructed out of statements from several of Miss Davis' extramural speeches—even taken on its face fails to justify the action of the Board. Indeed its use here itself represents a violation of academic freedom as well as a violation of her freedom of speech under the first Amendment.

#### 1. The Real Reason for the Board's Action

Let us first consider the first proposition.

The genesis of the Angela Davis case before the Board of Regents began on July 11, 1969, when it was reported that a newspaper had carried an allegation concerning a temporary nontenured individual who had been hired by the University and was allegedly a member of the Communist Party. The history of this case then unraveled when, on September 19, 1969, questions were raised at the Board meeting concerning the constitutionality of the Regents' 1949 policy prohibiting employment of members of the Communist Party in the light of several recent decisions of the U.S. Supreme Court. Despite these questions, a motion was passed to terminate Miss Davis' employment on the basis of the 1949 Regental policy prohibiting employment of members of the Communist Party.

Miss Davis had, however, been assigned teaching duties during the Fall Quarter, contrary to original expectations. Therefore, the following resolution was approved by the Board by a vote of 14-6.

WHEREAS, as stated in policies of The Regents "membership in the Communist Party is incompatible with membership in the faculty of the State University;" and

WHEREAS, The Regents at their meeting of September 19, 1969, after being advised that Acting Assistant Professor Angela Y. Davis had acknowledged membership in the Communist Party, directed the President to take steps to terminate Miss Davis' University appointment in accordance with regular procedures as prescribed in the Standing Orders of The Regents; and

WHEREAS, The Regents were informed at the time of taking that action that Miss Davis would not be engaged in teaching during the Fall Quarter and therefore took no action to specifically prohibit teaching activity; and

WHEREAS, subsequent to The Regents meeting of September 19, 1969, it was announced that Miss Davis has been assigned to teach a University course during the Fall quarter commencing October 6, 1969; and

WHEREAS, there may be some delay before the conclusion of hearing procedures relating to Miss Davis; and

WHEREAS, in the interim it is deemed appropriate and desirable that Miss Davis not engage in teaching activities as was The Regents' intention at the time of their September 19 action; and

WHEREAS, The Regents do not wish Miss Davis to suffer financial hardship pending the outcome of University hearing procedures;

NOW, THEREFORE, BE IT RESOLVED, that The Regents instruct the President that during the Fall quarter of 1969 Miss Davis shall be assigned no teaching duties, and that she shall not be authorized to give instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by The Regents.

BE IT FURTHER RESOLVED, that during the period of appropriate University hearing procedures she shall continue to be compensated as provided in her employment contract.

Thus, in spite of the United States Supreme Court decisions indicating the unconstitutionality of the Regents' policy prohibiting the employment of Communists, the Regents decided to act, and did so act. On October 21, 1969, the Superior Court in Los Angeles held that the Regents' policy prohibiting employment of members of the Communist party was invalid and enjoined its enforcement. The Regents' general counsel advised that this court order did not prevent further University action against Miss Davis based on any good cause other than charges based solely upon membership in the Communist Party. And so, in subsequent meetings, statements credited to Miss Davis were read, and questions raised about her presence on the University campus. No action, however, was taken with regard to her teaching qualifications or fitness to perform that for which she was employed. Ever pressing, some Regents felt her statements outside of class were a direct and deliberate provocation of the Board, and, because of her disruptive activities, her appointment should be terminated. Thus, the stage was set for denial of her appointment and the reasons for such were to be found.

This statement of the history of the Board's consideration of the Angela Davis matter is eloquent witness to the fact that, despite the protestations to the contrary in the Board's report, Miss Davis' admitted membership in the Communist Party was and still is the determinative consideration behind their decision to sever her relationship with the University.

