
Report of Committee A on Academic Freedom and Tenure, 2020–21

Introduction

In the past year Committee A's activities were limited by the conditions of the pandemic. Nonetheless the committee has continued to review important cases, monitor developments at censured institutions, and engage in fruitful discussions of pressing issues on campuses nationwide that affect academic freedom.

Judicial Business

Removal of Censure

At its spring meeting Committee A considered removing the censure at Bastyr University and adopted the following statement concerning the case. Upon the committee's recommendation, the Council voted to remove Bastyr University from the Association's list of censured administrations.

Bastyr University (Washington). The censure imposed by the 2007 annual meeting resulted from the finding of the ad hoc investigating committee that the actions of the Bastyr University administration against three faculty members constituted dismissals without demonstration of adequate cause or affordance of other safeguards of academic due process set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The investigating committee found further that the dismissals were effected in violation of their academic freedom.

Three years ago, a representative of the Bastyr faculty senate contacted the Association's staff to announce the formation of a new AAUP chapter and to request information about the censure removal process. After reviewing the institutional policies then in force, the staff recommended revisions to bring them into closer conformity with AAUP-recommended

standards. The staff urged, as critical to achieving the censure removal, the adoption of policy correcting inadequacies in the university's dismissal procedures that had led to the imposition of censure. In subsequent correspondence with the administration, the staff again strongly encouraged the adoption of a provision stating that the burden of proof in cases involving termination for cause rests with the administration. The staff also recommended modifications in the nonreappointment and grievance procedures. With the approval of the university's faculty senate and the administration (action by the governing board is not required), the institution adopted these revisions in spring 2021.

The three faculty members whose cases prompted the censure accepted the administration's apologies for the actions taken against them. Two of the faculty members received modest payment for costs associated with their dismissals.

An Association representative visited Bastyr University by teleconference, meeting with the president, the provost, and seven faculty members. He subsequently reported strong faculty support for the policy changes and a healthy climate for academic freedom at the university.

Committee A on Academic Freedom and Tenure recommends to the Association's governing Council that Bastyr University be removed from the Association's list of censured administrations.

Other Committee Activity

At its fall meeting the committee heard a report from its subcommittee on academic freedom provisions in collective bargaining agreements and in June discussed an initial draft of that subcommittee's report. While making several suggestions for improvement, committee members praised the draft as an important document that will be of considerable practical value

not only to collective bargaining chapters but also to non-collective bargaining faculties that seek to improve their standard employment agreements. The committee hopes to present a final document to the Council in the fall.

At that same meeting, in response to a proposal from University of Illinois law professor Matthew W. Finkin, a former Committee A chair, AAUP staff member, and Association general counsel, Committee A established a subcommittee, staffed by the AAUP's legal department, to prepare a report on the increasingly threatened legal status of faculty handbooks. We expect that work on this initiative will move forward this summer with the addition of a third member to the legal department's professional staff.

The committee's fall meeting also included an assessment of several Redbook documents under the committee's purview that may need updating or revision, including *On Processing Complaints of Discrimination*. A Committee A subcommittee charged with reviewing that statement agreed that a new statement on discrimination that might incorporate updated portions of the AAUP's 1973 report on affirmative action could replace *On Processing Complaints of Discrimination* in the Redbook. Preparation of the twelfth edition of the Redbook has been postponed in the hope that the AAUP's racial justice initiative might empower a joint effort by several committees to review this and similar documents. As a result, the subcommittee has suspended its work until that initiative concludes.

At its June meeting, Committee A discussed the AAUP's special report on COVID-19 and academic governance, the outcome of a multi-institution governance investigation conducted under the aegis of the Committee on College and University Governance. In response to this excellent and important report, the committee unanimously approved the following resolution: "Committee A on Academic Freedom and Tenure commends the COVID-19 investigating committee and the Committee on College and University Governance for the quality and timeliness of its report and for shedding light on issues of critical importance to higher education. Without genuine shared governance academic freedom is imperiled."

