



# ACADEMIC FREEDOM AND TENURE

## Yeshiva University<sup>1</sup>

Immediately prior to the commencement of the 1978-79 academic year, the administration of Yeshiva University sent letters to five tenured faculty members notifying them that their appointments were to be terminated immediately. The faculty members were told that they would receive severance pay for the forthcoming year but would not have any academic responsibilities. Two of the notices were subsequently rescinded. The three remaining affected faculty members—Professors Shelly Koenigsberg, Charles Patt, and Dorothy Sievers—asked the Association for advice and assistance. After discussions between the Association's staff and the administration of Yeshiva University failed to achieve a resolution, the undersigned *ad hoc* committee was appointed to investigate the cases of concern.

The members of the *ad hoc* investigating committee visited Yeshiva University on January 16-17, 1980. Vice President for Academic Affairs Blanche D. Blank and members of her staff conferred with the committee and answered a limited range of questions. The committee interviewed the three faculty members whose appointments were terminated, two former deans, the faculty members' departmental chairmen and other faculty col-

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<sup>1</sup>The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was sent to the Association's Committee A on Academic Freedom and Tenure, to the teachers at whose request the investigation was conducted, to the administration of Yeshiva University, and to other persons directly concerned in the report. In the light of the suggestions received, and with the editorial assistance of the Association's staff, the report has been revised for publication.

leagues, professors active in the Faculty Steering Committee of the Faculty of Arts and Sciences, and leaders of the organization which had been elected to represent the faculty for purposes of collective bargaining, the Yeshiva University Faculty Association.<sup>2</sup> In addition, the investigating committee listened to recorded hearings on the cases held by an *ad hoc* committee of the Faculty of Arts and Sciences in September, 1978, and it examined the extensive file on the cases that had been compiled by the Association's staff.

Yeshiva University is a private university located in New York City. Its origins are in a day school, founded in 1886, offering instruction in Jewish and General Studies. Ten years later, a theological seminary was established. Yeshiva College was established in 1928 and awarded its first baccalaureate degrees in 1932. The name Yeshiva University was adopted in 1945, and the Middle States Association of Colleges and Secondary Schools first accredited the University in 1948. Yeshiva University retains strong ties to the Orthodox Jewish community although it is considered nonsectarian and as such became eligible for New York State aid to

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<sup>2</sup>In February, 1980, the U.S. Supreme Court decided that the provisions of the National Labor Relations Act for collective bargaining were inapplicable to the Yeshiva University faculty (see *Academe*, May, 1980, pp. 188-197). The election for collective bargaining and the subsequent litigation have no particular relationship to the cases that are the subject of this report. It will be recalled, however, that the Court based its decision on findings that the faculty of Yeshiva University had such substantial roles in academic governance that they must be considered managers and they are ineligible for protection under the National Labor Relations Act.

independent secular institutions (commonly called "Bundy money") in 1970.

The University enrolls approximately 7000 students in four basic academic centers. The main campus, in the Washington Heights section of Manhattan, includes the men's undergraduate division, Yeshiva College, the Erna Michael College of Hebraic Studies, and the James Striar School of General Jewish Studies. This campus also houses the Rabbi Isaac Elchanan Theological Seminary, the Bernard Revel Graduate School, the Harry Fischel School for Higher Jewish Studies, and the site of the former Belfer Graduate School of Science (to be discussed below.) A midtown center, on Lexington Avenue and 36th Street, is the site for Stern College for Women and the Teachers Institute for Women. The Graduate Center, on lower Fifth Avenue, houses the Ferkauf Graduate School of Humanities and Social Science, the Wurzweiler School of Social Work, and the recently established Cardozo School of Law. Finally, the Albert Einstein College of Medicine and the Sue Golding Graduate Division of Medical Sciences are located at the University's Bronx Center.

