

Academic Freedom and Tenure: City University of New York¹

This report arises out of the decision made by the central administration of the City University of New York to relieve Mohamed Yousry of his teaching responsibilities and to discontinue his further service as an adjunct lecturer at York College, a component of the CUNY system. It did so because of Mr. Yousry's federal indictment on charges of assisting a terrorist organization by serving as a courier or conduit. The indictment arose in connection with Mr. Yousry's work as an Arabic translator for an attorney, the main subject of the indictment, representing a convicted (and notorious) terrorist.

At first encounter, this brief statement suggests two potential scenarios: (a) of a university administration acting swiftly and responsibly to ensure the safety of a campus in a city already subject to murderous attack, or (b) of a member of a suspected minority rushed to judgment by an administration acting in a climate of fear. Neither scenario, however, is presented. Instead, this case concerns far less dramatic and far more mundane, but nonetheless important, issues of fairness and sound administration.

I. The Institutional Setting

The City University of New York consists of nineteen two- and four-year institutions and a graduate center; it has over 200,000 students and employs more than 6,000 full-time and as many as 9,500 part-time faculty. For many years, the instructional staff has been represented under New York's public employee collective bargaining law by the Professional Staff Congress (PSC), a local of the American Federation of Teachers (AFL-CIO), which also maintains an affiliation with the American Association of University Professors. The university's current chancellor, Matthew Goldstein, was chancellor at the time of the events giving rise to this investigation. Frederick P. Schaffer was and remains the university's general counsel and its vice chancellor for legal affairs.

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty member at whose request the investigation was conducted, to the administration of the City University of New York, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

York College began operation as CUNY's fifth four-year undergraduate institution in fall 1967, in rented space in Bayside, Queens, with 371 students and a full-time faculty of 50. In the 1970s, the college was moved to rented and purchased properties in Jamaica, Queens, where construction of its current campus commenced in the 1980s. Together with liberal arts programs, the college developed career-related majors in the health professions and business, with an emphasis on cooperative education. It now offers, in addition to the baccalaureate, professional degrees in nursing, occupational therapy, and social work. Nearly 6,000 students are currently enrolled.

Dr. Charles C. Kidd, Sr., was president of York College in April 2002, when Mr. Yousry was barred from further teaching. He left office in summer 2002. Dr. Russell K. Hotzler served as interim president until May 2003, when the current president, Dr. Robert L. Hampton, took office. (President Hampton has not played any role in the matter under investigation.) At the time in question, Edward B. Weil, was the college's provost and vice president for academic affairs; he remains so.

II. Events Giving Rise to This Investigation

Mr. Yousry was born in Egypt in 1955 and is a graduate of Cairo University. He emigrated to the United States in 1980 and is a U.S. citizen. He obtained a master's degree in Middle Eastern studies at New York University and is a candidate for the PhD from that institution; only his dissertation remains to be completed. While pursuing his graduate studies, Mr. Yousry supported himself and his family by working as an Arabic-English translator. Some of that work involved translating for lawyers whose clients were incarcerated in federal and state prisons for which clearance by the relevant federal and state authorities to enter the prison must be and was secured. For work on high-security cases, Mr. Yousry had to be and was placed on a list approved for such work by the Federal Bureau of Investigation. He also translated for the government on occasion and for the news media as well. In addition, he taught as an adjunct or visiting teacher at Long Island University and New York University.

Mr. Yousry was first appointed as an adjunct lecturer at York College in 1995 and served continuously in that capacity until relieved of teaching in April 2002. He taught two sections of courses offered in the Program in Cultural Diversity,

"Understanding Cultural Diversity" and "Cultures and Societies of the World: Middle East." His classes were visited and evaluated by successive faculty members in charge of this program. He was consistently given high ratings and was extremely popular with his students. Although the subject of "Cultures and Societies of the World: Middle East" is fraught with the potential for complaints of bias in the presentation of the subject matter, particularly as it deals with the Israeli-Palestinian dispute, by all accounts he was punctilious in presenting these issues with dispassion and balance. He was hired additionally for the fall 2002 term by the Department of History and Philosophy to teach a course offered under its auspices.

In May 2000, Mr. Yousry was retained by an attorney, Lynne Stewart, in connection with her representation of Sheikh Abdel Rahman, who was then serving a life sentence in a federal penitentiary for his role in the bombing of the World Trade Center in 1993. Sheikh Rahman is blind and speaks no English. The government attached "special administrative measures" to his incarceration limiting his ability to communicate to his followers and forbidding others, including his lawyers, from facilitating such communication.

1. THE FIRST INDICTMENT

On April 8, 2002, a federal grand jury issued a five-count indictment against Lynne Stewart, Ahmed Abdel Sattar (a leader of the sheikh's movement), Yassir Al-Sirri (a member of the movement), and Mohamed Yousry. Three of the five counts applied to Mr. Yousry. The first two accused Mr. Yousry of unlawfully aiding and supplying material to support Sheikh Rahman's organization, the "Islamic Group" (or "Gam' a Islamiyya"), which had been listed by the U.S. Department of State as a terrorist organization. The group was responsible for killing tourists in Luxor, Egypt, and is dedicated to the killing of Americans in the United States and abroad. As alleged, Mr. Yousry provided and conspired to provide "communications equipment" to transmit communications to and from the organization's leaders and members, including, for example, the announcement by Ms. Stewart at a press conference that Sheikh Rahman was withdrawing his support for a "cease-fire" that had been in effect by the Islamic Group. In Mr. Yousry's case, the "communications equipment" allegedly provided was himself in his role as translator.³ The third count

2. On July 22, 2003, the federal district court dismissed on constitutional grounds the counts of the indictment against Mr. Yousry accusing him of providing material support to a terrorist organization. The court held that, as applied to the conduct alleged, translating, no reasonable person could know or anticipate that doing so would constitute the furnishing of "communications equipment" under criminal law. A superseding indictment handed down on November 19, 2003 (which withstood an ensuing motion against it), alleges that, by translating, Mr. Yousry furnished personnel, that is, Sheikh Rahman, to a terrorist conspiracy.

accused him of defrauding the federal government by promising to abide by the special administrative measures imposed on him while breaching them, that is, by deceiving the government in that regard. Mr. Yousry was arrested on April 9 and released on bond the same day.

2. THE REACTION OF CUNY'S CENTRAL ADMINISTRATION

Frederick Schaffer, the university's general counsel, told the undersigned investigating committee that he learned of the indictment after Mr. Yousry's arrest was reported on April 9; he recalled that he had a copy of the indictment at the time he took the matter up with officers of the central administration. The upshot of that conference was that a telephone call was placed to President Kidd of York College ordering him to remove Mr. Yousry from the classroom while paying him for the remainder of the term.³

Mr. Schaffer informed the investigating committee that although the cases were few—he identified three during his term of service—the consistent practice at CUNY was to order a removal from duty (with pay) of a member of the faculty (or, in one instance, an administrator) who had been indicted for a "serious felony." Upon learning of an indictment, the administration considers the nature of the offense charged. Some faculty members are not infrequently arrested at political protests, and such action is not considered serious enough to warrant an institutional response. Given the nature of the indictment in Mr. Yousry's case, however, the office of general counsel had no doubt of the need to act.

