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# Report of Committee A on Academic Freedom and Tenure, 2018–19

## Introduction

In the past year Committee A reviewed important cases and case reports of investigations, monitored developments at censured institutions, and formulated recommendations on censure and censure removal. In addition, the committee engaged in fruitful discussion of several pressing issues on campuses nationwide that affect academic freedom and began implementing an ambitious program aimed at producing new and relevant policy documents and reports that we hope will serve the needs of chapters, conferences, and faculty members everywhere.

## Judicial Business

### Impositions of Censure

At its spring meeting Committee A considered two cases that had been subjects of ad hoc investigating committee reports published since the 2018 annual meeting. The committee adopted the following statements concerning these cases, the Council concurred in them, and the 2019 annual meeting voted to impose censure.

*Nunez Community College (Louisiana).* The report of the investigating committee concerns the administration's action to terminate the services of an associate professor of English following his twenty-second year on the faculty. The investigating committee concluded that the action taken violated the faculty member's academic freedom to speak on institutional matters without fear of reprisal. The investigating committee further concluded that the administration had not afforded him the dismissal hearing to which he was entitled as the result of having obtained de facto tenure at the institution through length of service. Nunez Community College does not have a formal tenure system.

The decision to terminate the professor's services followed his disagreement with the administration over the

veracity of information to be provided to the Southern Association of Colleges and Schools Commission on Colleges (SACS), the college's regional accreditor. An accreditation visit in 2017 had cited the institution for failing to document "student success." Shortly after the arrival of a new chancellor in 2018, the administration found itself under pressure to complete monitoring reports for submission to the accreditor.

As general studies program manager, the professor was responsible for the completion of reports on the program. When he expressed concern that reports he had produced were not being included in the material to be submitted to SACS, the administration relieved him of his role. When he learned that the administration was submitting reports not prepared by him to SACS under his name, he requested that his name be removed. The administration denied his request.

The chancellor subsequently informed the faculty member that his services would be terminated, first in a phone call in which the chancellor stated that he was "not a good fit" at the institution and subsequently in a letter in which she declined to provide reasons for the decision, pointing instead to the faculty member's status as an "at-will employee." In response to the professor's written appeal, the chancellor wrote, "[The decision] is not a reflection of your work record or behavior. Nor does it diminish the past contributions you have made to the college. Your time and service to the college is appreciated."

The report states, "In the absence of any stated cause for the administration's actions and on the basis of the available information, the investigating committee is left to conclude that the termination of [the faculty member's] services was a retaliatory measure taken in violation of his academic freedom."

Committee A on Academic Freedom and Tenure recommends to the 105th Annual Meeting that Nunez Community College be added to the Association's list of censured administrations.

*St. Edward's University (Texas)*. The investigating committee's report concerns the dismissals of two tenured faculty members and the nonrenewal of a tenure-track faculty member. The tenured faculty members were in their twelfth year of service in the college's communication department. The tenure-track faculty member was in her fifth year of service in the teacher education department.

The two tenured professors, husband and wife, received almost identical letters notifying them of their dismissal for cause. The stated grounds were "continued disrespect and disregard for the mission and goals of the university," charges they sharply contested. Despite the urging of the AAUP's staff, the university's president declined to afford them a dismissal procedure that comported with AAUP-supported standards—an adjudicative hearing before an elected faculty body in which the burden of demonstrating adequate cause for dismissal rests with the administration. Instead, they were required to persuade an anonymous three-member faculty appeal body, of which one member was selected by the president, that the action taken against them was the result of "unlawful bias, arbitrary or capricious decision making, or a violation of procedures in the Faculty Manual." Their appeal was unsuccessful, as was a similar appeal to the governing board.

The tenure-track faculty member was afforded less than six months' notice (under AAUP-recommended standards, she was entitled to a year) and not allowed to appeal the nonrenewal to an elected faculty committee. She was thus denied the opportunity to ask a duly constituted faculty body to review her allegation that the real reason for the nonreappointment was her dean's perception of her as a troublemaker. Three years previously she had filed a complaint of sexual harassment against an associate dean in the School of Education, which did not, according to her account, result in a cessation of the objectionable conduct. As a result, she filed additional complaints. The school's dean, she charged, seemed irritated by the complaints, spoke of them disparagingly, failed to support her tenure application, and, after the associate dean retired, rehired him in another capacity.

