Report of Committee A on Academic Freedom and Tenure, 2019–20

Introduction

In the past year Committee A reviewed important cases and approved one investigative report for publication, monitored developments at censured institutions, and formulated recommendations on censure and censure removal. In addition, the committee engaged in fruitful discussion of several pressing issues on campuses nationwide that affect academic freedom, issuing in January a major statement, *In Defense of Knowledge and Higher Education*.

Judicial Business

Impositions of Censure

At its spring meeting Committee A considered one case that had been the subject of a staff investigative report published in January 2020. The committee adopted the following statement concerning this case. As a result of restructuring changes that took effect this year, the power to add an administration to the censure list now lies with the AAUP's governing Council, which voted to impose censure.

Pacific Lutheran University. The report prepared by the Association's staff concerned the dismissal of a part-time faculty member with forty years of service in the Department of Music at Pacific Lutheran University. In her long career at PLU, the faculty member had consistently defended her rights and the rights of other contingent faculty members.

In November 2018, the faculty member was summarily suspended from her teaching responsibilities for allegedly violating a directive that prohibited faculty members from accepting payment from PLU students for private music lessons given independently of the university. At a student's request, the faculty member had agreed to offer a course not available in the PLU music department and had subsequently refunded the small payment she had received. Following lengthy correspondence between the AAUP's staff and the administration, in which the administration's representatives repeatedly shifted their characterization of the action against her, the PLU administration agreed to afford her a faculty dismissal hearing, as stipulated under AAUP-recommended standards.

At the hearing, which was attended by an observer representing the AAUP's national office, the administration took the position that it was not actually dismissing the faculty member. As a result, the faculty hearing body did not reach a determination whether the charges warranted dismissal. The procedure, the report observed, was a dismissal hearing in name only.

The staff report found that the PLU administration had acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* when it summarily dismissed the faculty member and then, in "bad faith," conducted a dismissal hearing that the report calls a "sham exercise." With respect to academic freedom, the report found that the relatively minor nature of the misconduct in which the faculty member was alleged to have engaged and the summary nature of the administrative action taken against her supported the inference that the real reasons for her dismissal may have stemmed from the administration's long-standing displeasure with her advocacy for the rights of faculty members on contingent appointments.

Committee A on Academic Freedom and Tenure therefore recommends to the Association's governing Council that Pacific Lutheran University be added to the AAUP's list of censured administrations.

Removal of Censure

At its spring meeting Committee A considered removing censure in one case and adopted the following statement concerning that case. Upon the committee's recommendation, the Council voted to remove this institution from the Association's list of censured administrations.

Clarkson College. The 1993 annual meeting imposed censure based on the report of an ad hoc investigating committee that found that, in terminating the services of four faculty members who had attained de facto tenure through length of service, the college's administration had afforded them scant notice and no opportunity to contest the action. The report also found that the college's policies lacked provisions affording minimal protections of academic due process (the college does not grant appointments with indefinite tenure). Three of the cases that led to the censure were resolved in 1995, and the fourth professor died in 2003. In 2017 the college's president contacted the AAUP's staff to inquire about removing the censure. The staff informed him that, as redress was no longer an issue, what chiefly remained to be accomplished were revisions to the faculty handbook that would address the procedural deficiency that led to the censure. The staff's letter proposed adding the following sentence to the faculty handbook: "Once a full-time faculty member has completed six years of service, subsequent reappointment is presumed unless cause for dismissal is demonstrated in a hearing before an ad hoc committee of the faculty senate." The staff's letter, however, received no answer.

In February 2020, a new administration contacted the Association's staff to convey the good news that, with the interim president's encouragement, the faculty senate had been reviewing the amendment proposed in the staff's 2017 letter. Following a conference call with the AAUP in which the president, the vice president, and three faculty senate leaders participated, the president wrote to inform the AAUP that within the next few months the faculty senate would vote to add the AAUP-proposed sentence to the faculty handbook. The president further informed the staff that the college would welcome a visit from an AAUP representative to assess current conditions for academic freedom. Despite the difficulties presented by the COVID-19 pandemic, on May 28 the faculty senate voted to adopt the AAUP-proposed language, and later that week the AAUP representative met virtually with members of the faculty and administration. Her report confirms that positive conditions for academic freedom and tenure, as well as shared governance, now exist at the institution. Favorable review by two administrative bodies in early June resulted in the final adoption of the proposed sentence.

