

● Implementing AAUP Standards

Jordan E. Kurland

The American Association of University Professors, since its inception in 1915, has been the leading agency in higher education in developing the principles and standards governing the relationships of academic life. Often in conjunction with other national organizations, AAUP has issued such landmark documents as the 1940 *Statement of Principles on Academic Freedom and Tenure* (with the Association of American Colleges) and the 1966 *Statement on Government of Colleges and Universities* (with the American Council on Education and the Association of Governing Boards of Universities and Colleges joining in its formulation). Other AAUP statements, to name a few, deal with dismissal proceedings, renewal of appointments, professional ethics, political activity, discrimination, recruitment, resignation, and retirement. Currently thirty-six of these statements are compiled for ready reference in AAUP's *Policy Documents and Reports*.

The Association, however, also from its very inception, has assumed responsibility not only for promulgating principles and standards but for implementing them in specific situations. AAUP's first president, John Dewey, set the tone as follows in his 1915 presidential address:

Some have expressed to me fear lest attention to individual grievances might crowd out attention to those

general and "constructive" matters which are the Association's reason for existence... The investigations of particular cases were literally thrust upon us. To have failed to meet the demands would have been cowardly; it would have tended to destroy all confidence in the Association as anything more than a talking body. The question primarily involved was... whether the Association was to have legs and arms and be a working body.¹

To an extent which would have astonished and delighted Professor Dewey, the Association has indeed emerged as a working body. Its legs and arms scramble to deal with over 2000 inquiries each year on particular problems relating to AAUP standards. Some of these inquiries are dealt with by a single response, but about half of them lead to the opening of a file on a formal complaint by one or more faculty members against an institution's administrative officers or sometimes against other members of the faculty. These complaints, numbering approximately 1100 annually in recent years and dealing with the academic status of one or more individuals, are processed by members of the Association's professional staff, located in AAUP's national office in Washington, D.C., and in regional offices in New York and San Francisco. The staff is guided in its work by various Association policy-making bodies, especially its Committee A on Academic Freedom and Tenure, and it can often call upon the officers of AAUP's 1300 local chapters or of its state conferences or upon other capable volunteers for assistance.

JORDAN E. KURLAND is Associate General Secretary. This article is adapted, with permission of the publisher, from *Resolving Conflict in Higher Education*, ed. by Jane McCarthy (San Francisco: Jossey-Bass, 1980).

¹ AAUP Bulletin, 1 (December, 1915), pp. 11, 12.

The chief interest of the Association in processing these complaints is to employ its good offices in bringing them to a resolution which comports with AAUP standards and, whenever possible, is satisfactory to the parties directly concerned. Before discussing AAUP's mediative role, it should be noted that many complaints are not opportune for or susceptible to AAUP mediation, in which instances AAUP's response can take other forms. Often there are appropriate informal or formal procedures within the institution which can and should be used, in which event the staff will provide procedural advice but refrain from direct involvement. Where a collective bargaining agreement with the faculty is in force, a dispute may go to outside arbitration, and the Association may address itself to the scope of what is to be arbitrated and to the criteria to be followed. Litigation may already have been entered or may be the only feasible course to pursue. The Association often enters a legal case, usually at the appellate level, as a friend of the court, when the decision is likely to have an impact on basic AAUP standards. In addition, the Association has an Academic Freedom Fund and a Legal Defense Fund to aid in the litigation of issues of AAUP concern. In like manner, the Association may provide assistance in a complaint which is before a governmental agency. When what is known about a complaint suggests a serious violation of principles of academic freedom and tenure and the institution's administration simply refuses to discuss the matter, the Association may proceed quite promptly to a formal investigation; the procedures for investigating and imposing censure will be noted below. Whenever it can, however, the Association's staff will seek to mediate an appropriate resolution.