The president of Yeshiva University is Dr. Norman Lamm; he assumed his office in August, 1976, following the thirty-three-year presidential term of the late Rabbi Samuel Belkin. At the time of his appointment, President Lamm was professor of Jewish philosophy at the University and also rabbi of a prominent Orthodox Jewish congregation in Manhattan. A year later, he announced a reorganization of the administrative structure by discipline instead of by individual schools, and he named a number of new administrative officers. Dr. Blanche D. Blank became vice president for academic affairs. Dr. Morton Berger became dean of the Ferkauf Graduate School and university dean for the behavioral and social sciences. In January, 1978, Dr. Arthur Komar was succeeded as dean of the Belfer Graduate School of Science by Dr. David Finkelstein, who left the University one year later to accept a deanship elsewhere. Dr. Finkelstein's responsibilities were then assumed by Dr. Karen Bacon.

#### THE CASES OF THE THREE FACULTY MEMBERS

The structural reorganization of Yeshiva University that had been announced by President Lamm was the subject of extensive discussions during the course of the 1977-78 academic year. Its effect on members of the faculty was that, with the exception of the professional schools, the academic

organization of the University would be by discipline, although the separation of the University into various colleges would remain, and faculty members who previously had taught exclusively at the graduate level could therefore be expected to teach at Yeshiva College or Stern College. In each of the cases to be discussed, the stated reason for releasing the faculty members was academic reorganization.

#### Belfer Graduate School—The Termination of the Appointment of Professor Charles Patt

The Belfer Graduate School of Science offered degrees in physics, chemistry, and mathematics. On June 27, 1977, President Lamm sent a letter to each member of the Belfer faculty announcing his decision to close the Graduate School in light of the financial needs of the University, declining enrollments, and the high costs of operation. Present graduate students were to be afforded the opportunity to complete their studies, but new admissions were suspended. The president indicated that some faculty members would be reassigned to undergraduate teaching but that the appointments of others would be terminated under procedures consistent with the January 14, 1974, Statement of Tenure and Appointment Policy of Yeshiva University. He stated that it was the University's intention to complete the reassignment or termination of appointments of faculty by June 30, 1978.

As far as the undersigned investigating committee can determine, the basic decision to close the Belfer Graduate School was made by the president and his vice presidents; the long-time dean of Belfer, Dr. Arthur Komar, was not consulted in all details, and the Belfer Faculty Welfare Committee was not consulted at all.

Pursuant to the decision, Dean Komar made plans to transfer some graduate faculty members in mathematics to undergraduate mathematics teaching, utilizing them to expand undergraduate computer science courses. He expected that most of the affected faculty members who wished to remain at the University could do so, since he anticipated the resignation of a number of senior faculty members who would seek graduate teaching positions at other universities.

In January, 1978, Dean Komar was replaced by Dr. David Finkelstein. One of Dean Finkelstein's first acts, on January 19, was to remove Dr. Charles Patt, a tenured associate professor of mathematics, from his part-time administrative position as assistant dean of the Belfer Graduate School. Professor

Patt's affiliation with Yeshiva University was of long standing. He did his undergraduate work there, received his Ph.D. from the University in 1962, then served as a research associate for three years and then was appointed as an assistant professor. Tenure was granted in 1972, and he was promoted to associate professor in 1976. He had served on a part-time basis as an administrator in the Belfer School from 1962 to 1970 as assistant to the dean and after that as assistant dean. Dean Finkelstein stated that it was his desire, for reasons of efficiency, to discontinue using faculty members for administrative tasks. Professor Patt's administrative duties were assumed by someone who was not a member of the faculty.

Dean Finkelstein also moved to reduce the number of faculty positions. Several senior faculty members who were on leave were sent inquiries as to whether they planned to return to Yeshiva University for the fall semester of the 1978-79 academic year. In several cases no answer was received. The reticence in responding may in part have stemmed from the provision in Yeshiva University's Faculty Handbook that faculty members whose appointments were terminated would receive one year's salary as separation pay, while those who resigned would not. Despite informal assurances from the mathematics chairman that the individuals would not return, the dean acted on the supposition that they would, thereby eliminating positions for less senior faculty. In the absence of resignations, he proceeded over the summer of 1978 to revise the schedules for undergraduate courses in mathematics and computer science which had been drawn up in June by the department chairman. In the chairman's schedules, courses had been provided for Professor Patt and two other mathematics professors who were subsequently to receive notices of termination of appointment. Professor Patt was scheduled to teach Information Science I, Introduction to Computer Languages; and Information Science 5 and 5 L, Introduction to Computer Science, with laboratory. Dean Finkelstein decided over the summer to revise the program in computer science and appoint a new faculty member with that specialty. Courses originally scheduled were rearranged, so that a senior professor was assigned to teach the courses planned for Professor Patt and other courses in computer science were to be taught by the new person. The total number of positions in mathematics was cut by three, effective August 29. The affected faculty members were released in the