At that meeting the committee heard a report from AAUP staff members Aaron Nisenson and Kaitlyn Vitez on recent state-level legislative efforts purporting to oppose racial bias and "critical race theory," some of which infringe on the academic freedom and governance rights of faculty to conduct research

and determine curriculum. The committee agreed that these proposals can pose a significant threat to academic freedom and shared governance, especially at public institutions. Committee members applauded the efforts of staff and national leadership to reach out to other higher education and civil liberties groups to oppose these efforts, both politically and legally.

The committee in June also discussed an amicus brief filed by a large group of law professors involving issues of academic freedom raised in a case involving a professor who declined to use a transgender student's preferred honorific. The brief was signed by both law school professors currently serving on Committee A and was excerpted and discussed on the *Academe Blog*. The committee heard a report from General Counsel Risa Lieberwitz on a recent law enacted in Florida that defines anti-Semitism in a manner that can threaten academic freedom. The committee discussed the newly formed Academic Freedom Alliance and heard a report about the AAUP leadership's communications with that group's leadership. Lastly, at both its meetings the committee heard reports from the legal department and from President Mulvey on the AAUP racial justice initiative.

Although it is a pleasure to note that, for the first time in my nine-year tenure as chair, Committee A did not make a recommendation at its June meeting to add an institution to the list of censured administrations, I cannot report that the absence of such a recommendation reflects an improved atmosphere for academic freedom and tenure in American higher education. At its June meeting the committee was informed that the executive director had just authorized academic freedom investigations at two institutions regarding cases that have garnered national attention. At Collin College, a sizeable community college system in the Dallas suburbs, four faculty members were dismissed, apparently without affordance of academic due process and for reasons that appear to implicate their academic freedom of intramural and extramural expression. At Linfield University, a private institution in Oregon, a tenured full professor was dismissed, allegedly in retaliation for protected speech and also without apparent affordance of academic due process, despite the fact that the university's regulations incorporate the AAUP's recommended dismissal procedures verbatim. The AAUP's staff informed Committee A that the reports of both investigating committees would likely see publication in the fall. Moreover, as the governance investigation of eight institutions affected by the COVID-19 pandemic, in which I was

privileged to participate, and the recent report by the research department indicate, program eliminations unilaterally effected by administrations and governing boards that resulted in nonrenewals and terminations of faculty appointments (often without affording any due process) were dangerously widespread in the wake of the pandemic. As the governance report put it, COVID-19 “served as an accelerant” of long-standing negative trends and undermined tenure and academic freedom at many institutions.

These troubling developments notwithstanding, the committee, happily, was able to recommend the removal of one institution—Bastyr University in the state of Washington—from the Association’s list of censured administrations (see the committee’s statement, above). That institution has been on the list since 2007, but a revived AAUP chapter worked with a new administration to create a healthier climate for academic freedom.

At its June meeting the committee also heard an encouraging report on efforts to effect removal of censure at the University of Nebraska–Lincoln. It is our hope that such removal can be approved as early as November of this year.

A Personal Note

As this is my final report as Committee A chair, I am taking the opportunity to make some personal remarks and express my thanks to the many individuals who have supported and assisted me during my tenure.

Serving three terms in this position has been the single greatest honor and privilege of my professional life. I have learned from and enjoyed every minute of it. I began as Committee A chair without having served on the committee or having participated in any of its investigations. I depart having chaired two major academic freedom investigations and having written or coauthored several important Committee A reports and statements. My work as chair also provided me with the impetus to write several articles for *Academe* and the *Journal of Academic Freedom* and to contribute posts on academic freedom and other topics to the *Academe Blog*.

Some of these writings appeared in expanded form in my 2019 book *The Future of Academic Freedom*, which the American Library Association recognized as “the best book on intellectual freedom published between 2017 and 2019,” recognition that I believe honors the AAUP and its work as much as it honors the author. I have completed another book, *Understanding Academic Freedom*, to be published in

October, that introduces and surveys key concepts of academic freedom as defined by the AAUP. I hope it will provide a useful tool for chapters and members in educating the profession about both academic freedom and the importance of our Association.

