

The University of Texas

Author(s): Edward C. Kirkland

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THE UNIVERSITY OF TEXAS

A report by Committee A on Academic Freedom and Tenure of the American Association of University Professors to the Council of the Association. Presented on June 8, 1946 at a meeting of the Council held in Chicago, Illinois.

In a report, "Academic Freedom and Tenure at The University of Texas," published in the Winter, 1944 issue of the *Bulletin* of the Association, and in a report to the Council of the Association at its meeting in May, 1945, concerning which a statement was published in the Autumn, 1945 issue of the *Bulletin*, the members of the Council and of the Association were informed of a situation at The University of Texas under observation and investigation by the Association's Committee A on Academic Freedom and Tenure. This situation, as stated in these previous reports, was precipitated by dismissals and threats of dismissals of members of the Faculty of The University of Texas by the institution's Board of Regents, contrary to the recommendations of the president, the vice-president, the deans, and the department chairmen concerned, and by the subsequent summary dismissal of Dr. Homer P. Rainey from the presidency of the University. These previous reports indicate the efforts made by Committee A to clarify the facts of this situation and to bring about amicable adjustments in keeping with the principles of academic freedom and tenure and of faculty-administration relationships generally observed in accredited institutions.

Most of the evidence with reference to the situation at The University of Texas is documented: in special publications, in press releases, in correspondence released to the press, in transcripts of testimony, and through other media. Notable among these is the testimony adduced in the investigation conducted by the Texas Senate Committee on Education late in November, 1944. Committee A on Academic Freedom and Tenure has this evidence and has given it careful consideration. In addition to this evidence Committee A has evidence secured in conferences of representa-

tives of the Association with the Board of Regents of the University, with members of the Faculty of the University and with others directly concerned, and in correspondence with many persons involved in or concerned with the situation. The record of this situation is a long one, and the materials relating thereto voluminous. To present but a digest of what has been said and written with reference to the situation at The University of Texas, together with an analysis of the evidence, would require hundreds of pages. Whether the preparation of such a report is necessary the Committee has not yet determined.

II

Dr. Rainey was dismissed from the presidency on November 1, 1944. Following this action by the Board of Regents three members of the Board resigned, among them the then Chairman of the Board, Mr. John H. Bickett, Jr. To fill these three vacancies and another vacancy created by death, the Governor late in 1944 appointed four new members. One of these new members, Mr. Dudley K. Woodward, was subsequently elected Chairman of the Board.

It was the hope of Committee A that the Board of Regents of The University of Texas as thus reconstituted would undertake a judicious review of the facts of the total situation at the University. This the Board did not do. The first meeting of the Board following the appointment of three of the four new members was held on January 26, 1945. At this time the appointments of the new members had not been confirmed by the State Senate. At this meeting the Board was presented with many requests for the reinstatement of Dr. Rainey, among them one that had been authorized by an overwhelming majority of the Faculty of the University. These requests were ignored. At this meeting Mr. Woodward presented a lengthy statement in which he indicated that he personally had made an investigation of the total situation and in which he gave his reasons for opposing Dr. Rainey's "election to the presidency of the University." Mr. Woodward spoke for approximately four hours. Following Mr. Woodward's statement a vote was taken by the Board which, as reported by Mr. Woodward, "resulted in six votes against and one vote in favor of

the election of Dr. Rainey as President of The University of Texas." Later Mr. Woodward released in mimeographed form the substance of the statement he had made at this meeting of the Board. The mimeographed statement is a document of fifteen single-spaced typewritten pages of legal size and contains approximately 13,000 words. This document, at Mr. Woodward's request, was distributed to the members of the Forty-ninth Legislature of Texas and to the Faculty of The University of Texas, and was circulated among college and university administrative officers and faculties throughout the country.

