

Academic Freedom and Tenure in the Quest for National Security: Report of a Special Committee of the American Association of University Professors

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Academic Freedom and Tenure in the Quest for National Security

Report of a Special Committee
of the American Association of University Professors

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The special committee of the American Association of University Professors, appointed by authority of the Association's Council in the

fall of 1955 to review the effects upon academic freedom and tenure of the national effort to achieve military security and to combat Soviet Communism, herewith submits its report for approval by the Association's Council, and for action upon its recommendations by the 1956 Annual Meeting.

In reporting upon incidents at specific colleges and universities, the committee has relied entirely, except in two instances,¹ upon facts of public knowledge and the contents of published documents, including those circulated within the institutions themselves and not regarded as confidential. The recommendations made² are limited, therefore, to matters on which the public evidence permits conclusions to be reached; and the judgments expressed relate to the public record and not to undisclosed aspects of the incidents reviewed.³

A. Occasion and Purpose of This Report

Like civil liberties in general, academic freedom and tenure in the United States have been more greatly imperilled since World War II than for many years before. The wide-reaching struggle with Soviet Communism, the resulting emphasis upon military security, the growing realization of the Communist strategy of infiltration, the readiness of political and economic groups and of individual politicians to play upon the natural fears of the American people and to suppress legitimate opinions and activities have all combined to produce distrust of persons

¹ Committees of inquiry made visits on behalf of the Association, soon after the events involved, to the University of California and the University of Oklahoma. Use has been made of the reports of these committees.

² In several instances it is recommended that a university administration be placed on the Association's list of censured administrations. In this context, "administration" means the persons responsible for decisions, whether administrative officers, members of the governing board, or occasionally faculty committees acting in an administrative capacity, whose government of an institution has in the judgment of the committee produced unsatisfactory conditions of academic freedom and tenure.

³ During World War I a special Committee on Academic Freedom in Wartime rendered a report which contained, in addition to general principles, a discussion of the dismissal of "a distinguished man of science" by "an important university." The dismissal was declared to have involved "a disregard of all the essential distinctions upon which the present report has insisted." The report stated that "It is a grave abuse of the power of dismissal when it is used to deny to members of university faculties the enjoyment of their fundamental constitutional rights as citizens; and an institution in which dismissal is possible upon such a ground as was officially put forward in this case is one in which adequate guarantees of academic freedom are manifestly lacking." The Committee noted that it was not expressing any judgment on other aspects of the case, involving "issues not germane to the special topic of this report," and that its statement was "concerned solely with the fact that the board of trustees of the university have officially declared the act specified to be a valid ground for the dismissal of a professor in this institution." The institution was subsequently identified as Columbia University in the Association's *Bulletin*. See Vol. IV, Nos. 2-3, pp. 45-46, and No. 4, pp. 3-5. The basis of the present report is the same.

and organizations thought to be even remotely dangerous, and to encourage extreme action against them. To many guardians of security, any challenge to orthodoxy or tradition has been especially disturbing. Teachers whose thinking is likely to run in new or different directions have, consequently, been particular objects of public agitation, of legally required disclaimer oaths, of statutes designed to terminate employment, and of legislative investigations.

In the eloquent words of the Princeton University Chapter of our Association, concurred in by the Annual Meeting of 1953,

Such methods are alien to our national character and make war against our ideal of a free society. Wherever applied or for whatever motive, they have led unfailingly to stagnation and to a withering of the human spirit.

We view with deep concern the increasing tendency to resort to methods that have produced this result in other ages and in our own time in other countries. Political misuse of legal processes, the stifling of controversy, the suppression of dissent, the banning and censorship of books either because of their ideas, or because of what their authors believe, the boycotting of the creative mind—these and other methods of control are among the most dangerous enemies of a free society. They create a noxious air which men cannot breathe and remain free. They destroy faith in democracy by fomenting doubt and suspicion. They waste our substance at a time when every ounce of strength is needed to meet the grave issues of the day. They present a supposed remedy that will be fatal in its consequences if allowed to go unchecked. And history has proved over and over again that they are futile in combatting the evils attacked.

The prospect of an indefinite continuation of the “cold war” against Soviet Communism makes the current suppressions of unpopular opinions and the violations of civil liberties unlikely to subside within the immediate future; and it is now clear that the intellectual liberties of the American people and the hard-won conditions of freedom and tenure in academic institutions must either be preserved in this period of trial or be lost for a long time.

At this moment it is important for the American Association of University Professors to review publicly the extent to which the principles of academic freedom and tenure have been observed during the quest for military security and the effort to combat Communism of the past eight years, and to restate the Association’s position in relation to the problems presented. There has lately been evidence of growing moderation in the relevant practices of the legislative and administrative branches of government; judicial decisions have increasingly rebuked procedural excesses; the critics of the administration of loyalty and security programs have more frequently and more vigorously raised their voices in protest; and official investigations into these programs are under way. The current

period has been termed one of "reappraisal," and the belief has become widespread that a new balance will be struck between the demands of national security and the need for protecting fundamental freedoms. The necessity for security is not less than it was; but there is a renewed determination not to sacrifice individual interests, and those social interests inseparable from them, except to the minimum extent necessary. The settlement of the issues, now at so critical a stage, will be influenced by international events, but the quality of our judgments on the questions presented will also in part determine the outcome for security and freedom.

During the past eight years, the Association has been gravely concerned with these matters. Its Council, committees, chapters, and successive Annual Meetings have expressed views on most of the issues; and within the Association many specific instances of dismissal of faculty members because of alleged Communist affiliation or activity, or because of alleged unwillingness to make disclosures to representatives of the employing institutions, have been subjected to scrutiny. The Association has not, however, expressed itself publicly on these particular situations. The insistence that it do so is widespread among its members; and this committee believes that, at the present hour in national and world affairs, we may gain much by announcing the Association's position in reference to these situations, and by stating anew, in the present context, the principles upon which the Association relies.

The recent growth of literature relating to academic freedom permits the subject to be viewed in a historical perspective that illuminates the multiple facets of the contemporary situation. Because of the availability of this literature, it can now be understood how unique is academic freedom in this country, how it embraces a diverse educational system, greater in magnitude than that of any other time or place, and how correspondingly varied and complex are the forces which impinge upon it. There is, consequently, cause for gratification that even during the recent past a large measure of freedom has been both developed and preserved.

It remains true, nevertheless, that alarming consequences have resulted from the security procedures and the political tensions of the past few years. These consequences present serious dangers to the national welfare and to security itself; for our security and welfare are substantially impaired by the recognized insufficiency of the supply of qualified scientists, engineers, and foreign service officers, and by the human suffering inflicted through unwarranted or crudely conducted investigations and dismissals. Deterred by the unhappy experiences of others, many thoughtful young people now avoid careers in government. It may be justly surmised, too, that those who remain in govern-

ment posts are all too likely to temper their memoranda and advice, and even their research, according to expediency; hence technological advance is weakened and the development of important policy is delayed by hesitation. This is the tragic path to disaster.

In education, the harmful effects are less immediate and less apparent; yet they are no less real, and may eventually be more serious. An appreciable number of recognized teachers and scholars or promising academic recruits have been wrongfully eliminated from their vocation. Although the number excluded is relatively small compared to the total engaged in college and university teaching, many of the dismissals have followed a pattern which suggests that teachers elsewhere would have suffered the same fate had occasion arisen. Instances of forthright resistance by some administrations to outside demands for repressive action offer grounds for the hope, on the other hand, that academic integrity may finally be preserved; and this hope has been strengthened by the fact that other administrations were reluctant to act unwisely, but that their resolution was crushed by external pressure.

When the instances of academic dismissals and the unfortunate policies they exemplify are cast against the stormy background of popular agitation, governmental investigation, and hostile legislation, it is not surprising that scholarship has lost ground and that we are threatened with a shortage of qualified teachers just as mounting enrollments are beginning to require an increased number of able academic recruits. These potential teachers are undergraduates now. Their number and quality will vitally determine the future supply of experts in all areas of technology, in all branches of public policy, and in all creative divisions of the culture that sustains intellectual endeavor and human fulfillment. Upon the availability of these teaching recruits tomorrow's welfare and safety will depend. Yet not only the harsh examples of unwarranted dismissals, but also the accumulation of humiliating oaths and statutory inquiries into loyalty and beliefs, render the academic profession less worthy than it once was of the adherence of intelligent, fine-spirited young men and women.

We do not say that the battle is lost. The signs of a reappraisal of the situation have already been seen; and it remains true that effective teaching, objective research, and intellectual interest in contemporary issues continue on most American campuses. Unspoken restrictions are present, however, and they are of especial significance. It would require great fortitude, for example, for any teacher or student to espouse a position the Russians have adopted, rather than some official stand taken by the United States, on any significant contemporary issue. Yet American policy is urgently in need of constant critical testing that bars no points of view; if we are to remain strong, we must continually

examine ourselves. Where, if not in the colleges and universities, can an objective self-examination take place?

Particularly in a time of stress, this nation cannot afford the deterrents to scholarly careers and the restrictions upon contemporary learning which the events of the past eight years and the prevalent climate of opinion have imposed. The need for intellectual freedom is greater, far greater, than ever before. Technology advances at an unprecedented pace and confers ever more awesome power for welfare or destruction upon humankind. The problems to be solved by research and imaginative insight become larger and more complex. The American Association of University Professors would perform less than its duty if it did not at this juncture use all of its influence to support academic conditions that will make it possible to meet the needs of the nation and the world, wisely, adequately, and successfully.

B. Relevant General Principles

1. The justification of academic freedom

The maintenance of freedom of speech, publication, religion, and assembly (each of which is a component of intellectual freedom) is the breath of life of a democratic society. The need is greatest in fields of higher learning, where the use of reason and the cultivation of the highest forms of human expression are the basic methods. To an increasing extent, society has come to rely upon colleges and universities as a principal means of acquiring new knowledge and new techniques, of conveying the fruits of past and present learning to the community, and of transmitting these results to generations to come. Without freedom to explore, to criticize existing institutions, to exchange ideas, and to advocate solutions to human problems, faculty members and students cannot perform their work, cannot maintain their self-respect. Society suffers correspondingly. The liberty that is needed requires a freedom of thought and expression within colleges and universities, a freedom to carry the results of honest inquiry to the outside, and a freedom to influence human affairs in the same manner as other informed and unprejudiced persons do. Nor is the value of freedom lessened because error at times arises from its exercise. Learning, intellectual development, and social and scientific progress take place on a trial-and-error basis, and even the unsound cause or hypothesis may call forth the truth that displaces it. The error of one scholar has, indeed, stimulated others to discover the correcting truth.

The demand we of the academic world make for academic freedom is not made primarily for our own benefit. We enjoy the exercise of freedom; but the purposes of liberty lie, in a democracy, in the common wel-

fare. It has recently been said, "With regard to some occupations, it is eminently in the interest of society that the men concerned speak their minds without fear of retribution. . . . The occupational work of the vast majority of people is largely independent of their thought and speech. The professor's work *consists* of his thought and speech. If he loses his position for what he writes or says, he will, as a rule, have to leave his profession, and may no longer be 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."¹

We ask, then, for 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. Again, in the words of the Princeton University Chapter:

The spirit of free inquiry is not a privilege claimed for a single profession, but the touchstone of our character as a people, the proved source of our national strength. Its defilement in any area of our society is a threat to the entire body politic. . . .

As teachers, loyal to the country and to the ideal of free inquiry which has sustained our nation's material, humanitarian, and spiritual progress, we cannot fail to condemn any inimical force whether proceeding from an avowed enemy or from a misguided friend within. In doing so we take our guidance from our conscience, from our sense of justice, and from the convictions of one of our Founding Fathers, who declared: "The opinions of men are not the object of civil government, nor under its jurisdiction" and "to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy." This belief was purchased through centuries of struggle extending far back into history beyond the discovery of the New World, but when enacted into law in the infancy of our nation was greeted in the Old World as "an example of legislative wisdom and liberality never before known." It would be one of the supreme ironies of history and one of the greatest tragedies if the confidence we exhibited in the weakness of youth should be destroyed through fear in the strength of our maturity.

2. The claims of military security

We accept unhesitatingly the application to colleges and universities of needed safeguards against the misuse of specially classified information important for military security, to the extent to which these are applied

¹ Fritz Machlup, "On Some Misconceptions Concerning Academic Freedom," *Bulletin*, Winter, 1955.

elsewhere. We insist, however, that these safeguards should extend only to persons who have access to such information; in no degree do they justify the proscription of individuals because of their beliefs or associations, unless these persons were knowingly participants in criminal acts or conspiracies, either in the past or at present. Inquiry into beliefs and associations should be restricted to those that are relevant to the discovery of such actual or threatened offenses.

3. Vigilance against subversion of the educational process

The academic community has a duty to defend society and itself from 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. Any member of the academic profession who has given reasonable evidence that he uses such tactics should be proceeded against forthwith, and should be expelled from his position if his guilt is established by rational procedure. Instances of the use of such tactics in the past by secret Communist groups in a few institutions seem to have occurred, and vigilance against the danger of their occurrence in the future is clearly required.

4. Disclaimer oaths and general investigations of college and university teachers.

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 toward subversive intent with respect to the nation's institutions. In this regard they are not different from all other people. We deplore the entire 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. This country's greatness is founded upon a belief in the individual's importance and upon a trust in his ability and worthiness to serve his fellow-men in accordance with his capacity. 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. The confidence reposed in the individual and in his integrity, and the independence of decision and action granted him, have been vindicated throughout our history by the loyalty of our citizens, and by their willingness to make sacrifices in times of crisis. With infrequent exceptions, even those who have pursued false causes and have seemed at times to threaten the nation's fundamental principles have done so, as history generally recognizes, out of concern for the general welfare as they saw it.