The investigating committee found that, in dismissing the two tenured professors without affording them academic due process, the St. Edward's administration had violated the 1940 *Statement of Principles on Academic Freedom and Tenure* and the AAUP-supported dismissal standards set forth in Regulations 5 and 6 of the

AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The committee also found that the administration may have acted against the two professors because of their "persistent outspokenness about administrative decisions and actions." As a result, in the absence of a faculty dismissal hearing, their plausible claim that they were dismissed for reasons that violated their academic freedom remained unrebutted.

With regard to the tenure-track faculty member, the committee found that the administration, by failing to afford her an appeal process and a year of notice, had violated Regulation 2 of the *Recommended Institutional Regulations*. The committee also found credible her allegation that the nonrenewal was a consequence of her having lodged complaints of sexual harassment against an administrator, noting that the allegation remained unrefuted absent an appropriate faculty review procedure. The committee further concluded that general conditions for academic freedom and governance at St. Edward's University were "abysmal," with "fear and demoralization" widespread among the faculty.

Committee A on Academic Freedom and Tenure recommends to the AAUP's 105th Annual Meeting that St. Edward's University be added to the list of censured administrations.

This is the last year in which censure will be imposed by vote of the annual meeting. In future years, in accordance with the constitutional changes adopted by the 2019 annual meeting, the AAUP Council will vote on censure recommendations.

### **Other Committee Activity**

At its fall and spring meetings Committee A discussed a number of issues that have emerged around the country with potentially significant impact on the climate for academic freedom.

Nondisclosure agreements have become disturbingly common in matters of faculty employment. As noted in the following "Report of the Committee on College and University Governance," at Vermont Law School such agreements were employed in a restructuring that stripped faculty members of tenure. At Purdue University, the institution's newly acquired online arm, Purdue Global (formerly Kaplan University), required all faculty members to sign sweeping agreements as a condition of employment. However, after the Purdue University AAUP chapter, supported by our national staff, pushed back, Purdue

Global was compelled to rescind this requirement. Still, use of such agreements is a phenomenon that the committee and its staff will continue to watch closely.

Last year a professor at the University of Michigan, for political reasons, rescinded an offer to write a letter of recommendation for a student wishing to study in Israel. The action prompted considerable debate on the *Academe Blog* and elsewhere, and the administration sanctioned the professor without providing him an appropriate faculty hearing as stipulated in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. In response, the staff wrote the administration to urge provision of such a hearing. At its fall meeting Committee A engaged in a lengthy discussion of the issues posed by this case. While the committee ultimately decided that it was premature to prepare a general statement on such letters, there was consensus that while writing letters of recommendation for students is an obligation incurred by most teaching faculty, no faculty member can be required to write any specific letter or to provide a student with a specific rationale for declining to write. At the same time, members of the committee agreed that some rationales violate professional ethics.

In 2016 a joint subcommittee of Committee A and the Committee on Women in the Academic Profession produced a report, *The History, Uses, and Abuses of Title IX*. In the wake of proposed changes to Title IX enforcement by Secretary Betsy DeVos's Department of Education, that subcommittee submitted formal comments to the department. The subcommittee also issued the statement *The Assault on Gender and Gender Studies*.

Issues of campus free speech, as distinct from academic freedom per se, continue to roil the national conversation. This spring President Trump issued his notorious executive order ostensibly in defense of free speech on campus. In response to his March 2 initial proposal for such an order, the AAUP, in consultation with Committee A, prepared a statement that was eventually cosigned by ten other national organizations. Following official promulgation of the order, AAUP executive director Julie M. Schmid released a statement calling it "a solution in search of a problem" and "troubling in that it serves a broader goal of attempting to discredit higher education." Committee A and its staff will continue to monitor Trump administration policies that may threaten academic freedom.