Committee A on Academic Freedom and Tenure therefore recommends to the Association's governing Council that it remove Clarkson College from the AAUP's list of censured administrations.

Other Committee Activity

At its fall and spring meetings Committee A considered issues that have emerged around the country with potentially significant impact on the climate for academic freedom.

At its fall meeting the committee approved a major statement, *In Defense of Knowledge and Higher Education*, which was subsequently approved by the Council and released in January. The statement advances an impassioned argument for the importance of expert knowledge and the institutions of higher education that produce and transmit it. It raises alarm over efforts to dismiss scientific and other expertise that seriously threaten freedom of inquiry and of teaching. *In Defense of Knowledge and Higher Education* has been endorsed by the following organizations: American Federation of Teachers, American Historical Association, Association of American Colleges and Universities, American Society of Journalists and Authors, Association of University Presses, California State University Academic Senate, Council of University of California Faculty Associations, Faculty Association of California Community Colleges, National Coalition Against Censorship, PEN America, Phi Beta Kappa Society, and Woodhull Freedom Foundation. The spring 2020 issue of *Academe*, guest edited by Committee A member Joan Wallach Scott, was devoted principally to articles expanding on themes in the statement.

At its June meeting Committee A approved a statement, "Faculty Suspensions for Security Reasons," formulated jointly with the Committee on Gender and Sexuality in the Academic Profession. The statement addresses the issue of "administrators imposing suspensions not in order to sanction faculty members or to avoid legal exposure, but, ostensibly at least, in order to protect them and the campus from threatened violence." The statement "affirms the necessity of maximizing safety" but notes that when a faculty member is removed from the classroom in response to harassment, "the harassers have won." The text of the statement follows:

> **Faculty Suspensions for Security Reasons[1]**
> In 2008, the AAUP report *The Use and Abuse of Faculty Suspensions* observed that removing

1. Administrations often avoid the word *suspension* and employ other terms, most commonly *administrative leave.* Regardless of what term an administration might choose to use, the AAUP regards any action to remove a faculty member from his or her primary responsibilities, whether all or some of them, as a suspension.

faculty members from their primary responsibilities "appears to have become almost a routine recourse for administrations seeking to discipline faculty members regardless of the seriousness of the alleged cause." It cited a number of contemporary developments contributing to the administrative reliance on suspensions, such as the increased influence of campus legal counsel in protecting the university from perceived potential liability, especially "in the wake of heightened campus tensions ranging from fatal gunfire in a classroom to threatening graffiti that cause an entire campus to shut down."

In 2019, the issue of faculty suspensions has reemerged on account of situations not fully envisioned in the 2008 report: administrators imposing suspensions not in order to sanction faculty members or to avoid legal exposure, but, ostensibly at least, in order to protect them and the campus from threatened violence. The heightened political polarization of American society, the proliferation of media outlets stoking outrage, and the social technologies at their disposal have made more and more faculty members targets of virulent harassment and threats of violence, threats that often extend to the entire campus. Extramural speech, teaching, and professional research related to gender and gender identity, sexuality, and race, particularly, have triggered intense backlash and garnered threats to the livelihoods and lives of those who engage in them.[2] In this age of mass shootings, administrators are more frequently removing threatened faculty members from the classroom for the express purpose of reducing the possibility of violence erupting on campus.