For all these reasons, and because of the unhappy disruption of normal academic work which extreme actions in the name of security entail, as well as because of their evident fruitlessness, we oppose the imposi-

tion of disclaimer oaths, whereby individuals are compelled to swear or affirm that they do not advocate or have not advocated, or that they are not or have not been members of any organizations which advocate, overthrow of the government. For similar reasons, we oppose investigations of individuals against whom there is no reasonable suspicion of illegal or unprofessional conduct or of an intent to engage in such conduct. On the same grounds we oppose legislation which imposes upon supervisory officials the duty to certify that members of their staffs are free of subversive taint. We particularly object to these measures when they are directed against members of the academic profession as a special class apart from the population as a whole. Not only is the stigma of such a discrimination unjustified, but the application of these discriminatory measures denies the particular need for freedom from pressures and restrictions, which is a productive requirement of the academic profession and, for similar reasons, of lawmakers, judges, clergymen, journalists, and the members of certain other professions. We urge the academic profession not to be lulled, by the hope of possible non-enforcement or by a merely routine application of these measures, into an acquiescence in their maintenance as "paper" requirements. They should not be tolerated even as relics from which life might appear to have departed; for they would not only be an evil heritage unworthy of our traditions and our goals; their revivification would always be an ugly possibility. They should be steadfastly opposed until they are eliminated. At the same time, we cannot condemn educational institutions or teachers for yielding to the constraint of laws embodying such requirements, even though we regard the laws containing them as pernicious.

5. Grounds of adverse action

Action against a faculty member cannot rightly be taken on grounds that limit his freedom as an individual, as a member of the academic community, or as a teacher and scholar. This principle was defined in the 1940 Statement of Principles on Academic Freedom and Tenure, adopted by the Association of American Colleges and the American Association of University Professors and approved since by other organizations. Implicit in that Statement is the proposition (rendered explicit in later reports of committees of the American Association of University Professors and resolutions of its Annual Meetings) that a faculty member's professional fitness to continue in his position, considered in the light of other relevant factors, is the question to be determined when his status as a teacher is challenged. No rule demanding removal for a specific reason not clearly determinative of professional fitness can validly be implemented by an institution, unless the rule is imposed by law or made necessary by the institution's particular religious coloration. Any

rule which bases dismissal upon the mere fact of exercise of constitutional rights violates the principles of both academic freedom and academic tenure. By eliminating a decision by a faculty member's peers, it may also deny due process. This principle governs the question of dismissal for avowed past or present membership in the Communist Party taken by itself. Removal can be justified only 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 conspiracy against the government. The same principle applies, *a fortiori*, to alleged involvement in Communist-inspired activities or views, and to refusal to take a trustee-imposed disclaimer oath.

6. Refusal to testify as ground for removal

It follows that the invocation of the Fifth Amendment by a faculty member under official investigation cannot be in itself a sufficient ground for removing him. The Amendment's protection is a constitutional privilege. The exercise of one's constitutional privilege against self-incrimination does not necessarily or commonly justify an inference of criminal guilt; and even if it were to be ruled otherwise, it would not follow that the loss of an academic position should automatically result from a legal offense, whether proved in court or established by inference, without consideration of the relation of the offense to professional fitness. Invocation of the Fifth Amendment is to be weighed with an individual's other actions in passing a judgment on him. The same may be said with regard to refusals to testify on other grounds, such as the assertion of a right of silence thought to be conferred by the free-speech provision of the First Amendment, or because of a claim of lack of authority in the investigating body, an unwillingness to inform upon other persons, or a reluctance to cooperate in an investigation deemed oppressive or dangerous to the public interest.

7. Grounds for preliminary inquiry by an employing institution

The administrations of colleges and universities should, of course, take note of indications of the possible unfitness of faculty members. If a faculty member invokes the Fifth Amendment when questioned about Communism, or if there are other indications of past or present Communist associations or activities, his institution cannot ignore the possible significance for itself of these matters. There is then a possibility of his involvement in activities subversive of education itself, or otherwise indicative, to an important degree, of his unfitness to teach. As in other instances of possible unfitness, preliminary inquiry into this possibility is warranted and can become a duty. The aid of other

faculty members may be sought in such an inquiry; but the inquiry should be confidential in so far as possible, and should not be substituted for the hearing to which the faculty member has a right if formal charges are brought against him. If, after consideration of a faculty member's whole career, as well as the circumstances surrounding his invocation of the Fifth Amendment, probable cause to believe that he may be unfit is not disclosed, the matter should end at this stage; but if probable cause for belief in his unfitness is shown, charges leading to a formal hearing should be brought.

8. Procedural due process in tenure cases

The principles of procedural due process contained in the 1940 Statement of Principles are as applicable to instances in which a faculty member's tenure is challenged by his institution or its officials on grounds related to loyalty, national security, or alleged connections with Communism, as they are to instances of challenge on other grounds. Whenever charges are made against a faculty member with a view to his removal, he has a right to a fair hearing, to a judgment by his academic peers before adverse action is taken, and to a decision based on the evidence. The principal elements of due process in such proceedings are set forth in the 1940 Statement of Principles, while other procedures, the need for which appears in some of the situations this committee has reviewed, are still to be specified.

There should be adequate faculty participation in any such proceedings, although no particular form of faculty participation or means to assure it is stipulated in the principles as now stated. It is an important safeguard that whatever procedure is used should be one that the faculty of the institution has itself endorsed prior to the occurrence of the case. It is desirable to have procedural matters vested in a standing committee chosen in advance to deal with matters of academic freedom and tenure; *ad hoc* committees may be subject to manipulation or to the suspicion of it. Faculty 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.

Public hearings before committees with power to recommend or decide are not regarded as desirable. The accused faculty member should be permitted, however, to have persons of his choice present along with counsel; and observers from legitimately interested outside groups, such as the American Association of University Professors, should also be permitted to attend. In accordance with established principles of

justice, the burden of proof should rest upon the administrative officer bringing the charge, and should not be placed on the faculty member, whether he is being heard for invoking the Fifth Amendment or for other reasons. Because such hearings are not legal trials but are processes of a more informal sort, and the purpose is to establish clearly the fitness or unfitness of a particular person to teach, the introduction of new issues during the course of the hearings is not inconsistent with due process, provided sufficient opportunity to meet these issues is afforded. The decision should be based solely on evidence disclosed at the hearing.

9. The faculty member's obligation of disclosure

The fact that a faculty member has refused to disclose information to his own institution is relevant to the question of fitness to teach, but not decisive. If the refusal appears to be based upon evasiveness and a desire to withhold evidence of illegal conduct which would disqualify him as a member of the faculty, the refusal would be a weighty adverse factor. On the other hand, a refusal to answer questions which arises from a sincere belief that a teacher is entitled to withhold even from his own institution his political and social views should be accorded respect and should be weighed with other factors in the determination of his fitness to teach. Nevertheless, members of the teaching profession should recognize that sincerity cannot be judged objectively and that a college or university is entitled to know the facts with which it must deal. This is especially true when a faculty member's activities, whether or not they are blameworthy, have resulted in publicity hurtful to his institution. Accordingly, in any proper inquiry by his institution, it is the duty of a faculty member to disclose facts concerning himself that are of legitimate concern to the institution, namely, those that relate to his fitness as a teacher, as enumerated above in the sections, Grounds of Adverse Action, and Grounds for Preliminary Inquiry by an Employing Institution. This obligation diminishes if the institution has announced a rigid policy of dismissal in such a way as to pre-judge the case.

We are aware that statements made by a faculty member to his institution are not legally privileged and that his interrogators may be compelled in a later official proceeding to testify that he made them. If such statements tend to incriminate him, he may in effect lose the protection of the Fifth Amendment. But we believe that the institution's right to know facts relevant to fitness to teach should prevail over this consideration.

10. Suspension

Suspension of a faculty member during the time of inquiry and decision by the institution is justified only in certain instances in which the

reason for proceeding render it highly probable not only that he is unfit to continue as a faculty member but that his unfitness is of a kind almost certain to prejudice his teaching or research. Even in such instances, the suspension should be with full salary. By his own desire the faculty member may, of course, be temporarily relieved of his duties in order to prepare his defense.

11. Faculty members not on tenure

Academic freedom should be accorded not only to faculty members with tenure but also, during the terms of their appointments, to others with probationary or temporary status who are engaged in teaching or research. Moreover, neither reappointment nor promotion to tenure status should be denied, nor any other adverse action taken, for reasons that violate academic freedom. Dismissal or other adverse action prior to the expiration of a term appointment requires the same procedures as does the dismissal of a faculty member with tenure; but no opportunity for a hearing is normally required in connection with failure to reappoint. If, however, there are reasonable grounds to believe that a non-tenure staff member was denied reappointment for reasons that violate academic freedom, there should be a hearing before a faculty committee. In such a hearing the burden of proof is on the persons who assert that there were improper reasons for the failure to reappoint. If a *prima facie* case of violation of academic freedom is made, the administration of the institution is then required to come forward with evidence in rebuttal.

C. The Record of Events and the Committee's Recommendations

1. The impact of public actions directed against communism

{a} University of Washington

In the summer of 1948, a committee of the legislature of the State of Washington conducted hearings in Seattle with reference to alleged Communist activity at the University of Washington. Among those summoned by the committee were ten members of the University faculty, three of whom refused to testify as to past or present membership in the Communist Party. In September, the Dean of the College of Arts and Sciences preferred charges against six of these ten faculty members, including the three who had refused to testify. Against these three the charges were, among others, present and past membership in the Communist Party, concealment of this fact from the University Administration, and improper conduct by reason of the refusal to testify. The other three faculty members were charged, among other things, with concealing the fact of present or past membership in the Communist

Party and improper refusal to tell the whole truth when questioned by the legislative committee. The latter three were among five members of the faculty who told the committee that they had been members of the Party but had left it.

Hearings, during which procedural due process was accorded, were conducted upon these charges over a seven-week period by the eleven-member faculty Committee on Tenure and Academic Freedom. Two of those charged with present membership in the Communist Party stated the fact of their membership at the outset of the hearing; and the University Administration thereupon narrowed the case against them to that fact alone, without challenging the scholarship and teaching ability of these two men. The Committee stood 8-3 in favor of retaining them on the faculty, although five of those who voted for retention expressed the view that the University's regulations should, but did not, include membership in the Communist Party as a ground for dismissal. With respect to the third faculty member, the Committee agreed unanimously that dismissal should not be recommended on two charges; on each of the other four charges majorities voted against recommending dismissal. These majorities were differently composed; minority votes for recommending dismissal were cast by seven of the eleven Committee members on one or more of the charges. The Committee unanimously recommended that the other three faculty members involved should not be dismissed.

In accordance with the governing regulations, the President of the University, who sat as an *ex officio* member in the hearings of the Committee on Tenure and Academic Freedom, transmitted the Committee's report to the Board of Regents and submitted recommendations of his own. These recommendations were that the first three faculty members be dismissed and that two of the remaining three not be dismissed. As to the third of these three, the President, while suggesting an opinion regarding a charge of falsification in an interview with the President himself, made no recommendation. On January 22, 1949, after hearing arguments in the cases, the Board of Regents of the University dismissed the first three faculty members as of that date without severance pay. The other three faculty members were placed on "probation" for two years.

The dismissal by the Administration of the University of Washington of the two faculty members whose sole offense, as defined at a critical point in the proceedings, was membership in the Communist Party, merited censure by the American Association of University Professors at the time the action was taken and should stand condemned by the academic community. The competence of the faculty members as teachers was assumed throughout, and there was no evidence that they

had abused their positions in the classroom in any way. The action of the Administration deprived these faculty members of the right to be judged by their qualities as teachers, and took no account of much evidence as to fitness which came before the faculty Committee. The President and Board rejected the considered judgment of the Committee that under the existing regulations of the University these men should be retained, and substituted the conclusion of certain Committee members as to the nature of the Communist Party and the conclusive importance of Party membership in relation to retention of a teacher. An additional contention of the President, that they were required to disclose their membership in the Party at an earlier stage because he had purported to declare the University's policy to be the exclusion of Communists, cannot be accepted as valid. The minority faculty recommendations in favor of dismissal on three, or possibly four,¹ separate charges against the third faculty member add up to only a fictitious majority in support of that action.

Despite the generally excellent procedures afforded the accused faculty members, the subsequent actions of the Administration merit criticism in additional respects. The failure to accord a year's notice or severance pay to the dismissed individuals was a violation of the principles of tenure; for nothing in their conduct constituted moral turpitude within the proper meaning of that term as used in the 1940 Statement of Principles on Academic Freedom and Tenure. The action of the University Administration in placing the remaining three members of the faculty on "probation" was also censurable. Although admonitions from administrative officers to faculty members for reasons lying within the competence of those officers may not be out of place from time to time, probation publicly announced impairs the teaching function and has no proper place in academic administration. In this particular instance, the meaning of the "probation" imposed, and the means of ending it, were not specified. It is a reasonable inference that the purpose was to restrict the public activity and utterances of the faculty members involved, a purpose which stands in conflict with the fundamental tenets of academic freedom.

Since the events of 1949, the personnel of the Administration of the University of Washington has largely changed. In the light of all the facts, although the Administration of the University of Washington merited censure by the American Association of University Professors

¹ None of the statements of members of the Committee in support of their recommendations contains a clear finding that this faculty member was a member of the Communist Party. The statement most favorable to the view that he was, concurred in by two Committee members, states that a finding that "he never had been a member of the Communist Party is certainly tenable." If this statement may be taken as a finding that he was not a member of the Party, the Committee was unanimously in the negative on this charge as well as on two others.

at the time, it would not be appropriate to censure the present Administration on the ground of the 1949 dismissals. The present Administration has, moreover, insisted upon the admissibility to this country and the worthiness of a place on its faculty of a resident of Canada who is a philosophical anarchist, and has offset an earlier refusal, on grounds of unsuitability, to appoint Dr. J. Robert Oppenheimer to an honorary lectureship, by inviting Dr. Oppenheimer's participation in planning and conducting a conference on theoretical physics at the University. We rely upon these indications that in the future the University of Washington will adhere to the principles of academic freedom and tenure.

(b) University of California

On March 25, 1949, the Board of Regents of the University of California, upon the recommendation of the President of the University, prescribed an oath for all members of the faculty and Administration of that institution, as a condition of continued employment. The oath contained, in addition to the oath required by the Constitution of the State of California of all state officers, a provision, as modified on June 24, reading as follows: "I am not a member of the Communist Party, or under any oath, or a party to any agreement, or under any commitment that is in conflict with my obligations." The purpose of this requirement appears to have been to forestall legislation to establish security controls over the University, which seemed imminent by reason of previous investigations and reports.

After information concerning the oath had been conveyed to the faculty on June 12, the Senates of both the northern and the southern sections of the University protested against the requirement and sought an adjustment with the Regents. They were supported by the President. Then ensued more than a year of negotiation and bitter controversy. In the summer of 1950, 32 members of the faculty, more than half of whom had attained tenure status, persisted in their refusal to subscribe to the Regent-imposed disclaimer oath or to give acceptances of one-year contracts of employment containing similar language, which the Regents substituted for the oath at one point. These faculty members were deprived of their positions after the Regents, having first voted to continue their appointments, reconsidered and revised that action by a narrow majority. The Regents themselves recognized explicitly that none of these persons was accused of Communist affiliation or activity. Additional members of the faculty resigned in protest, and other adverse consequences to the University ensued.

