

R E P O R T

ENSURING ACADEMIC FREEDOM IN POLITICALLY CONTROVERSIAL ACADEMIC PERSONNEL DECISIONS

I. Perspective

Politically controversial cases involving college and university teachers spurred the founding of the AAUP, and they have frequently recurred. In recent years, the Association has witnessed a disturbing increase in such cases arising out of the war on terror, the conflict in the Middle East, and a resurgence of the culture wars in such scientific fields as health and the environment. In part, this increase may be a result of the rapid growth of new media, with their 24/7 sound-bite culture and Internet connectivity that have made it possible for talk-show hosts, bloggers, and well-funded interest groups to supplement the trustees, politicians, and journalists who previously put untoward pressure on the university. At the same time, this new situation has fostered a climate inimical to academic freedom, in which partisan political interests threaten to overwhelm academic judgment in academic personnel proceedings. Exacerbating this danger have been the structural changes within academe, in particular, the substantial decline in the proportion of faculty with tenure, as universities and colleges have come to rely on part-time and full-time non-tenure-track appointments. The faculty members holding these appointments—along with such academic professionals as librarians, advisers, counselors, and researchers—lack the legal, contractual, and procedural protections for academic freedom commonly afforded their tenured colleagues.¹

1. The need for academic freedom protections and the extent to which these protections are applicable to various academic appointees are discussed in such AAUP documents as *College and University Academic and Professional Appointments*, *Contingent Appointments and the Academic Profession*, *On Full-Time Non-Tenure-Track Appointments*, *Recommended Institutional Regulations on Academic Freedom and Tenure*, and *The Status of Part-Time Faculty*. These documents are printed in AAUP, *Policy Documents and Reports*, 10th ed. (Washington, DC, 2006).

As current political threats to academic freedom intensify, so too does the need for faculty members to contribute their expertise to public discourse and policy formation. The protection of their unfettered expression, including the ability to espouse highly controversial and unpopular views, is an essential social responsibility of universities and colleges. As the 1940 *Statement of Principles on Academic Freedom and Tenure* explains, “Institutions of higher education are conducted for the common good . . . [which] depends upon the free search for truth and its free exposition.” All too often, however, the freedom that the common good requires has been hard to maintain. Prior experience, including the dismissals of controversial professors and subsequent constraints on academic discourse during and after the two world wars, teaches us that political restrictions on academic expression must not be countenanced—even when most faculty members support or at least acquiesce in them.²

In order to avoid a recurrence of such situations, this report seeks to confront the contemporary political challenge to the academic community by exploring how free universities contribute to the common good even as they create political tensions between themselves and society that require the protection of academic freedom. At the same time, the report suggests ways that protection may be strengthened in the face of political intrusions into the academic decision-making process. The recommendations in this report are largely founded on long-standing principles and procedural standards supported by the AAUP. Where we have extended or amended previously existing principles and procedures in order better to ensure academic freedom against political intrusion, we explain why we have considered it necessary to do so.

2. For a discussion of threats to academic freedom that came to the fore following September 11, 2001, see the AAUP’s 2003 report *Academic Freedom and National Security in a Time of Crisis (Academe)*, November–December 2003, 34–59).

The professors who wrote the AAUP's founding 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* almost one hundred years ago, like the authors of the 1940 *Statement*, emphasized the social contribution of the university when they grounded academic freedom and tenure on the university's service to society. The 1915 *Declaration* described the university as an "intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world." At the same time, the 1915 *Declaration* explicitly emphasized the university's responsibility to serve as "the conservator of all genuine elements of value in the past life and thought of mankind which are not in the fashion of the moment."³ The authors thus understood that the mission of universities and colleges included not only research into or teaching of new ideas and providing experts to serve the community but also the teaching, interpretation, and communication of long-standing intellectual and artistic works and values. Further, in order for academics to contribute their ideas freely to the larger society, the 1915 *Declaration* emphasized that academic extramural expression, in addition to academic work, should be protected under principles of academic freedom.

The 1915 *Declaration* recognized that in order best to contribute to the long-term interests of society, the university necessarily serves as a check upon and even, at times, conflicts with short-term currents of democratic public opinion:

For by its nature [the university] is committed to the principle that knowledge should precede action, to caution (by no means synonymous with intellectual timidity) which is an essential part of the scientific method, to a sense of the complexity of social problems, to a practice of taking long views into the future, and to a reasonable regard for the teachings of experience. One of its most characteristic functions in a democratic society is to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train the democracy to the habit of looking before and after. (297)

Speaking directly to the need to protect faculty from "the waves of repression that periodically sweep through the American polity," Matthew Finkin and Robert Post succinctly express the essential tension between academic freedom and democracy referred to in the 1915 *Declaration* with the observation that "[a]cademic freedom is the price the public must pay in return for the social goal of advancing knowledge."⁴ A less succinct statement, but one more explicitly in keeping with the original, would include the need for the judicious *preservation* of knowledge, as well as for its advancement.

The 1915 *Declaration* also specifically identified two then-current political threats to the essential independence of thought within the university. It cautioned against the threats presented, first, by financially influential "vested interests" and, second, by governmental imposition and the "tyranny of public opinion." Subsequent experience, such as that during and after World Wars I and II, makes us aware that well organized minorities may intrude on university procedures and that such political intrusion may be particularly strong when it reflects a broad mainstream consensus, rather than either left or right perspectives. The 1915 *Declaration* did not err in its view, however, that the chief threats to academic freedom, while once ecclesiastical, had become increasingly political. Indeed, despite the AAUP's prescient efforts to resist political intrusion and its substantial subsequent success in advancing the principles of academic freedom and tenure, a historical review will show, not only that there have been times in the past when neither the Association nor the broader academy has adequately resisted recurrent political assaults on academic freedom, but also that there is reason for continuing concern.

Both political intrusion and our concern about it have been heightened by the impact of new technology and media formats. Videos have been produced to attack or defend specific faculty members and institutions. Listservs and websites have generated intense e-mail campaigns. These issues are not unique to our era, however. Even in 1915, the *Declaration* expressed concern that sensational newspapers had "quoted and garbled" classroom remarks, which the authors believed should be regarded as privileged rather than released as public utterances (299). To cite a pertinent example, an Association report published in 1990 concerning a

3. AAUP, *Policy Documents and Reports*, 297. Subsequent page references to the 1915 *Declaration* will be given parenthetically in the text.

4. Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven, CT: Yale University Press, 2009), 44.

case that closely reflects our concerns detailed “the intense outside pressure exerted on the administration and the faculty” in regard to a professor at a public university, despite the unanimous findings of a faculty committee that he had not “in any way exceeded the bounds of academic freedom” and that there was “no hint” of unacceptable classroom conduct. Those exerting intense pressure included community leaders and organizations, the local press, alumni threatening to cease contributions, the chair of the state board of trustees, state lawmakers, the governor, and an extremist group that threatened violence and sought to disrupt campus functions.⁵ At the same time, the report also cited a statement by the Commission on Higher Education of the Middle States Association of Colleges and Schools that eloquently expresses the fundamental rationale for the present report:

Political interference in the affairs of an educational institution presents a profound threat to its freedom and effectiveness. Direct intervention by governors, legislators, political parties, or pressure groups in the selection of faculty, the determination of curricula, textbooks, or course content, or in admissions or retention policies, invariably injects factors which are irrelevant or inimical to the fulfillment of an institution’s mission and goals.

In the 1980s and again more recently, self-appointed watchdog groups encouraged students to report and publicize offending classroom statements.⁶ Newspapers, talk shows, and bloggers campaigned against specific institutions and faculty members. These amplified pressures require enhanced protections to safeguard academic freedom and the free pursuit of knowledge. Accordingly, the report that follows examines the history and the changing character of political intrusions into academic personnel decisions in order to identify weaknesses in the principles and decision-making procedures that currently safeguard academic freedom and to recommend enhanced protections where necessary.

5. “Academic Freedom and Tenure: State University of New York at Stony Brook,” *Academe*, January–February 1990, 55–58.

6. For a recent example of the activities of student watchdog groups, see Katherine Mangan, “Video Seems to Catch Professor in a Liberal Rant, but There’s More to the Story,” *Chronicle of Higher Education*, November 17, 2010, <http://chronicle.com/article/Video-Seems-to-Catch-Professor/125426/>.

A. WHAT IS POLITICAL INTRUSION?

Political intrusion usually arises out of controversies over political ideology, religious doctrine, social or moral perspectives, corporate practices, or public policy—not more narrowly professional disagreements and disputes among academics. Even though political intrusion involves differences of opinion regarding extra-university societal controversies, it may nonetheless arise from within as well as from without the university, and with little public notice. Internal political intrusion sometimes occurs when members of the university community who are sensitive to political concerns engage in self-censorship as, for example, when faculty committees seek to minimize controversy or public opprobrium rather than to protect academic freedom. Internal political intrusion also occurs when politically motivated members of the university community violate or disregard sound academic principles and procedures. For example, the denial of promotion or tenure by liberal academics to a conservative academic or the reverse, if based on disagreement with the applicant’s views rather than on a scholarly evaluation of the applicant’s professional competence and performance, constitutes political intrusion regardless of whether persons outside the academic community were involved.

The distinction between routine professional disagreements within academic disciplines and larger social or political differences is sometimes difficult to make, and two of its aspects require further clarification. Although the AAUP may be concerned when adverse personnel actions arise from disputes between faculty members and administrators, this report on politically controversial decisions focuses only on those academic disputes involving the intrusion of external political, social, or economic concerns. Thus this report does not address disagreements such as those over university funding or support for particular academic programs, which AAUP policy already extensively treats. It does, however, pertain to cases in which private corporations or public officials seek to persuade universities to terminate or promote particular research activities or programs. In such situations, adverse personnel actions have been taken or might be taken against faculty members because of their involvement with the research activity or program. For example, if the nonreappointment of a Louisiana State University faculty member stemmed, as he alleges, from his allegations that the work of the Army Corps of Engineers on the levees contributed to the massive flooding of New Orleans following Hurricane Katrina,

then the relevant principles and procedural protections this report recommends would be applicable.⁷ Similar recent terminations of faculty appointments have involved attempts to shut down legal-aid clinics that challenged state legislation or supported defendants' rights.

We also recognize that faculties and administrators may seek in some cases to change the balance within and among academic disciplines and may seek in other cases to develop exceptional strength in a particular discipline or subdiscipline. Such endeavors need not have adverse ramifications for academic freedom, even though the decisions may carry political overtones because some fields and subfields may be popularly viewed as closely aligned with political tendencies, as women's and gender studies are with feminism and "law and economics" is with the right. Disputes over such disciplinary directions fall within the ambit of academic freedom and should not in themselves constitute grounds for adverse action against the individuals involved.⁸ Even where the disciplinary tendency is associated with some larger political current, these disputes are not encompassed within this report except to the extent that the political perspective, rather than the professional perspective, of the individuals involved appears to have determined adverse action against academics otherwise qualified by institutional standards for the particular discipline or subdiscipline.

B. SAFEGUARDING ACADEMIC FREEDOM FROM POLITICAL INTRUSION

Although the 1940 *Statement* grounds academic freedom in the functions of the university as a whole, the safeguards it recommends are largely directed to the protection of the academic freedom of individuals. The academic freedom necessary for the university to meet its social responsibilities is linked to the academic freedom of individual professors, since individual academics conduct the university's teaching and research and

engage in the extramural expression that the 1940 *Statement* seeks to protect.⁹

In addition to recognizing that individual teachers were responsible for the university's actual contribution to teaching and discovery, the 1915 *Declaration* repeatedly emphasized that the academic calling required scholars not only of the highest ability but also of "strong and independent character," who would impart the results of their study and investigations "both to the students and to the general public without fear or favor" (294). The 1915 *Declaration* particularly emphasized the need for independence with respect to teaching on the grounds that effective teaching required that students respect their teachers and that students lose confidence in the integrity of their teachers when they suspect that teachers are not expressing themselves fully or frankly "or that college and university teachers in general are a repressed and intimidated class who dare not speak with that candor and courage which youth always demands in those whom it is to esteem" (296). Forty years later, as the McCarthy era drew to a close in 1956, the AAUP issued a report, *Academic Freedom and Tenure in the Quest for National Security*, that usefully reiterated the general argument for academic freedom and then, plainly in response to the effects of McCarthyism, forcefully explained the links between and among the academic freedom of the university, the profession, and the individual professor. Quoting from an essay by Fritz Machlup in the *AAUP Bulletin*, the 1956 report observed that the entirety of faculty members' work consists of their thought and speech, so if faculty members are sanctioned for what they write or say they may be no longer able effectively to question and challenge accepted doctrines or effectively to defend challenged doctrines. And if *some* professors lose their positions for what they write or say, the effect on many other professors will be such that their usefulness to their students and to society will be gravely reduced.¹⁰

7. "Academic Freedom and Tenure: Louisiana State University," *Bulletin of the American Association of University Professors* 97 (2011): 19–48.

