Report of Committee A on Academic Freedom and Tenure, 2021–22

Introduction

Committee A held two meetings this academic year, on October 29–30 and on June 3–4, our first in-person meeting since October 2019.

Judicial Business

Impositions of Censure

In February, after discussing by email the case report on the University System of Georgia that had been published online in December, the committee adopted the following statement. At its March meeting, the AAUP's governing Council voted to impose censure.

> *University System of Georgia*. The staff report concerns the action taken by the Board of Regents of the University System of Georgia, on the recommendation of the system administration and without meaningful faculty involvement, to remove the procedural protections of tenure from the system's post-tenure review policy. Under the revised policy, a system institution can dismiss a tenured professor for failing to remediate deficiencies identified through post-tenure evaluation without affording that professor an adjudicative hearing before an elected faculty body in which the administration demonstrates adequate cause for dismissal. The report notes that tenure as the AAUP defines it does not exist separately from the academic due process that protects it. By removing academic due process from post-tenure review, the report finds, the USG administration and governing board "effectively abolished tenure in Georgia's public colleges and universities" in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*.
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> The report emphasizes the magnitude and singularity of this attack on tenure and academic freedom, which affects more than 5,800 tenured faculty members in twenty-five colleges and universities and bestows on the University System of Georgia the dubious distinction of being the only system of public higher education to take such a radical action in nearly fifty years.
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> Committee A on Academic Freedom and Tenure accordingly recommends to the Association's governing Council that the University System of Georgia be added to the AAUP's list of censured administrations.

At its spring meeting, the committee discussed the report of the investigating committee at Linfield University and approved the following statement. The AAUP's Council voted to impose censure at its June meeting.

> *Linfield University (Oregon)*. The report of the investigating committee concerns the summary dismissal of a professor of English in his tenth year of service at the institution. Soon after the faculty had elected him as its representative to the board of trustees, he began receiving complaints from female colleagues and former students of their having experienced sexual misconduct by trustees at social events held in connection with board meetings. In the belief that his role as "faculty trustee" obligated him to do so, the faculty member forwarded these allegations to the board's leadership, and, eventually, to the administration, and asked for remedial action. After sharing additional such allegations with campus authorities in the months that followed and ultimately concluding that the board and administration were not taking adequate steps to address the underlying problem, the faculty member made the sexual misconduct charges public on Twitter, along with his own charges of antisemitism (the professor is Jewish) against certain administrators and

board members. Several weeks later, the Linfield administration abruptly terminated his tenured appointment "for cause" without having afforded him any procedural rights, much less the academic due process required under AAUP-recommended standards.

The investigating committee found that the administration,

- by dismissing the faculty member without having first demonstrated adequate cause before an elected faculty hearing body, violated the 1940 *Statement of Principles on Academic Freedom and Tenure*;
- by refusing to afford the faculty member at least one year of severance salary or notice, violated Regulation 8 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*;
- by acting against the faculty member in evident retaliation for speech and conduct he exercised in fulfilling his responsibilities as a faculty trustee, violated his right to participate in institutional governance under principles of academic freedom set forth in the 1940 *Statement* and derivative AAUP documents; and
- in taking these actions, violated the institution's own regulations, since the faculty handbook incorporates key applicable AAUP policy documents in their entirety.

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

Removals of Censure

At its fall meeting, Committee A approved the following statement recommending censure removal at the University of Nebraska–Lincoln. At its November meeting, the Council voted to accept the committee's recommendation.

University of Nebraska–Lincoln. The 104th Annual Meeting imposed censure on the administration of the University of Nebraska–Lincoln for its actions in the case of a doctoral student who also served as a part-time lecturer. In response to a widely circulated video of the faculty member's August 2017 confrontation with an undergraduate student who was staffing an on-campus recruiting table for Turning Point USA, the UNL administration suspended her from her teaching duties for the duration of her appointment. Under Association-supported standards, a suspension that lasts until an appointment expires—a "terminal suspension"—is tantamount to dismissal. Its imposition therefore requires affordance of an adjudicative hearing of record before an elected faculty committee in which the burden of proof rests with the administration. At the time of the incident, the University of Nebraska bylaws did not require such a hearing for terminal suspensions, and the administration did not provide one. However, in April 2021, following a lengthy drafting process involving faculty representatives, the Nebraska system's board of regents amended its bylaws to require an adjudicative hearing prior to the imposition of a terminal suspension.