Consistent with the aim of upholding principles and standards rather than representing the interests of individuals, it is not required that faculty members join the organization in order to have their complaints processed, because unrectified departures from sound academic standards do injury to the entire academic profession, AAUP members and nonmembers alike. Complaints are accepted from any teacher or research scholar or librarian or counselor with faculty status at an approved college or university. While most often it is the complaining faculty member who initially approaches the Association's staff about the problem, it is not at all unusual for the first word to

come from the local AAUP chapter, the department chairman, a faculty committee dealing with the matter, or a member of the administration. Administrators frequently consult with the Association on how to deal with a situation involving a faculty member, and on many occasions the staff's advice has led to a solution and thus kept a complaint from arising. When someone other than the prospective complainant initiates the inquiry to the Association, the staff will ask that the individual directly concerned be invited to write or call. If the matter seems sufficiently serious or urgent, the staff will not stand on ceremony but will itself get in touch with the individual and make its availability known.

Apprised of a complaint, the Association's staff comes to a prompt preliminary assessment of its urgency and of its potential gravity under Association standards. The complaint of the faculty member who reports that he or she has just been dismissed and has been ordered off the premises by the end of that afternoon obviously calls for a different order of response from that of the faculty member who complains that the institution is contributing insufficiently to a pension which will become effective upon retirement thirty years hence. The faculty member may present a complaint which is legitimate enough but raises no issues under Association standards (e.g., that the institution overemphasizes football or admits ill-prepared students), in which case the staff can do little more than advise as to sources within the institution for dealing with these concerns. The staff must on occasion attempt to explain to a faculty member that the Association, while ever vigilant in defense of academic freedom, cannot assert that academic freedom is on the line in a dispute over the allocation of a parking space. If the problem appears to be both urgent and severe as regards Association standards, the staff will move as quickly as it can to establish contact with the institution's administration in an endeavor to ameliorate the situation, or at least stop it from worsening, while at the same time soliciting additional information from the faculty member and others to enable the staff to analyze the dimensions of the problem and the nature of the Association's concerns.

Should a complaint appear to the staff to be invalid or superficial or trivial, it is the staff member's responsibility to advise the complainant that the Association will probably not pursue it and that it might be in his or her best interests

not to pursue it. Should a complaint, in the staff's judgment, be legitimate yet only "five miles over the speed limit," it is incumbent upon the staff to review carefully and patiently with the faculty member whether his or her energies, as well as any expression of Association interest, might better be invested in the instant question or reserved for another day.

When the facts presented by the complainant and others do seem to support an allegation that Association standards, or the institution's own regulations, have been violated, the staff must then decide upon the approach which best serves the situation at hand. The staff, more often than not, is equipped to assess the situation through its experience with other cases, at that institution and elsewhere, and through their knowledge of the institution's stated policies and actual practices, of their previous dealings with the institution's administration, and of the strength and capability of the institution's instruments of faculty government and AAUP chapter as well as individual AAUP members at the institution and at institutions nearby. While staff members are certainly aware that they can recommend formal investigation of a case which poses a serious infraction of Association standards, their interest in the first instance is in mediation, in negotiating a resolution which will preclude the need for formal and public action.

The Association's staff member who is handling a faculty member's complaint, when in sufficient command of the facts and issues to advance a particular position, with the faculty member's consent will contact the institution's administration, usually the chief administrative officer. This approach may be indirect, through the AAUP chapter or through a particular AAUP representative in the area. The contact may be through letter, telegram, telephone, or personal visit. The available information on the complaint will be presented, together with the issues it appears to raise under Association standards. The comments of the administration will be solicited. Assuming the accuracy of the Association's information, one or more recommended resolutions will be proposed or discussion will be invited. This presentation, and discussions which ensue from it, can be highly formal or informal depending upon the circumstances.

The response received from the administration may, if the faculty member cannot effectively rebut it, demolish the validity of the faculty mem-

ber's complaint, in which case the staff will "close the file." Alternatively, the administration's response may provide little or nothing which refutes the faculty member's contentions, leading the staff to reassert its recommendation for a resolution, with a formal investigation in prospect if a resolution is not forthcoming. As often as not, the respective positions of the faculty member and the administration present a mixed picture, leading the Association's staff to urge the wisdom of a mutually acceptable accommodation. In approximately half of the cases in which the staff presents issues under the Association's standards to an institutional administration and urges an acceptable resolution, that resolution is achieved through the staff's mediative efforts.