Another issue that has attracted the committee's attention is the increasing displacement of faculty

disciplinary processes, committees, and hearings with bureaucratic interventions by human resources departments. This phenomenon is especially common in cases involving alleged sexual harassment but may well be spreading to other areas as well, as exemplified by a case at George Mason University reviewed this spring by the committee. The committee also discussed the threat posed to Stanford University Press by the Stanford administration's reluctance to continue a long-standing subsidy, a situation that highlights the increasingly precarious state of academic publishing. Committee A will continue to keep track of these sorts of developments.

At its spring meeting the committee engaged in a productive conversation about potential reports and statements, which resulted in a commitment to prepare two documents for consideration at our fall meeting. The first, with the working title of "In Defense of Knowledge," is envisioned as a sweeping and rousing statement in defense of higher education, expertise, and knowledge in the face of the sorts of widespread attacks on higher learning that we have seen in recent years. The second will be a report documenting how collective bargaining agreements in higher education—and not only AAUP agreements—seek to defend academic freedom, highlighting best practices and, I hope, providing a useful tool for our collective bargaining chapters and faculty unions more generally to strengthen protections. At its fall meeting the committee will continue its discussion of potential statements and reports.

Finally, I should note that Committee A, like the Association as a whole, has sought to respond to the challenge posed for our Association and its finances by the *Janus* decision. Facing the possibility that we might no longer be able to afford two annual in-person meetings, as has been the practice for decades, several members of the committee took the initiative to secure external funding. As a result, the William and Flora Hewlett Foundation has given the AAUP Foundation's Academic Freedom Fund a \$150,000 grant to cover all costs associated with one meeting of Committee A each year for three years as well as any costs associated with producing reports or statements approved at those meetings. We owe a debt of gratitude to Committee A members Joan Scott and, especially, Robert Post, whose efforts were essential to obtaining this support.

### Conclusion

I want to thank the members of Committee A for their tireless work on behalf of the principles of academic freedom, our profession, and the AAUP. I would also like to thank the members of the Department of Academic Freedom, Tenure, and Governance as well as other members of our devoted and hard-working

national staff for their support of the committee and their tireless efforts on behalf of academic freedom, shared governance, and the common good throughout higher education.

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

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## Cases Settled through Staff Mediation

*The following accounts exemplify the work of Committee A's staff in bringing cases to resolution during the 2018–19 academic year.*

In March 2018 faculty members at a liberal arts college in the Midwest sought the advice and assistance of the AAUP's staff after a "program prioritization" process resulted in cuts to departments and the elimination of ten faculty appointments. Writing in the cases of two tenured faculty members whose appointments had been terminated, the staff pointed out that, under AAUP-recommended standards, an administration cannot terminate a tenured appointment when academic programs are merely *reduced* unless a bona fide financial emergency exists. As the college had not declared financial exigency, the letter continued, the AAUP considered the terminations to be "illegitimate." The letter closed by urging that the administration rescind the termination notices issued to the two professors and other similarly situated faculty members. In April, one of the two professors wrote to give the staff the good news that the college had offered him a settlement, which entailed his continuation as a tenured full professor.

In March 2019, additional faculty members, including members of the newly constituted AAUP chapter, contacted the staff as a result of the elimination of twelve more faculty positions in the fall through the same process. Writing in the cases of two full professors whose tenured appointments had been terminated, the staff reiterated many of the same points it had made in its correspondence of the previous spring. As in the spring, the staff's letter urged rescission of the terminations. In the case of one professor, the staff's letter also questioned whether the administration had made "every effort" to find him other suitable teaching assignments within the

institution, as required under Regulation 4c(5) of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. The professor, the most senior in the department, claimed to be qualified to teach virtually all the courses currently offered and to have done so in the past.

In April this professor sent the staff the welcome news that the administration had done what the AAUP had urged and rescinded his termination notice. Soon thereafter the second professor in whose case the AAUP had intervened in spring 2018 informed the staff that she too had reached a resolution with the college that she found acceptable and had subsequently obtained a more suitable appointment elsewhere for the 2019–20 academic year.