While continuing in the University, the controversy shifted mainly to the courts of California when, in August, 1950, 20 of the dismissed faculty members brought suit to compel their reinstatement. On Oc-

tober 17, 1952, the State Supreme Court, in agreement with the lower court, decided in favor of the dismissed faculty members on the ground that the Regents lacked authority to impose a test or declaration in addition to the oath of office required by the State constitution and by statute. The legislature, in the meanwhile, enacted a statute, applicable to all State employees, requiring an oath similar to the Regents' requirement. This statute, which subsequently was sustained as valid by the Supreme Court of California, took the place of the oath prescribed by the Regents. Some among the dismissed faculty members took the statutory oath and were thereupon reinstated.

Since the court decision that the Regents' disclaimer requirement was legally invalid, the Administration of the University of California has declined on legal grounds to pay the salaries of dismissed faculty members for the period of their non-employment and is defending a court action for these salaries, brought by sixteen of the individuals affected. On related legal grounds a number of faculty members suing have been denied sabbatical leave credit for periods before and during the ouster.

Before, during, and since the period of the Regent-imposed oath, a University policy of not employing members of the Communist Party has been in effect and has been relied upon as a justification for the measures adopted. That policy was originally applied in 1940, when a teaching assistant was dismissed because he was found to be a member of the Party. In 1946 the Regents adopted a resolution stating that "any member of the faculty or student body seeking to alter our American government by other than constitutional means or to induce others to do so, shall, on proof of such charge, be subject to dismissal." It is not at all clear that the faculty were ever adequately informed of these actions of the Regents; but in 1950 the faculty, by secret ballot, did adopt by a heavy majority a resolution which contained the statement that "Proved members of the Communist Party, by reason of . . . commitments to that party, are not acceptable as members of the faculty."

The foregoing policy remains in effect and coincides with the statutory policy of the State. To implement both policies and carry out University commitments under research contracts with the Federal Government, the University of California has charged an administrative official on each of its campuses with responsibility for security matters, including contact with an investigating committee of the legislature. The Committee on Academic Freedom of the northern section of the University reported to the Senate in June, 1955, that so long as these arrangements continue, "they will create special dangers to academic freedom"; but it found no actual abuses connected with their administration during 1954-55.

After all due allowances have been made for the extreme difficulties

of administering the University of California in the climate of opinion in that State during the past seven years, we think it is fair to conclude that the Administration of that institution has failed over this period to maintain conditions of freedom and tenure that can be accepted by the academic profession. The oath requirement, with all its tragic consequences, was self-imposed. The delegation to administrative officers of responsibility for security matters, including reports to a legislative committee, is a dangerous concession, however reluctant, to repressive forces within the State. Whatever may be the legal grounds for refusal to recognize salary and other obligations to members of the faculty who resisted the Regents' oath to the end, the situation is clearly one which calls for resourceful efforts to meet those obligations, rather than an apparent eagerness to avoid them.

Under all the circumstances, the Committee recommends that the 1956 Annual Meeting of the American Association of University Professors place the Administration of the University of California¹ on the Association's list of censured administrations. The net effect of the action of the Administration has been to weaken academic freedom and to deny essential rights to the faculty members who resisted. The Committee is well aware of the commendable stand of the minority of the Regents under the leadership of Chief Justice Earl Warren, then Governor of the State of California, and of the efforts which the President of the University made at several times to prevent the dismissals, and of the outstanding degree to which the faculty of the University of California share in conducting the affairs of that institution. On the whole, the faculty waged a determined battle under adverse conditions, and despite the 1950 vote to bar Communists from the University, the thrust of the faculty actions has been in support of academic freedom. The action of the majority of the Board of Regents in dismissing 32 tenure members of the faculty was a serious breach of the Association's principles of tenure; the Board's opposition to the efforts of the wrongfully dismissed faculty members to secure full restoration of their rights shows that its unwillingness to recognize rights of tenure persists.

{c} *Oregon State College*

During the same period as the University of Washington and University of California controversies, and similarly related to the growing national resentment of the tactics of Soviet Communism, a controversy arose over the non-reappointment of two year-to-year faculty members at Oregon State College for the year 1949-50. The men in question made their non-reappointment for 1949-50 public when they were notified of it in February, 1949. Both had been active in behalf of the Progressive

¹ See footnote 2, p. 50.

Party in the 1948 election campaign; and one of them, an associate professor of chemistry, had written a letter, published in the *Chemical and Engineering News* of January 31, 1949, defending Soviet science against charges of political control and dogmatism based on its espousal of the so-called Lysenko theory of the inheritance of acquired characteristics. The non-reappointments aroused nation-wide public interest when charges were made that academic freedom had been violated. These were denied by the President of the College in public statements in which he declared that the non-reappointments resulted from normal academic considerations, and in which he also criticized what he regarded as defense of the Lysenko theory. The Administration was cleared of the charges against it by the Faculty Committee on Review and Appeals, in a report which was subsequently approved by the Faculty Council. The Committee heard the complainants and witnesses separately and confidentially.

No violation of tenure was involved in the Administration's action; the violation, if there was one, was of academic freedom. Submission of the matter to faculty determination was commendable, even though the fuller hearing now recommended in Section 11 of Part I of this report was not accorded. If the administrative action was motivated by political considerations, it was of course censurable; but the available record does not contain a sufficient basis for condemning the action that was taken.

{d} University of Colorado

In the State of Colorado the Regents of the University are elected by popular vote, and, by constitutional provision, form virtually a fourth branch of the State Government. Fearing that threatened investigation of the University of Colorado by the State legislature would imperil its independence, the Administration of the University early in 1951 ordered a confidential self-investigation of University personnel to be carried out by two local attorneys who had been FBI investigators. At the same time the Administration referred to the faculty Committee on Privilege and Tenure the case of a member of the faculty who had admitted former Communist Party membership before the national House Committee on Un-American Activities and in the same hearing refused to answer questions relating to other persons. After hearings at which full due process was accorded to the faculty member, the Administration followed the recommendation of the Committee to retain the faculty member.

An instructor in philosophy serving from year to year was notified in the autumn of 1951, as was the Department of Philosophy, that his reappointment for 1951-52 was a terminal one. This decision to terminate his services was made by the Board of Regents after the time when

other reappointments were made, and followed his refusal to answer questions of the Administration's investigators and of the President relating to his political beliefs and affiliations, except to state to the President that he was not then a member of the Communist Party. Both he and the Department of Philosophy protested, alleging that the Department had not been consulted and that an invasion of academic freedom was involved.

After a hearing before the University's six-member faculty Committee on Privilege and Tenure, that Committee voted 4-2 that the Administration had committed no violation of academic freedom. The majority, declining to consider hearsay and circumstantial evidence to the contrary, concluded there was nothing to show that the instructor's non-reappointment was not properly motivated and properly carried out. The minority made use of the evidence the majority had rejected for technical reasons, and concluded that the Department of Philosophy had not been appropriately consulted, and that an invasion of academic freedom was involved. It called attention to the President's refusal to supply evidence to meet the *prima facie* case of violation of academic freedom which this evidence established. The University Senate, on June 2, 1952, approved the majority report by a decisive vote. The Committee also voted unanimously that, in future cases involving the non-reappointment of faculty members without tenure, improved procedures should be made available in order to safeguard academic freedom, and to accord the faculty member due process. These procedures have since that time been worked out and adopted, and a grievance committee has been set up to hear such cases.

There had likewise been a non-reappointment a year earlier of an assistant professor of chemistry without tenure, who at that time was on leave-of-absence in Europe during the final two years of a three-year term. Four years earlier he had, according to the President of the University, admitted past membership in the Communist Party. His non-reappointment was also made a subject of public protest; but the jurisdiction of the faculty was not exercised in his case, and it did not come before the faculty Committee on Privilege and Tenure.

The history of academic freedom and tenure at the University of Colorado during the period under review contains cause for great concern. The self-investigation which the University Administration felt impelled to order was obnoxious, but perhaps the lesser of two evils. There is no way to measure the extent of its adverse effect upon academic freedom and tenure in the University. The conclusion is inescapable that ideological considerations, against a background of public pressures, were factors in precipitating at least one of the disputed non-reappointments. The majority of the Committee on Privilege and

Tenure erred by permitting technical rules of evidence, outmoded even in analogous legal tribunals, to foreclose its judgment on this point; but permissible appraisals of the individuals involved very possibly were made by the Administration.

Credit is due the Administration of the University for its earlier refusal, after due procedure, to dismiss a member of the faculty against whom there had been pressure. The Administration also acted commendably in permitting a faculty judgment upon its action in the dismissal of a faculty member who was not on tenure, even though it declined in the formal proceedings to state the reasons for its action. Under all the circumstances, this Committee does not recommend censure of the University Administration by the American Association of University Professors.

{e} University of Oklahoma

Information sent to the Governor and additional material gathered by an investigator for the State precipitated the University of Oklahoma's dismissal of an assistant professor of zoology, with tenure, on July 30, 1952. The purpose of the investigation was, ostensibly, to determine whether the faculty member in question had committed perjury on May 8, 1951, in executing the State's statutory oath of disclaimer of Communist or revolutionary activity during the preceding five years. Without advance notice, the faculty member was interviewed in the office of the head of his department, by the State's investigator. Thereafter the Board of Regents presented charges and granted him a hearing upon them. Prior to the charges, the Board had met with regard to the case and had ordered deferment, in this instance, of the usual letter of notification of "reappointment," or statement of salary during the ensuing academic year, which was customary in the University.

At the hearing the accused professor testified that at one time, before he had come to Oklahoma and more than five years before he took the Oklahoma oath, he had considered himself a member of the Communist Party, although technically he was not a member. He also testified that, at that time, he had attended public Communist Party meetings and contributed editorial criticism to an alleged Party newspaper. He or his wife had made contributions to organizations supporting the Spanish loyalists, but had not done so since coming to Oklahoma. The Board of Regents' statement, justifying his dismissal on the basis of the hearing, concluded that his testimony had been evasive and left "doubt that [his] adherence . . . to the Communist ideology and 'party line' had ever in fact ceased to exist." One of the charges against him had been :

Your associations over a long period of time evidence a basic course of thinking and activity which is inimical to the type of instruction and the social and economic philosophy demanded of persons entrusted with the responsibility of teaching and directing young Americans through the instrumentality of a university sponsored and financially supported by the State of Oklahoma.

This charge, the Board found, was sustained by the professor's failure to dispel "doubt."

The Board also found that an additional charge, relating to alleged statements of his which were "calculated to degrade the administration of the University of Oklahoma," had been sustained. Upon the advice of the Attorney General, the Board of Regents thereupon maintained that his conduct in making these statements involved moral turpitude and justified withholding severance pay from the dismissed faculty member. The derogatory statements in question related to the alleged tape-recording of the professor's interview with the State's investigator. A recording machine and two operators were present in an adjoining room during the interview—a fact of which he was unaware until the next day. He was later assured that no recording was actually made.

The Committee had not completed its recommendations as to the University of Oklahoma at the time this report went to press. They will be submitted for distribution in advance of the Association's 1956 Annual Meeting and for publication in the next issue of the *Bulletin*.

{f} Kansas State Teachers College at Emporia

On January 20, 1953, an assistant professor of economics and sociology at Kansas State Teachers College at Emporia, serving as a replacement for one year, was suspended from his teaching duties after publicity had been given to the fact that he had signed a petition for "amnesty" to eleven national leaders of the Communist Party of the United States who were convicted under the Smith Act. In signing the petition he had stated his connection with the College. The Administration of the College made public announcement of its action, stating that the faculty had considered the matter, expressed disapproval of the faculty member's conduct, and given "full support to any administrative action which might be taken." The faculty member was paid his salary for the remainder of the academic year.

The suspension of the professor was a serious infringement of academic freedom. An unpopular exercise of the rights of free speech and petition, even when it brings about adverse publicity, does not in and of itself justify any action by the faculty or administration of an institution. Of itself it raises no question about a professor's fitness to continue as a faculty member. If, in the light of other circumstances, it appears that such a question may exist, there should normally be a preliminary in-

quiry to determine whether charges of unfitness should be made. A full hearing should follow any such charges. Here the ground for suspension was an improper one and there was a clear denial of due process. The committee especially condemns the action of the faculty, which in effect endorsed in advance the action taken by the Administration. The committee refrains from recommending censure in this case because the faculty and Administration of Kansas State Teachers College at Emporia may not have realized that academic freedom is the right of every teacher, regardless of rank or status, and therefore should apply even to individuals serving on a temporary replacement basis, where dismissal involves neither a violation of tenure nor a failure to reappoint. The suspension took place, moreover, under an Acting President who has since been succeeded by a new President.

{g} *New York City Municipal Colleges*

Several provisions of law have played a part in a series of dismissals of faculty members by New York City municipal institutions, which have occurred since October, 1952. One of these provisions is Section 903 of the New York City Charter, which provides that if an officer or employee of the City willfully refuses to appear before an investigating body or refuses to answer questions "regarding the property, government or affairs of the city . . . or regarding the nomination, election, appointment, or official conduct of any officer or employee of the city . . . on the ground that his answer would tend to incriminate him . . . , his term or tenure of office or employment shall terminate. . . ." This provision was declared applicable to members of the faculties of the municipal colleges by the Court of Appeals of New York in 1954. Its validity under the Constitution of the United States is currently in issue before the Supreme Court.

Fourteen members of the faculties of the municipal colleges had been dismissed under this provision by June, 1953; after they had refused to testify at Congressional hearings. Suspension without pay, pending action by the Board of Higher Education, typically preceded the dismissals.

Section 12-a of the State Civil Service Law provides that no person shall be continued in employment who advocates in any way, or becomes associated with an organization which advocates, overthrow of the government by force. The so-called Feinberg Act of 1949, Section 3022 of the Education Law, which was extended to the municipal colleges in 1953, elaborates Section 12-a of the Civil Service Law by providing that the Board of Regents of the University of New York, which has general authority with respect to the municipal colleges as well as other public educational institutions, shall issue regulations for the removal of

teachers under Section 12-a. The Board of Regents is directed to list organizations "which it finds to be subversive," membership in which shall be *prima facie* evidence of disqualification of a teacher. Regulations of the Board of Regents require each school authority, including the Board of Higher Education of the City of New York, to report each fall on each teacher on its staff, and to proceed within ninety days against each teacher who is not the subject of a favorable report.