I could not have accomplished any of this without the hard work, strong support, and wise advice—and sometimes constructive criticism—provided by those who served with me on Committee A over these years, by fellow officers and Council members, and, especially, by the members of our hard-working and dedicated national staff.

Rudy Fichtenbaum tapped me for this awesome job, for which I will be eternally appreciative. He has been a close comrade-in-arms throughout my tenure, and I am grateful for his confidence in me and, more important, for his friendship.

In many critical respects what truly distinguishes Committee A’s work is the collective power of its discussions. But I would be remiss not to acknowledge the support and comradeship of many individuals who have served alongside me and made essential contributions to the committee over this last near-decade. These include Ernst Benjamin, Michael Bérubé, Don Eron, Jeffrey Halpern, Marjorie Heins, Emily Houh, Risa Lieberwitz, Michael Mann, Michael Meranze, Walter Benn Michaels, Irene Mulvey, Debra Nails, Cary Nelson, Robert Post, Jennifer Ruth, Joan Wallach Scott, Hans-Joerg Tiede, and Donna Young. Joan Bertin of the National Coalition Against Censorship and Barbara Jones of the American Library Association were always helpful and supportive consultants to the committee. The four members who joined the committee this past year—Mark James, Anil Kalhan, Patricia Navarra, and Charles Toombs—have not yet been able to work in person owing to the pandemic, but they have already made their mark, which promises a bright future for Committee A. I am also grateful to James Turk and David Robinson of the Canadian Association of University Teachers (CAUT) who have been regular guests at our meetings and who so graciously hosted me in Ottawa at meetings of CAUT’s equivalent committee and at CAUT conferences.

I cannot exaggerate how much I have learned from and was assisted by staff members in the AAUP’s Department of Academic Freedom, Tenure, and Governance: Gregory Scholtz, B. Robert Kreiser, Anita Levy, Hans-Joerg Tiede—now, of course, heading the Association’s research program—and the department’s most recent addition, Mark Criley. The late and

legendary Jordan Kurland initially terrified me, but I grew quickly to appreciate how welcoming he was and came, I must confess, to love him. He is still missed. I have had the opportunity to work, both as Committee A chair and in other capacities, with many other members of our staff in all departments who have always gone beyond the call of duty, for which they deserve the highest gratitude. In external relations, Gwendolyn Bradley, Michael Ferguson, and Kelly Hand have been especially helpful to our committee, as have Aaron Nisenson and Nancy Long in the legal department. Martin Snyder, who led the staff during a difficult transition, welcomed and mentored me. Our incredible executive director, Julie Schmid, has been, well, simply awesome in every respect.

Lastly, I would again be remiss not to thank the many, many members of the AAUP's Council, of other

committees, and of state conferences and chapters whom I have had the pleasure and privilege to meet and work with over these years. What a fantastic group we truly are!

Even though my term as Committee A chair ends in June, I plan to continue contributing however I can to the AAUP's important and critical work of defending academic freedom and promoting a more democratic system of higher education. I have come to love the AAUP as the organization that represents the best of what we are and can be as teachers and scholars. I am thankful to all who have contributed to giving me this extraordinary opportunity to serve.

HENRY REICHMAN (History), *chair*
California State University, East Bay

Cases Settled through Staff Mediation

The past twelve months was a remarkably busy period for the three-member Department of Academic Freedom, Tenure, and Governance, which processed more than a thousand complaints and inquiries, opened fifty-four cases, and staffed eight investigations. The following accounts provide a representative sample of complaints and cases handled during the 2020–21 academic year in which staff efforts contributed to a resolution of the issues.

A senior tenured professor at a major private research university contacted the AAUP for assistance after his dean notified him, on the day before fall classes began, that he had been “granted” leave without pay for the semester. According to the dean, the basis for the decision was that the professor had refused to teach not only the online course assigned him that semester but any fall term courses whatsoever. The faculty member informed the staff that he had not requested a leave, that he had declined two previous offers of leave, and that he had told the administration that he was willing and prepared to teach the online course in the fall.