Mr. Schaffer and the officers of the central administration with whom the committee met were unanimous in the view that the intent of that oral order was to preclude any subsequent appointment for Mr. Yousry, at least until his engagement with the criminal process had been resolved. It is not disputed, however, that no written communication was sent by the chancellor or the general counsel to Mr. Yousry or to any officer of the administration at York College directing either the initial suspension or the preclusion of his continuance.

3. Replying to an invitation to comment on a prepublication text of this report, Mr. Schaffer provided a detailed response on behalf of Chancellor Goldstein and himself. (The full text of their response to the draft report can be found on the Association's Web site, www.aaup.org. Further information from the City University of New York administration may be found on the CUNY Web site, www.cuny.edu.)

On the matter of who actually made the decision to remove Mr. Yousry from further teaching, Mr. Schaffer refers to an initial telephone conversation between York's President Kidd and three vice chancellors (Mr. Schaffer being one of them). He states that the three vice chancellors next held a discussion with the chancellor, who made the decision. The vice chancellors then conveyed the decision by telephone to President Kidd, telling him that "Mr. Yousry was to be relieved of his classroom duties and not allowed back on campus, that he was to be paid through the end of the spring 2002 semester, and that he was not to be reappointed thereafter."

Mr. Schaffer refused to characterize the order as a "suspension" because—as will be discussed below—that word has specific meaning (and consequences) under the CUNY-PSC collective bargaining agreement. However, there is no doubt (as will also be discussed below) that in common academic parlance what was ordered was a suspension—that is, the summary removal of a teacher from his or her classroom—and was taken to be such by the relevant members of the York College faculty with whom the committee met.

Three additional matters of concern to the Association are undisputed. First, unlike full-time CUNY faculty, adjunct faculty are governed by no written policy concerning when a suspension may be imposed; nor, for either full-time or adjunct faculty, are there written standards governing when a suspension is justified: an ad hoc judgment is made in each case based on how the administration views the seriousness of the offense alleged. Second, in making the initial decision to suspend, there was no consultation with any of the faculty having authority concerning the assignment of the adjunct faculty member or with any representative faculty body at either the campus or system level, nor is there any policy requiring such consultation. Third, for adjunct faculty, no provision is made for notice or hearing allowing the suspended instructor to challenge the decision.

3. IMPLEMENTATION OF THE IMMEDIATE ORDER

Professor Charles Coleman, coordinator of the Cultural Diversity Program in which Mr. Yousry taught, said that he received a telephone call on or about April 9 to meet with Provost Weil. Professor Coleman reports having been told by the provost that the central administration ordered that Mr. Yousry not teach for the remainder of the spring 2002 term, that he would be paid for the remainder of the term, and that substitutes were to be found for the two courses he had been teaching (one of which was being co-taught). Professor Coleman states that nothing was said to him at the time about Mr. Yousry's assignment for the fall 2002 term and that he himself expected the whole matter to subside in a few weeks. Professor Coleman told the committee that he protested the decision. Nevertheless, he called Mr. Yousry and informed him of the order; substitutes were engaged. Numerous students (over a hundred, the committee was told) signed a petition against Mr. Yousry's removal, and several wrote separately in his support. The decision stood, however, and the student protest proceeded no further.

Mr. Yousry's account differs. He agrees that Professor Coleman called him, but he understood Professor Coleman to urge him to take a couple of weeks off with pay. (Three weeks remained in the term.) Given his indictment, Mr. Yousry was happy to agree, but after two weeks he sought to return to the course for which he had been the sole instructor. Mr. Yousry said that Professor Coleman initially demurred but later con-

curred, and that Professor Coleman accompanied him to class and reintroduced him. Mr. Yousry took the class and also made up and graded the final examination. Mr. Yousry states that he did not at that time understand himself to have been suspended, and thus he did not approach his union concerning his status, nor did he file any grievance about it.

When the committee asked for Professor Coleman's account, he said he had informed Mr. Yousry that he had been suspended. Even so, the precise terms of what that meant had never been stated, and nothing was put in writing. Professor Coleman allowed Mr. Yousry to come on campus (nothing having been said to preclude him from doing so) to counsel students, and he accompanied him to a last class in which Mr. Yousry answered student questions. He acknowledged that Mr. Yousry graded the final examination.

4. MR. YOUSRY'S STATUS FOR FALL 2002

As nothing had been put in writing by the central or York administrations governing Mr. Yousry's status for the ensuing term, he was, until August 12, 2002, treated in the same way as the other adjunct lecturers retained by the Cultural Diversity Program and by the Department of History and Philosophy.

The investigating committee was informed that instructors in the Department of History and Philosophy are appointed on an informal basis by the coordinator of the courses involved, and that offers are conveyed and accepted orally. The department's preparation for offering the class Mr. Yousry was scheduled to teach, in terms of a class listing, book selection, and student enrollment, proceeded in due course.

Mr. Yousry had taught in the Cultural Diversity Program for seven years. Renewal is dealt with expressly by the collective bargaining agreement. Article 10 provides that members of the instructional staff "shall receive notice of reappointment or of nonreappointment" according to their status. Adjunct faculty appointed on a semester basis, as was Mr. Yousry, "shall receive *such* notice on or before December 1 in the Fall semester or May 1 in the Spring semester. Such notification of *appointment* shall be subject to sufficiency of registration and changes in curriculum which shall be communicated to the employees as soon as they are known to the appropriate college authorities." (Emphases added.)

The provision is a little confusing. "Such" notice would seem to refer to the captioning language that provided that there be notice of either nonrenewal or renewal. The second sentence speaks only of notice of renewal, but then only to explain the conditions that permit the university to cancel it. In any event, no written notice, either of reappointment or of nonreappointment, was ever sent. In fact, the long-standing practice in these two departments (and, the committee was given to understand, quite possibly in York College as a whole) is to give oral notice of nonreappointment to an adjunct lecturer who is simply not working out; written notice

of nonreappointment has never been given. Written notices of reappointment are issued over the signature of the provost, but these commonly appear near the end of the semester in which the adjunct faculty member has been teaching and sometimes not at all, although the committee was assured that the current administration was striving to conform to the contractual deadline.

Mr. Yousry was listed in the institution's roster of course offerings by name for his cultural diversity courses, which were fully enrolled. His book list was tendered, and the books he listed were purchased or on order. By memoranda of May 6, 2002, and August 15, 2002, Mr. Yousry was informed of the assignment to him of a supplemental instructor and a supplemental instruction leader. These notices were copied to Provost Weil.

Professor Coleman also sent a "personnel action form" regarding Mr. Yousry's renewal, again, as a matter of routine, to the office of the provost. On or about August 11, Provost Weil told Professor Coleman that Mr. Yousry would not be rehired and that Professor Coleman should tell him so. At about that same time, the provost, reminded of Mr. Yousry's assignment in the Department of History and Philosophy, told the department chair, Professor Howard Ruttenberg, to inform Mr. Yousry that he would not be teaching that course, and Professor Ruttenberg did so.