The AAUP's 2017 statement *Targeted Online Harassment of Faculty* urges "administrations, governing boards, and faculties, individually and collectively, to speak out clearly and forcefully to defend academic freedom and to condemn targeted harassment and intimidation of faculty members." However, it does not make a recommendation regarding what administrators should do when these attacks appear to present a genuine threat of immediate harm to the university community. The 2008 report does discuss suspensions where such potential exists, but it understands the faculty members themselves to embody that threat, either to themselves or to others. In faculty suspensions for security reasons, administrators suspend a faculty member when external parties threaten that individual and, directly or indirectly, the campus community. In these cases, administrators' stated goal is to protect the faculty member and the campus from threats of violence. While the AAUP affirms the necessity of maximizing safety, we must ask how universities in these situations can minimize damage to the academic freedom of the faculty member and the campus.

When an administration removes a faculty member from the classroom, the harassers have won. Faculty suspensions can thus end up serving the interests of the external parties whose object is to suppress the faculty member's speech. If administrations too readily suspend targeted faculty members in response to safety concerns, those who wish to silence faculty members may choose to employ threats of violence as a strategy.

Recommendations:

1. Suspension should be employed only as a last resort and will be with pay. Campus safety can be protected by other means; the safety of a threatened instructor may in some cases be ensured by temporarily moving classes into an online format.
2. Before imposing a suspension in those situations in which imminent harm to the faculty member and others is threatened, the administration should consult with a duly constituted faculty body and with the faculty member "concerning the propriety, the length, and the other conditions of the suspension." In consultation with institutional officers responsible for campus safety, the faculty body should assess the credibility and scope of the threat, make recommendations on measures to protect the faculty member and the campus community, and identify the conditions under which reinstatement should occur.
3. If suspension is deemed necessary, the administration should specify in writing that the suspension is not disciplinary in nature, will not affect future decisions relating to the faculty member's appointment status, and will be brought to an end as soon as possible.
4. When the threat of immediate harm has passed, the administration should restore the suspended

2. See Carolyn Gallaher, "War on the Ivory Tower: Alt Right Attacks on University Professors," 2018, http://feature.politicalresearch.org/war-on-the-ivory-tower.

> faculty member to his or her responsibilities immediately. If the administration declines to do so, or delays action once the threat has been addressed, the faculty member is entitled to a hearing before an elected faculty body, in which the administration must demonstrate cause for continuing the suspension. As the 2008 report stated, "Suspension without a hearing, or a hearing indefinitely deferred, is tantamount to dismissal."

For some time Committee A and the Committee on Gender and Sexuality in the Academic Profession have jointly participated in a subcommittee on Title IX enforcement. On May 6 the US Department of Education released its final rule revisions under Title IX. The AAUP had earlier submitted comments on the proposed revisions in response to the secretary of education's 2018 request. In May the subcommittee issued a statement, which noted that the "final regulations appear to take into account some of the AAUP's comments, while others were not addressed. Still others—those that emphasized the need to protect academic freedom—are gestured to repeatedly in the comment section of the new regulations, but the regulations themselves fail to adequately protect faculty academic freedom inside or outside the classroom."

The committee also heard reports from AAUP national staff member Hans-Joerg Tiede on the progress of a special project to survey the extent to which faculty handbooks and collective bargaining agreements embody AAUP academic freedom principles. The resulting research report, printed elsewhere in this issue, is the first such study to be conducted in over twenty years.

Finally, I should note that Committee A, like the Association as a whole, has sought to respond to the challenge posed for our Association and our profession by the COVID-19 pandemic. The committee's spring meeting was conducted on the Zoom platform, and much of the meeting was taken up with initial discussions of the implications for both academic freedom and shared governance of the pandemic's effects. Such discussion will continue, but the committee believes that our response cannot be limited to case-by-case reports. The crisis will also militate closer collaboration between Committee A and the Committee on College and University Governance. Hence, the chair of that committee, Michael DeCesare, participated in our meeting. Potential models for a response by the committees include the special investigation conducted in the wake of Hurricane Katrina and the special report from the 1950s on the impact of the post–World War II Red Scare. Of course, whatever contributions Committee A may be able to make, bold and energetic organizing by members at the national, state, and chapter levels will be most critical in responding to this crisis.

