The Association and the Desegregation Controversy[1]

My name is Ralph F. Fuchs. I am professor of law at Indiana University and testify today in my capacity as president of the American Association of University Professors. I am glad, on behalf of the Association and myself personally, to respond to the invitation of this Subcommittee and, at the outset, to supply a statement concerning Association action and experience in relation to racial segregation and discrimination as it affects higher education. The governing body of the Association has not had an opportunity to review this statement, which contains, therefore, my own summary.

I assume that the invitation of the Subcommittee resulted in part from the fact that this Association, with approximately 50,000 members, is the largest national organization of teachers and research scholars of all disciplines in higher education. We are grateful to the Committee for its suggestion that we can be of assistance to it in its inquiry. I will mention several kinds of Association action which reflect our experience with the problem of segregation, and the positions we have taken.

Delegates representative of the membership of the Association, together with a varying number of individual members, adopt resolutions to state their considered position on key issues at Annual Meetings in the spring of each year. I am aware of no more significant single action that can be taken to reflect the thinking and judgment of the faculty community in higher education. The Forty-Second Annual Meeting in 1956 stated in a resolution that it:

> . . . endorses the principles set forth by the United States Supreme Court in decisions providing for the elimination of racial segregation in publicly-supported institutions of higher education. In addition, the Association expresses its belief that these principles should be adhered to by privately-supported institutions of higher education.
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> The right to teach and the right to learn are vital and inseparable aspects of academic freedom. Consequently, free access to every kind of educational opportunity, measured only by the aptitude and achievement of the individual teacher or student, must be safeguarded to all Americans, of whatever race. . . .
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> The Association also calls attention to the right of every teacher to discuss the meaning and purpose of academic freedom, including the right to learn without regard to racial considerations. This includes his right, both as a teacher and as a citizen, to be active as an individual and as a member of organizations in exerting his influence with respect to problems of providing, at all levels, equal educational opportunity without racial segregation.

You will note here that both the evil of segregation in higher education itself and the need for freedom of public discussion by faculty members are stressed. Resolutions to the same effect have been adopted at each succeded Annual Meeting.[2]

Beginning with the 1957 resolution and several times thereafter, the Annual Meeting has also noted with deep concern the pernicious effect on higher education resulting from the loss of teachers and students by institutions which are subject to local repressive laws and to repressive social forces in communities where resistance to desegregation is strong. It is not too much to say that grave deterioration of educational standards is taking place in some institutions as a result, and will grow worse if remedial action is not taken. This situation involves both Negro institutions and institutions where Negroes are either still excluded or admitted on a token basis under legal pressure.

The Annual Meeting in 1960, in an additional resolution, considered the problem of students who have been subjected to severe disciplinary action for protesting against racial discrimination in their communities. The 1960 resolution, reaffirmed in 1961, reads

> The Forty-sixth Annual Meeting of the American Association of University Professors observes with sorrow and indignation the action of college and university authorities who have disciplined, suspended, or expelled students for protesting in peaceful ways against racial discrimination. Such action constitutes an abuse of academic authority. Since not every conviction under law necessarily represents an offense with which an educational institution must concern itself, it is incumbent upon educational authorities to reach their own decisions in these situations. Not to do so constitutes a failure in the exercise of academic authority. The academic community

[1] Testimony of Professor Ralph F. Fuchs, President of the American Association of University Professors, before the *ad hoc* subcommittee on integration in federally assisted education of the House Committee on Education and Labor, on March 30, 1962.

[2] EDITOR'S NOTE: See also resolution of Forty-Eighth Annual Meeting, p 174.

should not restrict the civil rights of students. We call upon the authorities of colleges and universities not to be misled by public pressures into punitive action which impairs the learning process and destroys the civil liberties of students.[3]

I should like to submit at this time, for inclusion in the record, if the Subcommittee so desires, copies of the various Association resolutions to which I have referred.

To gain more information about the impact of the desegregation controversy on colleges and universities in the South, the Association, through a grant from its Academic Freedom Fund, is sponsoring a survey of conditions in these institutions, which is now under way. The study is being made by Professor C. Vann Woodward, until recently at The Johns Hopkins University and presently Sterling Professor of History at Yale University. The survey will not be completed for some time, but Professor Woodward does plan to make its results known as soon as possible.