Those serious cases which remain unresolved are carefully reviewed by a staff committee responsible for recommending to the Association's General Secretary that a formal investigation be authorized. Under Association procedures, the General Secretary, the chief administrative officer of the AAUP, has the sole responsibility for authorizing an investigation. The General Secretary makes this decision upon determination of an apparent major yet unresolved violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative principles and standards. The case is submitted to an *ad hoc* committee of qualified active members of the Association who have had no previous involvement in the matter. Between a half dozen and a dozen such cases reach this stage, according to the figures of the last few years, and are investigated annually.

An *ad hoc* investigating committee, after examining the documentation available to the Association, visits the college or university on pre-announced dates and meets with the parties directly concerned as well as others who wish to speak not only to the case at hand but to other matters bearing upon Association principles and standards. The investigating committee is charged with preparing a report for submission to the Association's Committee A on Academic Freedom and Tenure. Just as the General Secretary is the sole official who can authorize an investigation, Committee A, which deals with a particular case for the first time when it receives an investigating committee's report, is the sole body within the Association which can authorize the report's publication.

Some cases authorized for investigation attain satisfactory resolution before an investigation re-

sults in a published report (the staff is unceasingly alert to opportunities for mediation), and occasionally a case is resolved soon after a report appears. Immediately before the Association's Annual Meeting each spring, Committee A reviews the reports published during the preceding year together with any subsequent developments relating to these reports. The Committee formulates recommendations to the Annual Meeting which may call for censure, the Association's strongest sanction, of an institutional administration found to be in violation of accepted academic standards. As the General Secretary is alone empowered to authorize an investigation and Committee A is alone empowered to publish a report and thus bring the case before the academic community, only the Annual Meeting is empowered to impose a censure (and subsequently to remove it). Presently there are forty-five institutions on the Association's list of Censured Administrations.

The censure list is not a blacklist. The Association will not and probably could not compel its members, let alone its nonmembers, to refuse to accept positions at censured institutions. The aim is to keep the censure in the public eye while being alert to developments which will permit a recommendation to a subsequent Annual Meeting for removal. The list is published in each issue of the Association's journal, *Academe: Bulletin of the AAUP* and once a year there is a published update of developments relating to each censure. Faculty members are advised, before accepting appointments at the institutions on the list, to consult with the Association's staff and with prospective departmental colleagues and then to make their own decision. The list is published periodically in Canada, by the Canadian Association of University Teachers, and it appears in Great Britain as well. Many of the learned societies and professional organizations which have endorsed the 1940 *Statement of Principles* also publish the list regularly and note the existence of the censure when they carry an announcement of an academic vacancy at the affected institution. Phi Beta Kappa, an endorser of the 1940 *Statement*, has declined to approve new chapters at censured institutions and has urged existing chapters to seek improved conditions.

The Association has specific procedures for the removal of censure as well as for its imposition. Considerations include the official adoption of

institutional regulations in essential conformity with Association standards, redress to the faculty member whose case was the basis of the censure, and evidence of a satisfactory current climate for academic freedom and tenure. Censure has been removed as soon as one year after it was imposed. The current forty-five censured institutions have been on the Association's list from one to eighteen years. The first investigation by the Association occurred in 1915, and the first censure was imposed in 1933. The longest censure on record lasted twenty years. (That same institution was censured again fourteen years later, and the second censure lasted only two years.) But the Association's post-censure negotiations have in all cases, sooner or later, met with success. Each and every censured institution, if not through the same erring administration then through a successor administration, has eventually cooperated with the Association in reforming the policies and practices which were the subject of the Association's initial concern.