An Association representative began a virtual site visit to UNL in late June 2021 to report on the conditions for academic freedom at the institution. However, in early July, a Nebraska regent (and gubernatorial candidate) announced that he would bring a resolution to the board's next meeting to prohibit the "imposition" of critical race theory in the system's curriculum. The AAUP's staff suspended the site visit pending the board's vote and informed the administration that removal of censure would be impossible if the regent's resolution were to pass. The president of the Nebraska system and all four of its chancellors meanwhile issued a statement expressing their "significant concerns" about the resolution. This development was especially welcome given the investigating committee's finding that political pressure on university administrators "was at the very heart" of the actions leading to censure. The critical race theory resolution failed at the August 13 board of regents meeting by a 5 to 3 vote, and the representative's virtual visit resumed.

The Association's representative interviewed two key administrators (the chancellor and the executive vice chancellor for academic affairs), eight faculty members (including past and current presidents of the AAUP chapter and current and former officers in key faculty governance bodies), and a graduate student representative. With two exceptions, all those interviewed had been directly involved with the events leading to

censure or their aftermath. The representative's report concluded that the conditions for academic freedom have "certainly improved in response to the AAUP's censure," not only because of the bylaw changes but also because of improvements in faculty orientation and the introduction of a campus ombudsperson. Some interviewees raised concerns about the vulnerability of non-tenure-track faculty members while these changes were implemented. However, the report observed that, while some interviewees "were ambivalent and some enthusiastic about" the potential removal of censure, "no interviewee was in favor of maintaining the current censure of UNL."

Committee A recommends to the Council that the University of Nebraska–Lincoln be removed from the Association's list of censured administrations.

At its spring meeting, the committee discussed the removal of censure at St. Edward's University and approved the following statement. The Council voted to remove the censure at its June meeting.

St. Edward's University (Texas). The 2019 annual meeting added St. Edward's University to the list of censured administrations as the result of the administration's actions in terminating the services of one tenure-track and two tenured faculty members. The investigating committee found that the administration had refused to afford the two tenured faculty members a dismissal procedure that comported with AAUP-supported standards—a pretermination hearing before an elected faculty body in which the burden of demonstrating adequate cause for dismissal rests with the administration. Regarding the tenure-track faculty member, the committee found that the administration had failed to afford the one year of notice to which she was entitled under AAUP-recommended standards as well as an opportunity to challenge the nonrenewal decision with a duly constituted faculty appeal body.

In July 2021, the institution's newly installed president, responding to the AAUP staff's semiannual solicitation of interest in discussing the removal of censure, wrote that she had made removal a priority that she hoped to achieve through "shared governance." In September, she asked the faculty senate president to work directly with the staff to address the institutional policies implicated in the actions that had led to censure. The staff recommended several sets of revisions to the faculty manual. One set addressed deficiencies in the institution's standards for notice of nonrenewal; the other added language on dismissal that requires a prior hearing before an elected faculty body in which the administration bears the burden of proof. The faculty voted overwhelmingly to approve these changes in January 2022, the administration concurred, and the board adopted them on May 6. Because the old dismissal policy did not afford the due-process protections that the AAUP regards as defining tenure, the new policy establishes tenure where it had previously existed only nominally.

Last month the two tenured faculty members reached an out-of-court settlement with the university. The case of the tenure-track faculty member is scheduled for jury trial in August, efforts at mediation having failed.

In late May, an AAUP representative, a member of the Texas AAUP conference executive committee, made a virtual visit to campus on behalf of the AAUP's national office to confirm that current conditions for academic freedom and tenure at St. Edward's are sound. Her report states that the university had taken "all the actions that the AAUP suggested" and that the faculty leaders with whom she spoke attested to "an improved climate for academic freedom and tenure."

Committee A recommends to the AAUP's governing Council that St. Edward's University be removed from the Association's list of censured administrations.

Since two new censures were imposed and two were removed, the number of institutions on the censure list remains at fifty-seven.

Legislative Business

At its fall meeting, Committee A approved the following *Statement on Academic Freedom and Transphobia,* which was prepared and approved by the Committee on Gender and Sexuality in the Academic Profession (formerly the Committee on Women in the Academic Profession). It was published online in November after the Council voted to approve its adoption.

Academic freedom provides space for conversations and learning about potentially uncomfortable subjects, including histories and

> experiences of sexuality and gender that do not conform to prevailing social narratives. But academic freedom cannot be understood to support misgendering—referring to someone using a word or pronoun that does not reflect their gender identity—or otherwise serve as an excuse for transphobia or the diminishment of trans, intersex, gender-nonconforming, and nonbinary persons and their lives. As the AAUP-endorsed *Joint Statement on Rights and Freedoms of Students* notes, "The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community." To these ends, the AAUP's *Statement on Professional Ethics* requires faculty members to "demonstrate respect for students as individuals" and "avoid any exploitation, harassment, or discriminatory treatment" of students and colleagues. In and out of the classroom, we recognize an ethical and political imperative to honor colleagues' and students' choice of name and pronoun as an issue that falls well beyond the purview of academic debate. In short, colleagues and students have the freedom to determine how they will be addressed. We find nothing in the principles of academic freedom to suggest otherwise.

