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# Report of Committee A on Academic Freedom and Tenure, 2016–17

## Introduction

I am pleased to report that Committee A had another productive year, reviewing cases and case reports and developing policies that address new areas of AAUP concern. I'm also pleased to report that the AAUP Foundation provided funding for the investigations conducted this year.

## Judicial Business

### Impositions of Censure

At its spring meeting, Committee A considered two cases that had been the subject of ad hoc investigating committee reports published since the 2016 annual meeting. The committee adopted the following statements concerning these cases, the Council concurred, and the 2017 annual meeting voted to impose censure.

*Community College of Aurora (Colorado).* The report of the investigating committee concerns the dismissal of a part-time instructor of philosophy in the fourth week of the fall 2016 semester. The stated basis of the action was his failure to implement curricular changes designed to improve pass rates in entry-level general education courses. One week before his dismissal, the instructor, who had been a vocal critic of these administratively driven changes, shared with administrative officers a draft letter in which he sharply criticized the new curriculum, informing them that he intended to send the final version to the college's regional accrediting agency.

The investigating committee found that the administration, in declining to afford the instructor a faculty hearing, had dismissed him summarily in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure* and of Regulation 13 ("Part-Time Faculty Appointments") of the derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*. The committee deemed credible

the faculty member's allegation that the administration terminated his appointment because he had conveyed his intention of sharing his critique with the regional accreditor, an allegation that remained rebutted absent a faculty hearing. In the view of the committee, "the administration's stated rationale for dismissal d[id] little to dispel the impression that its action violated basic tenets of academic freedom." Regarding the climate for academic freedom at the college, the committee concluded that the lack of adequate procedural protections for part-time faculty members meant that they enjoyed academic freedom "only as long as they retained the favor of their administrative superiors."

Committee A on Academic Freedom and Tenure recommends to the 103rd Annual Meeting that the Community College of Aurora be placed on the Association's list of censured administrations.

*Spalding University (Kentucky).* The report of the investigating committee concerns actions taken by the administration of Spalding University to dismiss a tenured professor of social work after eighteen years of service in violation of her academic freedom and without any affordance of academic due process.

The report finds that the Spalding administration abruptly terminated the professor's appointment because she criticized the administration's handling of an incident involving a student who had a history of making inflammatory and racist comments in class. This student brought a gun to a campus parking lot, showed it to a fellow student, and made statements that the fellow student construed as threats against faculty and students in the school of social work. The school's chair immediately alerted social work faculty about the incident—except the school's only faculty members of color, all three of whom were untenured, even though the student was scheduled to attend class with one of them the next day.

The tenured professor and two of the faculty members of color formally complained to the administration about the racial aspect of its failure to notify all faculty members about the incident. After the administration dismissed their complaint as groundless, they brought it in person to the faculty senate. Soon after their meeting with the senate, the tenured faculty member received written notice of dismissal, which lacked any reference even to the inadequate procedural rights provided in the Spalding University faculty handbook. Following the administration's action, the other two faculty members resigned, one stating, "I cannot be part of such a system, and I will not be part of a system that continuously models disparity between principles and actions and in so doing puts my life and the lives of my students in harm's way." The investigating committee found that the tenured professor was dismissed for "speaking out against institutional policies and practices she deemed inadequate" or, as one faculty member put it, for "doing what all tenured faculty should do" and "being connected to the marginalized voices."

Committee A on Academic Freedom and Tenure recommends to the 103rd Annual Meeting that Spalding University be placed on the Association's list of censured administrations.

### Removal of Censure

Committee A adopted the following statements recommending removal of Phillips Community College of the University of Arkansas and the University of Illinois at Urbana-Champaign from the Association's list of censured administrations. The Council concurred in the statements, and the annual meeting voted its approval.