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[Since this case attracted wide publicity, our account does not preserve the subject professor's anonymity.] In July 2018 Rutgers University's Office of Employment Equity determined that history professor James Livingston had "violated the university's policy on discrimination and harassment" after his Facebook posts regarding gentrification in his Harlem neighborhood created a public uproar. He had posted from a local restaurant, "OK, officially, I now hate white people. I am a white people, for God's sake, but can we keep them—us—out of my neighborhood?" The restaurant, he wrote, is "overrun with little Caucasian assholes. . . . I hereby resign from my race."

In response to a request from the Rutgers AAUP chapter, a member of our staff sent an advisory letter

to chapter officers on August 28. At this juncture, it seemed possible that the administration would take disciplinary action against Professor Livingston. The letter outlined the AAUP's position that doing so would "likely violate" Rutgers's own academic freedom policy as well as the collective bargaining agreement between AAUP-AFT Rutgers and the university. The key language in university's academic freedom policy, the letter pointed out, was an outcome of the highly publicized case of Professor Eugene Genovese, whose extramural attacks on the Vietnam War generated public controversy and calls for his dismissal. The letter noted that the AAUP bestowed its Alexander Meiklejohn Award for Academic Freedom on President Mason W. Gross and the Rutgers board of governors in 1966 for their defense of Professor Genovese's academic freedom. The letter also noted that the following year the governing board amended the academic freedom policy to read as follows: "Outside the fields of instruction, artistic expression, research, and professional publication, faculty members, as private citizens, enjoy the same freedom of speech and expression as any private citizen and shall be free from institutional discipline in the exercise of these rights." With respect to the AAUP-AFT Rutgers collective bargaining agreement, the letter cited the following provision: "The parties hereto recognize the principles of academic freedom as adopted by the University's Board of Governors on January 13, 1967."

Rutgers chapter officers immediately shared the staff's letter with President Robert L. Barchi. The next day the president ordered another review of Professor Livingston's Facebook posts, asking the reviewers to take into account the free-speech implications. On November 14, the review having been completed, the Office of Employment Equity informed Professor Livingston of its decision to "retract" its initial determination, with the revised conclusion that he had "not violate[d] the Policy Prohibiting Discrimination and Harassment in this matter." In a statement, Professor Livingston said, "I'm relieved that my right to free speech and my academic freedom have been validated by this retraction, thanks to FIRE, the AAUP, and colleagues."

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In November officers of the faculty senate and other faculty members of a large western state university sought the Association's assistance concerning a pattern of disregard for the legitimate role of the

faculty in institutional decision making. Among these concerns was that the administration had taken drastic measures to prevent the faculty senate from conducting its mandated review of university administrators.

A staff member promptly wrote to the administration conveying the AAUP's concern that the administration had obstructed the process for the biennial faculty senate review of the chancellor, provost, and other administrators as provided in the university bylaws; that the administration had repeatedly threatened legal action against individual members of the senate for participating in the review; and that it had forbidden the senate to use university resources to conduct the review on the basis of instructions from a deputy commissioner of the state's commission on higher education. The staff urged the administration and commission to reaffirm and uphold widely observed principles of academic governance as set forth in the *Statement on Government of Colleges and Universities*. As a result of the staff's letter, the state commissioner of higher education reaffirmed the faculty's right to conduct performance reviews of administrators. The faculty leaders in the state expressed their gratitude to the AAUP.

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Over the course of the past year, the Association's staff became apprised of several cases of administrations' taking adverse personnel actions against faculty members for employing the N-word in situations in which its use would appear to be protected under tenets of academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*. One such case involved a tenured full professor at a liberal arts college in the Midwest who quoted the word from an assigned book during an in-class discussion. Following student complaints and contentious campus-wide debates over the course of two weeks, the administration suspended him. In January, when the chief academic officer referred the case to a faculty hearing body, employing a process that can lead to dismissal-for-cause proceedings, the faculty member contacted the AAUP.