#### 2. The Ostensible Reason for the Board's Action

I now turn to the avowed reason for the action of the Board. The Board has seized upon the content of four extracurricular addresses she gave at political rallies, two in Los Angeles and one in Berkeley, when the public controversy over her appointment was at its peak, in October, 1969, and one in Santa Barbara in February, 1970. Despite the conceded facts that Miss Davis was a wholly satisfactory teacher who did not exploit her classroom position to indoctrinate students and did not permit her outside activities and commitments to interfere with her professional duties, statements she made in the course of these extracurricular political meetings are used as the basis of disqualifying her for another year of teaching. Even if the record were less clear that the real ground for the Board's action against her was her Communist Party membership, the action of the Board would still be insupportable since the avowed ground is no less a violation of her academic freedom and her freedom of speech under the First Amendment.

What are the standards against which her extramural utterances must be measured? The standards of academic freedom evolve from the 1940 *Statement of Principles on Academic Freedom and Tenure* of the American Association of University Professors and the Association of American Colleges, together with its accepted usages and interpretations. The standards of First Amendment freedoms derive from a number of recent decisions of the U.S. Supreme Court. I consider these in turn.

(a) *Academic Freedom*

The fundamental document of academic freedom in American universities is widely recognized to be the 1940 *Statement of Principles on Academic Freedom and Tenure* promulgated jointly by the American Association of University Professors and the Association of American Colleges—the former being an association of professors and the latter an association of administrators. Its widespread acceptance is evidenced by its having been endorsed by over seventy-five professional associations.

That statement contains, as Paragraph c, under the section on academic freedom, the following provision with respect to extramural utterances:

The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

It cannot be contended that these propositions mean that a professor may properly forfeit his claim to a professional position where his statements outside the classroom in political or other contexts are insufficiently temperate, polite, or accurate. This is an interpretation which from the very outset was repudiated by the original authors and sponsors of the 1940 *Statement*. At the Conference of Representatives of the AAUP and of the AAC in November, 1940, the following interpretation was agreed upon:

If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extra-mural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

From the inception of the 1940 *Statement*, therefore, it was made clear that while accuracy, restraint and good manners in extramural statements were desirable in professors, nonetheless the governing principle was that "teachers are citizens and should be accorded the freedom of citizens" and action against a professor for extramural utterances becomes entertainable only where they are such "as to raise grave doubts concerning his fitness for his position."

The heart of the matter was stated by President J. W. Maucker, President of the University of Northern Iowa, in 1968 in his remarks upon accepting the Tenth Alexander Meiklejohn Award. He received this award in part for defending a professor on his campus against public clamor for his dismissal for making extramural speeches defending massive civil disobedience toward the draft law. President Maucker then observed,

Isn't the pertinent hard doctrine that a professor is not to be punished by loss of his position for *ideas* he expresses as a citizen—no matter how loudly or bluntly or outrageously he states them, and no matter whose toes he steps on or how unpopular he becomes—*unless, in the judgment of his academic peers, his academic effectiveness is impaired?* . . . We ought not judge this matter by looking solely at what the professor said or how he said it—no matter what he said or how he said it. We must base the decision regarding his academic status by looking at the academic process and the effect of his extramural utterances on that process—has his effectiveness as a teacher or scholar in fact been seriously impaired?

In the same vein, the AAUP's Committee A on Academic Freedom and Tenure issued a *Statement on Extramural Utterances* in 1964 designed to clarify this same section of the 1940 *Statement*. They observed as follows:

The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and a scholar. . . . Committee A asserts that it will view with particular gravity an administration or board reversal of a favorable faculty committee hearing judgment in a case involving extramural utterances.

It is apparent from these interpretations of the 1940 *Statement*, as well as the commitment to academic freedom and freedom of speech which pervades the entire document, that action against a professor is intolerable which is based merely upon inaccuracies, indiscretion, bad manners or general excesses of the speaker's rhetoric in his extramural statements; that academic freedom is indeed imperiled if the professor's freedom to speak as a citizen is limited to the freedom to speak politely; that the one and only basis for any consideration of a professor's extramural statements in making a personnel decision is that those statements bear negatively upon his fitness for his position, which is to say, upon his effectiveness as a teacher and scholar.