At that same meeting, the committee approved the appointment of a subcommittee charged with drafting a statement on the academic freedom implications of broad regulatory definitions of antisemitism and the relationship of such regulations to attacks on critical race theory and other approaches to teaching about race and racism. The subcommittee's members were Risa Lieberwitz (chair), Rana Jaleel, Patricia Navarra, Jennifer Ruth, Joan Wallach Scott, and Charles Toombs. The subcommittee produced a draft statement in February. After email discussion, Committee A approved the statement, titled *Legislative Threats to Academic Freedom: Redefinitions of Antisemitism and Racism*, on March 1. As the statement's introduction notes,

> The past few years have seen an increase in partisan political attempts to restrict the public education curriculum and to portray some forms of public education as a social harm. Two targets are particularly evident: teaching about the history, policies, and actions of the state of Israel and teaching about the history and perpetuation of racism and other accounts of state-enabled violence in the United States. In both cases, conservative politicians have justified restrictive legislation under the guise of protecting students from harm, including discriminatory treatment or exclusion. In the first case, legislation defines antisemitism to include political criticism of the state of Israel. In the second, legislation defines critical analysis of the history of slavery and its legacies in US society as being itself racially discriminatory against whites.

The statement was published online in March and is printed in this issue of the *Bulletin*.

Other Committee Activity

Throughout the year, staff in the Department of Academic Freedom and Tenure kept the committee apprised of progress of potential and recently authorized case investigations, as Committee A is responsible for approving the publication of investigative reports and making recommendations on censure based on their findings. Among such cases were the University System of Georgia, Linfield University (OR), and Collin College (TX). (As noted under "Judicial Business," in the first two cases Committee A recommended imposition of censure, and the Council voted accordingly.) The executive director suspended the investigation at Collin College last summer when two of the three faculty members whose services had been terminated in apparent violation of their academic freedom declined to participate in the investigation. One of them subsequently informed the staff that she was now willing to participate, and in March 2022 the staff opened a fourth case regarding the summary dismissal of a long-serving history professor, who had also alleged that the administration's action violated his academic freedom. With three cooperating complainants, the executive director reactivated the investigation, and the investigating committee conducted its interviews in June. We hope to see the draft report before summer's end.

At its June meeting, staff informed the committee of two potential cases for investigation at Indiana University Northwest and Moravian University (PA). These remarkably similar cases involve summary dismissals of faculty members who claim that the action against them was in retaliation for their outspokenness regarding racial issues. Members of the staff reported that they had informed the respective administrations that should no acceptable resolution occur, they

would recommend to the AAUP's executive director that she authorize an investigation. Staff members also informed the committee that they will likely recommend that these cases be investigated in tandem.

The staff also kept the committee aware of developments relating to the removal of censure at the University of Nebraska–Lincoln and, more recently, at St. Edward's University, where fast-moving events this spring resulted in the committee's June decision to recommend its removal. (As noted under "Judicial Business," in both cases Committee A recommended removal, and the Council voted accordingly.)

Although much-needed revisions to several Redbook documents have been deferred until the implementation stage of the AAUP's racial equity initiative, the committee has taken up other policy matters, including the legal enforceability of faculty handbooks and, at its most recent meeting, attacks on academic freedom and tenure in Florida, Georgia, Louisiana, Mississippi, and other states dominated by conservative legislators and governors. Informed by that recent lively discussion, I will be conferring with AAUP president Irene Mulvey and executive director Julie Schmid on how the committee can best assist the Association in addressing this spreading and deeply concerning phenomenon.

The online publication in April of the *Report of a Special Committee: Governance, Academic Freedom, and Institutional Racism in the University of North Carolina System* (also printed in this issue of the *Bulletin*) resulted in a joint resolution from the chairs of the Committee on College and University Governance, the Committee on Historically Black Institutions and Scholars of Color, and Committee A condemning the UNC board of governors and system office for taking the actions described in the report. Committee A approved the resolution at its June meeting and, along with the other two committees, commended it to the Council for its adoption. The Council voted affirmatively. The resolution is printed separately in this issue of the *Bulletin*.

At that meeting Committee A also applauded nine years of distinguished service on the committee by outgoing members Walter Benn Michaels (University of Illinois Chicago) and Joan Wallach Scott (Institute for Advanced Study). This was Joan's second stint on the committee. She had also served from 1993 to 2005, the last six years as chair. ■

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