The Association also publishes from time to time in its quarterly publication, the *AAUP Bulletin,* articles on the issues relating to the segregation problem. One such discussion is that of Professor Daniel H. Pollitt on "Equal Protection in Public Education: 1954-61," in the Autumn, 1961, issue, which I think may be of interest to the Subcommittee. I would like to leave a copy of it with you for whatever use you may wish to make of it.

It is of great significance from an academic standpoint that within the past year the federal courts, in two landmark cases, have applied the procedural protection of the due process clause of the Fourteenth Amendment to disciplinary dismissals of students in public educational institutions, produced by their participation in demonstrations against racial segregation. The decisions are those of the Fifth Circuit last August in *Dixon* v. *Alabama State Board of Education,* and the District Court for the Middle District of Tennessee in December, in *Knight v. State Board of Education.*[4]

The American Association of University Professors also conducts committee investigations from time to time into dismissals of faculty members or other actions of college or university administrations which are alleged to violate the so-called 1940 *Statement of Principles on Academic Freedom and Tenure.* The Statement itself, following an earlier one of 1925, was formulated jointly by the Association and the Association of American Colleges in order to supply the community of higher education with specific standards in support of the freedom and tenure of faculty members which are necessary if teaching and research are to fulfill their functions. The 1940 Statement has been endorsed by numerous other educational and professional organizations. In 1958, the two Associations further developed an implementing *Statement on Procedural Standards in Faculty Dismissal Proceedings.* I am glad to submit for Subcommittee information copies of these two Statements.

In effect, the American Association of University Professors has become the recognized policing agency for the 1940 Statement. In the great preponderance of cases in which questions are raised, matters are adjusted through cooperative, consultative action. Committee investigations are undertaken in cases which are not settled by these means. They usually lead to reports which are published in the Association's *Bulletin.* If a gross violation has been found, the Association's Annual Meeting may vote to impose censure on the academic administration which is deemed to be responsible. The censure is removed when satisfactory conditions of freedom and tenure are restored in the institution.

Four instances of investigation, report, and censure have involved the desegregation controversy in the South to a greater or lesser extent. In one, at Auburn University, then the Alabama Polytechnic Institute, a faculty member was dismissed after he had written a letter to the student newspaper commending steps taken by the New York City Board of Education to solve its particular problem of racial distribution in the schools. The crux of the matter, from our point of view, was that freedom in the academic community suffered when the faculty member was removed for offering a proper comment in a proper way. In less judicial language than the Association customarily uses, the *Montgomery Advertiser* characterized the rule cited by the administration in justifying dismissal of the teacher as one requiring that "professors must either believe in segregated schools, or keep their mouths shut, or get out."

At Texas Technological College three professors were dismissed in 1957 for a variety of reasons. One had published an article entitled "Attitudes of White and Negro High School Students in a West Texas Town Towards School Integration." Our published report notes that this teacher's professional concern with a racial issue may have been a factor in his dismissal.

At each of two privately controlled neighboring institutions in Columbia, South Carolina, Allen University and Benedict College, three faculty members were dismissed in 1958 in complete disregard of procedural due process, because of alleged Communism. There was in the picture much pressure from outside sources applied through the State Board of Education, the State Superintendent of Schools, and the Governor of the State. Many of those insisting upon the dismissals, including public officials, chose to relate the alleged Communist affiliation to incitement of racial hatred because of support of desegregation as a principle. Actual or threatened

[3] EDITOR'S NOTE: See also resolution of Forty-Eighth Annual Meeting, p. 174.

[4] The citation of the *Dixon* case is 294 F.2d 150 (1961), and the *Knight* case, 200 F. Supp. 174 (1961). In the *Dixon* case, a petition for *certiorari* filed by the State Board of Education was denied by the United States Supreme Court last December. 368 U.S. 930 (1961).

withdrawal of eligibility of graduates of the two institutions for state teacher certification forced the dismissals in both instances. These schools and the two previously referred to are still on the list of censured administrations, among a total of ten. I can report, however, that the Association is engaged in constructive and cooperative discussion of one of these situations.[5]

With respect to a fifth school, Alabama State College, a report has been published in the *AAUP Bulletin* and will come before the Forty-Eighth Annual Meeting of the Association to be held next month.[6] The report again deals with the dismissal of a faculty member because of his views on desegregation.