This being the standard, Miss Davis' extramural statements afford no justification for the Board's action. There is no basis whatsoever for any inference that the statements relied upon by the Board negatively affected her effectiveness as a teacher. Indeed the evidence to the contrary is overwhelming. There is *first* the favorable judgment of her teaching and other academic qualifications by her Department. There is *second* the same favorable evaluation by the Deans of the Division of Humanities and of the College of Letters and Science. There is *third* the favorable evaluation by the Academic Senate Committee on Budget and Interdepartmental Relations. There is *fourth* the favorable decision of the Chancellor of the Los Angeles campus. And *finally* there is the lengthy and fully documented report of the *ad hoc* committee appointed by the Chancellor to inquire into Miss Davis' conduct in the classroom and into certain aspects and implications of her off-campus activities. This Report concluded that "Miss Davis' public statements, however interpreted, do not substantiate the accusations either that she utilized her position in the classroom for the purpose of indoctrinating students or that her extra-University commitments and activities interfere with her duties as a member of the faculty." Moreover, the elaborate evidence they amassed concerning the quality of her teaching, from colleagues and students, demonstrate her high ability as a teacher. In the face of this record there is no basis for finding that her extramural statements rendered her academically unfit as a teacher.

In reaching these conclusions I do not—any more than the *ad hoc* committee—approve the many statements she made in political rallies. I agree with the *ad hoc* committee that she "frequently sacrificed accuracy and fairness for the sake of rhetorical effect." But given the documented findings of her high quality of teaching and of her not having used the classroom for indoctrination, this evidence of her bad taste and excesses in political polemics may not, consistent with elemental academic freedom, be used to disqualify her from a teaching position. Moreover, in this day and age when the decibel level of political debate—from the Vice-President on down—has reached the heights it has, it is unrealistic and disingenuous to demand as a condition of employment that the professor address political rallies in the muted cadences of scholarly exchanges. Professors are products of their times even as the rest of us. As the *ad hoc* committee observed: "Regrettably, the use of lurid imagery and the excessive resort to hyperbole have become the hallmark of extremist rhetoric. Its use is by no means confined to the militant left. Compared with some of the writings of Classics Professor Revilo P. Oliver of the University of Illinois in the John Birch publication, *American Opinion*, for example, most of what Miss Davis has said in public seems rather bland. We cite this fact not for the purpose of condoning Miss Davis' style, but merely to emphasize its unfortunate pervasiveness in public debate." Professor Oliver, it will be recalled, wrote in an issue of *American Opinion*, the Birch Society magazine, under the title "Marx-manship in Dallas," his theory of President Kennedy's assassination. "The Communists executed the President," says Oliver, intending to blame ultrarightists and trigger a "domestic takeover." In describing former President Kennedy, he stated:

He is the John F. Kennedy who, in close collaboration with Khrushchev, staged the phoney "embargo" that was improvised both to befuddle the voters on election day in 1962 and to provide for several months a cover for the steady and rapid transfer of Soviet troops and Soviet weapons to Cuba for eventual use against us. . . . He is the John F. Kennedy who, by shameless intimidation, bribery, and blackmail, induced weaklings in Congress to approve treasonable acts designed to disarm us and to make us the helpless prey of the affiliated criminals and savages of the "United Nations." I have mentioned but a few of the hundred reasons why we shall never forget John F. Kennedy. So long as there are Americans, his memory will be cherished with distaste. . . . and if the international vermin succeed in completing their occupation of our country, Americans will remember Kennedy while they live, and will curse him as they face the firing squads or toil in brutish degradation that leaves no hope for anything but a speedy death.

Dr. Oliver, a Classics professor, also assailed Chief Justice Earl Warren as part of the "conspiracy" and as a "pal" of Mr. Khrushchev.