Mr. Woodward began his statement by a discussion of the legal concepts of the principal-agent and master-servant relationships, relationships which he characterized as of high estate "which no man need scorn to occupy." The Scriptures, he pointed out, sanctify these relationships in the words, "Well done, thou good and faithful servant." Mr. Woodward then spoke of Dr. Rainey's qualifications for the presidency of The University of Texas in the light of his qualifications to act as the agent or servant of the Board of Regents. In this connection he referred to Dr. Rainey's work as President of Bucknell University from 1931 to 1935. To ascertain the facts, Mr. Woodward said, "I did not go through the channels ordinarily familiar to lawyers; that is banks, insurance companies, and other reporting agencies. . . . I went through academic channels. . . . I was fortunate enough to learn the name of a man supposed to be thoroughly conversant with the affairs of Bucknell University and with Dr. Rainey's tenure, by reason of the fact that he was himself a graduate of Bucknell University, had educated eight of his eleven children there, and had served upon its Board of Trustees for more than twenty-five years."

Mr. Woodward then presented passages from a letter dated January 22, 1945, from this unnamed member of the Board of Trustees of Bucknell University. The letter states that the writer did not recall any controversies between Dr. Rainey and the Board of Trustees of Bucknell University, but did recall that Dr. Rainey had incurred some opposition within the Faculty and "also from friends of the College. . ." by the introduction of survey courses "rather suddenly and to a large extent." The writer also indicated that he thought Dr. Rainey took too much advice from a

"special or inner council of professors" and failed to keep closely enough in touch with the Faculty as a whole.

The name of the author of this letter was revealed only to a committee of the Southern Association of Colleges and Secondary Schools which was then investigating The University of Texas situation and the members of which, at Mr. Woodward's invitation, were present at the meeting of the Board of January 26. The writer of this letter has subsequently been identified as a Federal Judge of the Middle District of Pennsylvania, who during the year preceding Mr. Woodward's statement had been under Grand Jury investigation for alleged improper conduct on the Bench and who subsequently resigned his judgeship before the completion of the investigation. Later, on September 11, 1945, this Judge was indicted "on charges of conspiring to obstruct justice and defrauding the government." This Judge had been a member of the Board of Trustees of Bucknell University, but his membership had been terminated in June, 1944, by action of his colleagues on the Board.

In speaking of the charges that had been made by Dr. Rainey that the Board of Regents of the University had sought to repress freedom of teaching and of research, and in speaking of the dismissals of members of the Faculty by the Board and of the threats of dismissals of members of the Faculty, Mr. Woodward emphasized the length of time that had elapsed since the occurrence of these incidents, with the reservation frequently stated that he was not seeking to pass judgment on the merits of the issues involved in these incidents. In concluding his statement Mr. Woodward said that he had never met Dr. Rainey "and, of course, . . . could have no bias in his favor or prejudice against him," but that he had reached the conclusion that Dr. Rainey had no further possible usefulness to the University and should, therefore, not be reinstated to the presidency.

In the opinion of Committee A little in Mr. Woodward's statement was directed to the merits of the situation at The University of Texas. Most of the statement is irrelevant as regards the clarification of facts with a view to reaching a just decision.

A short while before Mr. Woodward presented the excerpts from the letter of the Federal Judge referred to above, there appeared an

alumni newsletter sent from the Librarian's Office of the Medical School of The University of Texas in Galveston, which spoke adversely of Dr. Rainey's work as President of Bucknell University. In this newsletter there was this question: "Wasn't this man also relieved of his similar position at Bucknell University for like insubordination and by pressure from the Alumni quarter?" The evidence indicates that the information on which this newsletter was based came from the author of the letter quoted by Mr. Woodward to the Board of Regents at its meeting on January 26. Apropos of this alumni newsletter Dr. Arnaud C. Marts, who was a member of the Board of Trustees of Bucknell University during the entire time Dr. Rainey was President of that institution and who succeeded Dr. Rainey as President of Bucknell University, wrote the following letter to a former student of The University of Texas under date of January 24, 1945:

My attention has just been called to an Alumni Letter from the School of Medicine dated January, 1945, which refers to President Rainey's relationships at Bucknell University in these words: "Wasn't this man also relieved of his similar post at Bucknell University for like insubordination and by pressure from the alumni quarter?" The answer to this question is an emphatic "No!"