In addition to conveying the Association's concern regarding the summary suspension, which had occurred in contravention not only of AAUP-supported procedural standards but also of the institution's own regulations, the staff's letter to the administration pointed out that the faculty member's

classroom speech fell under the protections of academic freedom. In addition to the 1940 *Statement*, the letter cited the AAUP's *On Freedom of Expression and Campus Speech Codes*, which states that "rules that ban or punish speech based upon its content cannot be justified" and that "an institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disservices its academic mission."

The letter also cited the Association's 2007 report *Freedom in the Classroom*, which, while acknowledging the need to "foster an atmosphere respectful of and welcoming to all persons" and warning that "an instructor may not harass a student nor act on an invidiously discriminatory ground toward a student," asserts that "ideas that are germane to a subject under discussion in a classroom cannot be censored" merely because a student might be offended. "Instruction cannot proceed in the atmosphere of fear that would be produced were a teacher to become subject to administrative sanction based upon the idiosyncratic reaction of one or more students. This would create a classroom environment inimical to the free and vigorous exchange of ideas necessary for teaching and learning in higher education."

In closing, the letter stated the AAUP's concern that the decision to refer the matter to a faculty body suggested that the administration would be seeking to dismiss the faculty member or impose another severe sanction on him. The letter noted that, although the AAUP has historically chosen to leave it to individual institutions to provide their own definitions of adequate cause for dismissal and for imposition of other severe sanctions, the Association's procedural standards assume that they will do so "bearing in mind the 1940 *Statement* and standards that have developed in the experience of academic institutions." The letter thus concluded that, to the extent that the administration intended to base a decision to impose a severe sanction on the faculty member because of the classroom incident in question, such an action would violate his academic freedom.

In March the Association learned that the administration had informed the faculty member that it had decided not to pursue his dismissal or any other severe sanction.

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An assistant professor of sociology at a Roman Catholic college in the Northeast sought the assistance of the AAUP in early March after she received a letter from the college's director of human resources notifying her of her dismissal effective immediately. The letter gave no reason for the action, but the faculty member reported that the provost and general counsel had informed her in a subsequent meeting that the administration was dismissing her because of doubts regarding her "long-term possibility of success." The faculty member, however, alleged that she was dismissed in retaliation for protesting racial bias and discrimination on campus.

In a March 15 letter to the college's president, the AAUP's staff noted that the faculty member's allegation that her dismissal had been effected for impermissible reasons stood un rebutted in the absence of an appropriate dismissal proceeding. In such a hearing the administration would have been obliged to demonstrate adequate cause for the dismissal before an elected faculty hearing body. The staff's letter also noted that the administration's action against the faculty member seemed to have disregarded relevant provisions in the faculty handbook. As a result, the letter went on to state, the administration's action was "fundamentally at odds with basic standards of academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*," both documents joint products of the AAUP and the Association of American Colleges and Universities. The letter closed by urging the president immediately to rescind the notice of dismissal issued to the assistant professor and to follow AAUP-recommended procedural standards in taking any subsequent action.

On June 11 the faculty member informed the staff that she and the college's administration had reached a resolution that she found satisfactory. She wrote, "Your powerful letter was pivotal in the process. Not only did it make a big difference for my specific situation, but the faculty at [the college] are now creating an AAUP chapter as a result of it! I have truly appreciated the wonderful work you did on my case. Thank you for being there in a challenging time."

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In May an assistant professor at a flagship university in the South tweeted about civil disobedience,

provoking a backlash involving state legislators and university administrators. When it appeared that the governing board might single him out from other tenure candidates for special scrutiny and potential denial of tenure because of his social media comments, the AAUP's staff promptly wrote to the chair of the board and the university's president to inform them that "if the reasons for this possible action are what have been alleged, we would consider this to be a flagrant violation of AAUP-supported principles of academic freedom and tenure." The staff further noted that the AAUP had investigated cases of tenure denials by governing boards that involved serious allegations of academic freedom violations, with several resulting in censure, and pledged to monitor the situation closely. The next day the board of trustees voted to award promotion and tenure to the faculty member. In a press release about its decision the board noted that its discussion of his tenure application included "consideration of the Board's support for academic freedom and expression." ■