The University of Illinois trustees upheld the right of Professor Oliver to be "offensive," "undignified" and "ungloriously wrong." The Board concurred with the recommendations of David D. Henry, President of the University of Illinois, who accepted the recommendation of the Faculty Senate Academic Freedom Committee:

If, in the exercise of this protected freedom of research and expression, and despite the [university's own] statutory admonition that a professor is expected to observe professional standards of accuracy, forthrightness, and dignity befitting his association with the university and his position as a man of learning, abuses of this privilege occur, restraints on such abuses must normally be provided by the adverse judgment of the individual's professional colleagues.

He must [the statement continued] withstand the full glare of critical professional judgment and condemnation for unprofessional, undignified, unsupported, or offensive utterances. He must have the right to be as ungloriously wrong, and suffer the professional consequences thereof, as to be gloriously right and receive the acclaim of his professional colleagues therefor. Thus when abuses occur, and the public image of a great university is somewhat tarnished as a result thereof, it must be recognized that the larger gain is in the brighter image of the university presented to the scholarly world of an institution dedicated to the advancement of knowledge and learning, and one willing to pay the price for strict adherence to this ideal.

Another example is the case of Rutgers Professor Eugene D. Genovese. At a teach-in, part of his remarks were condensed to "I am a Marxist and a Socialist, and I would welcome the victory of the Viet Cong." This abbreviated statement was picked up by the press and the gubernatorial candidate in New Jersey opposing Governor Richard Hughes raising the issue by urging Rutgers to dismiss or suspend Professor Genovese. The candidate said in part: "Academic freedom in my judgment does not give a teacher in a State university supported by taxpayers' money the right to advocate victory of an enemy at war in which some of his own students may very well [lay] down their lives in the cause [of] freedom." Governor Hughes' position was that "Frank and open discussion—even though involving a controversial subject—is basic to our American democratic tradition. Educational institutions have a responsibility not to forbid the carrying on of activities which have always been characteristic of the academic community." Despite growing public and political pressure for the dismissal of Professor Genovese, President Mason W. Gross of Rutgers and the Rutgers Board of Governors calmly and rationally investigated the matter. The Board's report concluded that Professor Genovese had not in any way abused the privilege of academic freedom or violated professional ethics by his behavior as a scholar and as a teacher.

A final word is required on the allegation that Miss Davis' public statements demonstrate a commitment to a concept of academic freedom which would ultimately be destructive of that essential freedom itself. It suffices to quote from the admirable discussion of this issue by the *ad hoc* committee:

A far more serious question is whether Miss Davis "respects and defends the free inquiry" of her associates. On this point the record is ambiguous. While denouncing a fellow professor as a racist and an "exploiter" of academic freedom, she has stopped short, at least in her public speeches, of denying his right to teach, to pursue his research interests, and to publish the results.

Even assuming for the sake of argument, however, that Miss Davis' conception of academic freedom does not include protection of the right of free inquiry by those whose views she believes to be evil and destructive, we do not see how that conception "substantiates the first two charges" discussed in Sections II-A and II-B, *supra*. [*i.e.*, that she indoctrinated in the classroom and permitted her outside commitments to interfere with her faculty duties.] One of the most

striking characteristics of Miss Davis' conduct is the very sharp difference between her classroom behaviour and her public statements. As previously indicated, the evidence submitted to us shows that her teaching has been unexceptionable; in her dealings with students she has maintained an objective and rather restrained posture. Her public speeches, on the other hand, have been characterized by a notable lack of restraint and the use of, to say the least, extravagant and inflammatory rhetoric. As we view the situation, even if the conception of academic freedom explicated by Miss Davis in her public statements would justify curtailment of someone else's freedom of inquiry, there has been no reflection of that belief in her teaching activities. What remains, then, is the question whether her assumed conception of academic freedom "would ultimately be destructive of that freedom itself."