The circumstances surrounding President Rainey's resignation are as follows: In the summer of 1935 he was approached by Dr. George Zook, President of the American Council of Education, to inquire if he could be induced to accept the position of Director of the American Youth Commission for a period of five years. The American Council had just received a large appropriation from one of the Rockefeller Foundations for the purpose of making a definitive study of the educational problems of American youth, which study, and a compilation of the report based thereon, was to occupy a period of five years, and Dr. Zook had created the American Youth Commission composed of representative and well-known citizens of the nation to make this study. In seeking the best man in the United States as the Executive Director of the Commission, they turned to Bucknell's then President, Dr. Homer P. Rainey. It was an opportunity which any young educator could not turn down. Dr. Rainey presented the situation to the Trustees of Bucknell University and asked their advice and stated that he would like to accept the offer. The Trustees therefore permitted him to resign for this purpose.

Dr. Rainey remained as President of Bucknell until after the opening of college in September, and when his resignation became

effective in October of 1935 he was elected a member of the Board of Trustees of Bucknell University for the usual term of five years, and until he was later called to The University of Texas, where his geographical separation made it impractical for him to attend meetings of the Board of Trustees, he was an active and highly respected member of our Board of Trustees, and was consulted frequently by his successor in regard to administrative and educational problems.

You are free to use this statement in reference to Dr. Rainey's relationship with Bucknell University in any way you desire.

III

Although the Board of Regents of The University of Texas, as reconstituted following Dr. Rainey's dismissal, declined to make a judicious review of the evidence relating to Dr. Rainey, it did subsequently review the evidence relating to the members of the teaching faculty of the University who had been dismissed by the Board during Dr. Rainey's administration and has reinstated several of them, some with promotion in rank and salary. These reinstatements are definite reversals of actions of the Board as constituted at the time of Dr. Rainey's dismissal. These actions would seem to indicate that the majority of the Board as now constituted regards these previous dismissals as unjustified. The reinstatements of the teachers previously dismissed are heartening to all who are interested in the principles of academic freedom and tenure, and Committee A would like to believe that they evidence support of the principles of academic freedom and tenure. In the light of the facts of the total situation, however, the Committee doubts that such a conclusion is warranted. The Committee is inclined to believe that these reinstatements were motivated by considerations of expediency and by a desire to becloud the issues with reference to Dr. Rainey. In this connection it should be noted that, in the recent reinstatement of one teacher, coercion and other administrative irregularities have been alleged. Clarification of the facts of this reinstatement is being sought.

When Dr. Rainey accepted the presidency of The University of Texas, he also accepted appointment as Professor of Education in the University. This arrangement he made a condition to his acceptance of the presidency of the University. The Board of

Regents met Dr. Rainey's condition and appointed him President of the University and Professor of Education. Following Dr. Rainey's dismissal from the presidency the Board declined to honor his professorship. This the Board did by the device of not providing a salary for his professorship, and by stipulating that it was to be, "Without duties or responsibilities of any character whatsoever." This action was tantamount to a dismissal; it was a dismissal without assignment of cause and without provision for a hearing, as required by good academic practice generally observed in accredited institutions.

The Board of Regents of The University of Texas alleges that Dr. Rainey made certain mistakes in administration and that he was dismissed because of these mistakes. In this connection reference is made to difficulties in the Medical School of the University. The Medical School of The University of Texas, which is located in Galveston, has for years presented many and serious difficulties, financial and otherwise. Prior to Dr. Rainey's acceptance of the presidency of the University, the Board of Regents had begun a reorganization of the Medical School and had appointed a new Dean (November, 1938). Dr. Rainey began his duties as President of the University ten months later (September, 1939). As President it became his duty to support the plans and the policies for the Medical School that had been determined by the Board of Regents. Among these was the plan to enlarge the Faculty by the appointment of more full-time teachers. In the beginning of Dr. Rainey's administration there were no disagreements between him and the Board of Regents concerning the plans and policies that were to be followed with reference to the Medical School. Subsequently there were complaints from members of the Faculty of the Medical School concerning the work of the Dean. It was alleged by some members of the Faculty that the Dean was arbitrary in his relationships with the Faculty. With reference to these allegations the record shows that there were new appointments to the Faculty of the Medical School, that there were some changes in departmental organization, which were not viewed with favor by some members of the Faculty, but that there were no dismissals of members of the Faculty who were entitled to continuous tenure.