In June, 1953, the Board of Higher Education established a Special Committee on Section 903 of the City Charter, the Feinberg Law, and Related Matters. Upon the recommendation of this Committee, the Board has established a Special Investigating Unit, under a Special Counsel. The Special Counsel interviews members of the faculties concerning whom he receives relevant derogatory information, and reports to the Special Committee with regard to those whom he is not prepared to "clear." The Committee may then itself interview the staff member. If formal charges are decided upon, they are preferred by the Special Committee. Hearings, when demanded, are held before a Trial Committee of the Board of Higher Education. Final action is taken by the Board upon the recommendation of that Committee.

Charges under the Feinberg Act initiate proceedings under regulations of the Board of Higher Education which govern the dismissal of faculty members under the State's Tenure Law. These regulations provide for the submission of certain charges against a member of the faculty of a municipal college by the president of the college to the committee on faculty personnel. The determination to institute formal proceedings is made by the Board in the light of the committee's and the president's recommendations. Charges of violation of a regulation of the Board itself are handled by the Board from the beginning, ordinarily without faculty participation. Pending a determination in his case, any person against whom charges have been made may be suspended by the president of the college with the concurrence of the appropriate dean or department head. Where a suspension occurs, the committee on faculty personnel does not review charges brought by the president, unless the faculty member involved so requests prior to answering the charges.

The Board's regulations include a provision that "the failure of any member of the staffs to cooperate fully" in an investigation by the Special Investigating Unit "and to answer all proper questions is to be deemed a violation of the directive of the Board. . . ." Another regulation provides that evidence of prior membership in a subversive organization shall be presumptive evidence that such membership has continued. Neglect of duty and conduct unbecoming a member of the staff are grounds for dismissing faculty members under the Tenure Law.

On September 30, 1954, three members of the faculty of Hunter College, all possessing academic tenure, were dismissed by the Board pursuant to charges which alleged neglect of duty and conduct unbecoming a member of the staff, consisting of (1) past and probable present membership in the Communist Party, (2) lack of full cooperation with the Special Investigating Unit, and (3) in the case of one faculty member, false testimony in previous investigations by committees of the New York legislature and the United States Senate. The charges were heard before a Trial Committee of the Board of Higher Education, which unanimously recommended dismissal in all three cases. Previous membership in the Communist Party, including membership in a secret unit at Hunter College, was admitted, as was the alleged perjury in the New York investigation, against which prosecution was no longer possible. In its report, the Trial Committee states that the three individuals continued to be evasive at the hearing, admitting only so much of past misconduct as public testimony by others had already disclosed.

On May 16, 1955, an instructor in English at Queens College, possessing tenure, was dismissed on the ground that he was guilty of neglect of duty and conduct unbecoming a member of the staff, because of his refusal to cooperate and answer all proper questions addressed to him by the Special Counsel on December 22, 1954. He grounded his refusals on the First and Fourteenth Amendments to the Constitution of the United States. The questions he declined to answer related to his alleged Communist connections prior to the effective date of the Feinberg Law. He denied membership in the Communist Party after that date.

In all of the foregoing cases, the accused faculty members were suspended without pay several months before the dismissals took place, and no further compensation was accorded them at the time of dismissal. Appeals to the State Commissioner of Education have been taken in several of the cases, and in one an appeal was taken to court. This appeal resulted, late in 1955, in a decision of the Court of Appeals of the State that a teacher removed under the Feinberg Act may, if he desires, have the issues determined anew on the basis of a trial in court, under a provision of Section 12-a of the Civil Service Law. The Trial court held in February, 1956, that continued membership of the faculty member in the Communist Party was not shown.

The methods used in tenure situations in the New York municipal colleges, compounded as they are of statutory requirements, judicial prescriptions, and administrative choice, are still in flux. Objections which this Committee has not had an opportunity to appraise have been raised to some aspects of those methods. Included among them are objections to the Special Investigating Unit's and its Special Counsel's alleged

pressure upon faculty witnesses to inform against others, and the asserted practice of requiring accused faculty members to overcome, in the Trial Committee's hearings, allegations based on secret information of undisclosed origin.

The suspension of faculty members without pay when charges are brought against them is a serious breach of the principles of tenure, which should be corrected without delay, by legislation if necessary. This practice involves a threat, which has in fact materialized, of summary dismissal without further salary if the charges against a faculty member are later sustained, and it cannot be reconciled with the normal requirement of one year's notice of dismissal. The Board should also devote serious effort to securing the early elimination of the Board of Regents' annual reporting requirement. The continuous scrutiny of faculty members' activities, associations, and thoughts, which that requirement entails, should be as repugnant to the Board as it is to the academic community in general. The Feinberg Act has resulted in the elimination of faculty participation in judging the fitness of a teacher to continue in his post when charges are raised under the Act. The legislation itself, under which these evils have arisen, merits condemnation under the principles set forth in this report, and its repeal should be sought. Investigation by committees of the American Association of University Professors into dismissals under the Act may become appropriate.

{b} San Diego State College

At San Diego State College in California an associate professor of psychology, with tenure, was dismissed from his position in 1954 after his refusal to answer, in the form presented, a question put to him at a hearing before the State Board of Education, relating to present membership in the Communist Party. He refused to answer, "in all good conscience," because he believed there was no authority for the question to be asked. A provision of the Government Code of California requires the dismissal of a State employee who has refused to answer questions prescribed in the statute, when propounded by the governing body of his State or local agency or by a legislative investigating committee.

The dismissed faculty member, after his dismissal, filed suit to challenge both the official interpretation of the statute and its constitutionality as interpreted. The Supreme Court of California decided against his contentions in 1955; but the precise Federal constitutional issue presented has not been determined by the Supreme Court of the United States.

The Committee records this incident because of its significance in relation to the type of legislation which produced it. Although the State Board of Education and the Administration of San Diego State College

are not to be criticized for giving effect to the official interpretation of a State statute, the consequences of such a statute in depriving State institutions of the services of qualified faculty members, without inquiry into their fitness, is apparent. The existence of such legislation should be continuously opposed.

{i} The Jefferson Medical College

On November 30, 1953, effective immediately, three members of the faculty of The Jefferson Medical College in Philadelphia, two of whom had served with the College long enough to receive tenure under the 1940 Statement of Principles on Academic Freedom and Tenure, were dismissed without explanation except that the action was "in the best interest of the institution." Hearings had been held in June and August before committees composed of trustees, administrative officers of the College, and a single faculty member. In advance of the final hearing, the statement had been made to at least one of the dismissed men that "Jefferson's officers are unable and unwilling to state, unequivocally, that you are not a 'subversive person' within the meaning of the Pennsylvania Loyalty Act." That Act requires each institution receiving State money, as did The Jefferson Medical College, to certify annually that it has no reason to believe subversive persons are in its employ. In connection with a subsequent settlement with the College, each dismissed faculty member was assured in a letter from the College's solicitor that the decision to terminate his service "was not based upon a finding that you were a subversive person as that term is defined in the Pennsylvania Loyalty Act." Each man was paid his salary to the end of the academic year.

The facts stated above are sufficient to explain why this committee recommends that the Administration of the College be placed upon the censured list of the American Association of University Professors. The propriety of a summary dismissal without definite charge or explanation is not saved by the form of a hearing. In addition, in these cases, faculty representation on the hearing committees was inadequate, and the severance pay granted would have been insufficient even in connection with dismissals on proper grounds and after due procedure. The methods of The Jefferson Medical College Administration in these instances merit condemnation by this Association.

2. The effects of refusal to testify

{j} New York University

On June 20, 1951, the Council (governing board) of New York University voted to dismiss an associate professor of German, with tenure, pursuant to charges of unfitness to teach which had been preferred against

him by the Dean of Washington Square College under the Tenure Rules of the University. These charges were filed in October, 1950, after the professor's refusal, in April, 1946, to produce records of the Joint Anti-Fascist Refugee Committee, on demand of the Un-American Activities Committee of the United States House of Representatives, had led to his conviction of contempt of Congress. The conviction became final on June 14, 1948, by denial of a writ of certiorari by the Supreme Court of the United States, and led to the professor's serving a 90-day sentence. He was suspended from his duties six days after his conviction of contempt became final. His salary was paid to the expiration of the University's current contract year, August 31, 1948, but not thereafter. The charges were based upon the illegal contempt, alleged misrepresentation of facts publicly and to the University faculty, and participation in an allegedly disorderly demonstration of students in October, 1948.

Hearings upon the charges were held before the Faculty Committee of the University Senate in January, 1951. That committee recommended dismissal on February 26. The grounds of this action and of the subsequent dismissal have not been available in the preparation of this report. A subsequent suit which the faculty member brought to compel payment of his salary prior to dismissal, and one year's severance pay thereafter, was unsuccessful. The ground of the adverse decision was that the University's regulations, which recognized rights of tenure as a matter of academic obligation and practice, did not create legal obligations on the part of the University.

On October 13, 1952, an associate professor of English at New York University, with tenure, refused to answer certain questions of the Internal Security Subcommittee of the United States Senate with respect to Communist Party membership and related matters. He invoked the First and Fifth Amendments. The Chancellor of New York University immediately suspended the faculty member from his duties, by telegram, on the ground of "a breach of his duty to the government and to the university." A month later he requested a hearing, and on November 24 the Dean of Washington Square College recommended dismissal of the professor, because of his refusal to answer before the Internal Security Subcommittee and because, in the Dean's opinion, the faculty member's refusal was improperly motivated by a purpose to conceal his relations and that of others to the Communist Party and numerous Communist-front organizations.

The University Council referred the suspension and recommendation of dismissal for hearing before the twelve faculty-elected professorial members of the University Senate. Extensive formal hearings were held, in the course of which the faculty member refused to answer questions relating to alleged Communist activity, which he regarded as

outside the proper scope of the inquiry. The faculty committee voted 9-3 to sustain the charge of improper motivation of the refusal to testify before the Congressional committee. After hearing the faculty member and his counsel, the University Council, on April 30, 1953, voted to dismiss him without severance pay.

This Committee is unable, on the basis of the material available to it, to state conclusions concerning either of the foregoing incidents at New York University. The precise reasons for the first dismissal have not been disclosed; and the testimony in both cases should be examined in relation to arguments which were used. The Committee suggests, therefore, that the American Association of University Professors appoint a committee to conduct an investigation and make a full report upon both incidents.

{k} Rutgers University

An assistant professor of history on a three-year appointment expiring in June, 1953, and an associate professor of physics and mathematics, with tenure, at Rutgers University invoked the Fifth Amendment, and the former also invoked the First Amendment, in hearings of the Senate Internal Security Subcommittee on March 28, 1952, and September 24, 1952, respectively. On September 26, a seven-member committee of trustees, faculty, and alumni was appointed by the President of the University to advise as to the course of action he should pursue. This committee found that under all the circumstances the faculty members' refusals to answer questions of the Subcommittee "raise a real question as to their fitness to continue as teachers on the University faculty," and it recommended that a special faculty Committee of Review of five members, to deal with the cases, be established. The President approved this recommendation and the committee was selected by the Committee on Committees. Formal charges against the men were not filed.

After elaborate hearings the Committee of Review, which had secured an agreement from the President that a decision on its part adverse to the faculty members would not be a final one but would be followed by charges, concluded unanimously that no further disciplinary action should be taken. The Board of Trustees, meeting on December 12, 1952, expressed appreciation of the report, but disagreed with it and adopted a statement which read in part as follows:

The Faculty Committee of Review has urged that to plead the protection of the Fifth Amendment is a recognized constitutional right, and that it carries with it no implication of guilt. However, there is here no question of the legal right of professors . . . as citizens to refuse to answer on the grounds of the Fifth Amendment. The question here concerns their special obligations as members "of a learned profession, and as representatives of this University."

The refusal of a faculty member, on the grounds of possible self-incrimination, to answer questions as to his present or past membership in the Communist Party, put to him by a properly constituted investigatory body, impairs confidence in his fitness to teach. It is also incompatible with the standards required of him as a member of his profession. He has the privilege of freedom to search out and to teach the truth. This University will protect him in the exercise of that freedom, but he has corresponding obligations.

It is therefore

Resolved, that this Board considers that it is cause for the immediate dismissal of any member of the faculty or staff of the University that he refuse, on the ground of the Fifth Amendment to the Constitution of the United States, to answer questions propounded by any duly constituted investigatory body, or in any judicial proceeding, relating to whether he is, or has been, a member of the Communist Party. . . .

The Board, therefore, directed that each man be dismissed from his position, effective December 31, 1952, unless in the meanwhile he should "have tendered himself ready to answer the questions of the Senate Committee. . . ." The dismissals took place at the designated time, with one year's severance pay to the faculty member on tenure and salary for the balance of the contractual period to the other man.

On September 11, 1953, an associate professor of law at Rutgers University resigned from the faculty as an alternative to dismissal because of his invocation of the Fifth Amendment before the House of Representatives' Committee on Un-American Activities in 1953. He was granted a year's severance pay. Before the final action of the Board of Trustees in the case, the President of the University referred to the established Committee of Review of the Law faculty the question whether any unusual circumstances existed, "on account of which the fixed policy of the Board of Trustees should not be applied." The Committee concluded that no such circumstances existed.

This Committee recommends that the Administration of Rutgers University be placed on the list of censured administrations of the American Association of University Professors. The adoption by that Administration of the view that invocation of the Fifth Amendment is in itself a ground of dismissal, violated the right of a faculty member to a meaningful hearing in which his fitness to remain in his position would be the issue, and attempted to turn the exercise of a constitutional privilege into an academic offense, without reference to other relevant considerations. The policy of the Administration in this regard remains substantially unchanged. The suggestion of some mitigation of the previous policy, which arose in the most recent case at Rutgers University, did not materially diminish the evil involved. The American Association of University Professors cannot acquiesce in such a view and is under a duty to exert its influence to secure a more acceptable policy.

(1) Temple University

On September 23, 1953, the Board of Trustees of Temple University decided unanimously not to reinstate a professor of philosophy, with tenure, who had invoked the Fifth Amendment in a hearing before a subcommittee of the national House Un-American Activities Committee on February 27, 1953, and had been suspended by the President of the University on March 1. At the time of his suspension his fitness was questioned because of the doubt arising that Temple University could qualify under the Pennsylvania Loyalty Act. This Act requires institutions receiving State funds, as does Temple University, to certify annually that it has no reason to believe any subversive persons are in its employ.