The debate over the distinction between liberty and license and the alleged need to suppress the speech and other activities, especially in educational institutions, of those who would deny freedom to others is as old as civilization. Different societies have sought to deal with the problem in widely varying ways. In totalitarian countries academic freedom has been abolished. In the United States we have on occasion witnessed regrettable assaults on academic freedom both by those who sincerely believed that they were preserving it and by those who simply did not believe in its necessity. But the theory of our Constitution, supported by most of the people most of the time, is, in the words of Justice Holmes, "that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market," and that "we should be eternally vigilant against attempts to check the expression of opinions we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." . . . Moreover, even if Miss Davis' speeches and views suggest a willingness to deny to others the same freedoms which are invoked to protect her, we must recognize that to use this to punish her would *actually* abrogate freedom of speech, whereas she has merely *talked* about doing so. We conclude, therefore, that on balance the conception of academic freedom embodied in the AAUP Statement and the Senate resolution previously quoted will be strengthened, not weakened, if it is invoked to protect rather than to punish the expression of ideas, however self-contradictory, intolerant, erroneous, or unpopular they may be. The tradition of free speech and inquiry in this country is not so fragile that it will succumb to assaults by a comparatively few extremists of the left or the right.

## B. The First Amendment

Careful examination of all of Miss Davis' public statements presented for review lead inevitably to the conclusion that they are protected by the freedom of speech provision of the First and Fourteenth Amendments of the United States Constitution. In the proceeding before the Regents, there is no dispute with the proposition that Miss Davis' reported statements are constitutionally immune from criminal punishment. The only contested issue is whether her statements justify refusing to continue her employment.

Recent decisions of the United States Supreme Court, rendered with virtual unanimity, make clear that refusing to continue her appointment on the faculty of the University of California because of her public statements in the record before the Board violates the Constitution.

Miss Davis' statements fall into two broad categories. The first concerns heated criticism of the concept of academic freedom and of the University and our educational system as presently conceived. In a case brought to the Supreme Court from Illinois just two years ago, *Pickering v. Board of Education*, 391 U.S. 563 (1968), the Court stated the prevailing standard:

To the extent that the Illinois Supreme Court's opinion [upholding the Board's dismissal of petitioner] may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court.

Just as in the *Pickering* case, where the teacher charged the school board with misallocation of financial resources, it must be said here that, on the questions Miss Davis addressed,

free and open debate is vital to informed decision-making by the electorate. Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal. . . . [I]t is apparent that the threat of dismissal from public employment is . . . a potent means of inhibiting speech.

As in *Pickering*, Miss Davis' statements in this category cannot fairly be characterized as other than "accusation[s] reflect[ing] . . . a difference of opinion . . . as to the preferable manner of operating the school system, a difference of opinion that clearly concerns an issue of general public interest.

Two further points must be made in respect to the *Pickering* decision and its bearing on Miss Davis' statements in this category. In *Pickering*, the dismissed teacher concededly made *false* statements of *fact* in his criticism. No such charge has been lodged, nor can it be, against Miss Davis, because her statements now being discussed were statements of opinion rather than fact. Nevertheless, the Court overturned Mr. Pickering's dismissal, stating in respect to his *false* accusations what is clearly relevant to Miss Davis' statements of opinion:

What we do have before us is a case in which a teacher has made erroneous public statements upon issues then currently the subject of public attention, which are critical of his ultimate employer but which are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally. In these circumstances we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

Finally, it should be noted that the Court in *Pickering* did not hold that teachers may never be sanctioned for making critical public statements. "The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." But the illustrations that the Court referred to as *possibly* meriting disciplinary action—criticism of colleagues or superiors with whom the teacher came into daily contact in his work, thus possibly undermining the effectiveness of the working relationship—are so far removed from the Davis matter as to compel a constitutional finding in her favor under the *Pickering* case.