8. See the Committee A report "Some Observations on Ideology, Competence and Faculty Selection," *Academe*, January–February 1986, 1a; see also Judith Jarvis Thomson, "Ideology and Faculty Selection," *Law and Contemporary Problems* 53, no. 3 (1990): 155–76.

9. In some recent academic freedom cases where individual faculty members have come into conflict with their own institutions, the courts have sided with the institutions. For a thoughtful discussion of the differences between individual and institutional academic freedom, see David M. Rabban, "A Functional Analysis of 'Individual' and 'Institutional' Academic Freedom under the First Amendment," *Law and Contemporary Problems* 53, no. 3 (1990): 227–301.

10. *AAUP Bulletin* 42 (1956): 55. Subsequent page references to *Academic Freedom and Tenure in the*

This dependence of the rights of all on the rights of each pertains also to the protection of these rights. Noting the “extremely difficult task” faced by administrations seeking to safeguard the institution at times when the public “has been confused by complicated issues or led astray by demagogic appeals,” the 1956 report cautioned that “[t]he temptation to yield a little in order to preserve a great deal is strong. . . . Yet to yield a little is, in such matters, to run the risk of sacrificing all. Those who feel safe today may become the victims of tomorrow, just as many of yesterday’s political heretics share in today’s orthodoxy” (97). Here and now we need especially to recognize that this fundamental admonition applies to faculty colleagues as well as to administrators. And it applies, not only to the failure to defend against specific attacks on individual academics, but also to the failure to prevent the growth of the ever increasing class of academics whose academic freedom has been eroded not so much by political intrusion as by a deterioration of the tenure system that the AAUP has championed from 1915 onward.

The foundational 1915 and 1940 statements bound academic freedom together with tenure. The 1915 *Declaration* required that faculty members be accorded tenure after a suitable probationary period in order to attract academics “of high ability and strong personality by insuring the dignity, the independence, and the reasonable security of tenure, of the professorial office.” This was not to say that only tenured faculty should have academic freedom. The *Declaration* recognized that, prior to dismissal or discipline, all faculty members should be assured of the opportunity for a hearing conducted by a committee of “members of the academic profession” who would “determine in what cases the question of academic freedom is actually involved” (300).

The 1940 *Statement* reiterates these principles and makes clear that dismissal from a tenured position requires not only an academic hearing but also a demonstration of “adequate cause.” Moreover, tenure protects academic freedom not only by ensuring the rights of those who hold tenure but also by establishing a system in which all other full-time members of the faculty should be regarded as holding probationary appointments with the opportunity to earn tenure and in which all probationary appointees should have the same academic freedom as other members of the faculty. Term appointees facing dismissal within the term of their

appointments must also be afforded an academic hearing with the same procedural safeguards as their tenured colleagues, as should all other appointees, like librarians or counselors, who have academic responsibilities.

Nonetheless, the rights of those academics who do not have tenure are plainly less secure than the rights of those who have it. Accordingly, faculty members who hold tenured appointments have an obligation, which the protection of tenure equips them to perform with reasonable independence and security, to safeguard the rights of those who do not. Yet the rights of all are increasingly jeopardized as the proportion of faculty with tenure has declined to less than 25 percent of the instructional staff. The defense of the academic community from political intrusion fundamentally depends, therefore, not only upon its members’ mutual responsibility for protecting the academic freedom of threatened individuals but also upon the renewal of the tenure system, which remains the bulwark of academic freedom.

II. Historical Reappraisal of Political Intrusion in Academic Personnel Decisions

From the start, even as the AAUP sought to protect academic freedom by strengthening tenure and instituting procedural safeguards, it has struggled with the challenges of defending politically controversial professors. Such work does not constitute the bulk of the cases handled by the staff of the AAUP’s Committee A on Academic Freedom and Tenure, but it does encompass some of the most notorious, difficult, and important ones. Beginning with the professional economists who ran afoul of the conservative business community in the Association’s early days, academics who lost their jobs for political reasons have been involved with some of the most controversial issues of their time. Whether it was deviating from the hyperpatriotism of World War I, refusing to answer questions about communism during the McCarthy era, or taking an unpopular stance toward the current conflict in the Middle East, the protagonists in these academic freedom struggles tested the limits of permissible dissent within the academic as well as the broader community. The AAUP’s record in those struggles was mixed. Sometimes the Association offered a strong defense of academic freedom; sometimes it delayed or equivocated, as it did in the 1950s; and sometimes it simply failed to act or for one reason or another did not become involved, as happened with regard to the nearly fifty academic professionals dismissed from New York City’s municipal colleges in 1940 and 1941 after a state legislative committee’s investigation into their supposed Communist Party connections.

Quest for National Security will be given parenthetically in the text.

The AAUP's early political cases required the organization's founders to apply the language of the 1915 *Declaration* to concrete violations of academic freedom. Thus, for example, when the trustees of the University of Pennsylvania overrode the faculty's recommendation to reappoint the left-wing economist Scott Nearing in spring 1915, the Association's investigating committee emphasized the need for stronger procedural guarantees and for greater deference to the faculty's judgment in personnel decisions. The substantive issue—that a political intrusion, in this case pressure from conservative alumni in the local business community, forced Nearing's ouster—was clear, and it was one that the Association's early leaders, who had founded the organization precisely because of similar cases a few years before, felt compelled to act on.

Unfortunately, however, when Nearing, who had found another position at the University of Toledo, was dismissed from that post in 1917—this time because he opposed US intervention in World War I—the AAUP did not intervene. Yielding to the patriotic excesses of the moment, the Association's leaders abandoned their earlier principles and signed on to the repressive report of the special AAUP Committee on Academic Freedom in Wartime. Claiming that “it can scarcely be deemed loyalty to democracy to place the future of democracy in jeopardy by an uncompromising adherence in time of crisis to the external forms of democratic government,” the report justified sanctions against professors viewed as insufficiently patriotic. Not only did it denounce academics who urged draft resistance and other illegal actions, but it indicated that those who merely opposed rendering voluntary service to the war effort could be subject to dismissal. Worse yet, the report warned faculty members of German and Austro-Hungarian descent to abstain from any act tending to promote the military advantage of the enemy or hamper the efforts of the United States; to take care not to give, by their utterances or associations, reasonable ground for the belief that they contemplate such acts or are conspiring with other disloyal persons; to refrain from public discussion of the war; and, in their private intercourse with neighbors, colleagues, and students, to avoid all hostile or offensive expressions concerning the United States or its government.¹¹

Although at least two dozen professors were dismissed for political reasons during the war, the 1917 report

noted only six dismissals for “disloyalty” and did not investigate or write them up.

During the following years, the Association became involved in few political controversies. It devoted most of its efforts to developing effective procedures and strengthening the institution of tenure. Although some of the published reports during the 1920s and 1930s mentioned rumors of political discrimination, the Association usually based its assessment of such cases on procedural, not substantive, issues. The few overtly political cases it did handle seemed fairly straightforward. Thus, for example, it explained how the repressive atmosphere and autocratic administration of the University of Pittsburgh contributed to the 1934 dismissal of the liberal, but hardly radical, historian Ralph Turner. And, in the case of Granville Hicks, a left-wing intellectual dismissed by Rensselaer Polytechnic Institute in 1935, the AAUP's investigators noted that although the university claimed Hicks had been released because of “financial difficulties,” “it is difficult to avoid the inference that Professor Hicks would have been dealt with otherwise, but for his economic and social beliefs.”¹²

The most troubling case of the period, one which presented the issues of retrenchment, academic competence, and personality that plague the cases of politically controversial professors to this day, was the 1937 dismissal of Jerome Davis from Yale. Though he had been teaching in the divinity school for twelve years, its senior faculty members could never bring themselves either to grant him tenure or to let him go. Because his commitment to social justice infused both his scholarship and his teaching, some colleagues had long questioned the quality of his work and its conformity with Yale's high standards. That issue intensified when it became likely that financial pressures might require Davis to teach in the more traditional and academically rigorous sociology department. At the same time, Davis's off-campus speeches and publications engendered considerable controversy among his colleagues, some of whom, the AAUP's investigators noted, were repelled by what they considered “the provocative and irritating quality of Professor Davis's personality.”¹³ Ultimately, the investigating committee faulted Yale's faculty for retaining Davis for such a long time without offering him tenure; it did not pass

11. *Report of the Committee on Academic Freedom in Wartime*, *AAUP Bulletin* 4, nos. 2 and 3 (1918): 32, 41.

12. “Rensselaer Polytechnic Institute,” *AAUP Bulletin* 22 (1936): 15, 20.

13. “Yale University,” *AAUP Bulletin* 23 (1937): 374.

judgment on the more difficult and divisive political issues involved.

It was their highly public off-campus activities rather than any official connection to the Communist Party that contributed to the dismissals of Hicks and Davis. Ten years later, as McCarthyism reached the nation's campuses, that connection, in and of itself, was to deprive at least one hundred college and university teachers of their jobs. The AAUP took strong positions on the issues involved; and, even though it issued no report on any of these cases until 1956, its annual meetings routinely denounced the practice of automatically dismissing college and university teachers solely because they were Communists or because they took the Fifth Amendment in front of a congressional investigating committee. Significantly, however, the Association did not issue a clear statement on the requirement of some colleges and universities that faculty members disclose their political affiliations to their own institutions.

Actions, however, speak louder than words; and, despite its exemplary policy statements, the AAUP failed to investigate any politically controversial cases until 1956, when the special committee released *Academic Freedom and Tenure in the Quest for National Security*. By then, however, McCarthyism had begun to subside, and the Association had relinquished whatever influence it might have had in deterring the most widespread violations of academic freedom that American higher education has ever experienced. Many factors account for this failure, not all of them political. We know, for example, that the AAUP's general secretary at that time was so crippled by physical and emotional problems that he was essentially unable to function. Another factor may have been the difficult personalities of the protagonists in some of these highly charged cases, a factor that has long been—and still is—common to many politically controversial personnel decisions. But it may also have been the case that to some extent the Association's leaders feared reprisals if they took an unpopular stance. In addition, they may have shared the anticommunist consensus of the time and recognized too late how serious an impact it had on the academic community.

When the AAUP finally did get around to dealing with the politically controversial personnel decisions of the late 1940s and the 1950s, it tended to base its findings on procedural rather than substantive grounds. Still, its special committee could not (and did not want to) entirely avoid dealing with the most contentious issues of the day. Since the Association's Council and annual

meetings had already decried the imposition of sanctions on academics merely for belonging to the Communist Party or invoking their constitutional privileges, the main issue the authors of the 1956 report confronted as they sorted through the McCarthy-era cases was determining to what extent faculty members were required to disclose their political views and associations to their colleagues in an internal academic investigation. In other words, did someone's affiliation with the Communist Party bear a relationship to that person's fitness to hold an academic position? The overwhelming majority of Americans, most college and university administrators, much of the academic profession, and a fair number of the AAUP's leaders believed that it did. But the special committee was ambivalent and did not provide a clear answer. A few later committees that investigated specific cases that the 1956 report did not discuss in depth did grant an institution the right to question its faculty members about their politics. They justified that position by relying on the assertion, made in the 1956 report (without any evidence, it must be noted), that because "secret Communist groups" had once been involved in the "subversion of the educational process by dishonest tactics, including political conspiracies to deceive students and lead them unwittingly into acceptance of dogmas or false causes," party members might be unfit to teach.