order of seniority prescribed by the Yeshiva University regulations. At the same time, at the hearings which were held in September, 1978, the dean stated that he thought it in the interests of the University to terminate the appointments of these particular tenured faculty members. According to the tape recording of the hearings, the dean stated that Yeshiva University required individuals who were more research-oriented than the terminated faculty.

The letters of notification were dated August 29, but the recipients were to be personally notified by Academic Vice President Blank, and difficulty in locating persons over the holiday period delayed the actual receipt of notice for several days. Consistent with Yeshiva University policy, the faculty members were considered on leave of absence with pay for the 1978-79 academic year and without pay for an additional year.

The opening of the semester was a period of confusion for the mathematics program because of the failure of senior faculty members to return from leave and the pressure of student enrollments. One of the three faculty members, who had not yet received written notice, was reinstated immediately. A second, while being paid his regular salary as separation pay, was engaged as an adjunct to teach fifteen hours on overload pay. In November, 1978, the termination of his appointment was rescinded and he was returned to his full-time tenured position at the University. The third, Professor Patt, was appointed to an adjunct position teaching computer science during the fall semester. The laboratory for which he was originally to have been responsible was monitored by two advanced undergraduates. Denied a full-time position at Yeshiva University, he obtained employment with a firm in the computer industry. Despite the additional experience he thus acquired and a continuing need for courses in computer science, he was orally offered a full-time position for academic year 1979-80 only on a one-year temporary basis, without restoration of tenure. He concluded that he could not return to Yeshiva University for only a temporary position. The Yeshiva University administration has not offered to restore him to his tenured position.

#### **Ferkauf Graduate School—The Termination of the Appointments of Professors Shelly Koenigsberg and Dorothy Sievers**

In addition to the actions at the Belfer Graduate School, the appointments of two tenured faculty

members were terminated following changes at the Ferkauf Graduate School of Humanities and Social Science. The actions at Ferkauf were apparently motivated by the administration's efforts to reduce costs in the face of declining student enrollments and a decline of support through outside grants. During the academic year 1977-78, Dr. Morton Berger assumed the position of dean of the Ferkauf School and university dean for the behavioral and social sciences. He received a mandate from President Lamm to effect the reductions necessary to save Ferkauf from the fate of Belfer. By the end of the spring semester of that academic year, the dean had informed departmental chairmen that there would be some reductions in program with a possible loss of positions. By the end of the semester final plans had not been formulated. Nonetheless, letters from President Lamm dated August 29 were sent to two tenured faculty members in education notifying them of the termination of their appointments.

Under the structural reorganization that had occurred, Dean Berger was responsible for programs in the behavioral and social sciences not only at Ferkauf but at Yeshiva College and Stern College. Associate Professor of Education Shelly Koenigsberg had been appointed initially to the faculty of Stern College in 1966, and received tenure in 1973. In addition to teaching undergraduate education courses, she served for ten years as the administrator of the education program at Stern College. During the 1976-77 academic year she was on sabbatical leave. She spent the 1977-78 academic year on unpaid leave to complete a book. In the spring and summer of 1978 she made repeated efforts to learn her course assignments from the education chairman, from Vice President Blank, and from Dean Berger in order to plan her program. The dean advised her in May, 1978, that reorganization of Ferkauf was under way and that the number of faculty might have to be reduced, but that no final decision had been made as to which faculty members would be affected. In mid-July, he again informed her that no decision had yet been made.

President Lamm's August 29 letter of notification to Professor Koenigsberg stated that the reorganization of the Ferkauf Graduate School resulted in the consolidation of four department units in education into two and the phasing out of a doctoral program. Professor Koenigsberg's immediate inquiries elicited the information from her chairman that reorganization and curtailment of certain graduate

education courses meant that a more senior tenured professor had to be moved to undergraduate courses at Stern College and that there were not enough remaining courses to make up a program for Professor Koenigsberg. Her courses had been combined with courses taught by another faculty member, nontenured according to Professor Koenigsberg, to fill out a program for this individual. The investigating committee gained the understanding that the administration considers Professor Koenigsberg not to be qualified for certain of the course offerings because of state certification requirements. The administrative responsibilities which Professor Koenigsberg held prior to her two years on leave were not returned to her, and she, like the others who received the August 29 notices, was placed on a year's leave with pay and an additional year without pay.