The second category into which Miss Davis' statements fall concerns criticism of the Board of Regents—e. g., charging the Board with "immoral usurpation," establishing "a tyranny over the University of California," and being "unscrupulous demagogues." (There is also a statement that may be interpreted as charging the Regents with having "killed, . . . brutalized . . . [and] murdered human beings" in connection with the Berkeley "people's park" episode; although, in context, it appears that here Miss Davis was charging "the police force and the military" with this conduct.)

Examination of the Supreme Court's *Pickering* decision, described above, would appear to foreclose use of these statements to dismiss Miss Davis consistently with the First and Fourteenth amendments of the United States Constitution. But it is not unreasonable to distinguish these intemperate and vituperative charges against and characterizations of the Regents (and others) from the critical statements of the educational system found in the first category of Miss Davis' public statements. These are intemperate and hyperbolic accusations. Nevertheless, under the Supreme Court's decision in *Greenbelt Cooperative Publishing Ass'n, Inc. v. Bresler*, decided as recently as May 18th of this year, the University is constitutionally prohibited from terminating Miss Davis' employment because of these statements.

In *Greenbelt*, a civil action was brought against a news-

paper for having reported the characterization of a real estate developer's negotiating position as "blackmail" despite the fact that the newspaper knew he had not committed such a crime. The Court held that "to permit the infliction of financial liability" upon the newspapers in these circumstances would violate the First and Fourteenth amendments. The key paragraph in the Court's reasoning is so closely analogous to the matter of Miss Davis' name-calling as to clearly dispose of any argument that she may be sanctioned for her statements described above:

It is simply impossible to believe that a reader who reached the word "blackmail" in either article would not have understood exactly what was meant: it was Bresler's public and wholly legal negotiating proposals that were being criticized. No reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging Bresler with the commission of a criminal offense. On the contrary, even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's negotiating position extremely unreasonable. Indeed, the record is completely devoid of evidence that anyone in the city of Greenbelt or anywhere else thought Bresler had been charged with a crime.

Similarly, no reasonable person who heard or read Miss Davis' statements respecting the Regents and others could have rationally perceived anything other than that her abusive language was "rhetorical hyperbole" and "vigorous epithet[s]" against persons whose conduct she considers "extremely unreasonable." If "infliction of financial liability" in the form of money damages in these circumstances is violative of first amendment freedom, it inescapably follows that refusing to continue her employment—"a potent means of inhibiting free speech," *Pickering, supra*—accomplishes the same result.

Miss Davis' posture and obligations as a teacher are comparable to those of Julian Bond's as a legislator. Bond had been refused a seat, after having been elected to the Georgia legislature, because of his various statements opposing the war in Vietnam, urging Negroes as "second class" citizens to seek alternatives to the draft, and expressing admiration for those who burned their draft cards. A unanimous Supreme Court reversed in *Bond v. Floyd*, 385 U.S. 116 (1966):

[W]hile the State has an interest in requiring its legislators to swear to a belief in constitutional processes of government, surely the oath gives it no interest in limiting its legislators' capacity to discuss their views of local or national policy. The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy. The central commitment of the First Amendment, as summarized in the opinion of the Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), is that "debate on public issues should be uninhibited, robust, and wide-open." We think the rationale of the *New York Times* case disposes of the claim that Bond's statements fell outside the range of constitutional protection. Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected. The State argues that the *New York Times* principle should not be extended to statements by a legislator because the policy of encouraging free debate about governmental operations only applies to the citizen-critic of his government. We find no support for this distinction in the *New York Times* case or in any other decision of this Court. The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators.

This cogent statement by the Court is wholly applicable to Miss Davis as a teacher-critic and, as in *Bond*, precludes this Board from refusing to continue her employment.

## ADDENDUM D

### Dissenting Statement of Regent Frederick Dutton June 19, 1970

The Angela Davis charade today is a "con" game to mislead the people of this state.

Reagan and the board majority that he now has fed on fear and dividing the people of this state. And that is the worst tragedy of all in this step.