The AAUP's staff wrote the dean to advise him that, under Association-supported standards, an action to place a faculty member on involuntary unpaid leave is a suspension and that the AAUP regards a suspension, with or without pay, as a sanction second in severity only to dismissal. The staff member further advised the dean that an administration can impose such a severe sanction only after demonstrating adequate cause for doing so in an adjudicative hearing before an elected faculty body. The staff member

urged that the professor either be reinstated to his teaching responsibilities immediately or afforded a procedure consistent with the elements of academic due process.

The dean replied, thanking the AAUP—a “vital and important organization”—for its interest but declining to comment on the case because of the confidentiality of personnel matters. However, the faculty member reported that the staff's letter “proved to be very important” not only for conveying AAUP standards to the dean but also for persuading other academic organizations to take up the professor's cause with the administration. The matter was soon amicably settled to the professor's “complete satisfaction.” He “credited the AAUP for playing a major role” in achieving that resolution.

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The AAUP advocacy chapter at a small religiously affiliated liberal arts college in the Southeast contacted the Association's staff in the fall to express concern that the “academic program prioritization” process

underway at the institution did not comport with Association-supported standards. Without soliciting faculty input, the administration unilaterally declared that twenty-three academic programs were to be considered for discontinuance, potentially involving the termination of dozens of faculty appointments before the end of the academic year. The interim president directed the faculty governance and curriculum committees to recommend whether each academic program under review should be maintained in its present form, consolidated with another program, retained without its major or minor, or discontinued altogether. The administration instructed the committees to base their decisions “essentially on educational considerations” but to “keep in mind the need to steward resources to support and sustain the College’s overall academic program.”

The committees declined to recommend any program discontinuances, calling instead for greater faculty involvement in the process and for exploration of alternative means of addressing the college’s financial difficulties. The AAUP’s staff wrote an advisory letter to the chapter, at the chapter’s request, that set out Association standards for program discontinuance leading to terminations of faculty appointments, standards that emphasize the faculty’s primary responsibility for such decisions. The chapter featured this letter in its campaign opposing the administration’s unilateral actions.

Despite the chapter’s efforts, the administration announced its intention to close more than a dozen academic programs and terminate nearly twenty tenured faculty appointments. Chapter, faculty, and alumni efforts to resist the cuts redoubled, and early in the spring semester the board of trustees announced a “pause” in the prioritization process and rescinded the planned discontinuances and terminations, followed swiftly by the interim president’s departure. The chapter’s work continues, including a spring campus-wide remote teach-in at which an AAUP staff member presented on the purpose and importance of tenure. Although the situation remains precarious, a chapter officer wrote to convey the chapter’s appreciation to the national AAUP for assisting the chapter in defeating the announced program cuts and appointment terminations, which she called a “huge achievement.”

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The AAUP chapter at a midsized private university in the Midwest contacted the AAUP’s national office in early fall for guidance in organizing a response to an administration-driven “program realignment”

process that threatened to close academic programs and terminate faculty appointments without involving the faculty. The AAUP’s Department of Organizing and Services assisted the chapter in its outstanding campaign to call community-wide attention to the situation and press for faculty involvement in the decisions. Nevertheless, at the end of the fall semester, the administration unilaterally proposed the elimination of three departments, eighteen majors, and thirty-eight faculty positions, including some held by tenured faculty members. Over the winter break, the administration solicited informal feedback on the proposal from all university constituencies and invited individual faculty members who had received provisional termination notices the opportunity to argue their cases for retention with the provost. Contrary to the provisions in the institution’s governance documents, the administration denied the faculty and its representatives any formal involvement in the process.

At the request of the chapter, staff in the AAUP’s Department of Academic Freedom, Tenure, and Governance wrote an advisory letter in December that outlined Association-recommended standards, as set forth in Regulation 4d of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, for faculty involvement in program discontinuance decisions when appointment terminations are in prospect. Quoting from the AAUP statement *On the Role of the Faculty in Conditions of Financial Exigency*, the letter emphasized that “program closure is very much a matter of educational policy; the faculty should therefore be accorded an initial and decisive role in any deliberations over program closures and release of tenured faculty members.” The chapter incorporated distribution of the advisory letter into its ongoing campaign, which resulted an overwhelming faculty senate vote of no confidence in the realignment process.