Thus, for example, in its 1958 report on the case of Stanley Moore, a Reed College professor who refused to tell his colleagues whether he had ever been a Communist, the AAUP's investigators noted that because of the party's "conspiratorial rather than political" aspects,

[i]f, consequently, a substantial indication of possible Communist affiliation arises, the faculty member's institution may properly ask him questions about the matter. . . . The institution is entitled to ask "the question," since it is relevant to fitness. The faculty member then has the duty of answering. Present membership in the Communist Party is a potentially disabling factor so far as fitness to teach is concerned.¹⁴

That there had been no evidence whatsoever that Moore had ever skewed his scholarship or misused his classroom was, it seems, irrelevant. Similarly, in a 1957 report on the case of Professor Horace Bancroft Davis of the University of Kansas City, another Fifth Amendment witness dismissed in 1953 after refusing

14. "Reed College," *AAUP Bulletin* 44 (1958): 129.

to disclose his political affiliations to a university committee, the AAUP explained that such an inquisition was justified because the institution's trustees "had the right, if not the obligation, to reexamine the qualifications for membership on the University's teaching and research staff," and since "the questions were proper, it was the obligation of Dr. Davis to answer."¹⁵

Historical research has revealed that such a politically repressive requirement was not proper: communism bore little or no relationship to someone's academic fitness, and the academic community possessed perfectly adequate mechanisms for handling incompetent or doctrinaire instructors without imposing political tests. It took more than a decade, but by the 1970s and 1980s, quite a few of the institutions that had dismissed faculty members because of their supposed Communist connections recognized that they had erred and made some kind of symbolic restitution. It is important to realize, as we assess the academy's response to McCarthyism, that all of these early Cold War academic freedom violations were the result of political intrusions from outside the academic community. University officials and some faculty committees administered and rationalized the dismissals and later the blacklisting of dozens of politically tainted individuals, but there is no indication that they would have undertaken those actions on their own had they not believed that the very well-being of their institutions required yielding to the political pressures they faced.

It did not take too long for both the AAUP and the rest of the academic community to absorb the appropriate lessons from the sorry record of the McCarthy era. Although in 1952 Rutgers University had been the first American institution of higher learning to dismiss someone specifically for having invoked the Fifth Amendment, thirteen years later, when several local and national politicians demanded the dismissal of a faculty member who stated during a local teach-in that he would welcome a Vietcong victory, Rutgers's president cited his school's commitment to academic freedom and refused to dismiss the professor, thereby earning the AAUP's Meiklejohn Award for Academic Freedom. Nor, once the Red Scare had passed, did the Association hesitate to defend politically controversial faculty members. During the late 1950s and the 1960s, its record with regard to the wave of political dismissals affecting southern faculty members who supported

racial equality was particularly strong. It condemned entire states as well as institutions that took punitive measures against faculty supporters of the civil rights movement. It also supported the procedural rights of a German professor at Long Island University who was summarily dismissed in 1959 when information about his wartime propaganda activities on behalf of the Third Reich reached the public.¹⁶

Most of the academic victims of McCarthyism were Communists or former Communists who were fired either because of what they ostensibly believed or supported or because they refused to cooperate with external and university investigating committees. But, until they tangled with the inquisition, they had not done anything that would have attracted notoriety. In contrast, most of the men and women who got into trouble during the 1960s and after, like the Rutgers historian who supported the Vietcong, tended to be more outspoken, if not downright obstreperous. Their cases often created the same kind of difficulty for the AAUP as did those of the individuals who had refused to disclose their politics to their institutions in the 1950s. Here, the issue was one of what we today would call "civility," as exemplified in the case of a University of Illinois biologist dismissed because he advocated premarital sex in a March 1960 letter to the student newspaper. The Association's leaders split over the issue. The investigating committee believed that the university had no right to discipline a faculty member for taking an unpopular position, but a majority of Committee A's members, while supporting the right of professors to hold and express controversial views, nonetheless believed that they also had an "academic responsibility" to present those views in a restrained and professional manner.¹⁷ In its 1964 *Statement on Extramural Utterances*, Committee A advocated more protection for faculty speech than called for in its report on the University of Illinois:

The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness to serve. Extramural utterances rarely bear upon the faculty member's fitness for continuing service. Moreover, a final decision should take

15. "The University of Kansas City." *AAUP Bulletin* 43 (1957): 189-90.

16. "Academic Freedom and Tenure: C. W. Post College of Long Island University," *AAUP Bulletin* 48 (1962): 5-13.

17. "Academic Freedom and Tenure: The University of Illinois," *AAUP Bulletin* 49 (1963): 34-43.

into account the faculty member's entire record as a teacher and scholar.¹⁸

As the 1960s progressed, the AAUP became increasingly tolerant of behavior that it might earlier have condemned. Thus, for example, it actually defended a Marxist sociologist who was dismissed from Adelphi University in the middle of the 1964–65 academic year because, among other things, he had gone to Cuba and the only reading he assigned in three different courses was *The Communist Manifesto*. And it did so despite calling him “abrasive.”¹⁹ It also condemned the hurried suspension and dismissal in spring 1968 of an Indiana State University composition teacher for “unprofessional conduct” after he burned a flag in his class to illustrate the nature of symbolic language.²⁰ The Association issued a similar condemnation of the Ohio State administration after it ousted an assistant professor of history for burning his draft card in the aftermath of the assassination of Martin Luther King Jr.²¹ And it faulted Alfred University for abruptly dismissing a young historian who had taken part in the disruption of an ROTC award ceremony in May 1968.²² There were similar cases at schools from Tulane University and the University of Florida to Queensborough Community College and the University of Hawaii.

In many of these cases, the AAUP's investigators found procedural lapses as well as evidence of the imposition of unnecessarily severe sanctions when milder ones would have sufficed. They also found that some of the institutions involved based their patently political decisions on such pretexts as the allegedly poor teaching or inadequate credentials of the individual or the need to retrench. And, in many, though by no means all, of

these cases, departments, faculty committees, and even AAUP chapters offered little support to their radical or unpopular colleagues—a failure to appreciate academic freedom that all too often still characterizes politically controversial academic personnel decisions.

By the late 1970s and 1980s, the nation's campuses were considerably quieter; there were some major political cases, but Committee A's roster of such cases was rather sparse. Although the majority of the protagonists in the AAUP's recent, as well as earlier, political cases have been on the left, a few involved professors whose conservative views put them at odds with their colleagues and administrations. There was the case, for example, of City College of the City University of New York philosophy professor Michael Levin, whom the school's administration tried to punish for having published articles denigrating the intelligence of African Americans. The AAUP gave similar support to Linda Gottfredson at the University of Delaware when that school tried to prevent her from accepting a grant from the allegedly racist Pioneer Fund for her work on intelligence and race. And the Association investigated an evangelical Methodist college for dismissing an even more ardently evangelical computer scientist who accused his colleagues and the institution of undermining their students' faith.²³

Arguably the most serious violations of academic freedom during these years occurred at religious institutions—Catholic, Jewish, Mormon, and evangelical Protestant—that dismissed or denied reappointment or tenure to faculty members because of their theological or cultural heterodoxy. Albertus Magnus College dismissed a former priest when his homosexuality became public knowledge.²⁴ At Brigham Young University, “a pattern of publicly contradicting fundamental Church doctrine” cost one literary scholar her job, while the University of Judaism denied tenure to another feminist by falsely claiming that her outside letters were negative.²⁵ These violations of academic freedom continue, supplemented more recently by situations in which

18. *Committee A Statement on Extramural Utterances*, AAUP, *Policy Documents and Reports*, 32. The 1970 Interpretive Comments to the 1940 *Statement* incorporated this language. See also William Van Alstyne, “The Specific Theory of Academic Freedom and the General Issue of Civil Liberty,” in *The Concept of Academic Freedom*, ed. Edmund L. Pincoffs (Austin: University of Texas Press, 1972), 81–85.

19. “Academic Freedom and Tenure: Adelphi University,” *AAUP Bulletin* 53 (1967): 279–81.

20. “Academic Freedom and Tenure: Indiana State University,” *AAUP Bulletin* 56 (1970): 52–61.

21. “Academic Freedom and Tenure: Ohio State University,” *AAUP Bulletin* 58 (1972): 306–21.

22. “Academic Freedom and Tenure: Alfred University,” *AAUP Bulletin* 56 (1970): 87–93.

23. “Academic Freedom and Tenure: Greenville College (Illinois),” *Academe*, May–June 2006, 71–90.

24. “Academic Freedom and Tenure: Albertus Magnus College (Connecticut),” *Academe*, January–February 2000, 54–63.

25. “Academic Freedom and Tenure: Brigham Young University,” *Academe*, September–October 1997, 52–71; “Academic Freedom and Tenure: University of Judaism (California),” *Academe*, May–June 1988, 34–40.

college and university teachers lose their positions because they challenge the conventional beliefs of their students. Equally disturbing have been the attacks on scholars of the Middle East by students and outside groups who dislike their views on Israel and Palestine and seek to deny them tenure or impose other sanctions. These attacks have become more prevalent in the aftermath of September 11, 2001, as has the failure of many administrators and faculty members to offer adequate resistance.

What makes the recent spate of politically controversial cases particularly alarming is how many of them involve faculty members with contingent appointments who can be let go without any of procedural protections their tenured and tenure-track colleagues enjoy. The AAUP has been responding to these new threats to academic freedom by releasing policy statements emphasizing the rights of non-tenure-track faculty members and academic professionals and defending the autonomy of the classroom. But even in cases where politically controversial individuals receive the full complement of AAUP-recommended procedural guarantees, there is increasing concern that superficial adherence to due process or weak or substantively biased faculty committees may provide politicized decision making with a veneer of legitimacy. As the past century of political threats to academic freedom has revealed, although procedural protections—such as providing adequate notice, a statement of specific charges, and a hearing before one’s peers—are crucial to the defense of academic freedom, they may not be sufficient in themselves, especially in cases where the dissenting faculty member confronts a strong mainstream consensus in support of repression.

III. Principles to Guide Decision Making regarding Politically Controversial Academic Personnel Decisions

All academic personnel decisions, including new appointments and renewals of appointments, should rest on considerations that demonstrably pertain to the effective performance of the academic’s professional responsibilities.

When an institution seeks to dismiss tenured faculty members, or term appointees within the term of their appointment, Regulation 5a of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* provides that

[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers

or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

AAUP policy extends similar protections to faculty members holding full- or part-time contingent appointments (*Contingent Appointments and the Academic Profession*), to graduate student employees (Recommended Institutional Regulation 14), and to non-teaching academic professionals such as those student advisers and counselors whose professional responsibilities require academic judgment (*College and University Academic and Professional Appointments*).

Decisions respecting new appointments and appointment renewals differ from dismissals not only in the procedural protections called for but also in the greater discretion permitted to the decision makers. In the case of new appointments, the suitability of competing applicants to the specific prospective position may outweigh their relative professional qualifications and under long-established practice may include consideration of whether the applicant is a “good fit” for the institution or department. Nonetheless, the decision may not rest substantially on impermissible considerations.²⁶ Accordingly, the 1976 AAUP statement *On Discrimination* applies to prospective as well as current appointees when it cautions that

[t]he Association is committed to use its procedures and to take measures, including censure, against colleges and universities practicing illegal or unconstitutional discrimination, or discrimination on a basis not demonstrably related to the job function involved, including, but not limited to, age, sex, disability, race, religion, national origin, marital status, or sexual orientation.²⁷

Although the AAUP has not issued a formal statement on political considerations in the making of new appointments, it has imposed censure in the case of a major university that withdrew an offer of appointment following board disapproval of the political views of the prospective appointee.²⁸

Discrimination by a public college or university against prospective appointees based on political views or affiliations unrelated to their professional responsibilities

26. See Judith Thomson, “Ideology and Faculty Selection,” *Law and Contemporary Problems* 53, no. 3 (Summer 1990): 155–76.

27. *Policy Documents and Reports*, 229.

28. “Academic Freedom and Tenure: University of Maryland,” *Academe*, May 1979, 213–27.

may well be found unlawful. It is certainly at odds with principles of academic freedom. Such discrimination in academic hiring practices by a private university or college, even if lawful, would similarly run afoul of academic freedom. To conclude otherwise would open the door not only to politically rather than academically based appointments but also, as in the 1950s, to political blacklists and similarly unacceptable employment practices.