On August 1, 1942, the Board of Regents of the University summarily dismissed the Dean from the deanship and from the professorship to which he had been appointed by the Board in November, 1938. This dismissal was without assignment of cause and without a hearing. Dr. Rainey protested this arbitrary action on the part of the Board. Shortly thereafter a new Dean of the Medical School was appointed by the Board of Regents without consultation with Dr. Rainey.

With reference to the difficulties in the Medical School, the evidence indicates that it was not until Dr. Rainey had become *persona non grata* to certain members of the Board of Regents, because of his opposition to their attempts to repress freedom of teaching and research, that there were any manifestations of differences of opinion between him and the Board concerning the plans and policies for the Medical School. At that juncture certain members of the Board sought to give the impression that Dr. Rainey had been responsible for the initiation of the plans and policies for the Medical School concerning which there had been complaints. Later Dr. Rainey did make certain recommendations concerning the Medical School, among them that it be moved from Galveston to Austin. This latter recommendation was opposed vigorously by influential persons in Galveston and by a majority of the Board.

Committee A has given careful consideration to the testimony and other data relating to the difficulties in the Medical School of The University of Texas and finds nothing in the record which indicates that these difficulties motivated the decision of the Board of Regents to dismiss Dr. Rainey. The Committee believes that Dr. Rainey would have been dismissed even though there had been no difficulties in connection with the Medical School and that no useful purpose would be served by presenting a detailed report of the vicissitudes of the Medical School.

IV

In the opinion of Committee A Dr. Rainey was not dismissed because of mistakes in administration, unless his opposition to dictation by members of the Board of Regents concerning matters relating to teaching and research be regarded as a mistake of ad-

ministration. And it was so regarded by the Board of Regents of The University of Texas. It is the considered judgment of Committee A that Dr. Rainey was dismissed because he refused to yield to pressures by the Board concerning teaching and research and, also, because of his philosophy of freedom in education. The Committee believes that if Dr. Rainey had not opposed the attempts at repression on the part of members of the Board, which included an attempt to destroy tenure at the University, his own position as President would have remained secure, but that there would have been many dismissals from the Faculty.

When representatives of the Association conferred with the Board of Regents of The University of Texas on October 30, 1944, in an executive session at the close of an all-day public meeting, members of the Board of Regents characterized certain members of the Faculty of the University as "unfit" to teach the youth of Texas because of their views on economic, social, political, and educational questions. These Regents made it unmistakably clear that it was their wish to dismiss the teachers thus named and suggested that the Association should cooperate with the Board in effectuating their dismissals. One member of the Faculty designated as undesirable is a particularly able and distinguished professor. His name was introduced into the discussion by a Regent with the question, "What are we going to do with Professor X? He loves it here in Texas." When questioned by a representative of the Association as to what this Regent would like to do with Professor X, the Regent replied, "Fire him!" Committee A is of the opinion that the members of the Faculty of the University thus named are among the ablest of the institution's Faculty and that they are all honorable and patriotic citizens. Committee A is also of the opinion that these teachers would have been dismissed if Dr. Rainey had been a pliable president and if the American Association of University Professors and other educational organizations had not intervened.