On September 10, 2002, Mr. Yousry wrote to Professors Ruttenberg and Coleman to confirm what they had told him, that is, that on August 12 and 13 they "had been advised by the central office not to honor" his having been appointed. He stated that he understood a commitment had been made to him and asked for a statement explaining why the college had rescinded its commitment.

On October 9, Professor Ruttenberg provided a memorandum confirming Mr. Yousry's account; Professor Coleman did so on October 28. On the same day, the Association's Washington office staff sent a letter about its concern over the matter to President Hotzler of York College. The ensuing engagement in this regard is treated below.

5. THE COLLECTIVE BARGAINING AGREEMENT

Mr. Yousry grieved the denial of reappointment, but before the grievance is treated, the regulatory framework established by the CUNY-PSC collective bargaining agreement needs to be set out. Article 21 makes detailed provision for disciplinary action brought against members of the instructional staff. The bases for the imposition of discipline are four: "(a) incompetent or inefficient service; (b) neglect of duty; (c) physical or mental incapacity; and (d) conduct unbecoming a member of the staff. This provision shall not be interpreted so as to constitute interference with academic freedom."

If disciplinary proceedings are in the offing, the president of the CUNY college must serve notice of an intent to press

charges and then consult with the faculty member (who may be accompanied by his or her attorney or union representative). If the matter is not resolved at that stage, a statement of charges is given and a hearing held before a hearing officer designated by the chancellor. If a penalty is recommended, the faculty member is entitled to a hearing before a neutral arbitrator whose decision is final.

A suspension, not otherwise defined in the agreement, is provided for. It may be imposed "during the pendency" of disciplinary charges, but no standards are set down to guide that determination. Presumably, then, for full-time faculty, a suspension may not be imposed as a form of discipline but only in conjunction with the initiation of a dismissal proceeding. Moreover, a suspension is subject independently to the procedures set down in Article 21, that is, notice, discussion, hearing, and arbitration.⁴

Detailed provision is also made for the treatment of instructional staff who have been convicted of a felony. Such a case is considered on an expedited basis, and conviction is deemed presumptively "conduct unbecoming." Even then, however, the faculty member is permitted under Article 21 to argue "extenuating circumstances" and to challenge the merits of the dismissal. No provision is made for dealing with the status of an indictment, that is, of charges proffered but not proven.

None of these procedural protections applies to adjunct faculty. Article 21.11 states succinctly, "Adjuncts shall be subject to discharge for just cause, subject to the Grievance and Arbitration article [Article 20] and *not* to Article 21 of this Agreement." (Emphasis added.) The applicable provision, Article 20, sets out a procedure fairly common in collective agreements. A grievance is defined as an allegation by the employee (or the union) of (a) "a breach, misinterpretation or improper application of a term of this Agreement," or (b) "an arbitrary or discriminatory application of, or a failure to act pursuant to the Bylaws and written policies of the Board related to the terms and conditions of employment."⁵ Three steps for hearing the allegation are set out, culminating in arbitration.

In other words, during their terms of service, full-time faculty members are entitled to notice, and there are hearing requirements before a discharge can be effected—consultation, a hearing before an administrative officer, and a hearing before an arbitrator. During an adjunct faculty member's term of service,

4. The absence of standards for suspension, Mr. Schaffer writes in his response to this report, is irrelevant in Mr. Yousry's case: "Since adjunct faculty may be dismissed without prior notice and a disciplinary hearing, the collective bargaining agreement makes no provision for suspension."

5. "Among the written policies of the board," Mr. Schaffer writes, "is a policy on academic freedom. . . . Thus, all faculty have the substantive and procedural rights to protections against violations of academic freedom."

he or she may be summarily dismissed, without any prior opportunity to present his or her statement of the facts and circumstances beforehand, and may then have his or her case heard before an arbitrator on whether or not the administration acted for just cause.

It will be recalled that Mr. Yousry, not understanding himself to have been suspended from all teaching but rather to have acquiesced in a request "to take a couple of weeks off," did not file a grievance over the suspension. He did, however, file a grievance over York College's denial of his right to reappointment for the fall 2002 term. During the grievance process, he alleged not only a failure to abide by the notice standards set out in Article 10, but also a violation of the collective bargaining agreement's nondiscrimination clause, on grounds of "political belief and/or national origin" and of the institution's commitment to academic freedom. The grievance was moved to the second step, a hearing before the chancellor's designee, who rejected it on March 20, 2003. The matter was then placed before an arbitrator, who rendered an award on January 16, 2004.

The arbitrator held there to be no evidence that the university had considered Mr. Yousry's national origin or political beliefs in deciding his status; there was therefore no violation of the nondiscrimination article. So, too, observing that academic freedom is the freedom of the individual "to teach, write or research," the arbitrator held that no claim had been made that the administration's decision was predicated on anything Mr. Yousry had taught, researched, or published. Accordingly, the award centered exclusively on Mr. Yousry's status in August 2002." On that question the arbitrator reasoned:

[T]he language of the agreement clearly indicates that there is no presumption of continuous appointments for instructional staff. At all times material herein, the grievant was employed as an adjunct lecturer which accorded him certain rights under the Collective Bargaining Agreement. In this regard it is noted that those rights are applicable during the time of the grievant's appointment which as an Adjunct Lecturer applies for the length of the term of the appointment. After the term of the appointment expires, the Agreement does not provide for an automatic right of reappointment. Indeed, the appointing officer has substantial discretion offering appointment. . . .

The grievant . . . alleged that the University failed to meet the procedural notice requirements with respect to the notice of nonreappointment. However, there is no language within the agreement which specifically gives an individual an automatic right to reappointment because the

individual did not receive notice by May 1, 2002 [the contractual date]. Indeed, it is noted that the Collective Bargaining Agreement as well as the regulations of the University require that such appointments must be made in writing. Indeed, it is acknowledged that the grievant received informal notification from the History Department, however, such notification was not substantiated by any official in authority and therefore cannot be deemed to be sufficient notice of the University's intent to reappoint.

Therefore, I must conclude that the grievant had no automatic right to reappointment under the Collective Bargaining Agreement. As such, I cannot find that there was a violation of the Collective Bargaining Agreement. Indeed, the grievant may be innocent of the charges levied upon him in the indictment. However, as an at-will employee this does not automatically give him the right of retention to his position under the Collective Bargaining Agreement which serves as the basis of the jurisdiction of this arbitrator. Accordingly, this grievance must be denied.

6. THE ASSOCIATION'S INVOLVEMENT

As noted previously, the Association raised concerns in the matter in a staff letter of October 28, 2002, to President Hotzler of York College. No written response was immediately forthcoming. On November 20, the AAUP staff shared that letter with Chancellor Goldstein. On March 18, 2003, President Hotzler wrote in reply to the October letter simply to observe that Mr. Yousry was availing himself of the CUNY-PSC grievance procedure. This letter crossed with one from the Association's staff reiterating the Association's concern to Chancellor Goldstein. General Counsel Schaffer telephoned in response to the staff's letter, informing the staff that President Hotzler's letter had been sent.

In a letter of May 1, 2003, to Chancellor Goldstein, the staff expanded on the Association's concerns in light of the decision in the second step of the grievance process in which the chancellor's designee rejected Mr. Yousry's grievance. Mr. Schaffer responded to this letter by letter of May 14. Further exchanges did not resolve the matter satisfactorily from the staff's point of view, and the appointment of the undersigned investigating committee was announced on September 30.