At the beginning of the spring semester, in response to faculty demands, the administration relented and said that it would present for a vote in the faculty curriculum committee any proposed curricular deletions. It also began an aggressive campaign seeking accelerated faculty retirements and voluntary separation agreements, which, in light of the administration’s threatened terminations of appointment, many faculty members believed stretched the meaning of the word *voluntary* almost beyond recognition. In March, the administration revised and received board approval for its realignment plan—before sharing it with the faculty. The plan capitalized on the departures of

twenty-two faculty members who had agreed to leave the university. It eliminated three majors, referring these decisions to the faculty curriculum committee for approval, and it reassigned tenured faculty members in those programs to other academic units. The final plan involved no terminations of faculty appointments.

The revitalized chapter regards these developments as at best a qualified success, and its efforts to improve the climate for academic freedom and shared governance on campus will continue. Nevertheless, the president of the chapter acknowledged the assistance of the national AAUP as well as the state AAUP conference: “On behalf of our ninety plus members, I thank you immensely for arming us with the knowledge, skills, and robust support which has allowed us to face this struggle for shared governance with courage, conviction, and confidence.”

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A long-serving associate professor with tenure at a religiously affiliated college in the Northeast sought the Association’s advice and assistance in September 2019 after the administration summarily suspended her from her academic responsibilities pending commencement of dismissal proceedings. The AAUP’s staff wrote the then president to convey the Association’s concerns about the apparent absence of any threat of immediate harm to justify the suspension and of any prior consultation with an appropriate faculty body regarding the “propriety, the length, and the other conditions of the suspension,” essential preconditions set forth in AAUP-recommended procedural standards. The staff’s letter also noted the professor’s suspicion, based on circumstantial evidence, that the action against her had been based on considerations that violated her academic freedom; the illegitimacy of several of the stated grounds for dismissal relative to AAUP-supported standards; and, regarding those same standards, a serious defect in the college’s dismissal procedures. In the absence of countervailing information, the staff urged her immediate reinstatement pending the outcome of any dismissal hearing. Unfortunately, that letter and a subsequent letter had little evident effect, and the professor remained on suspension throughout the 2019–20 and most of the 2020–21 academic years.

During this period, no dismissal proceedings took place, and the professor, with the aid of her capable attorney and several highly effective AAUP chapter leaders, fought for reinstatement. The first favorable development came in June 2020, with the president’s

retirement. At the instigation of the faculty member, the AAUP’s staff wrote to apprise the newly appointed president of the AAUP’s interest in her case and to reassert the Association’s position that the administration should immediately restore her to her academic responsibilities—adding that the professor’s suspension “and the related ignominy, anxiety, and disruption” had now “gone on for ten months, making particularly apposite the saying, ‘justice delayed is justice denied.’”

Three months later, the new president informed the professor that the college would no longer seek her dismissal if she agreed to a “performance improvement plan.” Several months of difficult negotiations with the vice president of academic affairs (against whom the professor had filed a successful grievance) ensued, but the difficulty was significantly alleviated when that administrator resigned. In February, the professor’s department chair emailed the professor to solicit her preferences for teaching assignments in summer and fall 2021. On May 13, she finally reached an agreement with the interim vice president for academic affairs on a performance improvement plan, thus putting an end to a nearly two-year ordeal and effecting the reinstatement that the AAUP had urged in September 2019. Both the faculty member and the chapter have thanked the AAUP on many occasions for its assistance, though clearly the faculty member’s tenacity, her attorney’s skill, and the chapter’s hard work had much to do with the happy outcome.