Professor Koenigsberg conferred with Academic Vice President Blank and asked whether some combination of undergraduate teaching and an administrative assignment could be arranged for her. She also offered to do administrative work exclusively. The vice president told her that no suitable administrative position was available, that there was no teaching for her to do since her courses had been reassigned to someone senior to her, and that therefore no restoration was possible. The Yeshiva University administration has not made any subsequent offers to place Professor Koenigsberg in any type of position.

Professor Dorothy Sievers was associate professor in the Department of Special Education of Ferkauf Graduate School. She was first appointed to the Yeshiva University faculty in 1965 and received tenure in 1972. Professor Sievers has New York State certification in psychology and extensive previous experience in psychology on a teaching and clinical level, in addition to her specialty involving special educational programs for the handicapped. She taught courses in human development as well as special education. In the summer of 1978, she was responsible for chairing the supervision of three doctoral dissertations and was on the committee for four others.

As part of the reorganization of the Ferkauf Graduate School that summer, the Departments of Special Education and Psychology were consolidated, and it was announced that the doctoral program in special education was being phased out. Warned by her department chairman of possible staff reductions, Professor Sievers conferred on June 20 with Dean Berger. He told her then that he

was unable to say whether a position would be available for her in September. As with the other faculty who were given notice, she received a letter dated August 29 from President Lamm informing her of the termination of her appointment with a year of paid leave and another year of unpaid leave. The letter was postmarked September 6, and on that same day she was informed of her situation by telephone by Dean Berger. According to Professor Sievers, he told her that her appointment had been terminated because declining student enrollments had necessitated retrenchment and the merger of the two departments, and that she was the least senior tenured faculty member in the Department of Special Education. A senior colleague in special education was, however, scheduled for retirement after one more year. In a subsequent discussion with the dean on September 12 the possibility of a future administrative position was suggested, but nothing ever materialized. Students who would have been in Professor Sievers's courses in human development in the Department of Special Education were placed in developmental courses in the Department of Psychology. At the time that notice was given to Professor Sievers, there were nontenured faculty members in the Department of Psychology who were retained in the merged new department.

### Subsequent Developments

Shortly after the issuance of the letters notifying the faculty members of termination of their appointment, a review was conducted by the *ad hoc* committee from the Faculty of Arts and Sciences. The *ad hoc* committee held hearings in which representatives of the administration participated and submitted a report at a meeting of the Faculty of Arts and Sciences on October 6. Faculty members from all components of Yeshiva University were invited except for the schools of law, medicine, and social work. The committee's basic findings were as follows:

The University did not follow the generally accepted guidelines on tenure as formulated by the AAUP nor, even more narrowly, its own promulgated rules of tenure as stated in the *Faculty Handbook* of 1974.

- (a) Neither the faculty as a whole nor its elected representatives were engaged in any way in arriving at these decisions.
- (b) No evidence can be found that any serious attempts on the part of the university were made to find alternate solutions to breaking tenure.

Following discussion, the faculty members present

at the October 6 meeting approved the following resolution:

- (1) The faculty endorses the findings of the *ad hoc* committee to investigate the firings of five tenured faculty members.
- (2) The faculty censures the administration for the firing, without academic due process and without inescapable and compelling reasons, of the five tenured faculty.
- (3) The faculty demands the immediate reinstatement of these five faculty members with their tenure unbroken.
- (4) The faculty directs that this resolution be forwarded to the Board of Trustees and other interested parties.

During the course of the 1977-78 academic year, members of the Yeshiva University faculty, and particularly faculty members from the Belfer Graduate School, had kept the Association's staff informed of developments. After notice was issued to five faculty members, three of them met promptly with the staff of the Association's Northeast Regional Office.<sup>3</sup> Shortly after the October 6 meeting and the adoption of the faculty resolution, the staff discussed the matter on the telephone with Vice President for Academic Affairs Blank. This was followed by a detailed letter, dated October 31, 1978, presenting the staff's basic understanding of the situation and discussing it in the context of applicable standards supported by the Association, and suggesting departures from these standards in the administration's actions.