After the committee's appointment was announced, there ensued a series of communications from and to Mr. Schaffer concerning the propriety of the investigation—its scope, procedures, and timing. The AAUP agreed to await the arbitrator's award and, after it was issued, decided to proceed with the investigation although Mr. Yousry's criminal trial was yet to commence.

On May 10, 2004, the investigating committee met with officials of the PSC and with Louise Mirrer, executive vice chancellor for academic affairs; Allan M. Dobrin, senior vice chancellor; and Mr. Schaffer. The following day, the committee met with several members of the York College faculty,

6. "That is incorrect," Mr. Schaffer writes in his response to this report. "There was never any question about his employment status in August 2002. He was then a former employee whose appointment had expired June 30, 2002."

including Professor Coleman, who, as coordinator of the Cultural Diversity Program, exercised administrative authority over Mr. Yousry's appointment, and Professor Ruttenberg of the Department of History and Philosophy. Unfortunately, Chancellor Goldstein was not available to meet with the committee, nor was Provost Weil, on the day it was at York College. Mr. Yousry met with the committee, unaccompanied by counsel, and was fully forthcoming. The committee wishes to express its appreciation to the officers of the PSC who provided logistical help, to the members of the central administration for a full and frank exploration of the issues presented, and to the York College faculty members with whom the committee had an equally informative and candid conversation.

III. The Issues

Having reviewed the facts independently, the investigating committee agrees with the university administration that there is no evidence that Mr. Yousry was suspended or discontinued because of his teaching, writing, political beliefs or activities (of which there is simply no record), or national origin. The investigating committee finds that he was suspended and discontinued because of his indictment.

Mr. Schaffer argued to the committee that, were we to conclude that the administration did not act for reasons that violated academic freedom, our work should be at an end, because the Association has no further valid interest to pursue. He made two arguments in support of this assertion. The first, we would say, is based on realpolitik, the second on principle. We find neither argument persuasive.

He first asserted that were we to fault the rules contained in the collective bargaining agreement, to which the administration strictly adhered (as the arbitrator determined), we would, in effect, be attempting to "get more" for the faculty than the union had been able to secure at the bargaining table. This effort would reveal to the world that Committee A was, by way of the investigative process, merely a labor union by another name. Such a revelation would, in turn, debase the Association's image and erode its effectiveness.

The Association views the rules contained in a collective bargaining agreement just as it does any other set of institutional rules governing faculty status and discipline. They should be drafted with meaningful faculty participation (which the bargaining process should ensure) and they should comport with national standards of fundamental fairness. These standards inure to the good of the profession, the institution, and the larger public.

The national standards by which the Association measures conduct affecting academic responsibilities and prerogatives may be more or less exacting than a particular collective bargaining agreement calls for, and they are certainly not arrived at by the process of negotiation and compromise that characterizes collective bargaining agreements. Rather, we regard the

general standards, developed and articulated over the years, as expressing fundamental concerns rooted in the principles of academic freedom and the American tradition of due process. We take careful note, of course, of the resolution of conflicts by arbitration and the construction of the contract thereby implied. But we do not consider ourselves bound by them. Consequently, the Association considers the standards it supports to be equally applicable in the presence or absence of a collective bargaining agreement; it has judged institutional actions by these standards not only at other unionized universities, but also at the City University itself.⁷

The second assertion Mr. Schaffer made is closely related to the first but less freighted. CUNY's counsel argues that, as the Association supports collective bargaining as a matter of policy, it either cannot or should not be critical of the rules the process produces.⁸ The argument is a non sequitur. The Association endorses the principles, embodied in the 1966 *Statement on Government of Colleges and Universities*, that accord a significant role for the faculty in all matters of faculty status. The Association considers collective bargaining to be one, but only one, way for faculty to play that role. It measures the rules these processes produce, whether by faculty senates or faculty unions, against national norms of substantive and procedural justice.

More important, the committee disagrees that because the central administration was not motivated by reasons that violated academic freedom, academic freedom is not in any way implicated. We will pursue this theme further at the close of this report. It is enough to say here that the practice of academic freedom is embedded in and supported by a framework that ensures fair treatment, substantively and procedurally. An ad hoc Association investigating committee had occasion to draw this connection early on in the AAUP's history, in its investigation into the nonreappointment of Professor Scott Nearing by the trustees of the University of Pennsylvania in June 1914. The committee noted of the procedure by which Professor Nearing's appointment was not continued that it

provides no proper safeguard for academic freedom; that it gives the individual academic teacher no adequate secu-

7. The events subject to investigation in "Academic Freedom and Tenure: Queensborough Community College," *AAUP Bulletin* 59 (1973): 46, antedated the first faculty collective bargaining agreement at CUNY. The investigations undertaken in "Academic Freedom and Tenure: The City of New York (SEEK Center)," *AAUP Bulletin* 60 (1974): 67, and in "City University of New York: Mass Dismissals under Financial Exigency," *AAUP Bulletin* 63 (1977): 60, were undertaken in the presence of a collective bargaining agreement.

8. General Counsel Schaffer writes that the report's summary of his argument "omits the central premise—that the collective bargaining agreement in effect at CUNY provides greater protections for adjunct faculty than exist at most other colleges and universities and that those provisions are more than adequate to safeguard the academic freedom of adjunct faculty."

ity against substantial injustice; and that it secures to the faculty or its representatives no sufficient voice in relation to questions of reappointment and removal."

We believe that the exercise of academic freedom and the affordance of fair procedure in matters of faculty status are intimately connected. From the beginning, the Association has viewed the two matters as conjoined, and we decline the invitation to separate them now.

1. REMOVAL OF MR. YOUSRY FROM THE CLASSROOM

The general counsel resisted using the word "suspension" to describe the action taken on April 9, 2002. The reason he offers for what seems to be mere wordplay is that under Article 21 of the collective bargaining agreement, a "suspension," not otherwise defined, may occur only in conjunction with a pending disciplinary proceeding brought under that provision. Those proceedings are not available to adjunct faculty. An adjunct lecturer may be dismissed for cause, in which case he or she, having been dismissed, has recourse to the grievance-arbitration procedure; but no provision of the collective agreement speaks to the suspension of an adjunct.

The grievance procedure permits an adjunct to complain of an arbitrary application of other written policies, but no other written policy has come to the investigating committee's attention governing the suspension of an adjunct lecturer. It is arguable, then, that, so long as the adjunct continues to be paid, the administration is contractually free to remove the instructor from the classroom, in the absence of a violation of some other provision. Indeed, that was the administration's position in Mr. Yousry's grievance, one that the arbitrator accepted: "When the grievant was indicted, he was removed from his post but was compensated through the end of the semester *which is consistent with the Agreement.*" (Emphasis added.) Thus, had the general counsel accepted the term "suspension," it might be taken as acquiescence in the idea that Mr. Yousry was entitled to further procedural protections that the administration did not afford; hence the general counsel's insistence on its eschewal.