In the case of reappointments and the granting of tenure, the decision makers must abide by the terms and conditions of the specific appointment, including the expectations and evaluations previously communicated to the appointee. Under AAUP policy, these decisions may, however, include institutional factors—such as enrollment, budget, and program adjustments short of financial exigency or program discontinuance—that would be inappropriate in the case of a dismissal, as long as those considerations are not pretexts for decisions that are actually politically motivated. In addition, there are many major sanctions, such as suspension or demotion, against whose imposition AAUP policies afford protections similar to those in cases of dismissal. Lesser sanctions, ranging from reprimands to denials of salary increments and of desirable teaching and research opportunities, are subject to appropriate grievance appeals, if based on impermissible considerations.

In many cases, it may be difficult to disentangle the multiple factors that influence a particular personnel decision and to identify with reasonable certainty those in which impermissible political considerations outweigh legitimate academic expectations. This is why the 1915 *Declaration* asserted that only a committee of faculty members has the requisite knowledge and experience to review a contested dismissal decision. Similar considerations apply to lesser sanctions. It is possible, moreover, to minimize the uncertainty and difficulty of such decisions both by further clarifying the applicable principles and by ensuring appropriate procedural protections. The applicable principles are discussed in the remainder of this section; the applicable procedures in the next.

A. ASSESSING CHARGES OF INDOCTRINATION IN THE CLASSROOM

One of the myths of the 1950s was the unsubstantiated charge that some faculty members who did not disclose to their students and colleagues their political affiliations or commitments were secretly working to advance their programs and viewpoints in the classroom. The academy's response, as articulated in the AAUP's 1956 report, was to insist that it expel from its ranks any instructor who sought to subvert "the educational

process by dishonest tactics, including political conspiracies to deceive students" (*Academic Freedom and Tenure in the Quest for National Security*, 56). In recent years the situation has been reversed; teachers have been accused of indoctrination because they revealed or advocated their views in the classroom. The accusers have sometimes suggested that the manner of expression, rather than its controversial substance, has reflected adversely on the professional fitness of the faculty member and interfered with the students' freedom to learn. Where faculty members' views were neither covert nor improperly imposed on their students, critics have turned to further arguments that the teachers were guilty of indoctrination because they did not offer a "fair and balanced" presentation or because they strayed from the announced curriculum.

The academic community's experiences during the 1950s alert us to the need to ensure that *when faculty are charged with indoctrination, only the proven demonstration of the use of "dishonest tactics" to "deceive students"—not the political views, advocacy, or affiliations of the faculty member—provides grounds for adverse action.* Those experiences—especially the demand for people to reveal their views and affiliations as well as the exclusion of Communist Party members and Fifth Amendment witnesses from the academy—further reinforce our recognition of the need to avoid political tests for employment. As the AAUP's 1956 report noted, we must be on guard against the "imminent danger [that] grows out of the claim to the 'complete candor' of the teacher in the course of an academic investigation—the danger of an inquisition into the personal thoughts and beliefs and the private associations of the teacher. That would indeed be the fatal axe laid at the root of the tree of academic freedom" (99). In an academic investigation, therefore, questions must bear on facts relevant to fitness to teach and should not include matters of political affiliation or belief. *In a politically controversial proceeding, this admonition to tailor questions narrowly to permissible issues of academic fitness and to avoid any inquiry into political affiliations and beliefs is plainly imperative.*

Because of some common confusion regarding the issue of indoctrination, it is also important to emphasize that the requirements of "scholarly objectivity and integrity," under the dismissal standards set forth in the 1956 report, do not preclude the presentation and advocacy of diverse viewpoints. To the contrary, the report asserted that it was "desirable" for Communists and other revolutionaries to be heard on campus so that "American colleges and universities return to a full-scale

acceptance of intellectual controversy based on a catholicity of viewpoint, for the sake of national strength, as well as for academic reasons” (99). Scholarly objectivity and integrity do require academic honesty and competence in gathering, selecting, and presenting data, as well as in framing arguments. They do not preclude, but commonly include, diverse interpretations, arguments, and conclusions.²⁹

Whereas complaints about the simple expression of values in the classroom today may be thought more likely to come from conservatives, in the late 1950s, the demand for value-free social science often came from liberal social scientists. Yet, as a leading conservative thinker observed at the time, “The prohibition against value judgments in social science would lead to the consequence that we are permitted to give a strictly factual description of the overt acts that can be observed in concentration camps. . . . We would not be permitted to speak of cruelty.”³⁰ Moreover, faculty members may rightly choose to express judgments grounded in their religious values. Such religious expression merits the protection of academic freedom in public as well as in private universities as long as it respects the same curricular and disciplinary constraints required of political or secular value judgments.

While many faculty members do not want to make explicit value judgments in the classroom, it defies common sense to require academics to avoid all value-laden terms or, to take an easy example, to forbid teachers to praise democracy or condemn tyranny. By the same token, academics should not face sanctions for expressing controversial views on homosexuality, global warming, or government policies for combating terrorism. *Neither the expression nor the attempted avoidance of value judgments can or should in itself provide a reasonable ground for assessing the professional conduct and fitness of a faculty member.*

Even when they grant that faculty members may express political and other value judgments in the classroom, recent critics have argued that some have abused this right by seeking to impose their views on their students. The AAUP has repeatedly recognized that

“freedom to teach and freedom to learn are inseparable facets of academic freedom.”³¹ The *Joint Statement on Rights and Freedoms of Students*, a policy document first issued in 1967, seeks to safeguard students from indoctrination both by recommending that faculty “encourage free discussion, inquiry, and expression” and by providing that “[s]tudent performance . . . be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.” It also balances rights and responsibilities by further providing that “[s]tudents . . . be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled” (274).

Some recent critics argue, however, that the ban on the imposition of faculty views through inappropriate standards of evaluation does not sufficiently protect students. They have charged that many faculty members abuse their freedom in the classroom by engaging in indoctrination rather than education, offering one-sided and unfair presentations, creating an ideologically hostile learning environment, and persistently introducing political issues irrelevant to the particular course of study. The 2007 AAUP report *Freedom in the Classroom* examined these claims. We need not recapitulate the contents of this recent report, but a few observations may be useful here.

The report, citing John Dewey, distinguished education from indoctrination on the grounds that the latter presented as dogmatically true what is not “tested” and established as true by the discipline in question. Some critics have been troubled by the implication that statements may be presented as absolutely true simply because these statements are accepted as true in a particular discipline. Those who share this concern should note that the 2007 report actually included a two-fold test. Professors may claim that a statement is true, even if their claim is based on their professional opinion and even if the statement is controversial within the discipline. “Indoctrination occurs when instructors dogmatically insist on the truth of such propositions by refusing to accord their students the opportunity to contest them.”³²

29. *Freedom in the Classroom, Academe*, September–October 2007, 54–61.

30. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 52.

31. *Joint Statement on Rights and Freedoms of Students, Policy Documents and Reports*, 273. Subsequent page references will be given parenthetically in the text.

32. *Freedom in the Classroom, Academe*, September–October 2007, 55. Subsequent page references will be given in the text.

Plainly, if professors may present as true even statements that are contested within a discipline, the test of indoctrination is not simply in the claim to truth but in a “dogmatic” claim to truth that denies students the right to take “reasoned exception” and to “reserve judgment.” The dogmatic claim would be defensible only in matters where a reasoned exception would be impossible, as, for example, mathematical propositions of reasoning within the terms of a particular mathematical or logical system, or faith-based theology within a specific doctrinal perspective.

Some critics, moreover, conflate all advocacy with dogmatism and indoctrination. Some draw on the 1915 *Declaration*, which clearly endorsed the presentation of opinion but argued also for restraint and emphasized the “liberal” aim of teaching students to think for themselves:

The university teacher, in giving instruction upon controversial matters, while he is under no obligation to hide his own opinion under a mountain of equivocal verbiage, should, if he is fit for his position, be a person of fair and judicial mind . . . and he should, above all, remember that it is not his business to provide his students with ready-made conclusions, but to train them to think for themselves, and to provide them access to those materials which they need if they are to think intelligently. (298)

As *Freedom in the Classroom* states, these worthy goals do not preclude advocacy: “If an instructor has formed an opinion on a controversial question in adherence to scholarly standards of professional care, it is as much a matter of academic freedom to test those opinions before students as it is to present them to the public at large” (56). Nor do they preclude a pedagogy that includes vigorous advocacy: “*So long as opinion and interpretation are not advanced and insisted upon as dogmatic truth, the style of presentation should be at the discretion of the instructor*” (56).

Recent critics have suggested that alleged lack of “balance” in classroom presentations may actually constitute deception, a more insidious transgression than explicit advocacy. Clearly, deception in the sense of substantial falsification of data, sources, or arguments and in the sense of deliberate concealment of pertinent, substantial contrary evidence and argument is unprofessional conduct. As the 2007 report also states with respect to calls for “balance,” however, not every instructor in every class can or should present the full range of possibly relevant data and arguments. Teachers may and, almost inevitably, do exercise selectivity and draw on the evidence and arguments they find relevant. Moreover, issues are often

many-sided, and what one academic sees as balanced another may well see as plainly biased. *Whether a specific matter or argument is essential to a particular class or what weight it should be given is a matter of professional judgment, based on the standards of the pertinent disciplines and consistent with the academic freedom required if the disciplines themselves are to remain capable of critical self-reflection and growth.*

Critics of the alleged failure of some faculty members to include all pertinent arguments have also claimed that others indoctrinate by introducing political issues and arguments irrelevant to the specific course or curriculum. The 1940 *Statement* does admonish teachers “not to introduce into their teaching controversial matter which has no relation to their subject.” The AAUP has long explained that this policy does not ban the controversial matters that academic freedom protects, but it does proscribe “persistently intruding material which has no relation to their subject” (1970 Interpretive Comment 2 on the 1940 *Statement*). The danger in the use of the persistent-intrusion standard lies precisely in the tendency to focus on and seek to constrain controversial subject matter. In sum, *exclusion of controversial matter, whether under the persistent-intrusion clause or in the name of protecting students from challenges to their cherished beliefs, stifles the free discussion necessary for academic freedom* (*Freedom in the Classroom*, 58–60). Indeed, such suppression of controversy would foster the narrow intellectual horizon within which indoctrination flourishes.

B. COLLEGIALLY AND CIVILLY ARE NOT APPROPRIATE INDEPENDENT CRITERIA FOR EVALUATION

Politically controversial academics are frequently found to be abrasive individuals who are difficult to work with. Consequently, lack of collegiality or incivility may easily become a pretext for the adverse evaluation of politically controversial academics. The Association’s 1999 statement *On Collegiality as a Criterion for Faculty Evaluation* provides that collegiality should not be employed as an independent criterion in academic evaluation, although it may contribute in important ways to an academic’s performance. Rather, in keeping with the general admonition that evaluation should focus on professional fitness, the statement maintains that whatever is pertinent with regard to collegiality should emerge through an evaluation based on the standard considerations of teaching, scholarship, and service.³³

33. *Policy Documents and Reports*, 39.

Although the 1999 statement specifically noted that the use of collegiality as an independent, distinct criterion has “the potential of chilling faculty debate,” it focused, as discussions of collegiality often do, more on matters of departmental and institutional governance than on the larger political issues that concern us. We emphasize that even though dispassionate as well as passionate teaching, scholarship, and extramural expression may be found politically offensive, passionate or polemical argument is more likely to be found offensive and thus may inappropriately become an independent basis for negative evaluation based on an alleged lack of collegiality. Moreover, we need to recognize that where polemics against the common enemy occasion little concern, even moderate disparagement of common beliefs may easily be found polemical. As a result, politically controversial faculty members are more likely to be judged as lacking in collegiality than those whose equally strident views accord with the prevailing ethos.