The staff's October 31 letter led to a meeting between the staff and Vice President Blank, with the University's counsel present for a portion of it. The position of the administration conveyed to the staff was that extensive consultation with the faculty had occurred through the various deans and that the administration acted consistently with Yeshiva University's own policies, policies which the administration depicted as in some respects better than the Association's. The staff subsequently discussed the cases of concern respectively with Dean Finkelstein and with Dean Berger. The staff then wrote to President Lamm, emphasizing that "the fundamental catalyst for the Association's inquiry to the administration remains unresolved." The letter reviewed the issue, discussed in the meetings with the vice president and the deans, as to whether the administration had followed the

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<sup>3</sup> In the case of one of these three, and of one other among the five, the notices were not implemented and they remain on the Yeshiva University faculty.

University's own regulations (which were acknowledged as varying significantly from the Association's recommended standards). The letter went on to state that

The letters of termination which were sent to the two faculty members in Education, Professors Koenigsberg and Sievers, rely primarily on departmental reorganization as the basis for termination. Professor Patt's letter of termination speaks to "consolidation" and "reorganization." The faculty has, of course, questioned both the extent of the consultations and the extent of the effort to find other positions within the University.

In his response, dated January 15, 1979, President Lamm wrote that the University scrupulously adhered to its tenure policy. He added:

It is painful indeed to lose any deserving member of our staff, tenured or otherwise, and whenever such steps are taken it is only after a long and thorough investigation of our problems. Our study of such problems always includes faculty consultation.

The decisions to terminate faculty were not easy to make, and were not undertaken lightly. I believe that any unprejudiced and objective study of the situation will confirm that the University conducted itself with fairness and probity.

Several additional conversations occurred between the Association's staff and the Yeshiva administration, but the dimensions of the differences did not change appreciably. The staff inquired as to the possibility of reinstatements of the released faculty members for the 1979-80 academic year, and it asked several questions about the funding of Professor Sievers's position. In reply, Vice President Blank reiterated the administration's position that the University's regulations had been followed. She stated in conclusion: "Since we have already discussed all the issues in great detail and shared all relevant facts and exchanged points of view, there is really nothing more that I can say." The General Secretary then authorized this investigation.

#### THE ISSUES

This discussion of the issues involved in the termination of the three appointments will first address the actions in light of Yeshiva University's stated policies and then in terms of the standards set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

The Yeshiva University administration's position

is that the terminations were carried out in accordance with the University's 1974 Statement on Tenure and Appointment Policy. There has, however, been some dispute between faculty representatives and administrators as to exactly what sections of the policy were applicable and what these sections meant. Neither an earlier version of the policy, dated 1962, nor the revised 1974 version had been approved by the faculty or its representatives, although texts formulated and approved by the administration and Board of Trustees had been shown to the Faculty Welfare Committee for comment.

The 1974 provisions dealing with termination of the appointments of tenured faculty for reasons of financial exigency require substantiation of the exigency. They also require the president to "confer with the dean and the Welfare Committee . . . regarding the policy to be followed in the reduction of staff before such action is taken." A preferred eligibility list for recall during a two-year period after termination is also provided. Unlike the provisions on financial exigency, which require consultation with the Faculty Welfare Committee, the provisions on departmental reorganization make no reference to faculty consultation. They do provide for an order of termination in the event that departmental or program reorganization permanently eliminates a position. Nontenured faculty members were to be released before any tenured faculty member's position was affected; tenured faculty members were to be released in inverse order of their rank. If practicable in the opinion of the president, tenured faculty members were first to be reassigned to new duties.

In the event of termination of appointment because of financial exigency or department reorganization, the University's policy provides that "a tenured faculty member who suffers a nondiscriminatory discontinuance of his tenured position shall be considered to be on leave with pay for one year from termination of the position and without pay for one additional year."