Among the criteria for judging whether a college or university president is a good administrator is the way he is regarded by the institution's Faculty. If the morale of the Faculty is good, it is reasonable to conclude that the institution's president is aware of the nature and purposes of an educational institution and is seek-

ing to have these purposes furthered. The morale of the Faculty of The University of Texas during Dr. Rainey's administration was high, very high. This does not mean that all the members of the Faculty of the University were in agreement with everything that Dr. Rainey did. It does mean, however, that Dr. Rainey's administration created an atmosphere conducive to good teaching and research and inspired confidence on the part of the members of the Faculty. Evidence of this is found in the fact that at the time of Dr. Rainey's dismissal the Faculty of the University was almost unanimous in requesting his reinstatement. Such unanimity on the part of the Faculty of a university in seeking the continuance in office of the institution's president is not usual. Professors, however, desire tranquillity, and the long and disquieting controversy that has ensued since Dr. Rainey's dismissal has disturbed many members of the Faculty, with the result that some of them have been in the mood to wish the whole controversy forgotten and a new start made on the basis of conditions which they are told are to be satisfactory. But until it became evident that the Board of Regents was determined not to reinstate Dr. Rainey, the Faculty was almost unanimous in seeking his reinstatement. No finer testimonial could be given any university president.

Criticism has been directed at Dr. Rainey because he made public his difficulties with the Board of Regents. This he did in a report to the Faculty, which he later released to the press. On this point the Committee wishes to comment briefly. Dr. Rainey believes in academic freedom. He believes that what constitutes a proper exercise of academic freedom is a matter for the determination of an institution's administrative officers and Faculty. Dr. Rainey also believes that the public has an interest in academic freedom and that without academic freedom an educational institution cannot fulfill its obligation to its students and to the public. Dr. Rainey's convictions in these matters are in accord with the philosophy of the American Association of University Professors. In the opinion of Committee A a university president who yields to pressures designed to weaken or destroy academic freedom is unfit to hold his significant position. The Committee believes, also, that a university president who resists

efforts to weaken or destroy academic freedom and who seeks clarification of the issues involved in cases of attempts to repress freedom, with a view to bringing about adjustments in accordance with the principles of academic freedom generally observed by the administrations of institutions of higher education, should have the gratitude and the support of the profession and of the public. For his efforts in behalf of academic freedom at The University of Texas, Dr. Rainey has earned the gratitude of our profession and of the friends of education throughout the country.

V

In the light of the facts of the situation at The University of Texas as stated in this report and in two previous reports published in the *Bulletin* of the Association, the Committee recommends that conditions at The University of Texas with reference to academic freedom and tenure and with reference to the relationship of the Board of Regents of the University to the administrative officers and the Faculty of the University be kept under observation, that later by a committee visit or otherwise the Association ascertain whether these conditions have become satisfactory, and that in the meantime the Administration of the University be placed on the Association's list of Censured Administrations.

Apropos of this situation the Faculty of The University of Texas is to be commended for its courage and tenacity in opposing systematic, persistent, and continuous attempts by a politically dominant group to impose its social and educational views upon the University.

Approved by Committee A on Academic Freedom and Tenure.

EDWARD C. KIRKLAND, *Chairman*

Addendum

Following a full discussion of the recommendation of Committee A quoted above, the Council of the Association by unanimous vote placed the Administration of The University of Texas on the Association's list of Censured Administrations. The Council in this instance functioned pursuant to Sections 1 and 3 of Article X of the

Constitution of the Association in lieu of the Annual Meeting of the Association.

EDWARD C. KIRKLAND, *Chairman*

Personnel of Committee A on Academic Freedom and Tenure: William E. Britton (Law), University of Illinois; Elliott E. Cheatham (Law), Columbia University; Thomas D. Cope (Physics), University of Pennsylvania; F. S. Deibler (Economics), Northwestern University; F. L. Griffin (Mathematics), Reed College; Ralph E. Himstead (Law), Association's Secretariat; A. M. Kidd (Law), University of California; E. C. Kirkland (History), Bowdoin College, *Chairman*; W. T. Laprade (History), Duke University; Robert P. Ludlum (History), Association's Secretariat; J. M. Maguire (Law), Harvard University; S. A. Mitchell (Astronomy), University of Virginia; DR Scott (Economics), University of Missouri; George Pope Shannon (English), University of Alabama; John Q. Stewart (Physics), Princeton University; R. C. Tolman (Physics), California Institute of Technology; Laura A. White (History), University of Wyoming; and Quincy Wright (International Law), University of Chicago.