Academics do have collegial responsibilities. The AAUP *Statement on Professional Ethics*, as written in 1966 and adopted as policy by the Association’s 1987 annual meeting, addressed these as follows:

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institutions.³⁴

Harassment of or discrimination against colleagues is plainly unacceptable. However, the qualified phrase “due respect for the opinions of others” is preceded by the unqualified admonition to “respect and defend the free inquiry of associates.” How much respect is due to the content of a particular opinion is, of course, precisely the matter likely to be in contention. There is, however, no such disagreement about the obligation to “defend the free inquiry of associates.”³⁵

34. *Policy Documents and Reports*, 171–72.

35. In order to avoid misunderstandings that may arise from taking out of context the phrase “due respect for the opinions for others,” while retaining the need to respect differences of viewpoint, the AAUP’s Committee on

“Due respect” has also been understood by some to preclude disputatious rhetoric. As the Association explained in its 1994 statement *On Freedom of Expression and Campus Speech Codes*:

Some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. We find this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power.³⁶

This priority accorded to free expression over restrictions on the manner of expression applies to both speaking and writing. Passionate speech may be more common than intemperate writing, but the latter is equally protected. This must especially be the case when it deals with politically controversial matters. Unlike speech, where the raised voice commands attention, writing may depend on polemical style to emphasize important, morally significant issues.

It is a matter of professional judgment, however, whether a passionate defense, a denunciation, or a dispassionate critique is the appropriate mode of expression, for example, when writing about the use of torture against suspected terrorists. The same holds true for the prior decision whether to evaluate this subject at all. *The academic imperative is to protect free expression, not collegiality.*

C. CONSIDERATION OF EXTRAMURAL SPEECH AND ACTION IN POLITICALLY CONTROVERSIAL PERSONNEL DECISIONS

Controversial statements to the general public about politically or socially controversial matters are more likely to attract notice than statements made within the university or at academic gatherings. Academic work on high-profile public policies may also attract more attention than work on less controversial policies. This phenomenon is not new and not only a result of the recent expansion of electronic communication. The authors of the 1915 *Declaration* distinguished “freedom of inquiry

Professional Ethics recently recommended and the AAUP Council officially adopted, first, the deletion of “In the exchange and criticism of ideas professors show due respect for the opinions of others,” and second, the replacement of the deleted phrase with the italicized addition: “They respect and defend the free inquiry of associates, *even when it leads to findings and conclusions that differ from their own.*”

36. *Policy Documents and Reports*, 37.

and research; freedom of teaching within the university or college; and freedom of extramural utterance and action.” Remarking that infringements of the first were rare, they noted the close relationship between teaching and external speech and stressed that it was the latter that occasioned the most common “difficulties and controversies.” In fact, the 1915 *Statement* pointed out,

All five of the cases which have recently been investigated by committees of this Association have involved, at least as one factor, the right of university teachers to express their opinions freely outside the university, or to engage in political activities in their capacity as citizens. The general principles which have to do with freedom of teaching in both these senses seem to the committee to be in great part, though not wholly, the same. (292)

If this early twentieth-century statement regarding the frequency of cases arising out of extramural expression is only mildly surprising to a contemporary ear, its identification of intra- and extramural expression with freedom of teaching may be more so.

In an age when university and college teachers were among the few highly educated members of their communities, and academic disciplines and methods of instruction were far less specialized, professors were often perceived as having a role in educating the larger public as well as a corresponding responsibility “to avoid hasty, or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression” (299). However, as the 1915 *Declaration* continued,

subject to these restraints, it is not, in this committee’s opinion, desirable that scholars should be debarred from giving expression to their judgments on controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialties. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest. And, speaking broadly, it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen. (299)

If faculty members are to serve the public interest as experts and consultants in policy deliberations, then academic freedom is fundamental. In addition, by tying extramural speech to teaching, the 1915 *Declaration* reminds us that its previously cited explanation of the pedagogical need for freedom of expression similarly applies to extramural utterances. Public as well as student respect for teachers is imperiled when “there is a

suspicion that the teacher is not expressing himself fully or frankly, or that college and university teachers in general are a repressed and intimidated class who dare not speak with . . . candor and courage” (296).

The 1940 *Statement* incorporates both the protection of extramural expression and the exhortation to professional restraint and respect for the opinion of others found in the 1915 *Declaration*. A contemporaneous footnote adds that, should an administration challenge a faculty member’s fitness as a result of extramural expression, “the administration should remember that faculty members are citizens and should be accorded the freedom of citizens.” The effect of this qualification is to remove from consideration any supposed rhetorical transgressions that would not be found to exceed the protections of the First Amendment. In 1970 the Association added an interpretive comment, based on the 1964 *Statement on Extramural Utterances*, stating, “Extramural utterances rarely bear on a faculty member’s fitness for the position,” and “a final decision should take into account the faculty member’s entire record as a teacher and scholar” (6).

As with intramural statements, objections to the expression of controversial ideas may be put forward as objections to the manner of expression. But constraints on robust expression are even less appropriate outside the campus, where a speaker necessarily competes with others who enjoy the protection of the First Amendment and where rhetorical intensity to some may seem appropriate to the fundamental political and moral controversies at issue. Moreover, today, when the sound-bite is more readily heard than the more thoughtful dissertation and intemperate speech is commonplace, strong language may be more necessary to those seeking a hearing for controversial views. Consequently, *consideration of the manner of expression is rarely appropriate to an assessment of academic fitness*. Allegations of unacceptable speech should not merely be content neutral (that is, without respect to the views advanced), but, as a minimal test, a controversial attack on a commonly accepted principle, practice, or event should not be regarded as rhetorically excessive if a similar attack on an unpopular principle or practice or event would not be so regarded. Similarly, a critique of a scholar or public figure should not be deemed rhetorically excessive if a similar critique of a scholar or public figure of a different or opposite persuasion, or a critique addressing a different issue, would not be deemed rhetorically excessive.

It is important to understand why extramural speech deserves such broad institutional respect and protection.

Finkin and Post, who provide a comprehensive review of the grounds for protecting extramural expression, explain that the AAUP in a series of cases has justified this protection on the grounds of “a practical concern for maintaining conditions conducive to the performance of essential faculty tasks.”³⁷ That is, if faculty members experience their institutions as repressive, these conditions will detract from their imaginative performance inside as well as outside the classroom and may confuse them regarding which statements are protected, because they are related to their field of study, and which are not, because they may be deemed irrelevant to their work.

We also note the important well-known statement of the early twentieth-century Harvard president A. Lawrence Lowell that “[i]f a university or college censors what its professors may say, if it restrains them from uttering something it does not approve, it thereby assumes responsibility for that which it permits them to say.”³⁸ Lowell’s argument, particularly if understood in the light of the difficulty of disentangling intra- and extramural expression, reflects a basic concern. The university or college that undertakes to censor faculty expression, whether intra- or extramural, would need, as in the case of certain religious institutions, to define itself as a moral arbiter and to “take sides” as an institution in matters of public controversy and concern.

This would be a difficult position for a university or college to maintain for several additional reasons. First, college and university administrations are not equipped to play this role. Second, and more important, it would be inconsistent with the basic principle set forth in *On Freedom of Expression and Campus Speech Codes*, which states, “On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.”³⁹ Particularly in an era in which e-mail messages, blogs, Facebook, YouTube, Twitter, and other electronic means of communication have eliminated the boundary between campus and public speech, *it makes no sense for an administration to discipline a faculty member for an off-campus statement that the faculty member could freely make on campus*. Nor would it make sense to permit on-campus freedom of expression only to the extent that it directly relates to an academic’s particular area of study. Also untenable would be to permit students general rights of freedom of expression

denied to the faculty. It is particularly difficult to understand, therefore, how those who have criticized campus speech codes would seek to constrain faculty extramural expression. Accordingly, *we find no basis upon which an institution might properly discipline a faculty member for extramural speech unless it implicates professional fitness*. Laws and university policies that forbid improper disclosure of protected student information or that require confidentiality in certain personnel matters are examples of laws and university policies that might implicate issues of professional fitness. Policies that forbid faculty members from commenting publicly on internal controversies or community disputes of concern to the university are examples of unsound and unacceptable constraints. Academic institutions would do best to leave charges that might criminalize politically controversial speech or expression to the courts and to focus institutional hearings solely on professional fitness.

It is not uncommon, as the recent case of former University of Colorado faculty member Ward Churchill illustrates, that a university, even while recognizing the impropriety of disciplining a faculty member for extramural utterances, pursues alternative grounds for sanction following a controversial public statement. Plainly, the fact that a faculty member has become controversial does not afford him or her protection against sanctions based on unrelated and demonstrated charges of misconduct. It is equally apparent, however, that disciplinary actions undertaken soon after a controversy emerges will not unreasonably present an appearance of retaliation and repression inimical to a climate of free expression. Similarly, in politically controversial cases, it is particularly important not to introduce a double standard that either imposes extraordinary penalties or else indicts a controversial academic if his or her actions or similar behavior by less controversial academics had been previously tolerated by the institution. *We recommend, therefore, that institutions be especially careful in bringing charges closely following controversial extramural expression and that, should disciplinary hearings be found necessary, the administration, board, and faculty all take special care to ensure full, fair, and equitable proceedings and judgments*. There may be occasions when one should consider the benefits of deferring review until a time when a more dispassionate evaluation is possible. Such a determination requires careful, contextual consideration of the risks and rewards by members of the faculty and the administration. No universal rule can apply. An institution that resists external pressure and asserts its values in a timely review has clearly set an ideal standard. When public

37. Finkin and Post, *For the Common Good*, 140.

38. *Ibid.*, 138.

39. *Policy Documents and Reports*, 37.

and political pressure is overwhelming, however, allowing time for controversies to be defused may be one way to preserve institutional independence.

Finally, there is the matter of extramural speech that amounts to “expressive conduct,” “gross personal misconduct,” and, at an extreme, criminal conduct. Though the AAUP’s 1956 report, as well as Association policy throughout the McCarthy era, did reject “dismissal for avowed past or present membership in the Communist Party taken by itself,” it did justify dismissal “on the ground, established by evidence, of unfitness to teach because of incompetence, lack of scholarly objectivity or integrity, serious misuse of the classroom or of academic prestige, gross personal misconduct, or conscious participation in a conspiracy against the government” (*Academic Freedom and Tenure in the Quest for National Security*, 58).

Significantly, that report distinguishes Communist Party membership from “conscious participation in a conspiracy.” The current “war on terror” requires a similar distinction between support for various political causes and nationalist movements and “conscious” participation in “terrorist conspiracies.” Determination of criminal conduct is clearly a matter for the courts, not the academy, but, under the policy set forth in the 1956 report, conviction of actual participation in a conspiracy of this nature in a judicial proceeding would be pertinent though not necessarily determinative to a review of professional fitness in an academic hearing. We reaffirm the 1956 report’s position that a criminal conviction is not dispositive of fitness for professorial office. Recent judicial expansion of the scope of what is encompassed by illegal “material support” for governmentally identified terrorist groups, echoing the expansion of conduct criminalized during World War I, the civil rights movement, and the Vietnam War, should inspire caution; a faculty hearing committee should give only such weight to a criminal conviction as is justified by the facts of the case. The Association has already expressed concern regarding the 2004 denial of a visa to Professor Tariq Ramadan (a ban subsequently lifted in 2010) and the questionable actions against the University of South Florida’s Sami Al-Arian and the City University of New York’s Mohamed Yousry. We are further concerned by the recent decision of the Supreme Court to include expressive conduct in the current legal prohibition on “material support” for governmentally identified terrorist groups. These and similar judicial rulings cast so wide a net as to ensnarl those who intend only to support or encourage legitimate political and humanitarian objectives.

The widely endorsed 1967 *Joint Statement on Rights and Freedoms of Students* observes that

[s]tudents who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the functions of general laws. Only where the institution’s interests as an academic community are distinct and clearly involved should the special authority of the institution be asserted. . . . Institutional action should be independent of community pressure. (276)

We believe that similar caution should be exercised regarding academic appointees, with the added proviso that institutions should exercise special restraint regarding expressive conduct. There are many forms of expressive conduct whose criminal status may be a matter of historical contingency (such as protesting Jim Crow laws) or may legitimately be debated (such as burning draft cards). Additionally, there are many forms of expressive conduct whose criminalization might plausibly constitute a threat to academic freedom. There may, therefore, be circumstances in which an academic hearing or review committee might reasonably find that a faculty member’s criminal conviction for such conduct is not pertinent to a determination of his or her professional fitness.