Conclusion

I want to thank the members of Committee A for their tireless work on behalf of the principles of academic freedom, our profession, and the AAUP. I would also like to thank the members of the Department of Academic Freedom, Tenure, and Governance as well as other members of our devoted and hard-working national staff for their support of the committee and their tireless efforts on behalf of academic freedom, shared governance, and the common good throughout higher education.

HENRY REICHMAN (History), *chair*
California State University, East Bay

Cases Settled through Staff Mediation

The following accounts exemplify the efforts of Committee A's staff to resolve complaints and cases during the 2019–20 academic year.

The staff has for several years been advising a notably active AAUP chapter at a private college in the Northwest. Like so many colleges and universities today, the institution is confronting challenges arising from enrollment declines and consequent financial shortfalls. Benefiting from a faculty handbook that fully incorporates AAUP-recommended standards, the chapter and faculty governance bodies have so far prevented attempts by the governing board and administration to address the college's financial

problems by reducing the size of the faculty in disregard of AAUP-supported standards.

In summer 2019, however, the chapter found itself in special need of staff assistance as it attempted to help a tenured faculty member with thirty-one years of service to whom the administration had presented a Hobson's choice: either accept reassignment to a staff position or be summarily dismissed. In an advisory letter to the faculty member, the AAUP staff member pointed out that the first alternative was tantamount to a suspension, since it entailed removing him from his primary responsibilities, and the second was "completely unacceptable" under AAUP-supported standards, which require affordance of an adjudicative hearing of record before an elected faculty body prior to dismissing a professor with tenure. The staff encouraged the faculty member, now armed with the advisory letter, to avail himself of the AAUP-friendly grievance procedures in the faculty handbook. He did so, and in January the faculty grievance committee issued its report, with the recommendation that "the college respect [the professor's] tenured status" and immediately "withdraw its insistence that he accept a staff position and reinstate him as a faculty member." Although the chair of the grievance committee reportedly had to threaten taking the issue to the full faculty to get the president's assent, assent eventually came.

In an email message to the staff conveying his gratitude, the reinstated faculty member wrote, "Thank you for all the assistance you and the AAUP provided through my grievance process." He also gave well-deserved credit to his stalwart chapter and the "strength of the faculty handbook."

* * *

The AAUP chapter at a religiously affiliated liberal arts college in the Midwest reached out to the Association's staff this spring after the college's governing board issued "contract" letters to continuing faculty members asserting the administration's right to terminate faculty appointments with twenty-four hours' notice and no severance pay. The letters stated the administration could so act "at its sole discretion" if it determined that "any Force Majeure" related to the COVID-19 crisis had occurred. The letters gave faculty members two weeks to sign, with failure to do so resulting in instant termination. By adding similar force majeure language to the college's layoff policy, the board rendered it essentially void.

At the same time the administration issued notice of termination, with one day of prior notice, to five tenure-track and tenured faculty members, along with separation agreements containing a general release, an agreement not to sue, and nondisparagement and nondisclosure clauses. The agreements offered one year of salary in exchange for the faculty member's signature.

The staff offered to write an advisory letter to the chapter addressing these issues, with the stated expectation that the chapter would share the letter with the administration and board. The chapter having accepted the offer, the staff wrote a lengthy letter explaining the meaning and critical importance of academic freedom, tenure, governance, and due process and showing how the reported actions of the administration and governing board were "antithetical to academic freedom and tenure," "inimical to principles of shared governance," and completely at odds with AAUP-supported procedural standards governing nonrenewals and dismissals.

The chapter president immediately shared the letter with the administration and governing board, a committee of which was then reviewing the appeals of three full-time faculty members who had received the notice of termination and separation agreement. Several days later one of the affected faculty members wrote the Association's staff to share the welcome news that the board had reinstated all three. The faculty member expressed her gratitude for the advisory letter, which, she wrote, seemed to "have made some impact on our leadership," adding, "I remain a proud and appreciative AAUP member." ■