In common academic parlance, a removal from the classroom, even if with full pay, is a suspension. Further, based on decades of experience with such cases, in a series of policy documents the profession has defined the circumstances under which a suspension can be imposed. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, issued jointly by the AAUP and the Association of American Colleges and Universities, provides, "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty

member's continuance. Unless legal considerations forbid, any such suspension should be with pay."

In 1970, the AAUP appended an interpretive comment to the 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated by the two drafting organizations—the AAUP and the Association of American Colleges and Universities—providing a further gloss on this requirement: "A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process." An additional AAUP gloss, contained in its *Recommended Institutional Regulations on Academic Freedom and Tenure*, reiterates the core notion that a suspension is legitimate only if it is part of a dismissal proceeding, only if a threat of "immediate harm" is met, and only if there is adequate consultation beforehand with a relevant faculty body on the propriety, length, and conditions of suspension.

In suspending Mr. Yousry in April 2002, the CUNY administration met none of these standards. The suspension was not part of a formal dismissal proceeding. It was meant to be permanent and to be accompanied by no meaningful procedure whereby Mr. Yousry could vindicate himself, and there was no consultation with any faculty body—not even with his immediate administrative superiors at his institution—about its propriety." Mr. Yousry's presence did not pose a threat of "immediate harm" to himself or others; indeed, the central administrators with whom we met insisted that that was *not* the ground of the decision. The ground of the decision, not only to suspend Mr. Yousry, but also not to retain him, was the fact of his indictment per se. The next section deals further with the role of the indictment, but the fact of the indictment for a felony—even, as the general counsel put it, a "serious felony"—without evidence that the faculty member poses a threat of immediate harm to others by his continued presence cannot sustain the drastic action of removal from one's classes."

2. MR. YOUSRY'S DISCONTINUANCE

The arbitrator accepted the administration's position that once Mr. Yousry's appointment for the spring 2002 term expired he "became an employee at will." At that point, the administration had the prerogative to appoint or not for any reason or no reason at all so long as the reason was not contractually disallowed; and, the arbitrator went on, the reason for the decision not to appoint, the indictment, was not disallowed by any provision of the collective bargaining agreement.

10. Mr. Schaffer states that "Mr. Yousry had the opportunity for a hearing following his removal from the classroom, but chose not to file a grievance."

11. See, for example, "Academic Freedom and Tenure: Armstrong State College (Georgia)," *AAUP Bulletin* 58 (1972): 69. (An instructor was suspended from further teaching after having been served with a criminal warrant for distributing copies of an underground newspaper.)

9. "Report of the Committee of Inquiry on the Case of Professor Scott Nearing of the University of Pennsylvania," *AAUP Bulletin* (1916): 7, 41.

In the investigating committee's view, if the arbitrator's premise were correct, the conclusion would follow that a university is under no obligation to ignore the fact of an indictment in deciding whether or not to select a prospective candidate. But the question is whether the premise is correct. If Mr. Yousry were not a candidate for appointment, but should be considered as having an appointment for the fall 2002 term, then the university administration's decision would have been a dismissal, not a refusal to hire. In that case, analysis would turn to the reasons for the discharge, the indictment, and the procedures employed to effect the discharge. Thus it falls here, as in other cases, for the investigating committee to confront that question.¹²

The administration argues strenuously that the arbitrator's award is dispositive of Mr. Yousry's legal status. We take no issue with that proposition. Under the law of labor arbitration, an arbitrator "speaks the contract" for the parties. His or her fact finding or reading of the contract may be wrong, but it is the arbitrator's reading that the parties bargained for.¹³

Legal disposition, however, does not determine how the academic profession views Mr. Yousry's status. An institution may behave lawfully even as it departs from norms of academic acceptability.¹⁴ Thus the question—as an ad hoc com-

12. Several reports of investigating committees have confronted the assertion that the complainant was not dismissed, but merely not hired, because the period of instruction had not yet begun. The Association has long maintained that when a specific appointment has been made and accepted, the appointment is functionally in place. Its withdrawal by the administration should be considered a dismissal, even if the withdrawal occurs before the faculty member actually commences instructional performance. See, for example, "Academic Freedom and Tenure: The George Washington University," *AAUP Bulletin* 48 (1962): 240; "Academic Freedom and Tenure: Wayne State College (Nebraska)," *AAUP Bulletin* 50 (1964): 347; and "Academic Freedom and Tenure: Columbia College (Missouri)," *AAUP Bulletin* 57 (1971): 513.

This conclusion has also been applied to the refusal to honor a part-time appointment; see "Academic Freedom and Tenure: The University of South Florida," *AAUP Bulletin* 50 (1964): 44. All part-time lecturers in CUNY are appointed subject to suitable enrollment, budget, and curriculum. The withdrawal or cancellation of an appointment on grounds of a problem in one of these areas presumably could be contested under the collective bargaining agreement's provisions for grievance and arbitration.

13. However, we also note that as arbitral awards are not made contractually precedential under the CUNY-PSC collective bargaining agreement, another arbitrator, faced with similar facts, would be free to read the effect of a failure to afford timely contractual notice of nonrenewal differently, and that such a decision, resting on that arbitrator's interpretation of Article 10, would be equally final and binding.

14. Under the 1940 *Statement*, all full-time faculty members who serve substantially in excess of the maximum probationary period should be treated as having achieved academic tenure. It may be—although such a case would be rare today—that an institution lacks

mittee put it in an analogous case, that of the termination of the services of Mr. Edwin Moser at Trenton State College in the mid-1960s—is whether, "under academic concepts," the teacher was refused hire or dismissed.¹⁵ In the Trenton State case, all appointments, including reappointments, were expressly made subject to the written approval of the state's commissioner of education. In late August, the commissioner refused to approve Mr. Moser's reappointment. That refusal may have been dispositive of Mr. Moser's legal status, but it was not dispositive of how the profession viewed him. The analogous question here is whether, as an academic matter, Mr. Yousry had valid reason to believe he had been appointed for the fall 2002 term and should have been treated accordingly by the institution.

Like its predecessor in Mr. Moser's case, this investigating committee concludes that Mr. Yousry had sound reason to believe he had an appointment. No timely written notice of nonrenewal was given, routine memoranda from program coordinators and departmental officers at York were sent to Mr. Yousry, his classes were listed, his students were enrolled, his books were selected, and instructional assistants were appointed. It was not until shortly before the term began that he was told that he would not teach, by order of the central administration. To be sure, he had not received notice of renewal. However, we deem it significant that he had taught for seven years, most of the time without receiving notice of renewal for another term. At York College, notice of renewal was not commonly received until several weeks into the teaching term and, sometimes, not even then.¹⁶

Thus, the only factor set against the weight of these considerations is the fact of Mr. Yousry's suspension in April and the central administration's intent at that time that the consequence of suspension carry forward to discontinuance. Mr. Yousry did not understand that that was so; neither did his immediate superiors at York, Professors Coleman and Rutenberg, understand that the one was to lead to the other (indeed, they acted on quite the contrary understanding). The central administration's intent was never placed in writing or clearly communicated at the time. We can only conclude that

the legal authority to bind itself to a tenure commitment and any such having been made would be legally unenforceable. See, for example, *Worzella v. Board of Regents*, 93 N.W. 2d 41 (S.D. 1958). The Association would insist that the institution act as if such faculty were tenured despite the institution's legal inability to bind itself to do so.