As a general matter, *academic institutions should take special care to ensure that the sanctions resulting from judicial determinations of criminal activity involving expressive conduct are not unnecessarily compounded by institutional sanction: for faculty as for students, institutional authority should never be used merely to duplicate the functions of general laws. If, however, institutions are legally compelled to take such action, or if the faculty committee considers it pertinent to an evaluation of professional fitness, then academic hearings should be confined to the issue of whether the alleged conduct has substantially impaired the professional fitness of the academic appointee.* The point in question should not be whether an academic hearing or review committee believes that a faculty member should or should not have been charged with criminal activity in the first place; rather, the point in question should be whether the faculty member’s extramural speech or conduct is pertinent to a determination of his or her conduct as a professor.

D. COMPELLED POLITICAL DECLARATIONS: LOYALTY OATHS AND DISCLAIMERS

Many politically controversial academic personnel decisions have involved compelled political declarations:

loyalty oaths that affirm one's support for federal or state constitutions, that abjure certain beliefs, or that disclaim specified associations and activities. They have been a historical reality in this country since before the founding of the nation. Although sometimes viewed as mere rituals, such oaths overtly and covertly pressure individuals to conform in a manner antithetical to the core of higher education.

While loyalty oaths may appear to be remote and insignificant Cold War relics, state affirmation oaths for employees of public universities and colleges have cycled in and out of use and have never entirely disappeared. Courts have found that such oaths may be constitutional if pertinent to a government employee's job responsibilities and not overly broad. Disclaimer oaths have also reemerged as a little noted instrument of the war on terror despite judicial precedents finding many, if not most, such oaths unconstitutional. Ohio has recently introduced a disclaimer requirement for certain public employees and state contractors that, according to the American Civil Liberties Union (ACLU), requires

people and businesses to sign a form titled "Declaration Regarding Material Assistance/ Non-assistance to a Terrorist Organization."

Among those required to sign are new employees of the State of Ohio and its subdivisions (including colleges & universities).⁴⁰

Though the ACLU has successfully challenged the application of this requirement to attorneys, faculty members and other university employees must still sign the form.

The AAUP's 1956 report strongly criticized loyalty oaths, especially disclaimer oaths, explaining:

Nothing in the record of college and university teachers as a group justifies the imputation to them of a tendency toward disloyalty to the government or subversive intent with respect to the nation's institutions. In this regard they are not different from all other people. We deplore the recent tendency to look upon persons or groups suspiciously and to subject their characters and attitudes to special tests as a condition of employing them in responsible positions. . . . Only by gross misconduct, proved by means of due process, should the right to this trust be lost, and then

only to the extent necessary to defend the common interest. (*Academic Freedom and Tenure in the Quest for National Security*, 56)

We join with the authors of that report who, more than fifty years ago, deplored the unfortunately resurgent "tendency to look upon persons or groups suspiciously and to subject their characters and attitudes to special tests as a condition of employing them in responsible positions" (56).

Many loyalty oaths have been found to be unconstitutional, in some cases because they have been ruled unconstitutionally broad or in violation of an individual's constitutionally protected right to freedom of association. They have also been found to violate academic freedom, as in the 1967 Supreme Court case in which the court declared that academic freedom is "a special concern of the First Amendment" and ruled that a New York loyalty oath program was unconstitutional in that it "cast a pall of orthodoxy over the classroom."⁴¹ While this decision undermined many loyalty oath programs in higher education, such oaths have not been completely eradicated.

As recently as 2008, two California faculty members risked their positions when they refused to sign affirmation loyalty oaths, which required public employees to swear or affirm that they will "support and defend" the state and federal constitutions. As Quakers, they refused to sign an oath that might entail compromising their nonviolent principles, and both were dismissed as a result. Fortunately, after significant publicity in each case, they were eventually reinstated. One faculty member signed the oath after the university attached a statement saying that public employees were not required to "bear arms or otherwise engage in violence" in order to fulfill the tenets of the oath. The other faculty member was allowed to attach to the signed oath a statement expressing her own views. Although both cases ended positively for the faculty members involved, the fact that these cases occurred so recently necessarily underscores the ongoing threat loyalty oaths present to academic freedom. As an AAUP staff member explained, *a faculty member's principled refusal to sign a loyalty oath should not "be a justifiable reason for not appointing a faculty member or for terminating an appointment. . . . It is not too much to hope that public colleges and universities required to administer*

40. American Civil Liberties Union of Ohio, "Clients Needed to Challenge Ohio Patriot Act: Only the Brave Need Apply" (January 2007), <http://www.acluohio.org/issues/governmentspying/drma.asp>.

41. *Keyishian v. Board of Regents*, 385 US 589, 87 S. Ct. 675.

the oath will appoint and retain faculty members as determined by academic considerations, not dictated by legislative enactments.”⁴²

E. CIVIL DISOBEDIENCE

Extramural expression encompasses expressive conduct such as contributing to political campaigns, signing petitions, picketing, and engaging in lawful boycotts. Civil disobedience, insofar as it entails illegal acts or deliberate violations of university regulations, does not, however, enjoy the same unqualified protection as lawful intra- or extramural expression. In 1970, in response to the campus activism of the 1960s, the AAUP’s governing Council issued *Freedom and Responsibility*, which reminded academics of their responsibility to respect the free expression of all and cautioned that “[t]he expression of dissent and the attempt to produce change, therefore, may not be carried out in ways that injure individuals or damage institutional facilities or disrupt the classes of one’s teachers or colleagues.”⁴³

In practice, the line between acceptable and unacceptable protest is often difficult to draw. For example, moderate heckling or picketing of a speaker is generally acceptable but not when it obstructs the program by preventing entry to the auditorium or drowning out the speaker. A rare diversion or suspension of a class to recognize an extraordinary event—such as the assassination of Martin Luther King, the Kent State and Jackson State killings, or September 11—does not constitute persistent intrusion of irrelevant material or a substantial failure to perform assigned responsibilities, but the recurrent or prolonged disruption of instruction would be impermissible. The more recent case of a faculty member who assisted an effort to overload a university website as part of a protest against university cutbacks may require similar care to differentiate the modest inconvenience occasioned by a largely symbolic breach of the rules from a substantial and unacceptable violation.⁴⁴

42. From a statement issued in May 2008 by Jonathan Knight, then-director of the AAUP’s Department of Academic Freedom, Tenure, and Governance.

43. *A Statement of the Association’s Council: Freedom and Responsibility, Policy Documents and Reports*, 173. Subsequent page references will be given in the text.

44. For a discussion of the application and implication of principles of academic freedom to electronic and digital communications, see *Academic Freedom and Electronic Communications, Policy Documents and Reports*, 45–50.

Freedom and Responsibility provides detailed recommendations for such circumstances, which prudently include the consideration of “sanctions other than dismissal, such as warnings and reprimands.” Moreover, it states that in all such personnel actions “it is vital that proceedings be conducted with fairness to the individual, that faculty judgments play a crucial role, and that adverse judgments be founded on demonstrated violations of appropriate norms” (174). *We would also reemphasize that in these matters, as in disciplinary or other personnel proceedings generally, assessment of a particular charge of misconduct should be considered in the light of the faculty member’s professional record considered as a whole. Institutions should be similarly cautious about imposing sanctions on the basis of inferences about a controversial individual’s supposed lack of remorse and possible future activities.*

IV. Procedural Safeguards Required in the Consideration of Politically Controversial Academic Personnel Decisions

Academic freedom depends on the requirement that dismissal from a tenured position or within the term of a contract may occur only after demonstration by the administration of adequate cause (consistent with the principles discussed above) in an academic hearing before a faculty committee and subsequently, if necessary, the governing board, in accordance with the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the derivative Regulations 5 and 6 of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*. Even in the case of a nonrenewal or the denial of reappointment to an academic position, a faculty member who alleges a violation of academic freedom or discrimination should have the opportunity to request a review of the decision and a hearing before a faculty committee, in accordance with the provisions of the AAUP *Statement on Procedural Standards in the Renewal or Non-renewal of Faculty Appointments*. Faculties and administrations engaged in the resolution of a politically controversial case should carefully consider these and related Association statements.

As the historical review has shown, however, additional care may be required in the case of politically controversial personnel decisions. In such circumstances, faculty members as well as administrators and boards have at times been improperly influenced by the desire to protect the institution from public embarrassment at the cost of sacrificing the rights of a

controversial academic colleague. Also compromised is the ability of academics and universities to fulfill their social responsibilities, both community service and involvement in key policy debates of the day. Due process in these circumstances requires special care to ensure that appropriate procedures are fully and fairly applied and that decisions are carefully and correctly reasoned. In the following discussion, we focus on procedural problems that emerged in our review of politically controversial cases and suggest corrective measures.

A. SOUND AND FAIR POLICIES AND PROCEDURES

Establishment of procedural protections against political intrusion into academic personnel decisions requires preparation before a controversy emerges. *The institution should have in place sound and fair procedures consistent with AAUP-recommended standards. Faculty members and administrators should be familiar with these procedures and understand the need to safeguard academic freedom.*

B. MEASURES TO DETER POLITICAL INTRUSION INTO ROUTINE PERSONNEL PROCESSES

Outside intervention sometimes precedes a personnel review. Anonymous letters and statements should be entirely excluded from any proceeding. More commonly, intervention takes the form of signed but unsolicited letters or of orchestrated complaints. These may arise from alleged statements in the classroom, from controversial scholarly research and publications, or from extramural statements or activities.

As the 1915 *Declaration* noted, classroom utterances “are often designed to provoke opposition or arouse debate” and “should be considered privileged communications” (299). *Complaints regarding alleged classroom statements forwarded by outside agencies or individuals should generally be ruled out of consideration in initiating or conducting personnel reviews.* Complaints by students enrolled in the pertinent class may be reviewed in accordance with institutional policies consistent with the *Joint Statement on Rights and Freedoms of Students*, but policies should ensure that *when complaints regarding alleged classroom speech arise from or are promoted by student political groups, the complaints should be respected only to the extent merited by the complaints and only when they are based on evidence from students who were actually enrolled in the course or courses in which the alleged inappropriate conduct occurred and who were present to observe that conduct.*

Unsolicited letters, organized complaints, and accusations in the press and other media may also arise from scholarly controversy or from extramural statements and activities. Subject to the qualifications below, unsolicited accusations, even from academics at other institutions, should be viewed with heightened skepticism in politically controversial cases. Established procedures should ensure that such accusations never in themselves provide an acceptable basis for initiating a disciplinary proceeding, and they should generally not be considered in evidence in any personnel proceeding. Colleges and universities should have written policies prohibiting such use.

Unsolicited communications referring to legitimate nonpolitical concerns, such as sexual harassment, plagiarism, or other professional dereliction, cannot be ignored, however. Rather, they should be separately reviewed through appropriate and established academic procedures. The allegations and findings should then be added to the personnel file or included in subsequent personnel proceedings only if substantiated. In the event that, despite these recommendations, institutional policy permits the inclusion of unsolicited material, then the academic under review should be granted access to the documents and a timely opportunity for rebuttal, and consideration should be limited to the issue of direct and substantial applicability to professional fitness.

University policies do often provide for the formal solicitation of external reviewers. *Established policies should provide for careful professional review and care in the selection of such outside expert reviewers. In the event of politically controversial reviews, special care should be taken to ensure that those external and internal academics invited to provide a professional evaluation are able and willing to conduct a review without regard to political concerns and in keeping with appropriate scholarly and disciplinary standards.*

C. MEASURES TO ENSURE DISPASSIONATE REVIEW IN PASSIONATE CIRCUMSTANCES

Political controversy often encourages a hasty and ill-considered response just when a more deliberate, thoughtful response is particularly required. This is especially a problem when an actual or anticipated public demand leads an administration to seek an unscheduled review. The administration may believe that haste is necessary to reassure the board, public, or legislature that the matter is in hand. However, haste itself is more likely to indicate that the matter has gotten out of hand. In these circumstances, the prompt

establishment or reestablishment of orderly procedures is critical.