On May 7, 1953, the suspended professor was heard by the University's Committee Administering the Pennsylvania Loyalty Act, composed of three administrative officers and three faculty members, which was augmented by the three members of the Faculty Senate's Personnel Committee. The augmented committee met subsequently with three members appointed from the Board of Trustees. At the suggestion of this enlarged group, the Board thereafter obtained the advice of counsel concerning legal questions deemed to be involved in the problem presented. Without further proceeding outside of the Board of Trustees, that body then took its final action, amounting to dismissal. In a subsequent financial settlement the faculty member received approximately the equivalent of a year's salary from the time of suspension.

The action of the Board of Trustees was grounded, in a statement which the Board issued, wholly upon the faculty member's allegedly "false use of Constitutional privilege" as being a violation of his "cardinal duty" to his university and to the teaching profession. The questions he had refused to answer were preliminary ones relating to his personal history; and these, the Board held, "could not possibly have tended in the slightest to incriminate him. His assertions under oath to the contrary were manifestly untrue, and it is plain that he deliberately undertook to misuse the Constitutional privilege against self-incrimination as a means of evading the duty of giving his testimony." In October, 1955, the faculty member was acquitted by a United States district court of a charge of contempt of Congress, upon the ground that he was within his rights in invoking the Fifth Amendment.

Following his dismissal, the faculty member appealed to the Faculty Senate pursuant to a tenure rule of the University. As permitted by the rule, the matter was referred to the Personnel Committee, which subsequently interviewed the faculty member and afterward submitted "a report in an advisory capacity with the president of the University." That report is not available to the public except, by action of the University

Senate, to representatives of the American Civil Liberties Union and the American Association of University Professors. The University regulation provided that the President should "carefully review the report . . . and enter such order as he deems fair and just." In this case, the President, after considering the Personnel Committee's report, informed the faculty member that he would not be reinstated.

This Committee recommends that the Administration of Temple University be visited with censure by the American Association of University Professors on account of the foregoing action. The dismissal of the faculty member involved, following his unjustified summary suspension, was without procedural due process and was unaccompanied by an appraisal of his fitness in view of all relevant factors, such as is essential in a dismissal action. Although members of the faculty participated in the preliminary consideration of the case, their attention was focused upon the certifiability of the faculty member under the Pennsylvania Loyalty Act and only secondarily upon the point which later became the sole ground of decision. They were, moreover, given no opportunity to arrive at conclusions or even to participate in the proceedings where conclusions were reached.

The procedure which was followed in this case was in manifest violation of the principles of academic tenure. The ground upon which action was finally based not only was arbitrary, but has now been shown to have ignored legal considerations that robbed the faculty member's invocation of the Fifth Amendment of illegality, although possible ethical questions are not foreclosed. These ethical questions, which might have been related to the faculty member's entire record and motivation, were, like the question of over-all fitness, left unexamined by the Board of Trustees. The subsequent proceedings in the Senate Personnel Committee did not, under the then existing regulations, produce even a reconsideration by the Board of Trustees as a matter of right. It must be added that the procedures have since been improved. Under the new rules, cases involving tenure policy are to be referred to the Personnel Committee prior to action by the Board of Trustees. Moreover, by resolution of the Senate, the Personnel Committee was requested to explore with the proper committees of the Board of Trustees the adoption of a statement of policy on the rights and duties of faculty members before government bodies, and there is assurance that the Trustees will act on the request. These evidences of an altered attitude on the part of the Administration of Temple University are encouraging. They do not remedy the violation for which we conclude censure should be imposed, nor did the inadequate severance pay that finally was accorded.

{m} The Ohio State University

On March 13, 1953, an associate professor of physics at The Ohio State University, with tenure, relied on the First and Fifth Amendments before the House Un-American Activities Committee in Washington in refusing to answer questions relating to his alleged connections with Communism. On the same day the President of The Ohio State University wrote the professor a letter relieving him of all duties in the University until "a complete study of the record of your appearance" before the Committee could be made.

On March 24, the President sent the professor a statement which, among other things, alleged that

Your refusal to answer these questions raises serious doubt as to your fitness to hold the position you occupy. Doubt is raised as to your ability to answer these questions truthfully without self-incrimination. Doubt is raised as to your moral integrity. Doubt is cast upon the loyalty of your colleagues and the integrity of the University itself. There is also serious implication of gross insubordination to the University policy and of conduct clearly inimical to the best interests of the University.

The statement set April 2 as the date of a hearing before the President himself. The hearing was adjourned to April 4 to permit the professor to procure counsel. Present in addition to the President, who conducted the hearing, were three members of the faculty, three Vice-Presidents of the University, and the Assistant to the President. The hearing was attended by due process. The professor stated that he was not and never had been a member of the Communist Party or of any organization which, to his knowledge, was affiliated with it. On April 7, the President recommended to the Board of Trustees that the professor be dismissed, effective immediately. This recommendation, which coincided with the judgment of those who sat in the hearing, was unanimously approved by the Board on April 20. The dismissal, on ground of "a lack of candor and moral integrity" involved in the previous refusal to testify, was without further salary. The President's recommendation and a supplementary statement by the Chairman of the Board were published by the University in justification of the dismissal.

The President's recommendation of dismissal recognized the individual's legal right to invoke the Fifth Amendment. Invocation of the Amendment, however, was stated to involve a failure of duty to the University. "Against this failure the Fifth Amendment is no protection." The statement paid tribute to the professor's outstanding research and excellent teaching and asserted that "there is no evidence of any kind of political activity" during membership on the faculty "and there is common agreement that he gave no indication of bias or leaning toward

communist ideology. He appeared consistently during all the time he was on our campus as a competent and devoted man of science. There appeared from his conduct no reason to question his loyalty." "These facts," the statement continued, "are relevant and would carry weight were it not for" the "public refusal to answer pertinent questions." This refusal, according to the statement, damaged the University's integrity and its good repute in the public mind, and cast doubt upon the University's maintenance of its "fixed policy not to employ Communists or retain them if they ever were employed." Invocation of the Fifth Amendment to justify refusal to answer questions concerning possible Communism of certain colleagues in the University was alleged in the statement to have cast an unwarranted aspersion upon them individually.

The considerations adduced were stated to "show a lack of candor and moral integrity in matters vital to his professorial status. They show gross insubordination to University policy. They show conduct clearly inimical to the best interests of the University." The statement added that "all those from the Faculty and the Administration who sat with me participated freely in this hearing and concurred in the foregoing conclusion." Similar observations were contained in the statement of the Chairman of the Board. He also mentioned that the professor, in the University hearing, had given fear of prosecution for perjury as his reason for invoking the Fifth Amendment, and that this reason was legally invalid. He also gave assurance of support to faculty members if they should encounter actual abuse by Congressional committees.

This Committee recommends that the Administration of The Ohio State University be placed upon the list of censured administrations of the American Association of University Professors because of the basis upon which it acted in this dismissal. This basis, as stated in the written justification of the President of the University and the Chairman of the Board, consisted essentially of the faculty member's prior invocation of the Fifth Amendment and the evils said to be inherent in his refusals to testify. Foreseeable harm was not found to be present on the basis of analysis of his motivation or of actual effects upon the University or his colleagues, but resided, in substance, in deductions from a supposed state of public opinion in relation to his act and from a University policy which, as here elaborated, excluded not only Communists, but also persons suspected of possible Communism because of their voluntary conduct, from membership on the faculty. We do not believe the legal error of the professor in his reason for relying on the Fifth Amendment, or the mere fact that he invoked the Amendment in relation to questions about his colleagues, is an adequate basis for his dismissal. The statements published by the Administration in justification of the dismissal demonstrate that the professor was denied what he had a right to, a

decision reached after due consideration of all factors relevant to his fitness to continue in his post, including his admittedly outstanding record in the University.

The Administration of The Ohio State University has been led into other measures inimical to academic freedom and tenure by its zeal to exclude Communists and persons suspected of Communism from the institution. In 1948 the Board of Trustees instituted an oath requirement applicable to all members of the staff, whereby each was compelled to swear that :

I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the Government of the United States or the Government of the State of Ohio by force or violence; and that during such time as I am an officer, instructor, or employee of The Ohio State University, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or the Government of the State of Ohio by force or violence.

This requirement, which is similar to the one the Board of Regents of the University of California sought to impose, continues to exact the same oath of new staff members and could have led to the dismissal of persons originally refusing to comply. In 1951 the Board of Trustees adopted a regulation forbidding the appearance on the campus of any speaker not approved by the President. Although this rule has now been withdrawn as a result of protests, student organizations must still secure clearance from faculty advisors, and in doubtful instances from the President, before outside speakers can be brought to the University.

In 1954, a Faculty Advisory Committee to the President and the Board of Trustees, chosen by the elected members of the Faculty Council, was established in the University. In addition to general advisory functions, the Committee has the duties of (1) evaluating the functioning of the University policy on guest speakers as established by the Board of Trustees and (2) selecting from among its members, three members to participate in future presidential hearings on termination of tenure. The establishment of this Committee is a constructive development, and we are hopeful that it may lead to the adoption of policies which the American Association of University Professors can approve.

{n} University of Vermont

On April 23, 1953, an associate professor of biochemistry at the University of Vermont, with tenure, having been called to testify before a subcommittee of the United States Senate Judiciary Committee, claimed the privilege of the Fifth Amendment. In accordance with the announced policy of the University, he was immediately relieved of his teaching duties; and a Faculty-Trustee committee was appointed to make a

preliminary inquiry into the case. This committee consisted of 3 trustees and 3 faculty members. It met in executive session, but a stenographic transcript was prepared and later released. The committee voted 5 to 1 that the faculty member be retained. The dissenting member, a trustee, joined in the conclusion regarding the fitness of the faculty member but held that invocation of the Fifth Amendment itself constituted a ground of dismissal. This opinion was contrary to the adopted policy of the Board of Trustees, as later affirmed in the announcement of dismissal of the faculty member: "the dismissal . . . is based on the circumstances of his own particular case and does not, therefore, indicate any change in policy of the Board of Trustees that the invoking of privilege under the Fifth Amendment is not, in and of itself, cause for dismissal. . . ."

On June 20, 1953, the Board of Trustees considered the findings and recommendations of the Faculty-Trustee committee and suspended the faculty member indefinitely and without pay, as of July 15, 1953, "unless on or before that date he advises the president in writing of his willingness to go down and appear before the Jenner Committee and answer fully and freely any questions that committee may see fit to put to him, and that on or before that date he offers to the Jenner Committee to do so."

On August 14, 1953, the faculty member was informed that, according to the general policy of the University, a Board of Review had been constituted, before which he could be heard on three charges: (1) that he had refused to testify before the governmental subcommittee and had invoked the Fifth Amendment; (2) that he "improperly invoked the Fifth Amendment for the protection of others and not for his own protection"; and (3) that he was guilty of "conduct which justifies his discharge in that he has refused to disclose fully his connection with the Communist Party prior to 1948, if any." The Board consisted of 20 members of the Board of Trustees, 4 members of the College of Medicine, and a five-man Faculty Policy Committee. At the hearing on August 29, the faculty member was represented by counsel, as was the Board of Trustees. The hearing was public, and two representatives of the American Association of University Professors were present by invitation. In the final announcement of their decision, the Trustees evidently dismissed the first charge, since they specifically reaffirmed their policy on the invocation of the Fifth Amendment. They also stated that the subject matter of the second charge was not a factor considered by them in their final action; and they made no specific reference to the third charge.

During the hearing it became evident that counsel for the faculty member had refused to permit him to testify in a public hearing regarding events prior to his association with the University of Vermont, on July 1, 1948. Although the faculty member had originally agreed to a public

hearing, he therefore now refused to testify in public to any events before January 1, 1948; but he expressed willingness to answer every question regarding the earlier period in a private session, at which no record would be taken. This offer was refused by a vote of 15 to 8. The remainder of the hearing included testimony by the faculty member in regard to his associations and beliefs after January 1, 1948, including a cross-examination by one trustee into many factual details, seemingly to establish that the faculty member's inability to remember some of them was evidence of evasiveness and untrustworthiness.

The final decision by the Trustees to dismiss the faculty member represented their "considered opinion . . . that he has failed to display to a sufficient degree in his actions and statements during the past five months, both before the committee of Congress and before the University bodies, the qualities of responsibility, integrity, and frankness that are the fundamental requirements of a faculty member. The actions referred to include, but are not limited to, his invoking of the Fifth Amendment." The faculty member was given a year's terminal salary.

This Committee had not completed its recommendations as to the University of Vermont at the time this report went to press. They will be submitted for distribution in advance of the Association's 1956 Annual Meeting and for publication in the next issue of the *Bulletin*.

{o} University of Kansas City

On June 9, 1953, an associate professor of economics, with tenure, at the University of Kansas City invoked the Fifth Amendment as a basis for his refusal to answer certain questions of the Senate Internal Security Subcommittee about membership in the Communist Party and other memberships and activities alleged to be related. At a conference in August, 1953, with a committee of the Board of Trustees of the University, held to enable the professor to "discuss with them his fitness to continue as a member of the Faculty of the University of Kansas City," he declined to answer questions about similar matters, including past or present membership in the Communist Party.

Following the conference, charges were preferred against the faculty member in writing by the Acting President of the University. The principal charge was, "that you refused to answer questions put to you by the Trustees of the University, or to cooperate with them in the performance of their duty to determine whether you are bound by commitments which render you unfit to continue in a position of educational trust." An additional charge, relating to an alleged omission from the information supplied by the faculty member at the time of his appointment, was not relied upon in the decision.

After a delay, because of the faculty member's absence during a

sabbatical leave, a hearing upon these charges was held, in accordance with the University's governing regulations, before the President's Advisory Council and the Executive Committee of the Board of Trustees, sitting as one body. The Chairman of the Board of Trustees presided. Four Board members and the President of the University (who had succeeded the Acting President subsequent to the events outlined above), constituted the Executive Committee members who were present, but the President did not vote. The President's Advisory Council consisted of three deans, four full professors, and one associate professor. These faculty members had been elected before this case arose. The Administration of the University was represented by counsel who presented its case. The faculty member also had counsel. A representative of the American Association of University Professors was present by invitation as an observer.