The administration has stated that it was working under the provisions on departmental reorganization in the 1974 text. A chairman of the *Ad Hoc* Faculty Steering Committee and former member of the Belfer School Welfare Committee has asserted that the applicable text might be that in the 1962 document (in effect at the time tenure was granted to the faculty members whose appointments were terminated) which provided that in the event of departmental reorganization "a tenured faculty

member shall first be reassigned to a new set of duties whenever the same is possible, and such faculty member who has reason to believe that he has been improperly reassigned may have the action reviewed by the faculty review committee which shall make its recommendations to the president for final decision."

The investigating committee has reviewed a number of documents relating to the financial condition of the University. As revealed in public statements, at times the condition appeared precarious. The doctoral programs in mathematics and physics at Belfer Graduate School and in education at Ferkauf Graduate School did have declining enrollments. It is significant, however, that the administration of the University did not claim a state of financial exigency. It attributed its actions against the tenured faculty members not to financial exigency but to departmental reorganization, although it may well have moved to consolidate certain programs as a prudent financial measure. The representatives of the faculty, however, responded to the administration's actions with a sharply different focus. To them, the actions were taken "... without academic due process and without inescapable and compelling reasons." If nothing else, this difference indicates a failure by the administration adequately to convey to the faculty its sense of the situation facing the University.

The concerns raised by the Yeshiva University administration's actions are exacerbated when the actions are measured against the standards enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.

Under the 1940 *Statement of Principles*, tenure continues until retirement for age unless it is terminated for adequate cause or as the result of a financial exigency that is demonstrably *bona fide*. The Association's *Recommended Institutional Regulations* also recognize, as a basis for termination of tenure, discontinuance of a program or a department of instruction not mandated by financial exigency and medical reasons. Adequate cause for dismissal, retirement for age, and medical problems are clearly not germane in these three cases. Although administrators did cite financial considerations as a factor contributing to their actions, they specified to the investigating committee, referring to the University's stated policies, that they acted on the basis of "Departmental Reorganization" and not "Financial Exigency," defined in Regulation

4(c) of the *Recommended Institutional Regulations* as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means."

There remains under the standards supported by the Association one basis for terminating tenure, that set forth in Regulation 4(d) of the *Recommended Institutional Regulations*, "Discontinuance of Program or Department Not Mandated by Financial Exigency." This provision includes the following essential points, none of which was met by the Yeshiva University administration in its actions against the three faculty members.

First, "The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof." During the critical period when the reorganization was being planned and implemented by the Yeshiva University administration, faculty participation in the academic government of the University was in a weak state. Faculty-administration relations were affected adversely by the struggle over the potential unionization of the faculty. After the arrival of President Lamm, the representative faculty bodies of former times, the School Welfare Committees, ceased to be active. Vice President Blank stated in the hearings on the cases of concern held in September, 1978, that she felt it was not required to consult with these committees, and she did not consult with them. At the same time, the full-time Arts and Sciences faculty throughout the University organized itself into a committee of the whole. Neither that body nor its steering committee was consulted by the administration. Deans did talk with departmental chairmen about impending changes, and some of this discussion appears to have found its way back to departmental faculty meetings. In no sense, however, was the faculty asked to study the financial situation or the administration's proposals, nor was it requested to make recommendations or express its view in any comprehensive fashion on the administration's course of action.<sup>4</sup>

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<sup>4</sup> Vice President Blank, commenting on a draft of this report sent to the administration prior to publication, stated that Dean Berger had met extensively with faculty members in the Ferkauf School to discuss the educational and economic issues facing the School. According to Dr. Blank, "It was the faculty of the School that developed the reorganization plan that was adopted. Indeed, it was the faculty that determined the particular programs that

Early in September, 1978, the faculty of Arts and Sciences selected an *ad hoc* committee to hold hearings on the terminations of tenured appointments. Vice President Blank and Deans Berger and Finkelstein, as well as members of the faculty, testified at these proceedings. The *ad hoc* committee's conclusions, which were endorsed by the faculty as a whole at an October meeting, included findings that the faculty members being released were denied academic due process, that their rights under principles of academic freedom and tenure were violated, that no effort was being made by the administration to reassign them to other teaching or administrative duties, and that neither the faculty as a whole nor its elected representatives had had the opportunity to participate in the decisions. A faculty of Arts and Sciences vote to censure the administration resulted. On July 11, 1979, the Faculty Senate of Yeshiva University's Albert Einstein College of Medicine also passed a resolution censuring the administration for its actions. On February 7, 1980, the faculty of Arts and Sciences again voted to condemn the administration for its actions in the cases of concern and for its failure to reinstate the released faculty members.