The AAUP recommends that when an administration questions the fitness of a faculty member, it first discuss the matter with the affected individual. If the problem remains unresolved and the administration seeks further action, then

a standing or ad hoc committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation, to effect an adjustment, if possible, and, if none is effected, to determine whether in its view formal proceedings to consider the faculty member's dismissal should be instituted. (1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*)

Some institution-specific faculty review procedures, such as those for hearings on charges of professional misconduct or sexual harassment, may not call for this preliminary consultation. *The AAUP generally considers that a faculty review is essential prior to the filing of charges in any case arising from or in the midst of a political controversy.*

The administration would be well advised to follow the committee's recommendations. If the committee recommends against proceeding and the president decides otherwise, the president should provide the committee with an opportunity to reconsider the matter and to respond to his or her reasons for proceeding. If the committee then agrees with the president's desire to proceed or if the president remains dissatisfied with the committee's recommendation against proceeding, the president may then formulate specific charges and initiate a formal hearing.

In the midst of a political controversy, faculty members selected to serve on a preliminary review committee may believe that any proceeding would be unduly influenced by external forces or considerations. They may question whether to participate in a preliminary proceeding that they believe would inevitably lead to charges, whatever they recommend, and then to a predetermined or ill-considered outcome. We recognize that some faculty members would not wish to serve in such circumstances and that faculty members may have legitimate concerns that their advice may be overruled. We note, however, that failure to participate might further diminish the procedural protections afforded the accused. Thus, the 1956 report advised regarding faculty participation in hearing committees that

[f]aculty members should be willing to accept the difficult responsibility of serving on such

committees and, when cases are presented, should accept the painful need to reach decisions. On occasion, problems have arisen because faculty committees have defaulted in their responsibility to render unequivocal advice to administrative officers and trustees. (*Academic Freedom and Tenure in the Quest for National Security*, 59)

We agree that faculty members should ordinarily accept this responsibility to serve on advisory and review committees, including the responsibility to offer strong recommendations regarding the proper conduct of any subsequent proceedings.

We recommend, however, that *to the extent members of the committee believe the process is too hasty or ill-considered, or the outcome predetermined, its members should explain their views in the advice they provide to the president and firmly recommend that if the hearing goes forward despite their recommendation, the administration should defer the proceeding until it can occur free of undue political constraints or, failing this, at least without injudicious haste and with all the essential procedural safeguards. If, or to the extent that, the president proceeds regardless of this advice, the public nature of the decision to proceed should relieve the committee of any impediment to explaining publicly its concerns to and requesting support from the faculty senate or other faculty governance body that has the responsibility to scrutinize the process and to ensure the affordance of all the procedural protections requisite to protecting academic freedom.*⁴⁵

D. WEIGHING CHARGES

Dismissal proceedings require "a statement of charges, framed with reasonable particularity" (Recommended Institutional Regulation 5b). The charges must, of course, be consistent with the requirement that "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" (Recommended Institutional Regulation 5a). Nonetheless, weighing charges in the midst of political controversy can be difficult.

Substantial evidence of misconduct is relevant and cannot be ignored. Charges based on previously known

45. For an example of a deferral of proceedings to enable a difficult academic decision to be made "when there is less controversy and heat," see "Academic Freedom and Tenure: State University of New York at Stony Brook," 40.

and accepted conduct should not be renewed or reconsidered in the midst of a political controversy. In addition, as the Association observed in the context of raising objections to the post-tenure review process, “Such a review must not become the occasion for a wide-ranging ‘fishing expedition’ in an attempt to dredge up negative evidence.”⁴⁶ Moreover, in these circumstances, charges and penalties should be consistent with comparable cases, and small matters should not suddenly assume greater than usual significance. (See, for example, the observation by an investigating committee in 1958 that “a university must be on guard against the temptation to strengthen the case against a troublesome teacher through the addition of marginal and perhaps irrelevant charges.”)⁴⁷ *In politically controversial cases, the need for specific charges narrowly formulated with “reasonable particularity” does not relieve the committee or the governing board of the responsibility to weigh these charges in the light of the faculty member’s “entire record as a teacher and scholar”* (1970 Interpretive Comment 4 on the 1940 *Statement*).

E. COMPOSITION OF ACADEMIC HEARING COMMITTEES

The Association’s 1966 *Statement on Government of Colleges and Universities* provides that “faculty status and related matters are primarily a faculty responsibility.” This responsibility rests on the understanding that “scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments.” Further, “there is the more general competence of experienced faculty personnel committees having a broader charge.” As a consequence of this special competence, “the governing board and the president should, on questions of faculty status . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.”

The selection of a hearing committee is particularly difficult in the midst of a political controversy. Recommended Institutional Regulation 5c therefore provides for an “elected standing committee” in dismissal cases. In the event that a university or college does not have an “elected standing committee” that has

not been “previously concerned with the case,” then a committee should be “established as soon as possible after the president’s letter to the faculty member has been sent” (1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*). Although these statements do not specify the mode of selection for the hearing committee if there is no committee in place, they concur with the view set forth by Louis Joughin, in his 1964 study “Academic Due Process,” that “[n]o one can regard as fair the appointment of a faculty hearing committee by the administration which is to bring the charges.”⁴⁸ Especially in politically controversial cases, therefore, *it is essential that the hearing committee be elected directly by the faculty or “appointed by an appropriate elected faculty body”* (from a footnote to Recommended Institutional Regulation 4g).

Further, “the choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held by the academic community” (1958 *Statement*). Objectivity and competence are, of course, subject to dispute. Though participation of nontenured faculty on such committees may be necessary or appropriate in some circumstances, as a general rule faculty members with tenure are better able to exercise independent judgment (Joughin, 283). Recommended Institutional Regulation 5c specifically provides that committee members “deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or at their own initiative.” A 1963 AAUP staff advisory letter further recommends that when a committee member “has spoken or acted in a manner to call his *objectivity* into question, he should be disqualified from serving on the hearing committee, preferably at his own suggestion, but by challenge if necessary.”⁴⁹ Joughin recommends additionally, and we agree, that “[c]hallenges for cause should certainly be permitted at any appropriate point, even at the end.” The hearing committee should resolve disputed challenges. Limited peremptory challenges by either party might also be permitted to avoid public arguments about alleged bias (282–83).

48. Louis Joughin, “Academic Due Process,” *AAUP Bulletin* 50 (1964): 282. Subsequent citations will be given parenthetically.

49. Letter No. 3 in *Academic Freedom and Tenure: A Handbook of the American Association of University Professors*, ed. Louis Joughin (Madison: University of Wisconsin Press, 1969), 125.

46. *Post-Tenure Review: An AAUP Response, Policy Documents and Reports*, 64.

47. “Academic Freedom and Tenure: State University of New York at Stony Brook,” 36.

Competence may also be an issue. Recommended Institutional Regulation 5c(11) provides that “[i]n the hearing of charges of incompetence, the testimony will include that of qualified faculty members from this or other institutions.” The 1915 *Declaration* similarly, but more fully, proposed that in a hearing on charges of “professional incompetency,” a “formal report upon [the faculty member’s] work should be first made in writing by the teachers of his own department and of cognate departments in the university, and, if the teacher concerned so desires, by a committee of his fellow specialists from other institutions” (301). These recommendations do not, however, refer to the composition of the hearing committee itself but only to the evidence that should be included. Moreover, our existing recommendation applies only to hearings regarding alleged incompetence and not to alleged professional misconduct. The need for expert testimony may, however, extend to the issue of professional misconduct and may involve special expertise, inasmuch as one discipline’s procedures or knowledge may not be those of another. The AAUP and several disciplinary associations have, for example, recently expressed concern about the application of the standards required by medical human subjects review boards to disciplines such as sociology, history, and anthropology. Should this concern also extend to the selection of committee members? The AAUP has not made such a recommendation because it would greatly complicate the process of establishing standing hearing committees. It might also compromise the effort to avoid bias, since colleagues from the faculty member’s own department would be more likely to have already taken sides.

Thus, two issues may be presented. One is of possible bias on the part of the members of the hearing committee; the other an arguable want of disciplinary expertise. Departmental colleagues, who make the initial decisions on renewal, tenure, and promotion, may share certain disciplinary predispositions or personal biases; but their recommendations are usually subject to review by college-wide or university-wide faculty committees, which serve as a check on potential impermissible bias. In terms of hearing committee composition, as Joughin observes, even members of elected committees may be disqualified for possible bias, for example, on the basis of membership in the same department as the accused faculty member (124).

The lack of expertise is more subtle, as academics can rightly be assumed to share some common norms of truth seeking and exposition. Association-recommended rules allow for the reception of expert witness testimony

when a hearing committee believes it helpful. But *in rare cases, experts from outside the university may be appointed to a hearing committee. They could be designated jointly by the administration and the accused faculty member, chosen separately by them, selected by the hearing committee, or engaged through some combination of these methods at the committee’s discretion.*

F. CONFIDENTIALITY AND TRANSPARENCY

Recommended Institutional Regulation 5c provides that “public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution.” In ordinary personnel cases, this is plainly a sound policy based on the genuine need to respect the privacy of the faculty member under review, to encourage frank statements by witnesses and committee members, and to ensure that unsubstantiated charges and claims are not publicized prior to careful committee review.

What happens may be quite different, however, in a politically charged case in which the issues are already in the public domain and outsiders can continue a barrage of attacks while the faculty member, the hearing committee, and the administration are silenced. In such a situation, questions arise about whether to hold an open hearing and how to maintain confidentiality. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* provides for some flexibility: “The committee, in consultation with the president and the faculty member, should exercise its judgment as to whether the hearings should be public or private.” Maintaining confidentiality may also be possible, especially if the administration vigorously defends the committee members, who should, however, retain the right to defend their professional reputation against partisan attacks. The administration must also safeguard the independence of the hearing panel and publicly insist on the need to await the panel’s finding before reaching a judgment on the issues. Even so, confidentiality will not always ensure a fair hearing. *The committee should give great weight to the preference of the faculty member in these circumstances, both as to the openness of the hearing and the right to speak publicly on the issues. Of course, if the faculty member speaks out publicly or insists on an open hearing, the committee and the administration have a right to respond. In any case, the deliberations of the committee should be conducted in private.*

In order to avoid even the appearance of politically based decision making, once a decision has been reached, the decision and its basic rationale should be made public unless the institution and the faculty member have reached a settlement or have made a confidentiality agreement. If the governing board disagrees with the recommendations of the hearing committee, it should, as provided in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, convey its objections to the committee and request reconsideration prior to reaching a final judgment. In reaching its final determination, the board should carefully consider the consequences for the climate for academic freedom and shared governance of reaching a decision contrary to the faculty's recommendation. *The board would be well advised to follow the advice of the faculty committee, particularly in politically controversial cases in which academic freedom is at stake. If, after such consideration, the board nonetheless reaches a determination contrary to the recommendations of the hearing committee or increases the severity of sanctions, the board must provide the faculty committee and the individual with written, detailed, and compelling reasons for reversing the committee's recommendation (Statement on Government)*. These reasons should meet the requirements for substantive due process discussed in the following subsection of this report.

G. ENSURING SUBSTANTIVE DUE PROCESS

In politically controversial cases, even when AAUP-recommended procedures have been followed step by step, nonpartisan observers may still question whether the review was conducted fairly and the decision was soundly reasoned. Partisan observers are, of course, even more likely to question results with which they disagree and to allege that only the form or appearance and not the substance of due process has been observed. It is very important, therefore, to ensure not only that procedural safeguards have been followed, but that the evidence is carefully weighed and that the decision reasonably accords with the evidence and sound principles. In controversial cases, it is unlikely that everyone will agree with the outcome, or even with the idea that there is only one valid outcome, but it is essential that the outcome be academically reasonable. *That is, the decision should be one that an experienced, informed, and disinterested academic might reach on the basis of clear and convincing evidence and of the academic principles at issue, even if it is not the only possible such decision.*

H. OBLIGATIONS OF THE HEARING COMMITTEE

Since the AAUP recommends that the administration and board ordinarily accept the faculty recommendation on academic matters, the AAUP does not itself usually question the academic judgment of the faculty when it is based on AAUP-supported standards. Even in politically controversial cases, we have viewed faculty academic judgments based on sound procedures and consistent with appropriate principles as presumptively valid. Moreover, even when a hearing transcript is available, it is difficult to evaluate reliably the judgments of those who have actually heard witness testimony and engaged in extensive deliberation.