At the hearing before the tribunal, witnesses were called by each side, but the faculty member was not asked to testify or make a statement and did not do so. The tribunal stated that he "did not avail himself of the opportunity to deny that he is a Communist or subject to Communist influences."

After the hearing the tribunal, according to its subsequent statement, "unanimously found that adequate cause existed for the dismissal" of the faculty member. He was dismissed immediately, on December 17, 1953, with one year's pay from the time notice was sent to him. A subsequent suit, which he brought to compel his reinstatement, was unsuccessful.

The explanation of the University's deciding tribunal stated (1) that "the question whether a Communist should be permitted to teach in our Educational institutions can be unhesitatingly answered in the negative," (2) that the question whether invocation of the Fifth Amendment in an official investigation is in itself a reason for dismissing a faculty member need not be decided, and (3) that "the real issue is this: Shall a member of the academic community have the right to refuse to tell his associates whether he is a member of an organization, such as the Communist party, which disqualifies him for academic life? Our answer is that he does not have this right."

The Committee does not, on the basis of the information available to it, recommend censure of the Administration of the University of Kansas City. The statement of the deciding tribunal in support of its dismissal recommendation does not contain a sufficient justification according to the principles supported in this report; for the unwillingness of the faculty member to disclose pertinent information when he appeared before the Board committee, and his subsequent omission to come forward with the desired information at the hearing upon charges, are treated as in themselves sufficient to warrant dismissal, and no effort is made to weigh this consideration along with the quality of the faculty

member's service to the University, which was not questioned, or with the reasons he may have had for his action. We do not condone this inflexible treatment of a responsible member of the academic profession. However, his refusal to supply certain information created a difficult problem for the Administration of the institution; due process was accorded in the hearings; and a year's severance pay was awarded. Our limited conclusions do not preclude an investigation by a subsequent committee into the merits of this dismissal, if such an investigation should be decided upon.

{p} Wayne University

After the enactment in 1952 of a Communist Control Act by the Michigan Legislature, known as the Trucks Act, the University Council of Wayne University, which is the faculty legislative body of that municipal institution, charged its Special Committee on Rights and Responsibilities with formulating a Statement of Policy and Procedures for the faculty in relation to enforcement of the Act and similar matters. The Act provides that state enforcement authorities shall transmit to the official employing agency pertinent information concerning any person holding a state position who appears to be a Communist or a knowing member of a Communist-front organization. No such person is permitted to hold any non-elective position in the government of the State or any of its subdivisions. The agency is obligated to determine, after a hearing, whether it concludes "with reasonable certainty that such person is a Communist or a knowing member of a Communist-front organization . . . provided, that the refusal" of the person in question, "upon being called before a duly authorized tribunal or in an investigation, under authority of law, to testify concerning his being a Communist or a member of a Communist-front organization, on the ground that his answers might tend to incriminate him, shall be . . . *prima facie* evidence that such person is a Communist or a knowing member of a Communist-front organization."

The statement of the Special Committee on Rights and Responsibilities, after reciting general principles concerning academic freedom and the duty of faculty members, recommends procedures to be used when information comes to the Administration of Wayne University concerning the possible Communism of a member of the faculty, as well as in other situations. The statement was adopted by the University Council on June 4, 1953, and was subsequently approved by the Board of Education of the City of Detroit, which has general supervision over Wayne University. The Board also adopted a statement of its own.

The Council's statement, while noting that invocation of the Fifth Amendment is a constitutional right, recommends that no member of

the University staff invoke the Amendment. It provides that if a staff member on his own initiative or on advice of counsel invokes the Amendment, his summary dismissal is not warranted, although he may be relieved of his teaching duties, but not deprived of his pay "unless absolutely necessary." The statement provides for the establishment of an Advisory Committee to the President, consisting of the Provost, the Dean of Administration, and two faculty members elected by the Steering Committee of the University Council for five-year terms. This committee, in cases not involving the Fifth Amendment, inquires in a preliminary way into allegations of Communism against a teacher, without keeping records of any kind. If the President, after receiving the advice of the Advisory Committee, prefers charges against a faculty member, the right to a hearing before the University Committee on Rights and Responsibilities arises. That Committee consists of five faculty members chosen by the President from a panel prepared by the Steering Committee of the University Council, the Vice President for Academic Administration (formerly Dean of Administration), and a member of the Council of Deans.

The Board of Education's statement provides, in addition, for the right to a hearing before the Board's Personnel Committee, prior to a dismissal. It also provides for the immediate suspension without pay of any employee against whom a *prima facie* case has been established under the provisions of the Communist Control Act.

In April, 1954, the President of Wayne University issued an announcement of University procedure under the Communist Control Act which provides, among other things, for a "hearing" before the Advisory Committee to the President, at which the faculty member against whom charges are brought on the ground of refusal to testify in an official investigation "will be expected to clear himself of the charge of being a Communist or a knowing member of a front organization." The statement notes that "whether suspension *can be* with pay is a legal question on which no board ruling has been made."

On May 3, 1954, a member of the Mathematics Department, with tenure, and a member of the Physics Department, on a one-year contract, invoked the Fifth Amendment at a hearing before a subcommittee of the Un-American Activities Committee of the United States House of Representatives, and the former based his refusal on the First Amendment also. They were suspended without pay on the same day by the President of the University, who was advised by counsel that no legal basis existed for continuing their salaries if they had ceased to perform their duties. Subsequently, the President's Advisory Committee on Loyalty heard both men in a formal hearing. No stenographic notes were taken, but a tape recording of the proceedings was made. Each man

answered all of the Committee's questions but declined, on advice of counsel, to execute an affidavit incorporating his statements. The Committee reported that neither man had, under the law, overcome the "*prima facie* evidence" of his original refusal to testify.

The Committee on Rights and Responsibilities, to which an appeal was taken, listened to the tape recording of the proceedings before the Advisory Committee and took additional testimony. The Committee concurred in the conclusion of the Advisory Committee. In a published supplementary report it later stated that there was no substantial evidence against either man and that the result turned wholly upon the statute. The Board of Trustees dismissed both men upon charges in January, 1955, but did not make the dismissals final until a month later in order to permit a hearing before the Board's Committee on Personnel, if requested. Neither man was granted any compensation either for the period of his suspension or as severance pay.

Some aspects of the foregoing proceedings are subject to severe criticism. The immediate suspension of the two faculty members, following their invocation of the Fifth Amendment, was not asserted to be required by the statute and was uncalled for. The refusal to accord further compensation to the dismissed individuals, if required by legal considerations, should have been accompanied by genuine efforts to overcome obstacles to recognition of the University's obligations under the principles of academic tenure, obligations which the University Council called to the attention of the Board of Education. The University Administration was, however, confronted by a new and damaging statute, which it was difficult to apply. The act contains vague proscriptions and a harmful provision concerning the result of refusals to testify, which had the effect of foreclosing a faculty judgment upon the merits in the cases under review. We believe opposition to the policy of such a statute has become a professional duty.

Other questions which have been suggested regarding these two dismissals could be resolved only through an investigation by a subsequent committee of the Association.

{q} *University of Michigan*

On May 10, 1954, three members of the faculty of the University of Michigan refused to answer certain questions of a subcommittee of the national House Un-American Activities Committee. They were an instructor in mathematics on a term appointment expiring in June, 1955, an associate professor of pharmacology who had tenure, and an assistant professor of zoology on a three-year appointment expiring in June, 1956. All three relied on the First Amendment, and the latter two also invoked the Fifth Amendment. On the same day, the President of the

University sent letters to each of the three, informing him that his refusal to answer raised "serious question as to your relationship to the University of Michigan and to your colleagues, and places upon you the duty to go forward to explain your actions." The men were suspended from their duties without loss of pay, "pending a thorough review of the evidence . . . through the regularly constituted procedures. . . ."

The President sought the advice of a Subcommittee on Intellectual Freedom and Integrity, which had been appointed by the Advisory Committee of the University Senate the preceding February in anticipation of possible developments. The Subcommittee, however, defined its function as solely the review of decisions previously made by the President and refused to act prior to such a decision. The Senate Advisory Committee thereupon, at the President's request, elected a special subcommittee of five members to advise the President in the three cases.

The special subcommittee heard the three men separately, after having defined the scope of its inquiry in letters to each of the men. One of them refused to answer at all with respect to his present or past Communist affiliation on the ground that the questions concerned political activities and beliefs; another testified that he had been a Party member, but that he had drifted away; and the third, testifying similarly as to past membership in the Communist Party, established his withdrawal to the satisfaction of the subcommittee and the President. The subcommittee unanimously recommended the dismissal of the first man, voted 3-2 in favor of censure of the second man but against his dismissal, and recommended, 4-1, censure without dismissal for the third. The Executive Committee of the Medical School had previously recommended unanimously that the second man be dismissed; the Executive Committee of the College of Literature, Science, and the Arts had recommended that the other two be retained.

On July 27, 1954, the President of the University informed the first two men that he intended to recommend their dismissal to the Regents, and called attention to their privilege under the Regents' bylaws to have their cases reviewed by the Senate Advisory Committee. Both of them sought this review, which was accorded before the Subcommittee on Intellectual Freedom and Integrity. That body unanimously recommended dismissal of the first man and concurred unanimously with the majority of the special subcommittee in recommending censure but not discharge for the second. The third man was censured by the Administration and his case did not receive review. The President recommended that the first two be dismissed. The dismissals were voted by the Board of Regents and became effective on August 26, 1954. No request for a hearing by the Board was made. Subsequent efforts to secure severance pay for the two men were rebuffed.

On October 5, 1954, the President of the University made a report to the Senate regarding all three cases. That report strongly enunciated the University's policy of not knowingly appointing or retaining Communists on its staff and quoted a message, offering the University's cooperation, which the President had sent to the House subcommittee after learning that the University of Michigan was scheduled for investigation. The President's report stated that the University of Michigan had not adopted a policy of regarding invocation of the Fifth Amendment in an official investigation as in itself a ground for dismissal. The report criticized the three faculty members for not disclosing their Communist associations to the University at the time of their appointment and repeated a statement the President had made to the special subcommittee, that "this is not an inquiry into the technical competence of the men in question," but "is a question of relation to or involvement in a conspiratorial movement which, if successful, would subvert the freedoms and the liberties which we hold sacred." The report quoted the earlier statement to the effect that answers must be "freely and candidly given" to enumerated questions about past and present membership in the Communist Party, possible Communist contacts, reasons for withholding information from the University, and reasons why protection of associates was placed above the University in the refusals to testify.

The President's report stated that the questions of the Congressional subcommittee indicated a "rather close and continuing involvement in the Communist apparatus on the part" of the first faculty member. The report noted that this member, in contrast to the second person dismissed, had declined to agree to circulation of the special subcommittee's report among the faculty. As to the second man, the report noted that his refusal, based on the Fifth Amendment, to answer the Congressional subcommittee's questions, led "to the presumption that he was using the amendment legally and that there were in truth facts in his case which, if disclosed, would tend to connect him with a crime." The report noted that the minority of the special subcommittee recognized that this faculty member had "not shown proper loyalty to the University, . . . continues to be a Communist in spirit, and . . . has acted so as to bring discredit on the University." The report recognized that "fair-minded persons may, and clearly do, differ" as to whether this faculty member "did satisfactorily demonstrate his withdrawal from the Communist Party." The report cited vagueness concerning the circumstances of his withdrawal from the Party as an example of his "unwillingness to disclose matters which he surmises may be unknown to his questioners." The report condemned his disclaimers of contemporary knowledge of the Communist Party and suggested that he might in fact have "gone underground." **The report continued:**

Standing alone, the question of political and economic ideologies would not be matters of grave concern to the University. But as evidence bearing upon the determination of the fact of severance or non-severance of Communist affiliation they may be made the proper subject of inquiry without invading the sacred precincts of freedom of thought. It is not thoughts but the definite fact of adherence or non-adherence to the present Communist organization which is the subject of inquiry.

The burden of refuting the inescapable inferences flowing from his admitted former membership and present refuge in the Fifth Amendment must necessarily rest upon [the faculty member].

The report quoted from the President's letter to this faculty member after the special subcommittee's report was made, as follows: "Your answers to their questions leave grave doubts as to your fitness to hold your present position of responsibility and trust, and have raised in my mind and in the minds of the University committees serious concern about your integrity as a member of the teaching profession." The conclusion was expressed that "it becomes difficult to accept your disavowal of the illegal and destructive aims of the Communist Party."

The President's report recorded his censure of the third faculty member who was originally charged, and stated the conclusion that he was at the time of his Communist Party membership "and now remains an undisciplined mind outside of his own field who scorns all authority."

This Committee does not, on the basis of the information available to it, recommend censure of the Administration of the University of Michigan. The report of the President to the University Senate, in asserting that a dismissal may be based not only on actual Communist Party membership, but also on remaining a "Communist in spirit" after leaving the Party, advances a vague, ideological test of fitness, which we cannot accept. We cannot, moreover, as we state elsewhere, accept as proper the imposition of formal censure on one of the faculty members involved; and the failure to accord severance pay to the dismissed members of the faculty was a serious breach of the principles of tenure. Due process was accorded in the proceedings, however, and the stated justification for the dismissals involves, in the final analysis, a judgment with regard to the faculty members involved which is not necessarily invalid. Our limited conclusions do not preclude an investigation by a subsequent committee into the merits of this dismissal, if such an investigation should be decided upon.

{r} *Reed College*

In August, 1954, the Board of Trustees of Reed College decided to dismiss a professor of philosophy and humanities, with tenure, and to retain a professor of art, with tenure, and an instructor in history and humanities who had completed the first year of a two-year contract term,

after proceedings which resulted from their refusal to answer certain questions relating to Communist affiliation, at a hearing of the national House Un-American Activities Committee in June, 1954. The refusals were followed by the appearance of the three men before a committee of the Board and by a preliminary inquiry into their fitness by the Faculty Council of the College, which also interviewed the men.

The full Board considered reports based on these two preliminary inquiries and a report by the President of the College. The two men subsequently retained made disclosures acceptable to the Board committee and to the Council. Because the faculty member subsequently dismissed had refused to disclose to the Board committee information concerning his past or present membership in the Communist Party, the Board brought a charge of failure to cooperate against him. The charges led to a hearing before the Board, at which he was offered the right to have counsel. The Board consulted with the members of the Faculty Council, who were present at the hearing, before deciding upon the dismissal, which was accompanied by one year's severance pay.