15. "Academic Freedom and Tenure: Trenton State College," *AAUP Bulletin* 54 (1968): 43, 47. (The case involves refusal to implement reappointment of a faculty member upon learning that he had formerly been a member of the Communist Party.)

16. Mr. Schaffer states that "it is legally irrelevant whether Mr. Yousry had a belief, reasonable or otherwise, that he would be reappointed for the fall 2002 term. The fact is that he ceased to be an employee when his appointment expired on June 30, 2002."

in mid-August 2002, Mr. Yousry was neither a mere applicant nor, as the central administration would have it, an "at will" employee, but an incumbent adjunct lecturer. We find that his discontinuance was therefore a summary dismissal.

We fully understand that Mr. Yousry was, de jure, as a consequence of the arbitrator's reading of the collective bargaining agreement, an employee whose contract expired in the absence of a written offer of renewal. However, we cannot end consideration with this formal conclusion. Where an academic instructor, in this case an adjunct, has a reasonable expectation of continued faculty status, and where that expectation has been induced by the custom and conduct of the university, he receives a de facto renewal of his contract.¹⁷

Here, the custom of implicit contract renewal was well known and, indeed, bestowed each semester over seven years, some fourteen times, on Mr. Yousry himself. Moreover, rather than a notification of termination, the various responsible persons at the university created classes for Mr. Yousry, enrolling students, ordering books, and the like. In such circumstances, the administration cannot convincingly assert that, notwithstanding such reasonable expectations instilled by the university itself, Mr. Yousry was not even entitled to basic due process protections before he could be deprived of his faculty position.

Attention needs to be devoted to the ground of action, Mr. Yousry's indictment. Under the 1940 *Statement*, he could be dismissed for "adequate cause," the standard for which differs from that set out in the CUNY-PSC agreement. (The agreement allows dismissal on the seemingly broader ground of "conduct unbecoming" a member of the faculty, although that standard could well draw on national norms for refinement, given its generality.) The Association's *Recommended Institutional Regulations* are more specific: "Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers."

Mr. Schaffer took exception to this standard, placing special emphasis on the "directly and substantially related" test as insufficiently protective of the institution's or, perhaps, the public's interest. His doing so is in keeping with the adminis-

tration's position, advanced in the grievance procedure, that "teachers . . . [including adjunct faculty] serve as role models in their students' lives." Consequently, the general counsel argues for a broader regulatory reach for institutions than Association standards would recognize.¹⁸

The investigating committee believes that the theory of teacher-as-role-model, grounded as it is in the prospect of student emulation, should have scant purchase in higher education. College students are not impressionable children. For the most part, they are adults and should be respected as such. Of course, we are all aware of those few professors with students who parrot not only their mentors' theories but also their catchphrases and speech patterns. But we are equally aware of professors whose idiosyncrasies become the stuff of student gossip, caricature, and derision. The role model theory thus poses the difficulty of deciding just who is influenced by whom and in what way. It is a malleable doctrine that gives free rein to the censoriousness of trustees, administrators, colleagues, and even the larger community.

Recall that in 1940 a trial judge in New York disallowed the appointment of Bertrand Russell to teach symbolic logic in the Department of Philosophy of the City College of New York. The judge opined that Russell's beliefs regarding trial marriage disabled him from teaching in terms indistinguishable from the quoted portion of the CUNY administration's argument advanced in the Yousry grievance process:

Mr. Russell[']s] very presence as a teacher will cause the students to look up to him, seek to know more about him, and the more he is able to charm them and impress them with his personal presence, the more potent will grow his influence in all spheres of their lives, causing the students in many instances to strive to emulate him in every respect.¹⁹

The idea of role model rests on indirection. It would allow a faculty member to be dismissed on a suspicion of a potential for evil influence. As the Russell case evidences, it is putty in the hands of those who would mold it to their preferences.

The administration's criticism, directed to the closeness of the connection this standard requires, elides what the connection is to—a faculty member's "fitness" for professorial office.²⁰ "Fitness" we take to be that attribute of the teacher's character

17. The U.S. Court of Appeals for the District of Columbia Circuit recognized as much in refusing to defer to an express disclaimer of contractual status attached to a university's rules governing notice of non-renewal. "Contracts are written, and are to be read," the court said, "by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is." *Greene v. Howard University*, 412 F.2d 1128, 1135 (D.C. Cir. 1969). The court held that the failure to give timely notice, even if the university disclaimed itself to be bound to do so, created "a different dimension of relationship because of the expectations inherent in the University's failure to give notice[.]" one that required the affected faculty to be "afforded an opportunity to give their version of the events which led to their nonreappointment because of misconduct."

18. Mr. Schaffer refers to this provision on adequate cause as "too narrow to take into account the full range of legitimate institutional interests of colleges and universities, which also include maintaining public confidence, attracting and retaining student applications and enrollment, and providing role models for students."

19. *Kay v. Bd. of Higher Educ.*, 18 N.Y.S. 2d, 821, 830 (Sup. Ct. 1940).
20. The investigating committee notes that under New York law, CUNY is forbidden to refuse to hire an applicant by virtue of that person's having been convicted of one or more criminal offenses unless

that relates, directly and substantially, to his or her ability to perform the functions of an officer of instruction. When an institution dismisses a historian for plagiarism or a scientist for falsifying data, it does not do so simply to punish an academically wrongful act. It does so also because a historian who plagiarizes or a scientist who falsifies has demonstrated a trait of character—academic dishonesty—inconsistent with obligations of professional integrity. There are, however, moral lacunae, flaws in character, that have no bearing on fitness for academic authority. There is no obvious connection, for example, between being a shoplifter, even a persistent criminal petty larcenist, and being a professor of poetry (even though such a person would clearly be a bad “role model” for any students who might be led to emulate his extramural behavior). Hence the Association’s long-held position that conviction for a crime may open the door to deciding the question of fitness, but is not dispositive of it.²¹ Nor does the CUNY-PSC collective bargaining agreement differ in its treatment of the criminally convicted, as noted earlier.

An indictment is not a conviction. It is a finding by a civic body of probable cause to believe the allegations of criminal wrongdoing it alleges are true. As a practical matter, it may be possible for a prosecutor who is notably zealous for that outcome to persuade a grand jury that such is the case even when

there is a “direct relationship” between the criminal offense and the employment, defined as having “a direct bearing on his *fitness* or ability to perform one or more of the duties or responsibilities” of the employment. (Emphasis added.) N.Y. Corr. L. Secs. 750-755 (2001) and N.Y. Exec. L. Sec. 296(15) (2004 Supp.). The Association’s standards do no more than to require an institution to show much the same connection in order to dismiss a faculty member convicted of a crime as New York law requires the university to show in refusing to hire him or her.