A second essential provision in Regulation 4(d) of the *Recommended Institutional Regulations* is that the institution is required, before notice of termination of appointment is issued, to

... make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

In Professor Patt's case, both Dr. Komar, the dean who was in office at the time the reorganization was announced, and his department chairman had

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were to be discontinued. In view of the fact that the faculty was not merely consulted but given a determinative role, the accusation of a lack of adequate consultation seems totally unfounded." Dr. Blank also stated that at the Belfer School there was consultation through the participation of some Belfer faculty members on various advisory committees. "The difficulty, however," according to Dr. Blank, "was that in this instance, consultation did not produce consensus. Consensus, however, is not the requirement of the rules."

indicated to him that reassignment to a teaching position in computer science courses was a possibility. Professor Patt had already taught some courses in that area, and in June, 1978, he was scheduled to teach a full load of such courses in the fall semester of the 1978-79 academic year. The courses, however, were assigned to a newly engaged nontenured faculty member. The possibility of a part-administrative/part-teaching position also existed for Professor Patt, and he had in fact held such a position up to January, 1978, when he was removed from his administrative post by Dean Finkelstein. Instead of seeking to continue Professor Patt in a suitable position, which in the investigating committee's view would have been quite possible, the administration acted so as to eliminate any possibilities. If he was considered to have been less than fully qualified in computer science, he was not offered additional training to strengthen his capabilities. Professor Patt certainly acquired additional knowledge and experience in computer science during the 1978-79 academic year through the position he held in industry, but the administration nonetheless was unwilling to reinstate him to a permanent position.<sup>5</sup>

For ten years prior to her being away on leave of absence for the academic years 1976-77 and 1977-78, Professor Koenigsberg held a position at Stern College comprised partly of teaching undergraduate education courses and partly of administering the education program. No discernible effort was made by the Yeshiva University administration either to reassign or retrain her. When she was left without a full load of courses in the undergraduate division, her request for some combination of teaching and administrative work or even a full-time administrative position was not accepted by the Yeshiva administration. The investigating committee, while taking note of her background and experience, did not identify a specific suitable

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<sup>5</sup> Commenting on the prepublication draft of the report, Vice President Blank stated that "... the committee seems to wish to brush aside what it could not help in recognizing was the real reason for Dr. Patt's choice not to continue with the position offered him by the University, namely, that Dr. Patt ... left to accept an offer of another position. ..." The investigating committee believes that the offer to Professor Patt would have been much more appropriate if the administration had informed him that the new position was viewed as reinstatement, and that as a tenured faculty member he could expect to continue at Yeshiva University.



alternative position for which she would have been eligible.

Professor Sievers's background in psychology and special education would appear to have provided a number of possibilities for reassignment within the University, but neither reassignment nor retraining was offered by the administration. Professor Sievers, who had tenure, was told that the consolidation of the Departments of Special Education and Psychology rendered her position as a faculty member superfluous, while nontenured faculty members in psychology were retained. In the opinion of the investigating committee, she could have taught courses in psychology and might have been retrained to do other work in that field, but the administration made no discernible efforts toward finding a suitable position for her.<sup>6</sup>

A third essential provision of Regulation 4(d) is that a "... faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee ...." Yeshiva University's 1974 policy (in contrast with the 1962 policy) has no

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<sup>6</sup> Vice President Blank, in her comments on the draft report, asserted that any course in psychology which Professor Sievers was qualified to teach was taught by a more senior tenured faculty member, and that other suitable teaching opportunities did not exist even with a reasonable amount of retraining. She stated that

... the undergraduate courses in psychology were taught by more senior tenured faculty (apart from introductory courses taught by adjuncts involving three or [fewer] credits per year). As for graduate courses, Professor Sievers has never taught on a graduate level, and had no background whatsoever in graduate psychology. Indeed, Professor Sievers had not taught any psychology course at any level for at least fifteen years and had had even previously no regular teaching experience...."