The report of the Faculty Council to the Board evaluated the faculty members' fitness in relation to their service to the College, their qualifications, and their conduct before the Congressional committee and before the Council itself. It recommended that no action be taken against them. One member dissented as to the man later dismissed, on the ground that members of the Communist Party should not be retained on the faculty and that the faculty member in question had "not been helpful to our learning his true position relative to the Party and membership in the Party"; but the remainder of the Council, basing its views on considerations of professional fitness and behavior, concluded that he was outstandingly qualified. The Council alluded, also, to assurances he was given at the time of his appointment that the College did not inquire into the political beliefs or affiliations of members of its faculty. The statement of the Board of Trustees in support of its dismissal action takes the position that "membership in the Communist Party today is not consistent with membership in a college faculty" and that refusal to cooperate in an academic inquiry into these matters is misconduct.

This Committee does not, on the basis of the information available to it, recommend censure of the Administration of Reed College. The statement of the Board of Trustees in support of its dismissal action does not contain a sufficient justification according to the principles supported in this report; for the faculty member's unwillingness to disclose information concerning his possible Communist connections is treated as in itself sufficient to warrant dismissal, and no effort is made to weigh his refusals to answer along with the quality of his service to the College or with the reasons he may have had for his action. Sub-

stantial due process was accorded, however; a year's severance pay was granted; and two faculty members who also refused to answer questions before the Congressional committee were retained. Our limited conclusions do not preclude an investigation by a subsequent committee into the merits of this dismissal, if such an investigation should be decided upon.

3. The defense of academic freedom and tenure by college and university administrations

There have been heartening instances in which the principles of academic freedom and tenure have been sustained by college and university administrations during the period under review. These actions merit commendation, and we recommend that the 1956 Annual Meeting of the American Association of University Professors express its approbation of them.

In certain instances, the number of which is unknown, administrations have declined to question the fitness of faculty members who, sometimes to the accompaniment of considerable publicity, have been denied passports for foreign travel or have encountered extreme delay in the issuance of passports. Several administrations have, likewise, contended vigorously for the admission of foreign scholars to this country, without regard to political considerations lacking any clear relation to national security. These are issues of great significance, upon which compromise would be harmful to learning and to security itself; for the community of scholarship, by its very nature, transcends national boundaries. To the credit of the academic institutions which have acted courageously in these matters, they have perceived the interests at stake and have defended them.

Several administrations, though under acute stress, have declined to proceed against faculty members who have become the subject of criminal charges based on alleged Communist activity, contempt of a legislative committee, or perjury in a legislative investigation. In an outstanding instance, the Administration of The Johns Hopkins University retained a faculty member at full salary status during protracted litigation, while relieving him of teaching duties to permit him to devote adequate attention to his defense, and has since restored him to full duty following the final dismissal of the perjury charges against him. The Administration of the University of Chicago acted similarly in a publicized case covering a shorter period of time. In instances at the Massachusetts Institute of Technology and Cornell University, in which the court proceedings have not yet ended, the faculty members concerned have been relieved of teaching duties at full pay, although for reasons less clearly related to their defense; but they have retained faculty privileges in other respects.

Under the circumstances of these times and the stress of the particular situation confronting it, the Administration of The Johns Hopkins University deserves especially warm commendation, as does the Administration of the University of Chicago. This Committee, although it regards suspension from teaching duties (except as necessary to enable the teacher to prepare his defense) as harmful and unnecessary in the kind of cases under review, concludes also that, under the conditions of the recent past, administrations which have resorted to suspension, but have adhered to their obligations in other respects, have not forfeited favorable mention. We assume that, should the criminal conviction of a faculty member result from his prosecution, academic due process would be accorded to him despite his suspension, if his removal should come under consideration.

It is also to the credit of academic administrations that they have not, on the whole, taken the position that past membership in the Communist Party is in itself a ground for the dismissal of a faculty member. They have, in such situations, been willing to weigh all of the factors relevant to the faculty member's fitness. The Administration of the Massachusetts Institute of Technology sought the advice of a faculty committee in reviewing the cases of several faculty members, and upon recommendation of that committee, determined that they should be continued at the Institute in good standing and without change of status. In several other instances, including some of those previously reviewed in this report, in which certain faculty members were dismissed or denied reappointment, others were retained after hearings upon charges, even though their past Communist Party membership was disclosed.

The Administration of Sarah Lawrence College merits especially warm commendation for respecting the ethical position of a member of its faculty who, on the basis of moral rather than legal considerations, declined to inform against others in a Congressional committee hearing.

The position of the Administration of Harvard University in relation to the matters reviewed in this report calls for somewhat more extended treatment; for it reflects an extensive consideration of the problems involved. That consideration took place under severe attack by Senator Joseph R. McCarthy upon the University Administration itself, and under the stress of criticism by certain alumni and members of the public. The outcome embodies, in many respects, the best academic traditions, even though the conclusions reached do not accord in certain particulars with the positions taken in this report.

A few members of the faculty of Harvard University invoked the Fifth Amendment before committees of the Congress of the United States. They were not disturbed in their positions, but were made the subject of inquiry by the Harvard Corporation. They were interviewed by a

subcommittee of the Corporation and were heard by the full Corporation, which had the advice throughout of a special Faculty Advisory Committee. The Corporation concluded, after reviewing each case with care, that the invocation of the Fifth Amendment by each individual was misconduct, but was not "grave misconduct" justifying removal under the terms of the applicable University statute.

From the Corporation's statement explaining its decisions, and from subsequent administrative statements and actions, it is clear that invocation of the Fifth Amendment, under the circumstances involved in these cases, may be regarded as sufficient ground for non-reappointment, though not for dismissal, of a faculty member at Harvard University; but one of the faculty members involved, who has retained his post, has continued to perform his duties despite an indictment for contempt against him. In the course of its statement, the Corporation expressed its view that "In the absence of extraordinary circumstances, we would regard present membership in the Communist Party by a member of our faculty as grave misconduct, justifying removal." This conclusion rests upon "secret domination by the Party," which is the "usual concomitant" of membership and "cuts to the core" of the faculty members' "ability to perform his duties with independence of thought and judgment."

The absence of any assurance that a faculty committee will give its judgment in such cases, accompanied by the Corporation's strongly expressed view that invocation of the Fifth Amendment is misconduct, might, under other circumstances, give rise to difficulty. The actions taken in the particular instances, however, and the careful thought which the Harvard Corporation and its advisers have devoted to the problems confronting them, have been a major source of strength to the principles of academic freedom and tenure throughout the country in a difficult time. They merit the appreciation of the academic profession and will, we hope and believe, continue to add luster to the institution responsible for them. We note that, in respect to present membership in the Communist Party, the statement of the Harvard Corporation recognizes the possibility of special circumstances which might render a teacher's removal inadvisable. The need to determine all the issues in such circumstances implies the right to a full hearing. The maintenance of this right, with the opportunity it affords for responsible judgment, is the key to continued respect for academic freedom and academic tenure alike.

D. Concluding Observations

Several general conclusions emerge clearly from the review made by this Committee. The most important conclusion is that a misconceived notion of "public relations" has led various university administrations

to interrogate entire faculties or particular members of faculties who, for one reason or another, have been suspected of Communist taint. Public pressure from newspapers, legislatures, state officials, or just from the general climate of opinion during the most critical years seems to have brought about nearly all of these administrative activities. All but two of the institutions where the dismissals now under review occurred are publicly controlled or receive public funds. In several instances specific public campaigns against these institutions or against individuals within them preceded the action. The necessity of assuring the public of an institution's freedom from Communist influence is referred to in several of the statements justifying dismissals; and in other instances university administrations have felt impelled to sanction the purposes of hostile legislative investigations by offering their whole-hearted co-operation.

We cannot censure the justified public interest in colleges and universities, or be unmindful of the extremely difficult task confronting academic administrations that seek to preserve educational and research opportunities in order to serve the general welfare in spite of the suspicions of a public which, at times, has been confused by complicated issues or led astray by demagogic appeals. The temptation to yield a little in order to preserve a great deal is strong, particularly when faculty members who cry out for protection seem wilfully uncooperative. 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.

We cannot accept an educational system that is subject to the irresponsible push and pull of contemporary controversies; and we deem it to be the duty of all elements in the academic community—faculty, trustees, officials and, as far as possible, students—to stand their ground firmly even while they seek, with patient understanding, to enlarge and deepen popular comprehension of the nature of academic institutions and of society's dependence upon unimpaired intellectual freedom. Measured by this standard, the acts and utterances of a preponderance of college and university administrations in the situations under review leave much to be desired. In a few instances full support has been given to agitation that should have been resisted. If the conduct displayed in these instances represented the customary behavior of academic administrations today, there would be cause for deep pessimism.

The evidence is persuasive, however, that the general administrative and faculty behavior in colleges and universities is quite otherwise, and this is far more hopeful. Instances have been few in which officials or trustees have seemed fundamentally convinced of the wisdom or fairness of the repressive policies they have felt constrained to carry out.

In other instances, administrations have believed for the moment that justice and true freedom were being served. In several situations there was no move to bring charges until an outside spur was applied; and sober confidence in academic personnel, rather than zeal to ferret out subversion, seems to prevail as the nearly universal mood today. The institutions that maintained this confident temper through the years of stress, rather than those that yielded to pressure, seem now to have been the guardians of the true spirit of the academic community in this country. Constructive forces are at work even in the administrations this Committee has found it necessary to criticize in this report. Although security measures may still present an under-the-surface threat, and although the selection of faculty members may be harassed by narrow restrictions, the dominant purpose, in all probability, continues to be the maintenance of intellectual vigor in the members of college and university faculties.

Administrations have repeatedly announced their adherence to a policy of refusing to employ a known member of the Communist Party, even when their actions were stated to be based on other considerations; and faculties under pressure have from time to time adhered to the same position. Administrations have consequently assumed the difficult burden of reconciling the ferreting out of Communist faculty membership with the maintenance of academic freedom and with procedural due process in situations involving tenure. With Communist Party membership as difficult to ascertain as it is, the danger is great that injustice will result from this policy and that innocent, capable people will be lost to the academic profession. The public demand for the heads of persons suspected of Communism is not characterized by fine discrimination; and the answering actions of academic institutions, like those of other organizations, are likely to reflect a similar crudeness of judgment.

It clearly would have been better for the health of higher education in this country if academic institutions had refused to be stampeded, and had insisted that competence and satisfactory performance in teaching or research, and good character in relation to these functions, are the matters to be judged when academic tenure is at stake.

Much of the non-Communist world proceeds without excluding from the teaching profession avowed Communists, provided they are not active conspirators, and it seems out of keeping with the free traditions and present strength of the United States for our policy to be craven and timid. One reason lies, no doubt, in the greater realization in this country that Communist Party groups, given the opportunity, become active instruments of Soviet Communism's espionage apparatus and formidable agents of subversion. Yet, as our report shows, effort to avoid this danger may well inflict damage upon the academic commu-

nity that far outweighs any beneficial results of the measures adopted.

To maintain a healthy state of thought and opinion in this country, it is desirable for adherents of Communism, like those of other forms of revolutionary thought, to present their views, especially in colleges and universities, so that they may be checked by open discussion. How else are Americans to know the nature of the ideological currents in their world? If representatives of Communism from abroad were to be employed under an exchange program in American institutions of higher learning, as has been proposed, the unwisdom of the present academic policy would quickly become evident. We urge 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. Such a policy is complicated in this country by the growing tendency towards the legal outlawing of the Communist Party. Simple membership in the Party has not yet been clearly defined as illegal. The influence of the academic community should, we think, be directed against the proscription of membership in a movement which needs to be kept in view rather than driven underground.

Administrations have frequently referred to a statement made by the Association of American Universities in 1953, that professors owe their colleagues "complete candor and perfect integrity," and that the "invocation of the Fifth Amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position." Perfection is indeed a standard to which men should aspire; but it does not follow that those who fail in some instance should be cast out, or that imperfection in one particular is necessarily inconsistent with valuable service.

The case of an individual who is asked to testify about some past political indiscretion and who is ordered to disclose the names of other persons who were involved is illustrative. There is a popular prejudice against informers as such, but there is also reason to sympathize with a person who declines to aid in the ruin of others who, in his judgment, do not deserve such a fate. The use of the Fifth Amendment as a basis for silence in such situations may not be morally or academically blameworthy, although it might be legally indefensible. A sense of humanity may justify a departure from "complete candor" in such a dilemma.

An imminent danger 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. It is just as incumbent upon university and college administrations and upon faculty committees to

respect those bounds as for the individual faculty member to demonstrate frankness and candor. The greater peril for American education lies in the loss of our respect for our hard-won intellectual rights and freedoms.

The policy of placing "a heavy burden of proof" on a teacher who has invoked the Fifth Amendment must be considered in relation to the constitutional protection that the Amendment is designed to secure. This report has already expressed a belief in the duty of a faculty member to be open and truthful with his associates if he has invoked the Fifth Amendment and is for this reason questioned; but it does not follow that it is wise or right to place his professional survival in jeopardy by demanding that he not only talk freely but also refute unspecified inferences drawn by his accusers from his refusal to testify. The adoption of such a policy tends to substitute economic punishment for the criminal punishment against which the Amendment is designed to guard; and it impairs in direct proportion the constitutional guaranty. The variety of reasons which have induced witnesses to invoke the Fifth Amendment, moreover, renders the policy of attaching *prima facie* blameworthiness to their conduct thoroughly unrealistic. We venture the belief that sober second thought will lead to the conclusion that this aspect of the statement of the Association of American Universities is unsound.

Bentley Glass (Biology), The Johns Hopkins University, *Chairman*
 Robert K. Carr (Political Science), Dartmouth College
 Ralph F. Fuchs (Law), Association's Secretariat
 Douglas B. Maggs (Law), Duke University
 Glenn R. Morrow (Philosophy), University of Pennsylvania
 Talcott Parsons (Social Relations), Harvard University
 Russell N. Sullivan (Law), University of Illinois
 George C. Wheeler (Biology), University of North Dakota

Appendix

University of California Oath Controversy: Summary of Developments¹

On March 25, 1949, President Robert G. Sproul of the University of California presented to the Board of Regents a proposal that a special oath be taken by members of the faculty and administration of the University, in addition to the oath to support the Constitution of the

¹This summary is based on the detailed report prepared by Professors R. F. Arragon and Quincy Wright, who visited the University of California in the spring of 1951 and investigated the situation on behalf of the Association's Committee A on Academic Freedom and Tenure.