21. In “Academic Freedom and Tenure: New York University,” *AAUP Bulletin* 44 (1958): 22, the ad hoc investigating committee confronted the discharge of a professor for having been convicted of the crime of contempt of Congress. The proceeding against him did not commence until after the U.S. Supreme Court had refused to review the case and the faculty member had served his prison term. The committee opined that the faculty member

had refused to cooperate with a committee of the Congress, and this had led to his conviction in a federal court of the statutory offense of contempt of Congress. He was under sentence of imprisonment. A teacher’s institution may properly take cognizance of such a state of affairs and conduct its own inquiry into the case in an attempt to determine whether the individual’s fitness to continue as a member of the teaching profession has been compromised by his conduct.

But the wording of [the charge] [s]eemed to be based on the rationale that contempt of Congress is an offense that automatically disqualifies a person from further employment as a teacher. Such a rationale is inconsistent with acceptable standards of academic freedom and tenure. Clearly, a teacher is entitled to have attention given to the particular circumstances that have led him to defy the authority of a governmental agency.

the facts or the application of the law might be weak. Nevertheless, as a formal matter, an indictment is a solemn civic act that can legitimately be of concern to the indicted person’s institution.

The 1958 *Statement on Procedural Standards* puts it that, “When reasons arise to question the fitness” of an incumbent faculty member, a process, potentially leading to the initiation of a dismissal proceeding, should be initiated. The investigating committee has no doubt that an indictment alleging facts that, if proven, go directly and substantially to the faculty member’s fitness for the profession should trigger that process. In this case, the grand jury alleges that Mr. Yousry lent material aid and support to a terrorist organization intent on achieving murderous ends. He allegedly did so by serving, in effect, as a courier between its leader and its followers. These facts, if proven, go directly and substantially to one’s professional fitness. Not to put too fine a point on it, one is unfit to instruct students while knowingly aiding an organization dedicated to killing them.

But allegations, even by solemn civic act, are not proven facts. Mr. Yousry vehemently denies that he did anything other than faithfully perform the services of a professional translator; that what Sheikh Rahman’s lawyers did with that information—for example, hold a press conference (which Mr. Yousry did not attend)—was their business, not his.²² We note that in June 2003, the board of directors of the American Translators Association adopted a statement to the effect that, if that is all Mr. Yousry did, he acted consistent with the Code of Ethics of the National Association of Judiciary Interpreters and Translators for which he should not be criminally liable. In other words, Mr. Yousry’s culpability is contested, but no institutional process was provided to allow him to challenge the allegations against him.

The procedure in the CUNY-PSC agreement for dismissing an adjunct faculty member during his or her period of services is less finely tuned than the procedure governing full-time faculty. No prior discussion or hearing before dismissal is required. The administration is allowed to dismiss, and the faculty member may then take the dismissal through the grievance procedure up to a labor arbitrator. At least this much process was (and remains) available had the administration acknowledged the fact of Mr. Yousry’s incumbency. Consequently,

22. Mr. Yousry stated to the committee that in order to have access to federal prisoners in his role as translator, he had to be approved by the federal Bureau of Prisons; to have access to prisoners incarcerated for crimes related to national security, he had to be approved by the Federal Bureau of Investigation. He further stated that he was approved by both bureaus in 1995 and has never been notified that he has been removed from either list. The committee has been unable to verify Mr. Yousry’s status vis-à-vis these federal listings, but the committee has confirmed that Mr. Yousry’s status vis-à-vis access to state prisoners for the purpose of translation has not been affected by his indictment and that he continues to perform that function in that setting.

the general counsel was asked why he did not send Mr. Yousry notice of dismissal in August and present the administration's case in arbitration. He gave three reasons: (1) given the pendency of the criminal charges, Mr. Yousry would merely invoke his right against self-incrimination and refuse to testify, making it pointless to proceed; (2) a dismissal sustained by an arbitrator would further injure Mr. Yousry's reputation and so it was an act of kindness not to proceed; and (3) he did not have to.²³

With respect to the first reason, a grievant may invoke a privilege without an adverse inference being drawn by the arbitrator. What the general counsel seems to mean is that it would have been difficult actually to prove Mr. Yousry unfit in advance of the completion of the criminal process. But difficulty of proof should serve to emphasize the need for, not the obviation of, due process apart from the possibility of suspending the proceeding pending the criminal disposition.²⁴ As to the second reason, even taken at face value, the argument ignores the fact that it would be for the faculty member to decide whether to challenge the decision, which Mr. Yousry most assuredly wanted to do. The third reason is the crux of the matter, about which more will be said in the next section.

IV. The Larger Implications

It is customary for investigating committees to be charged with examining how the incident under investigation has affected the climate on the campus for academic freedom or the institution more broadly. A hypothesis the committee explored was that of a rush to judgment by an administration driven by concern for bad publicity—anticipating accusations in the press of harboring a terrorist—especially in a city that had already experienced the horrors of a murderous terrorist enterprise. If so, we expected the fallout of its action to have repercussions on the York College campus and reverberations throughout the system as a whole. Neither of these occurred. What the committee actually encountered was less dramatic, but nonetheless disturbing.

None of those the committee interviewed saw the case as deriving from a fear of public outrage had Mr. Yousry not been suspended.²⁵ In fact, the committee is unaware, in the extensive press coverage of the Lynne Stewart case, of any

23. Mr. Schaffer subsequently wrote that, in providing these reasons to the investigating committee, he "was not responding to a question about his or CUNY's subjective motivations, but rather was merely reiterating CUNY's basic point that it had complied with the collective bargaining agreement."

24. That is how New York University dealt with the issue in the case referenced in note 21.

25. General Counsel Schaffer, however, who in his meeting with the investigating committee and in subsequent comments attributed the decision to act against Mr. Yousry solely to the issuance of the indictment, in his response to this report added the following:

In fact, the chancellor's decision was motivated in part out of a concern that public confidence would suffer if Mr. Yousry were

mentioned of Mr. Yousry's connection with CUNY, to the extent that he figures in the press accounts at all.

After the student protest over Mr. Yousry's suspension in April 2002 and Professor Coleman's renewal of his objection to the discontinuance of Mr. Yousry's appointment in August 2002, the matter ceased to be a subject of public discussion or of much further concern at York College. The removal of one adjunct lecturer at a remote campus in Queens seems to have had no discernible impact on any other campus. The major impact of Mr. Yousry's case lay in the arbitrator's award which, to the faculty union's distress, may well render the failure to provide timely notice of nonrenewal (or renewal) of no contractual consequence.²⁶

What the investigating committee encountered was the exercise of authority in the Yousry case by the office of general counsel and insistence by that office on a system under which adjunct faculty are considered as largely disposable at will. When the committee asked the general counsel about the making of the decision to suspend and to discontinue Mr. Yousry's appointment, the committee understood him to say that the decision came out of his discussions with the relevant officers of the administration, but he declined to specify who actually made the decision. Subsequently, responding to the draft text of this report, he has written that the decision was made by the chancellor. Being informed that the administration's actions against Mr. Yousry had the chancellor's authorization does not make it any less obvious to the investigating committee that from April 9, 2002, to the present, the general counsel had and continues to have effective decision-making authority as to how Mr. Yousry will be dealt with.

We do not mean to suggest that the law and legal advice should play no role in academic administration; in fact, some decisions may well be driven by law. But the decisions at issue here are not among them. They were ultimately academic decisions, and the two perspectives, legal and academic, are not necessarily identical.