*Phillips Community College of the University of Arkansas.* Phillips Community College of the University of Arkansas has been on the Association's list of censured administrations since 1978. The case that led to the censure involved the summary dismissal of a faculty member with ten years of full-time service at the institution, which did not grant appointments with indefinite tenure. Although the faculty member's case was resolved over three decades ago, staff negotiations with the administration regarding revisions to institutional regulations that would address the policy deficiencies that led to the censure ended unsuccessfully, even after the institution was absorbed by the University of Arkansas system in the mid-1990s.

In September 2015, a member of the system administration began working with the AAUP staff to amend the relevant institutional regulations to comport with AAUP-recommended standards. These efforts led to the college's adoption of a policy ensuring that indefinite retention after six years of full-time faculty service is presumed unless the administration demonstrates cause for termination in an appropriate hearing. The approved changes also provide for improvements to the institution's hearing procedures. In March, a representative of the Association visited the college and submitted a report to Committee A that described the climate for academic freedom as "healthy."

Committee A on Academic Freedom and Tenure recommends to the 103rd Annual Meeting that Phillips Community College of the University of Arkansas be removed from the Association's list of censured administrations.

*University of Illinois at Urbana-Champaign.* The 2015 annual meeting imposed censure on the administration of the University of Illinois at Urbana-Champaign on the basis of a published report which concluded that the UIUC administration and the Board of Trustees of the University of Illinois, in rejecting the appointment of a tenured professor in the American Indian Studies Program without demonstrating cause, and in doing so only after the appointment had been approved and courses had been assigned to him, acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*.

In fall 2015 the faculty member, who had filed suit in federal district court following his dismissal, reached a financial settlement with the university. The AAUP staff then made recommendations to the interim chancellor for removing the censure. The first was that official policies be revised to ensure board approval of faculty appointments prior to their effective date. The second was that the board approve a new rule applying to cases in which issues arise about a tenure-track or tenured faculty appointment that has been tentatively forwarded to the board by an administrative officer. The rule would require the board to send the recommendation back, through that administrator, to the appropriate faculty committee in order to give that body an opportunity to respond or rebut any concerns or problems raised by the board. And the third was that the board satisfactorily reaffirm its commitment to academic freedom. These recommendations were adopted, but

so late in the spring that it was not possible for an AAUP representative to visit the campus and evaluate the climate for academic freedom prior to the annual meeting. Committee A on Academic Freedom and Tenure thus recommended to the 2016 annual meeting that it delegate to Committee A the authority for removing the censure once the committee had received the representative's report.

At the urging of UIUC faculty members in attendance, the annual meeting declined to approve Committee A's recommendation. They argued that a decision regarding removal should wait until the system trustees considered a request of the three University of Illinois system faculty senates that the board delegate appointment authority to the campuses. These faculty members nonetheless made it clear that they did not believe that trustee approval of this proposal should be a condition for censure removal.

This April a representative of the Association visited the University of Illinois at Urbana-Champaign and held a series of meetings with administrators and nine representatives of faculty groups. These included the current chair of the university's Committee on Academic Freedom and Tenure; the president and vice president of the university's AAUP chapter; the president of the Non-Tenure Faculty Coalition (an AAUP/AFT-affiliated collective bargaining unit); the president of the Campus Faculty Association; a former member of the American Indian Studies Program who was interim director of the program when the professor's offer was tendered; and the chair of the Committee on University Statutes and Senate Procedures. The AAUP representative provided an exhaustive report to Committee A that described the climate for academic freedom at the institution as "robust."

Committee A on Academic Freedom and Tenure recommends to the 103rd Annual Meeting that the University of Illinois at Urbana-Champaign be removed from the Association's list of censured administrations.

### **Other Committee Activity**

At its October 28–29, 2016, meeting, the committee continued its discussion of Regulation 13 ("Part-Time Faculty Appointments") of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, led by a subcommittee consisting of Michael Bérubé, Don Eron, Walter Benn Michaels, and Debra Nails. Coincidentally, the first investigating committee report approved by the committee this year, that concerning the case of part-time instructor Nathaniel Bork at the

Community College of Aurora, involved a violation of Regulation 13. The committee intends to resume its discussion in fall 2017.