While the Association can point with pride to what it has accomplished through investigation and censure, these publicly visible endeavors are, in a sense, the Association's failures. As was emphasized earlier, the Association's chief interest is in securing an acceptable resolution through its informal mediative techniques and thus avoiding the need for formal and protracted action. Sometimes a resolution is long in coming so that even the informal becomes protracted, but the staff will keep at it. One file, on the complaint of a professor who claimed she was unfairly kept at a low salary, remained open until her retirement while intermittent approaches to the administration brought no adjustment. Some nine years later, a new administration took office, and the staff tried again. The result was a retroactive increase in the retired professor's pension, amounting to nearly \$20,000. Most of the time, however, justice comes much more quickly. The shortest open complaint within memory involved an instructor who called to report that he was unexpectedly being reduced to part-time status. The staff member who took the call immediately telephoned the instructor's dean, who promised to rectify the matter without delay. The dean called the instructor, who in turn called the staff member back to report happily that he had been assured of continuance in his full-time position. The time that elapsed between the instructor's first call, presenting the complaint, and his second call,

bringing notification of its resolution, was exactly fifteen minutes.

Association staff members write brief accounts of successfully mediated complaints. The text of a couple of these accounts, selected from among several dozen files which were closed in recent months following satisfactory mediation, will provide some indication of the nature of the problems and of the Association's role.

A faculty member at a small professional school in the Northeast was dismissed for cause prior to the expiration of his term of appointment. The Association's staff, once it reviewed the record of the proceeding, stated to the administration that significant protections of academic due process had not been provided. The staff also questioned whether cause of a magnitude to justify dismissal had been demonstrated. The administration acknowledged that the procedures which had been used, adopted *ad hoc* for the particular case, were not satisfactory. At a subsequent meeting of the governing board, regular dismissal proceedings, formulated with staff assistance and based on the 1958 *Statement on Procedural Standards*, were approved as institutional policy. With regard to the case in question, the administration, which had continued the faculty member's salary during the remaining three months of the term of his original appointment, offered to pay him an additional three months of salary as settlement of the case.

A tenured professor at a state university in the South was notified by the administration in January that because of financial considerations his program, which attracts relatively few students, had been recommended by a faculty-administration committee for discontinuance and his services would therefore be terminated at the end of the academic year. A member of the Association's staff proceeded to discuss the matter with the administration. He emphasized that whatever the merits of the recommendation to terminate the program and thus the professor's appointment, merits which would be determined through a hearing that the administration was prepared to offer, the notice of less than six months was unacceptably brief. Six days later, the staff member was informed that the president of the university, finding the financial situation not so severe as had been earlier estimated and agreeing that the

notice was inadequate, rejected the recommendation to discontinue the program. The professor was informed that the notice was being rescinded and that his re-tenure for the following academic year was assured.

While the emphasis of the Association is on the need for sound procedural standards, appropriate to an academic setting, the staff attempts in its mediative work to call upon reason and fairness rather than to make threats or stand on technicalities. A faculty member who points to an inadvertent technical violation of stated institutional procedures, but cannot show that any actual harm resulted from the lapse, will be informed that the Association is not prepared to argue that the institution should provide redress. In a case where formal institutional and AAUP standards have not been breached, yet the faculty member has nonetheless suffered from inequitable treatment, the Association will assert that redress is warranted. During the course of negotiations, the Association's staff is perhaps more likely to stress the plight of a human being while the institution's administrators stress orderly and economical management. Still, the Association well recognizes, as it protects individual rights, that the welfare of the academic institution must also be preserved.

Writing ten years ago about the Association's mediative work, Bertram H. Davis, AAUP's General Secretary at the time, concluded as follows:

Through a persistent vigilance—through the constant application of its principles to cases—the Association has made academic freedom a byword in higher education, and in institution after institution it has been instrumental in the adoption of policies and procedures which lend support to academic freedom. To individual faculty members it has given a resource in their hour of need, and to faculties as a whole it has steadily helped to bring the dignity of professional status.²

We continue to perform this vital task for the members of our profession and for the academic community in which they serve.

² AAUP *Bulletin*, 56 (June, 1970), p. 173.