The investigating committee does not accept the suggestions that introductory courses are the preserve of adjunct faculty and that introductory courses should not be assigned to full-time tenured faculty members. The committee suspects that an undergraduate program also might have been made available to Professor Sievers with some rearrangement of the schedules of more senior faculty members. In addition, the committee wishes to note that Professor Sievers's doctorate, earned at Northwestern University in 1955, is in psychology, and that for the ten years after earning her degree and before becoming a faculty member at Yeshiva University she served as a diagnostic and clinical psychologist at three institutions. At the time her appointment was terminated, Professor Sievers was the chairwoman of four doctoral dissertation committees and served on three other dissertation committees.

such provision, and the administration did not offer to arrange for hearings. The faculty did provide for *ad hoc* proceedings, through the creating of an *Ad Hoc* Committee To Investigate the Firings of Five Tenured Faculty Members. The proceedings were tape recorded and members of the administration participated. The administration, however, offered no direct response to the findings of the committee that the actions against the faculty members were improper or to the resolution approved by the Faculty of Arts and Sciences that demanded their immediate reinstatement.

As has been noted earlier, the three faculty members whose appointments were terminated were denied the opportunity to teach during the 1978-79 academic year and thus were involuntarily suspended upon being issued notice of termination. The 1970 Interpretive Comments on the 1940 *Statement of Principles* caution that "A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process," and the *Recommended Institutional Regulations* emphasize that "suspension which is intended to be final is a dismissal, and will be treated as such."

The Yeshiva University administration contended to the investigating committee that the University's policy of paying faculty members for a year, while assigning them no institutional responsibilities, is an advance over the Association's recommended policy. The investigating committee does not concur. The denial of the right to teach can be an inherent commentary, intended or not, on the affected faculty member's competence. Under the provisions of the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, it is appropriate to suspend a faculty member while dismissal charges are pending only if the faculty member's continuation in the classroom presents a threat of immediate harm to himself or others. The Yeshiva University administration has not suggested that any such threat existed in the cases of Professors Patt, Sievers, or Koenigsberg. Payment of salary for at least a year in lieu of a year of notification may in certain circumstances be the preferred choice of faculty members who are compelled to seek new positions, but the choice of maintaining continuity of professional life should rest with them. A release from duties that is unilaterally imposed by the administration suggests a dismissal for cause which, when unaccompanied by the procedural safeguards of academic due process, raises basic concerns for academic freedom

and tenure under the 1940 *Statement of Principles*. Finally, the payment of one year of terminal salary to tenured faculty members released because of discontinuance of program is of questionable adequacy under Regulation 4(d) of the Association's *Recommended Institutional Regulations*. The Regulation provides, in cases where a tenured faculty member cannot be reassigned after a program is discontinued, that "... the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service." The investigating committee questions the adequacy of one year of severance salary in the cases of concern.

### CONCLUSION

The administration of Yeshiva University, in terminating the tenured appointments of Professors Charles Patt, Shelly Koenigsberg, and Dorothy Sievers, acted contrary to the applicable provisions of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

The administration terminated the appointments of the three faculty members, and suspended them from further teaching responsibilities upon issuance of notice to them, without having afforded them the safeguards of academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*. The lack of opportunity for a meaningful faculty role in the decisions to consolidate programs and of procedures to release tenured faculty members is inconsistent with the provisions of Regulation 4(d) ("Discontinuance of Program or Department Not Mandated by Financial Exigency") of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, as is the failure of the administration to assume responsibility for demonstrating its case at an appropriate hearing.

The administration did not arrange suitable continuing assignments for the affected faculty mem-

bers although such assignments appear to have been possible in two cases. The administration did little to seek suitable alternate positions for the faculty members elsewhere within the institution, particularly in the face of apparent opportunities for relocation. The Yeshiva University administration's failures in this regard indicate a lack of commitment to the rights which the three faculty members possessed under generally accepted principles of academic tenure.

Roger Wines (History) Fordham University,  
*Chairman*

Alvin M. Halpern (Physics), Brooklyn College  
*Investigating Committee*

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

Matthew W. Finkin (Law), Southern Methodist University, *Chairman*.

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