In October, Committee A approved and recommended that Council adopt *Threats to the Independence of Student Media*, a report produced by a subcommittee consisting of Joan Bertin, executive director of the National Coalition against Censorship and longtime consultant to Committee A; Barbara Jones, former consultant to Committee A; Chris Evans of the College Media Association; Frank LoMonte, executive director of the Student Press Law Center; and me. After receiving the endorsement of all four sponsoring organizations, the final report was posted online in December and is printed in this issue of the *Bulletin*. On the Wednesday preceding the annual meeting, the Newseum cosponsored a panel discussion of this report, thanks to the good offices of *Academe Blog* editor John Wilson, who initiated and helped organize the event. Frank LoMonte and I were among the panelists.

As I reported a year ago, at both of its meetings last year the committee engaged in lively discussions of its 1999 statement *On Collegiality as a Criterion for Faculty Evaluation*. In July, committee members approved minor revisions to the statement resulting from that extensive discussion. The revised document was posted online in September and is included in this issue of the *Bulletin*.

At its June 2–3 meeting, Committee A discussed a draft report, "National Security, the Assault on Science, and Academic Freedom," prepared by a subcommittee on academic freedom and international scholarly exchange consisting of Professor Xiaoxing Xi, the Chinese American physicist at Temple University whose case raised the issues of concern; Mary Jane West-Eberhard from the National Academy of Sciences; and Committee A members Michael Mann, Joan Wallach Scott, and me, with staffing provided by Anita Levy of the AAUP's Department of Academic Freedom, Tenure, and Governance. As this important report will make clear, issues of academic freedom are no less pressing in the physical and natural sciences than they are in the humanities and social sciences, with threats to international scientific exchange and climate science being two major concerns. On the basis of the committee's discussion, the subcommittee will prepare a final draft for Committee A before its fall meeting.

At its June meeting, Committee A discussed several recent situations of interest, including the case of

Professor George Ciccariello-Maher at Drexel University; potential layoffs of tenured faculty members at Mills College in Oakland, California; and the administration's cancellation of a faculty search at California State University, Fresno.

In June the staff advised the committee that early this year sixteen federal agencies announced sweeping changes to regulations on institutional review boards (IRBs). In 2013 a subcommittee of Committee A had issued a lengthy report, the most recent of four, recommending revisions to IRB regulations to protect academic freedom. The committee discussed the government's changes, which a member of the IRB subcommittee described as constituting a "huge victory" for scholars in the humanities and social sciences, although others have been less impressed.

Finally, the committee discussed, in light of relevant AAUP policy statements, recent controversies regarding outside speakers, free-speech bills in state legislatures, and related topics. Earlier this year the AAUP issued brief statements, based on standing policy, calling attention to threats posed by targeted online harassment of faculty and, separately, opposing legislation under consideration in several states concerning issues related to campus free speech. The AAUP strongly supports freedom of expression on campus and the rights of faculty members and students to invite speakers of their choosing. We oppose, however, any legislation that interferes with the institutional autonomy of colleges and universities by undermining the role of the faculty, administration, and governing board in institutional decision making and the role of students in the formulation and application of institutional policies affecting student affairs. Incidentally, in June I posted four articles on this topic on the AAUP's *Academe Blog*.

### Conclusion

Two important figures in Committee A's storied past died this past year. Professor Walter Metzger of Columbia University served for over forty years on Committee A, longer than any individual in the committee's history. His many books and articles on academic freedom, however, remain a priceless resource. On October 24, Hans-Joerg Tiede of the staff and I represented the Association at a memorial service for Professor Metzger at Columbia University. Prior to that event, Joerg visited Professor Metzger's personal archive, and I am pleased to report that the family is donating this remarkable trove of original documents to the AAUP and that the George

Washington University library will add them to its extensive collection of AAUP materials.