A twenty-six year old bookish black girl surely is no threat to our state or country, or the traditional values that the over-

whelming majority of us believe in.

She is not being fired for being a Communist, for the courts forbid that. Yet that is the real reason behind the Board's action. The Regents are thus deceitful in what they have claimed they have done—deceitful not against Angela Davis so much as against the people of California.

The formal grounds for firing her are her statements com-

pletely outside of the classroom or her other employment work. The Board is therefore firing her for exercising free speech in her nonworking hours. It is imposing an unconstitutional condition on her public employment. At an even more fundamental level, it is intimidating free inquiry and criticism at the University and in our society. It is acting just as did those forces which attempted to prevent consideration of Darwin's theory of evolution on the campuses many years ago.

Miss Davis' rhetoric is sometimes much, but it is anemic compared to Governor Reagan's bloodbath statement and other frequent, intentional, publicly reported language that provokes and prolongs turmoil on our campuses and in our state. Who is he to get this girl fired for some words and thoughts, not acts, outside of her teaching work?

In a closely related vein, his numerous, secret sessions with less than one per cent of the faculty and the increasing use of a handful of students by various sources to report on other students and faculty illustrates the Gestapo climate he is fostering in California. That leads to a society disintegrating before our eyes—and not just in our lifetime but in these very days and years.

The Board lacks professional competence to pass on her academic progress and, in fact, concedes her qualifications as

determined by the appropriate faculty groups. Meantime, the Board is undermining University administrators and making it vastly more difficult for them to maintain law and order, much less academic excellence, for the state's young people.

The action of the Governor and a majority of the Board firing Miss Davis is unlawful and unconstitutional, for it violates the Federal Constitution, including the First Amendment, Equal Protection Clause, Due Process Provision, and Ex Post Facto Prohibition, Federal Civil Rights Statutes, the California Constitution, state law, and the Board of Regents' own long-standing rules and procedures.

In essence, Governor Reagan and his Regents have again unleashed vigilantism on our state. They have carried out a public lynching of this twenty-six-year-old black girl for their own exploitative purposes.

She is only one individual like each of the rest of us. But California likely will reap turmoil, mediocrity, ridicule, and a lessening of its potential for the future by this step. History shows basic rights have almost always been won or lost in unpopular causes like this one. But California should know today that it has become the less—and worst of all, will become less and less if it continues further on the present course.

### *Haverford College v. Reeher: A Landmark Decision on Campus Surveillance and Academic Freedom*

The Association is glad to report the holding of a three judge federal court striking down as unconstitutional key provisions of two Pennsylvania statutes which required colleges and universities to report on certain behavior of students who receive state financial aid, which behavior could or would be the basis for denial of such aid. The AAUP appeared as *amicus curiae* in this case, *Haverford College et al. v. Reeher*, Civil Action No. 70-2411 (E.D. Pa. July 19, 1971) in support of the position of the plaintiff colleges and students that these statutes violated basic constitutional rights of both. Through its brief, filed on behalf of the Association by its General and Staff Counsel, and in oral argument in which the General Counsel, Professor Robert M. O'Neil, also participated, the Association stressed the pervasive threat that legislation of this nature poses to academic freedom, rights of due process, and related constitutional rights of college and university students, and to the well-being generally of our colleges and universities. It emphasized also as a matter of concern that such legislation added a new and ominous dimension to the relationship between a college and its students—the task of surveillance. The invidiousness of relating surveillance, and risk as to constitutional freedoms, to financial need was likewise stressed.

It is believed that this decision represents a landmark case on the complex and vexing problem of campus surveillance, as well as a sound rejection of the simplistic principle that "order" is to be restored to campuses by imposing broad punitive or retributive sanctions through restrictions on loans, scholarships, and other forms of subvention. The Association is of course pleased to have had the opportunity to contribute to this result.

HERMAN I. ORENTLICHER  
*Associate General Secretary and Counsel*