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On June 1, the president of a Midwestern AAUP state conference alerted the AAUP’s staff to the plight of six long-serving faculty members at a small religiously affiliated college in his state whose administration had just notified them of the termination of their appointments, effective at the end of the month, “to ensure the long-term financial viability of the college.” After receiving the documented complaints of four of the six, all of whom were tenured, the AAUP’s staff wrote the institution’s newly appointed president (as of June 1) to draw his attention to the fact that, under Association-supported standards, if an administration wishes to terminate faculty appointments for financial reasons, it must adhere to the provisions of Regulation 4c, “Financial Exigency,” of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, that the administration and governing board had clearly not adhered to those standards in acting to terminate these four appointments, and, therefore,

that the terminations “were effected in contravention of normative academic standards.” In closing, the staff’s letter, which was copied to the governing board, urged the immediate rescission of the termination notices issued to the four faculty members and “any similarly situated colleagues.”

In reply, the institution’s president noted that some of the affected faculty members had appealed pursuant to the faculty handbook. After the faculty appeal body found in favor of the appellants, the appeals made their way to the governing board, which in mid-July issued its decision to rescind the terminations and reinstate all six faculty members, as the AAUP had urged. The four faculty members conveyed their appreciation to the Association for its assistance, including one who wrote, “The timely, powerful intervention from the AAUP, an esteemed national organization, played a pivotal role.”

In an August email message to the president, the AAUP’s staff stated that “the faculty members whose cases occasioned our June 10 letter have sent us the welcome news of their reinstatement,” that the AAUP therefore considered their cases resolved, and that the staff was “more than willing to assist” whenever the faculty and administration decided to revise the college’s policy on terminating appointments for reasons other than cause.

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Two untenured full-time faculty members—one probationary for tenure, the other serving on a non-tenure-track appointment—at a large Midwestern public university reached out to the Department of Academic Freedom, Tenure, and Governance on the recommendation of the AAUP state conference, which had already written “letters of concern” in their behalf. Both professors, who served in the same department, had been summarily suspended in October pending the initiation of dismissal proceedings against them.

In its January letter to the institution’s president, the AAUP’s staff stated its understanding that, despite the faculty members’ requesting a hearing in November, no hearing had taken place and no hearing was currently scheduled. In the meantime, the staff added, the two complainants had informed the AAUP that the administration had canceled their scheduled courses for the spring term. The staff further noted that the institution’s dismissal policy, adopted to facilitate the removal of AAUP censure in 1975, comported in almost all essential respects with

Association-supported standards, which forbid an institution from suspending a faculty member pending dismissal without (a) evidence of a threat of immediate harm to the faculty member or others and (b) prior consultation with a duly constituted faculty body regarding the propriety, the length, and any other conditions of the suspension (Regulation 5c[1] of the *Recommended Institutional Regulations*). As neither of these conditions had evidently been met, the staff’s letter continued, the AAUP could only regard the suspensions as illegitimate.

Further intensifying the Association’s concern, the letter noted, was the fact that no hearing date had been set, causing the faculty members to fear that the administration did not intend to afford them academic due process and rendering their suspensions indefinite. The staff advised the president that under the 1940 *Statement of Principles on Academic Freedom and Tenure* (which the institution’s regulations cited as applicable), an indefinite suspension is tantamount to a summary dismissal.

The letter accordingly urged the professors’ immediate reinstatement pending any further action against them.

A few weeks later the tenure-track faculty member wrote, with expressions of gratitude, to inform the AAUP’s staff that he had reached an agreement with the university (apparently with his attorney’s assistance) that he found satisfactory.

The non-tenure-track faculty member, also assisted by an attorney, had still not reached a settlement by early March, and a faculty committee was constituted to hear the case for her dismissal. Apprised of that fact, the AAUP’s staff wrote the chairs of the dismissal committee, attaching the AAUP’s January letter, to confirm that the committee would permit an AAUP observer representing the national office to attend the hearing. Two weeks later the faculty member informed both the state conference officers and the AAUP’s staff that she had reached an agreement with the administration that she found acceptable and had secured a suitable appointment at another local institution. “I truly thank each one of you,” she wrote, “for your time, energy and encouragement during this torturous process.” ■