We have only recently learned of the passing in May of Evelyn Miller, who served on the Association's Committee A staff for over forty years. Evelyn was honored on her retirement at the 2002 annual meeting for her "unswerving commitment to the welfare of the Association and the cause of academic freedom." I am told that Evelyn was especially close with our beloved Jordan Kurland, whose passing we recognized a year ago. After Evelyn retired, Jordan called her every Friday to fill her in on the latest goings-on at the AAUP. Let us therefore honor the memory of both Walter Metzger and Evelyn Miller, two long-serving champions of our profession, our Association, and our principles.

On a more pleasant note, I can report the addition of Cheryle Adams to the AAUP's staff as program coordinator in the Department of Academic Freedom, Tenure, and Governance. Cheryle comes to us, most recently, from Bread for the World Institute, where she was program coordinator for eleven years.

Lastly, 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 work of Committee A's staff in bringing cases to a sound resolution during the 2016–17 academic year is reflected in the two accounts that follow.*

An assistant professor in his second year of service at a public research university in the Southwest received notice of nonreappointment at the conclusion of the academic year. When the faculty member asked his dean for a written explanation for the decision, the dean declined to provide it, citing institutional regulations. In writing to the administration, the Association's staff cited the widely adopted Regulation 2 of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, which specifies that a faculty member notified of nonreappointment will be furnished a written statement of the reasons for the decision upon request. The staff urged that the faculty member be afforded such a statement and recommended amendment of the faculty handbook to incorporate a policy on reasons accordant with the AAUP-recommended standard. Noting that the handbook allowed faculty members to petition a faculty committee for review of a nonrenewal decision, the staff pointed out that being deprived of a written explanation for that decision could make it difficult for a faculty member to mount a successful appeal. In his reply, the institution's president provided the faculty member with a statement of reasons for the decision and indicated that, following receipt of the Association's letter, the administration had offered, and he had accepted, a research position for the following academic year.

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Two years ago a long-serving associate professor at a small liberal arts college in the Midwest sought the advice of the AAUP's staff after the college decided to phase out her department and, with it, her tenured appointment. She reported that the faculty had played a meaningful role in reaching the decision and that she had received two years' notice. The staff wrote to advise her regarding Regulation 4d ("Discontinuance of Program or Department for Educational Reasons") of the *Recommended Institutional Regulations* and its applicability to her situation. The staff's letter emphasized that, under this regulation, (1) she was entitled

to an appeal hearing before an elected faculty body and (2) the college was obliged to make "every effort" to find her "another suitable position" within the institution. The staff encouraged her to ask for such a hearing and, in it, to make her case that among the college's current offerings were a number of courses that she was qualified to teach, certainly enough for her to be full time.

This spring the staff heard from her again. She wrote that, with her appointment about to expire and with the administration having declined to find her another suitable position, she had now decided to request a hearing. The chair of the faculty body to which she appealed contacted the AAUP's staff for advice regarding the relevant AAUP-recommended procedural standards. In its letter to the chair, which was copied to the administration and to the affected faculty member, the staff outlined the due-process elements of Regulation 4c and answered the chair's specific questions, most of which originated in objections raised by the administration. One such question was whether the college's subscription to the 1940 *Statement of Principles on Academic Freedom and Tenure* implied any conformance to the *Recommended Institutional Regulations*. In response, the staff wrote, "We consider such an affirmation as implying a commitment to the procedures by which academic freedom and tenure are protected and without which they are in danger of existing in name only."

The committee heard the professor's appeal and a few days later issued a detailed report of its findings and recommendations. While the committee found that the decision to discontinue the major had been a faculty decision, it also deemed credible the professor's argument that enough courses remained for her to build a full-time schedule. Stating their intention of defending tenure at the college, the committee accordingly recommended that the professor be retained in her tenured status. When the administration appealed this recommendation to a meeting of the general faculty, the faculty voted overwhelmingly to uphold it, and the affected faculty member was restored to her

tenured appointment. In a recent e-mail message to the staff, she conveyed an “immeasurable amount of thanks” for the staff’s “integral and powerful role” in helping to bring about this resolution. ■