Nonetheless, especially in politically controversial cases, the academic community needs to ensure that faculty committees conduct their hearings fairly and reach decisions consistent with sound academic principles. The AAUP recommends, especially in the event that a hearing is not conducted publicly, that, “[a]t the request of either party or the hearing committee, a representative of a responsible educational association . . . be permitted to attend the proceedings, as an observer” (Recommended Institutional Regulation 5c[5]). The AAUP further recommends that a “verbatim record of the hearing or hearings . . . be taken and a typewritten copy . . . made available to the faculty member without cost, at the faculty member’s request” (Recommended Institutional Regulation 5c[7]). These practices not only directly encourage care in the conduct of hearings but also facilitate subsequent review and provide some assurance that the hearings have been fairly conducted and the decisions soundly reached.

Above all, the faculty committee needs to present a reasoned statement of its findings. In dismissal cases, the Association generally recommends that the committee “make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable” (1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*). *In politically controversial dismissal cases, a written, reasoned opinion is essential.* In nonreappointment cases, the administration has the responsibility for providing written reasons if the faculty members request them. These faculty members may use that statement as the basis for requesting a reconsideration in routine cases as well as for supporting a formal hearing if they believe that the nonrenewal decision was based on considerations that are discriminatory or inconsistent with principles of academic freedom. *Substantive due process requires that the written reasons resulting from such academic proceedings be consistent with the evidence and sound academic principles.* In view

of the complexity and variations in the academic judgments involved in such cases, however, substantive due process does not require that the result be the only acceptable or reasonable one. Severe sanctions, however, do require especially convincing support.

I. OBLIGATIONS OF THE ADMINISTRATION AND THE GOVERNING BOARD

The administration and the governing board of the institution should be guardians of the academic freedom of the institution and the academic community. The president has a responsibility to represent the institution “to its many publics” and “to present the views of the faculty, including dissenting views, to the board” (*Statement on Government*). This responsibility may be particularly challenging in the case of a state university, which must and should take the concerns of public constituencies seriously. At the same time, however, the administration of the institution has a concomitant, and indeed a greater, obligation to ensure that the public’s concerns do not chill the atmosphere in which controversial views may be expressed by the members of the university’s academic community and to speak out firmly when freedom of expression is under attack.⁵⁰

In politically controversial cases the president should, therefore, be particularly mindful of her or his obligation to respect the faculty’s role regarding judgments of faculty competence and conduct.

The board also has a special responsibility to serve as a buffer against political intrusion. “When ignorance or ill will threatens the institution or any part of it, the governing board must be available for support” (*Statement on Government*). Unfortunately, as the 1915 *Declaration* recognized, the governing board itself may be a source of or conduit for political intrusion. Accordingly, in politically controversial cases, assurance of the board’s respect for the faculty recommendation is especially important. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* recommends general procedures to ensure that the board carefully considers the faculty recommendation. But *in those politically controversial cases where a governing board exercises its extraordinary authority to reverse or alter the faculty recommendation, it is also imperative that the board fully meet its obligation to provide written compelling reasons stated in detail.*

Compelling reasons must be more than ordinarily persuasive. A general statement about “the good of the institution” or the fiduciary responsibilities of the board does not meet the standard of specificity and is not compelling. Legitimate concern for the reputation of the institution should, in any case, include concern for its reputation for upholding principles of academic freedom and does not override the obligation to protect those principles. Rather, *the board’s reasoning must be consistent with the basic requirement that “[a]dequate cause for dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens”* (Recommended Institutional Regulation 5a).

V. Conclusion and Summary of Recommended Principles and Procedures

In summation, we join Fritz Machlup, who a half century ago expressed our present concerns particularly well in noting that

some scholars, through their writings, teachings, speeches, or associations, offend the sensibilities of people in power, or of pressure groups, so potently that complaints of “abuse” of academic freedom are made and interventions against the perpetrators of the “abuse” are demanded; . . . when these pressures and temptations to interfere are resisted and the offenders are assured of their immunity, then, and only then, is academic freedom shown to be a reality.⁵¹

We endorse the belief of the authors of the AAUP’s 1958 report, who viewed

the maintenance of academic freedom and of the civil liberties of scholars, not as a special right, but as a means whereby we may make our appointed contribution to the life of the commonwealth and share equitably, but not more than equitably, in the American heritage. Society has the power to destroy or impair this freedom; but it cannot do so and retain the values of self-criticism and originality fostered by higher education.⁵²

To this end we recommend the following principles and procedural standards.

51. Fritz Machlup, “On Some Misconceptions concerning Academic Freedom,” *AAUP Bulletin* 41 (1955): 768.

52. *Academic Freedom and Tenure in the Quest for National Security*, 55.

50. “Academic Freedom and Tenure: State University of New York at Stony Brook,” 62.

Principles to Guide Decision Making Regarding Politically Controversial Academic Personnel Decisions

The fundamental principle is that *all* academic personnel decisions, including new appointments and renewal of appointments, should rest on considerations that demonstrably pertain to the effective performance of the academic's professional responsibilities.

A. ASSESSING CHARGES OF INDOCTRINATION IN THE CLASSROOM

1. When faculty are charged with indoctrination, only the proven demonstration of the use of “dishonest tactics” to “deceive students”—not the political views, advocacy, or affiliations of the faculty member—may provide grounds for adverse action.

2. In a politically controversial proceeding, the admonition to tailor questions narrowly to permissible issues of academic fitness and to avoid any inquiry into political affiliations and beliefs is plainly imperative.

3. Neither the expression nor the attempted avoidance of value judgments can or should in itself provide a reasonable ground for assessing the professional conduct and fitness of a faculty member.

4. “So long as opinion and interpretation are not advanced and insisted upon as dogmatic truth, the style of presentation [in the classroom] should be at the discretion of the instructor” (*Freedom in the Classroom*).

5. Whether a specific matter or argument is essential to a particular class or what weight it should be given is a matter of professional judgment, based on the standards of the pertinent disciplines and consistent with the academic freedom required if the disciplines themselves are to remain capable of critical self-reflection and growth.

6. Exclusion of controversial matter, whether under the persistent-intrusion clause of the 1970 Interpretive Comment 2 or in the name of protecting students from challenges to their cherished beliefs, stifles the free discussion necessary for academic freedom.

B. COLLEGIALITY AND CIVILITY ARE NOT APPROPRIATE INDEPENDENT CRITERIA FOR EVALUATION

The academic imperative is to protect free expression, not collegiality.

C. CONSIDERATION OF EXTRAMURAL SPEECH IN POLITICALLY CONTROVERSIAL PERSONNEL DECISIONS

1. Consideration of the manner of expression is rarely appropriate to an assessment of academic fitness.

2. An administration should not discipline a faculty member for an off-campus statement that the faculty

member could freely make on campus.

3. We find no basis upon which an institution might properly discipline a faculty member for extramural speech unless that speech implicates professional fitness.

4. We recommend, therefore, that institutions be especially careful in bringing charges closely following controversial extramural expression and that, should disciplinary hearings be found necessary, the administration, board, and faculty all take special care to ensure full, fair, and equitable proceedings and judgments.

5. Academic institutions should take special care to ensure that the sanctions resulting from judicial determinations of criminal activity involving expressive conduct are not unnecessarily compounded by institutional sanction: for faculty as for students, institutional authority should never be used merely to duplicate the functions of general laws. If, however, institutions are legally compelled to take such action or if the faculty committee considers it pertinent to an evaluation of professional fitness, then academic hearings should be confined to the issue of whether the alleged conduct has substantially impaired the professional fitness of the academic appointee.

D. COMPELLED POLITICAL DECLARATIONS: LOYALTY OATHS AND DISCLAIMERS

A faculty member's principled refusal to sign a loyalty oath should not be a justifiable reason for not appointing a faculty member or for terminating an appointment.

Procedural Safeguards Required in the Consideration of Politically Controversial Academic Personnel Decisions

A. SOUND AND FAIR POLICIES AND PROCEDURES

The institution should have in place sound and fair procedures consistent with AAUP-recommended standards. Faculty members and administrators should be familiar with these procedures and understand the need to safeguard academic freedom.

B. MEASURES TO DETER POLITICAL INTRUSION INTO ROUTINE PERSONNEL PROCESSES

1. Complaints regarding alleged classroom statements forwarded by outside agencies or individuals should be generally ruled out of consideration in initiating or conducting personnel reviews.

2. When complaints regarding alleged classroom

speech arise from or are promoted by student political groups, the complaints should be respected only to the extent merited by the complaints and only when they are based on evidence from students who were actually enrolled in the course or courses in which the alleged inappropriate conduct occurred and who were present to observe that conduct.

3. Established policies should provide for careful professional review and care in the selection of outside expert reviewers. In the event of politically controversial reviews, special care should be taken to ensure that those external and internal academics invited to provide a professional evaluation are able and willing to conduct a review without regard to political concerns and in keeping with appropriate scholarly and disciplinary standards.

C. MEASURES TO ENSURE DISPASSIONATE REVIEW IN PASSIONATE CIRCUMSTANCES

1. The AAUP generally considers that a faculty review is essential prior to the filing of charges in any case arising from or in the midst of a political controversy.

2. To the extent that members of a preliminary consultative or hearing committee believe the process is too hasty or ill-considered or the outcome predetermined, its members must explain their views in the advice they provide to the president and firmly recommend that if the hearing goes forward despite their recommendation, the administration should defer the proceeding until it can occur free of undue political constraints or, failing this, at least without injudicious haste and with all the essential procedural safeguards. If, or to the extent that, the president proceeds regardless of this advice, the public nature of the decision to proceed should relieve the committee of any impediment to explaining publicly its concerns to and requesting support from the faculty senate or other faculty governance body that has the responsibility to scrutinize the process and to ensure the affordance of all the procedural protections requisite to safeguarding academic freedom.

D. WEIGHING CHARGES

In politically controversial cases, the need for specific charges narrowly formulated with “reasonable particularity” does not relieve the committee or the governing board of the responsibility to weigh these charges in the light of the faculty member’s “entire record as a teacher and scholar” (1970 Interpretive Comment 4).

E. COMPOSITION OF ACADEMIC HEARING COMMITTEES

1. It is essential that the hearing committee be elected

or appointed by an appropriate elected faculty body.

2. In rare cases, experts from outside the university may be appointed to a hearing committee. They could be designated jointly by the administration and the accused faculty member, chosen separately by them, selected by the hearing committee, or engaged through some combination of these methods at the committee’s discretion.

F. CONFIDENTIALITY AND TRANSPARENCY

1. The committee should give great weight to the preference of the faculty member in these circumstances, both as to the openness of the hearing and the right to speak publicly on the issues. Of course, if the faculty member speaks out publicly or insists on an open hearing, the committee and the administration have a right to respond. The deliberations of the committee should be conducted in private.

2. The governing board would be well advised to follow the advice of the faculty committee, particularly in politically controversial cases in which academic freedom is at stake. If, after such consideration, the board nonetheless reaches a determination contrary to the recommendations of the hearing committee or increases the severity of sanctions, the board must provide the faculty committee and the individual with written, detailed, and compelling reasons for reversing the committee’s recommendation.

G. ENSURING SUBSTANTIVE DUE PROCESS

The decision should be one that an experienced, informed, and disinterested academic might reach on the basis of clear and convincing evidence and the academic principles at issue, even if it is not the only possible such decision.

H. OBLIGATIONS OF THE HEARING COMMITTEE

1. In politically controversial dismissal cases, a written, reasoned opinion is essential.

2. Substantive due process requires that the written reasons resulting from such academic proceedings be consistent with the evidence and with sound academic principles.

I. OBLIGATIONS OF THE ADMINISTRATION AND THE GOVERNING BOARD

In those politically controversial cases in which a governing board exercises its extraordinary authority to reverse or alter the faculty recommendation, it is imperative that the board fully meet its obligation to provide written compelling reasons stated in detail. The board’s

reasoning must be consistent with the basic requirement that “[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens” (Recommended Institutional Regulation 5a). ■

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