Recall that the general counsel maintained that were this committee to conclude that the decisions regarding Mr. Yousry were not made for reasons that violated academic freedom, the Association's interest should be at a close. The committee responded that academic freedom can be implicated even if the administration did not act on a proscribed ground: that in order to exercise one's freedom to teach, one must have access to one's students; that freedom to teach means little if one can be deprived arbitrarily of students to teach.

permitted to teach at York College. It should be noted in this connection that Mr. Yousry, who is charged with aiding Islamic terrorists in a conspiracy to kidnap and murder, was assigned to teach courses that dealt with the cultures, religious history, and politics of the Middle East. Furthermore, Mr. Yousry has figured quite prominently in the press coverage of the Lynne Stewart case.

26. But see note 13.

To say that the general counsel declined to endorse this proposition would be an understatement. But almost forty years ago, in a prominent controversy surrounding the suspension of nearly two dozen faculty members at St. John's University in New York, the investigating committee had this to say:

The profession's entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one's professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. Moreover, to a good teacher, to be made involuntarily idle is a serious harm in itself. . . . [The denial of access to the classroom] was, in itself, serious injury. To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University.

[In] the denial of the exercise of their chief skills, the administration has injured its faculty. To have inflicted this injury without granting the faculty members an opportunity to be heard is a grievous and inexcusable violation of academic freedom.²⁷

The general counsel's disagreement does not stem from the fact that the law's perspective in such matters tends to be more hard-nosed than might be that of the arts and sciences.²⁸ The difference lies in the fact of counsel's exclusive concern that the institution do no more than what the rules require, a position in which the chancellor apparently concurred.²⁹ Still, the investigating committee does not consider it to be the proper

27. "Academic Freedom and Tenure: St. John's University (New York)," *AAUP Bulletin* 52 (1966): 12.

28. We note that two of the three members of the committee that penned the above-quoted text were lawyers: John T. Noonan, then of the Notre Dame Law School, who was later to serve with distinction (and continues to do so now in senior status) on the U.S. Court of Appeals for the Ninth Circuit; and Willard Pedrick, then for two decades a professor of the law of taxation at Northwestern University Law School and later the founding dean of the School of Law at Arizona State University.

29. Recall counsel's resistance to the Association's taking on the procedural aspects of Mr. Yousry's treatment as seeking to exert concessions the faculty union had been unable to secure in collective bargaining. This is to conceive of the societal concerns for accuracy and fairness that undergird the need for due process as just so many chips in a zero-sum labor-relations game. Recall counsel's persistent position that a lecturer with seven years' outstanding service was, on the eve of the commencement of his classes, an "at will" employee, that is, one who can be released for any reason—good, bad, or even morally repugnant—or for no reason at all, absent one proscribed by the collective bargaining agreement. Recall further counsel's resistance to treating Mr. Yousry's

function of an office of university counsel to make academic decisions. That office's conception of a university's best interests may not, from what the committee observed in the case it investigated, include recognition of those academic values the nonobservance of which "destroys the academic character" of a university, as the St. John's investigating committee put it.

The treatment of adjunct faculty under the current CUNY system as governed by the collective bargaining agreement and as further interpreted by the arbitrator's award in the Yousry case is as follows: until written notice of appointment or renewal is received, an adjunct's relationship to the institution is "at will," that is, he or she may be discontinued for any reason or no reason at all so long as it is not for a reason that violates law. Before the individual actually commences to teach (or, if no notice of appointment had been given, perhaps not even then), his or her services may be disposed of summarily. The fact of being treated and regarded in all academic respects as a member of the faculty does not matter, although recourse might be had through the collective bargaining agreement (the terms of which largely echo extant legal protections against discrimination). During his or her term of service, an adjunct faculty member may be suspended summarily, if with pay. These terms govern more than half of CUNY's instructional staff.³⁰

In the academic world, as William Van Alstyne observed when he was Perkins Professor of Law at Duke University, the reservation of the power to act against persons by unaccountable standards and by procedurally deficient means "deserves to be called 'arbitrary' and to be despised."³¹ Academic freedom cannot be secure under such a regime. The highly decentralized nature of the CUNY system and, if York College is an example, the informal and solicitous personal treatment of adjunct faculty has ameliorated the asperities of this regime. But, as this case evidences, even if this mode of operation is in the background, it remains the governing regime.

V. Conclusions

1. Mr. Mohamed Yousry was suspended from his position as adjunct lecturer at York College of the City University of New York in April 2002. That action was taken with none

discontinuance as a dismissal, to allow him access to a neutral adjudication on the question whether he had engaged in such conduct as to render him unfit to teach. Because the collective bargaining agreement did not require process, no process would be afforded.

30. Mr. Schaffer observes in his response that the "AAUP has for some time been in favor of greater protection for adjunct faculty, including longer appointments, seniority rights, and the right to a statement of reasons in the event of nonreappointment. . . . The fact is, however, that CUNY was not charged with violating the recommendations contained in [the AAUP's] policy statements relating to job security for adjunct faculty. . . . It is wrong for the investigating committee to try to advocate for them through the back door of a draft report about Mr. Yousry."

31. Quoted in Matthew Finkin, *The Case For Tenure* (Ithaca, N.Y.: Cornell University Press, 1996).

of the procedural protections required by Association-supported standards of academic due process and without any claim of harm threatened by the faculty member's continuance.

2. Mr. Yousry was not informed until August 2002, shortly before the classes he was assigned to teach were to convene, that his appointment for that semester would not be honored by the City University. This was a summary dismissal in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*.

3. Sole responsibility for these actions lies with the central administration of the City University of New York and not with the administration of York College.

4. The allowance for the suspension of adjunct faculty without any governing standards or procedural safeguards, and the CUNY administration's interpretation of the rules concerning the reappointment of adjunct faculty, are inimical to Association-supported principles of standards of due process.

MATTHEW W. FINKIN (Law),
University of Illinois, chair
DEBRA NAILS (Philosophy),
Michigan State University
1. RICHARD UVILLER (Law),
Columbia University
Investigating Committee

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

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

Members: JEFFREY HALPERN (Anthropology), Rider University; MARY L. HEEN (Law), University of Richmond; EVELYN BROOKS HIGGINBOTHAM (Afro-American Studies and Divinity), Harvard University; DAVID A. HOLLINGER (History), University of California, Berkeley; STEPHEN LEBERSTEIN (History), City College, City University of New York; * ROBERT C. POST (Law), Yale University; CHRISTOPHER M. STORER (Philosophy), DeAnza College; DONALD R. WAGNER (Political Science), State University of West Georgia; MARTHA S. WEST (Law), University of California, Davis; JANE L. BUCK (Psychology), Delaware State University, ex officio; ROGER W. BOWEN (Political Science), AAUP Washington Office, ex officio; DAVID M. RABBAN (Law), University of Texas, ex officio; ERNST BENJAMIN (Political Science), Washington, D.C., consultant; MATTHEW W. FINKIN (Law), University of Illinois, consultant; * ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; LAWRENCE S. POSTON (English), University of Illinois, Chicago, consultant; GREGORY SCHOLTZ (English), Wartburg College, liaison from Assembly of State Conferences.

*Did not participate in the vote.