United States and the Constitution of the State of California which was already required of all officers of the State. This proposal was made without the foreknowledge of the faculty, apparently in an effort to forestall action on the part of the California Committee on Un-American Activities, of which Senator Jack Tenney was Chairman, to inaugurate a constitutional amendment giving the Legislature authority over the University in matters of loyalty. The minutes of the Board state simply that President Sproul said: "There is a matter on which I should like the hand of the President upheld and his authority clarified having to do with this subject." Offered in executive session, the motion to require the oath was passed with little discussion, by a unanimous vote. The text of the oath, which was not revealed to the faculty until June 12, 1949, was as follows:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of my office according to the best of my ability; that I do not believe in, and I am not a member of, nor do I support any party or organization that believes in, advocates, or teaches the overthrow of the United States Government, by force or by any illegal or unconstitutional methods.

On June 24, the text of this oath was changed so that the latter portion of it made specific reference to the Communist Party, as follows:

. . . that I am not a member of the Communist Party or under any oath or a party to any agreement or under any commitment that is in conflict with my obligations under this oath.

This novel requirement of an oath of disclaimer came as a shocking surprise to the members of the faculty, not alone because they had not been consulted about it and remained unaware even of its existence until it was announced in the May issue of the *Faculty Bulletin*, but especially because it seemed in clear contravention of the State Constitution and of the Government Code. The former prescribed a simple oath of allegiance to the Constitutions of the United States and of the State of California, and provided that no other oath should be required as a qualification for any office of public trust; while the latter required all public officers and employees to take an identical oath and made it unlawful to remove a person from his post because of his failure to comply with any "law, charter, or regulation prescribing an additional test or qualification, other than tests and qualifications provided for under civil service and retirement laws, if he has taken or offers to take the oath prescribed" by the Code.

On June 14, the northern section of the Senate (faculty members of the rank of instructor or above, but with no right of voting on the part

of instructors until their third year of service) passed a resolution of protest, which on June 20 was concurred in by the southern section. The objections to the oath included not only the ambiguity of its terms and its futility as a mode of detection of Communists, but the broader questions of constitutionality and tenure. The President was asked for assurance of the application of "all normal intramural procedures with respect to privilege and tenure," of the separation of the oath from the "contract letters" (which were newly instituted to replace the former letters of notification of salary sent to professors each year), and of no requirement for annual repetition of the oath.

From the beginning, the members of the faculty were placed in a dilemma because of the difficulty of separating the two major issues thus presented them. On the one hand, there was the issue of Communism and loyalty; on the other, the issue of the infringement of tenure implied in the imposition upon everyone of an oath of disclaimer: "I am not. . . ." In later discussions it was emphasized, especially by the Regents, that in 1940, at the time of the dismissal of a teaching assistant who was found to be a member of the Communist Party, a public statement had been issued by the Regents which stated "that membership in the Communist Party is incompatible with membership in the faculty of a State University." Furthermore, a resolution of the Regents on January 4, 1946, had amplified and formalized this policy as follows: "Be it resolved that any member of the faculty or student body seeking to alter our American government by other than constitutional means or to induce others to do so, shall, on proof of such charge, be subject to dismissal." True, many members of the faculty appear to have been uninformed of this policy; no effort had been made to implement it until the fateful days of 1949, when the political temper of the times had changed, and the disclaimer oath was made to substitute for the *proof* of charges of subversion. Subsequent events showed, however, that in this policy of the exclusion of Communists from positions in the University the great majority of the faculty concurred. Thus, Regent Neylan stated correctly that the faculty on March 22, 1950, "after a full year's discussion, voted by secret ballot in a majority of 79% to sustain the policy of the University excluding Communists from employment." It is true that the propositions affirmed by the majority would not only exclude Communists from teaching positions simply upon evidence of membership in the Communist Party, but would also exclude teachers whose "commitments or obligations to any organization, Communist or other [would] prejudice [demonstrably prevent¹] impartial scholarship and the free pursuit of truth. . . ."

¹ Wording contained in proposition as adopted by the southern section.

The initial action of the faculty was to seek a compromise. The Advisory Committees of the Senate were asked to confer with the President in order that the oath "be deleted or revised [sic] in a manner mutually acceptable to the Regents and the members of the Academic Senate." From the wording suggested by the Advisory Committees came the sentence in the resolution by the Regents on June 24, which accompanied the modification in the oath requirement, and which reads: "Any person who is or shall be a member of the Communist Party or otherwise undertakes obligations or advocates doctrines inconsistent with this policy shall, after the facts have been established by the University Administration and after the traditional consultation with the Committee on Privilege and Tenure of the Academic Senate in cases of members of the faculty, be deemed to have severed his connection with the University." This was intended by the Advisory Committees to make the oath superfluous and to hold academic tenure inviolate. Nevertheless, the oath, as modified to disclaim membership in the Communist Party, was retained, and this new wording introduced more specifically than the original words the implications of guilt by association and of political test. Misunderstanding increased; faculty distrust of the Regents grew; and the Regents later charged that the faculty had repudiated its own representatives.

On September 19, 1949, the northern Senate met, and three days later the southern section also met. The resolutions then adopted indicated that the faculty was not willing to go as far as the Advisory Committees had gone to meet the Regents' policy. The faculty now undertook to avoid explicit agreement with the exclusionist policy and the doctrine of guilt by association, and it placed the issue of the Communist teacher squarely upon "the freedom of competent persons in the classroom" as stated in University Regulation No. 5 (1934; revised, 1944). The prohibition should be that of "the employment of persons whose commitments or obligations to any organization, Communist or other, prejudice impartial scholarship and the free pursuit of truth." In the second place, the faculty rejected the additional loyalty oath. These proposals were voted unanimously in the north (650 voters present) and practically so in the south (375 present). When they were presented to the Regents, a committee, of which John F. Neylan later became Chairman, was appointed to confer with the Advisory Committees of the two Senates. About this time, as the misunderstanding increased, Regent Neylan, who had originally been opposed to the oath, according to his own testimony, became one of its staunchest supporters; while President Sproul became more and more concerned with the adoption of alternatives that would be acceptable to the faculty.

The Regents' position, as it now emerged, was simple and definite:

Communists must be excluded from the faculty, and until some better means should be suggested, an oath of disavowal would be a condition of employment. The faculty stand, as eventually defined by the Conference Committee appointed to confer with the Regents, was that the oath should be withdrawn; that freedom and security should be maintained by "full faculty participation in the making of decisions affecting conditions crucial to teaching and research and a high degree of deference to faculty judgment in such matters, such as qualifications for membership, which are peculiarly within the competence of the faculty"; and that "the exclusion of members of the Communist Party *per se* from employment is not the best means." There was admitted to be a sharp division of opinion on the last matter, but the vast majority at that time held to the policy of the American Association of University Professors that guilt should not rest solely upon membership or association. In the Regents' meeting of January 4, 1950, the immensity of the cleavage between faculty and Regents became fully apparent, and the effort to find a compromise led to the proposal to place a statement of policy on the reverse side of the "annual contract" [sic] and to have the acceptance of the "offer of position and salary" [sic] include acceptance of "the terms of employment implied in that statement of policy." The proposed statement did not mention Communism, but concerned only free scholarship and teaching, according to the Regents' resolution of June 24, 1949, and University Regulation No. 5. In conference with President Sproul, the northern Conference Committee members, in supporting the letter as a substitute for the oath, accepted wording that recognized the exclusion of Communists, and in effect acceded to the exclusion of Communists from the normal protection of tenure. The Regents proposed that the conditions be stated on the face of the letter of appointment as an alternative to the oath. This was unanimously refused by the Senate Committee. The Board of Regents reaffirmed the alternative requirement and set April 30, 1950, as the deadline for acceptance, with failure to sign meaning severance from the University as of June 30, 1950. Thus, as a result of a deadline for signature with no specific provision for hearings, non-signature as well as membership in the Communist Party abrogated tenure. This action by the Regents was taken in spite of appeals by 42 deans and department chairmen of the northern section and by 32 administrative heads of the south, warning of the serious consequences to the University.

On April 21, 1950, nine days before the deadline, an alumni committee submitted, and the Regents accepted, a plan which substituted for the oath a "New Contract of Employment," containing a disavowal of Communist Party membership and a further provision that those who failed to sign could petition the President for a hearing by the Senate's Committee on Privilege and Tenure. During the next few days, however,

it became apparent that while the President held that unwillingness to sign did not mean dismissal, and that one could be cleared without signing, this view was challenged by Mr. Neylan. On May 1, a new form of letter of appointment was sent out to implement the adopted policy, to those with tenure as well as to those without. Instead of the former wording ". . . your salary for the year ending . . . as Professor of . . . was fixed at \$. . .," it read as follows: "This is to notify you that you have been appointed Professor of . . . for the period July 1, 1949, to June 30, 1950, with salary at the rate of \$. . ." This letter also contained the further requirement that the letter of acceptance be signed and the enclosed oath be subscribed and sworn to before a notary public. This letter clearly substituted for indefinite tenure an annual appointment, subject to the constitutional oath, and a written acceptance of the disclaimer statement.

Fifty-two persons who did not comply appeared before the northern Tenure Committee, of whom five were not recommended for continuance of employment and 47 were recommended for continuance. The Committee claimed that the crucial point was whether the non-signers would state to the Committee directly or indirectly that they were not Communists and so would clear themselves; but in cases of refusal to reply to this question directly or indirectly, the Committee appears to have acted from inferences. The southern Tenure Committee, on the other hand, gave only incidental attention to the question of Party membership, and devoted itself mainly to eliciting satisfactory reasons for not signing, if there were such. It examined 27 non-signers, nine of whom lacked Senate status, and found of all but one that "they were loyal citizens, who in their independence stood unwilling to perform an act that they felt should form no part of a great University's condition for employment."

In the July and August meetings of the Regents it became clear that the reasoning of the Tenure Committees would not be accepted by the Regents. Communism was no longer the issue between the majority group of Regents and the Faculty; it was rather whether the Board should accept only signatures and reject the use of the appeal to the Tenure Committees as an "honorable alternative." To refuse to sign was to be disobedient, to flout the Board's authority, to desire to substitute one's own judgment as to standards of employment, to resist the discipline of the University over its employees. Professors were employees, not officers or holders of a public trust, and so had no vested right. Such statements appear from the stenographic records of the summer meetings as the grounds for the Regents' rejection of the President's recommendation for the continuance of those who had been cleared by the Tenure Committees. Governor Warren protested the action and said that it amounted to "discharging these people because they are

recalcitrant and won't conform." The southern Tenure Committee reported to the Senate in September: "They were dismissed for insubordination."

The precise actions of the Regents were more complex: on June 23 to postpone the consideration of the President's recommendations; on July 21 to accept these recommendations by a vote of 10 to 9; and on August 25 to reconsider and reject them by a vote of 12 to 10. Out of 62 original non-signers who were Senate members, and recommended by the Committees for continuance, 32 were left who had not signed at this date, and who therefore stood dismissed. It thus became evident that, contrary to the understanding of the faculty, clearance by the Tenure Committees did not in itself obviate the requirement of written disavowal; the teacher was still expected to show "adequate reason" for not signing. The reasons for not signing and other evidence reported by the committees were not acceptable substitutes for the disclaimer; and whether any would have been acceptable was not made clear. The elimination of academic tenure in relation to the disclaimer also emerged as a clear policy.

The effect of the dismissals upon the faculty of the University was dramatic and devastating. The northern Tenure Committee's adverse report on the five who were not recommended for reappointment was reexamined, and an extended debate arose because of charges that the Committee had so acted only because of a lack of cooperation on the part of the five, and not from any evidence of their membership in the Communist Party. The Committee was asked to reconsider their cases. It did so, and on October 19 recommended their reappointment to the President, on the grounds that no charges of disloyalty, incompetence, or moral delinquency had been laid against them and that their discharge as a "disciplinary measure" constituted a breach of tenure. On October 9, the Senate voted to work for the reinstatement of all the non-signers and to uphold "the traditional University principles of academic tenure and academic freedom, including the essential right of the faculty to determine the qualifications for membership." A Committee on Academic Freedom had been set up in the north, and the Tenure Committee in the south given similar functions. A 59-page booklet issued by the former of these committees in March, 1951, appraised the effect of the dismissals and their aftermath on the University. Not only were 26 faculty members finally dismissed, but 37 others resigned in protest, including some of the most distinguished members of the faculty; 55 courses had to be dropped from the curriculum; and there were 47 pointed refusals of appointment. Over 1200 signatures to protests from other college and university faculties were reported, together with 20 condemnatory resolutions by professional societies and groups. *The*

Year of the Oath, by George R. Stewart and others, was written and published in 1951, and the northern Senate formally thanked Professor Stewart on November 21, along with others who had written articles or pamphlets. A special unified Committee on Tenure was set up by the Senates. Financial assistance for the non-signers, whose salaries ceased in June, 1950, was organized and was widely forthcoming.

On August 31, 1950, 20 of the dismissed Senate members petitioned the State's District Court of Appeal for a writ of mandate to compel the issuance of the contracts voted in July, notwithstanding their refusal to sign. On April 6, 1951, the Court rendered a favorable decision, on constitutional grounds, and ordered letters of appointment to be issued. Before the Regents had reached a consensus on the question of appeal, the State Supreme Court, on its own motion, took the case under consideration.

Meanwhile, on October 3, 1950, the State had enacted the so-called Levering Act, which required of all State employees an oath disclosing past membership in any subversive organization, although not designating any by name. The Regents, on October 20, 1950, requested faculty members to comply with the State legislation. On December 15, 1950, they announced that any employee who did not do so by December 31 of that year would not be paid. On October 19, 1951, the Regents adopted the Levering Act as the University's own requirement. They then abolished the requirement of an annual anti-Communist oath, or an anti-Communist declaration in the annual acceptance of contract. They reasserted their refusal to employ Communist Party members, and the responsibility of the Senate for implementing this policy, and reserved a veto on any appointment which, in their judgment, would violate the anti-Communist policy. This action was affirmed on November 16, 1951.

On October 17, 1952, the Supreme Court of California handed down a decision favorable to the faculty members who had petitioned for issuance of letters of appointment to their regular posts. The decision was on the ground that the State had preempted the field of legislation regarding oaths and the loyalty of State employees, and that the Regents had no authority to exact of the faculty any loyalty oaths or declarations other than those required of all State employees. A writ of mandate was directed, ordering the issuance of a letter of appointment to each petitioner upon his taking the oath then required by statute of all public employees. The Court was silent, however, in regard to the payment of back salaries.