The situation which is highlighted by the foregoing cases involves several evils of key importance. Squarely involved at all times, of course, is racial discrimination *per se* with, as we view the matter, all of its harmful effects upon the educational process. Second is the highly unfortunate repression of faculty and students with respect to the expression of opinion in favor of desegregation, which prevails on too many campuses. Third is a disastrous loss of independence from outside pressure by a number of institutions themselves. Fourth is the stark disregard of procedural due process toward faculty and students which the tensions of the controversy over desegregation have at times produced. This fourth point merits a few words of emphasis.

As is indicated by the 1940 and 1958 Statements, to which I have referred, the essential concepts of fairness and justice embodied in procedural due process of law have been adapted to the protection of academic freedom and tenure, and have full application there. These principles undergird and express our whole sense of order in the community of higher education as well as in our society generally. Their continuous observance within that community is essential. If they are disregarded under stress in relation to a particular subject, they lose most of their value; for it is especially against stress that they are designed to guard. We believe that on the whole administrations, faculties, and students, in the South as well as elsewhere, passionately desire their maintenance. Academic people do not yield willingly to the pressures they sometimes are under.

It seems clear that the community of higher education in the South also needs outside moral support and tangible help, wisely rendered in the light of full knowledge of the conditions to be met. In extending that help, professional assistance such as our Association renders, judicial action, and legislation and administrative action all have their place. None of these is easily formulated, and a particular measure may require recognition of the full complex of interrelationships among racial discrimination, academic freedom, and basic constitutional rights in a particular community setting.

An example that comes to mind involves a statute first enacted in 1956 in Mississippi and then, in 1958, by the Arkansas Legislature.[7] In both instances the statute was enacted in the specific setting of the segregation issue. In Arkansas a companion statute barring employment of members of the National Association for the Advancement of Colored People was based in part on a legislative finding that the NAACP is a captive of the international Communist conspiracy.[8] Under the statute every teacher in a public educational institution is required to file annually a list of all organizations of which he has been a member or to which he has made regular contributions within the preceding five years. The Arkansas statute was challenged and upheld in both the state and lower federal courts.[9] In the state court proceedings, one witness, a member of a local citizens' council, testified that his group intended to gain access to some of the affidavits with a view to eliminating from the school system persons who supported organizations, including the American Association of University Professors, disliked by his group. The Supreme Court, by a 5-4 majority, held the statute unconstitutional and thereby, in our view, strengthened the support of freedom, desegregation, and due process in all of their pertinent aspects.[10]

Our Association has been informed, nevertheless, that the State of Mississippi, despite objections by the Association and others, is continuing to enforce its statute. It is a sad commentary on the present state of affairs that so far no way has been found to institute a legal challenge to the statute through a plaintiff who is in a position to bring suit.

The American Association of University Professors has not taken a position on legislative measures which this Subcommittee may have before it or may itself fashion. Therefore I cannot testify on behalf of the Association as to any such measures. We can only hope that our experience may have value for legislative purposes. We know the segregation situation in higher education, as well as farther down the educational scale, calls for your attention; and we believe that measures combining the requisite insight into reality and insistence on constitutional and moral principles can be devised.

[5] EDITOR'S NOTE: Censure of the Administration of Allen University was removed by action of the Forty-Eighth Annual Meeting. See p. 162.

[6] EDITOR'S NOTE: The Forty-Eighth Annual Meeting voted to censure the Administration of Alabama State College. See p. 162.

[7] See Mississippi Code Annotated, Section 6282-41 to -45 (1960 Cumulative Supplement), and Arkansas Statutes Annotated, Section 80-1229 to -32 (1960).

[8] See Arkansas Statutes Annotated, Section 12-2335 to -38 (1959 Supplement).

[9] *Carr* v. *Young,* 106 Ark. 139, 331 S.W. 701 (1960), and *Shelton* v. *McKinley,* 174 F. Supp. 351 (E.D. Ark. 1959). The Federal Court did, however, declare unconstitutional the companion statute with respect to employment of members of the National Association for the Advancement of Colored People. The State did not appeal from this holding of the Court.

[10] See *Shelton* v. *Tucker,* 364 U.S. 479 (1960).