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ABSTRACT

Policies and standards of the American Association of University Professors (AAUP) are presented, along with a number of reports on significant topics. The materials, many of which were published in the "AAUP Bulletin," or, since 1979, in "Academe: Bulletin of the AAUP," cover the following topics: academic freedom, tenure, and due process; discrimination; college and university government; collective bargaining; professional ethics; student rights and freedoms; college and university accreditation; research and teaching; and collateral benefits. Specific issues include: faculty dismissal, renewal/nonrenewal of faculty appointments, notice of nonreappointment, imposition of tenure quotas, full-time nontenure-track appointments, status of part-time faculty, sex discrimination, affirmative action plans, problems resulting from financial exigency, faculty status of college librarians, arbitration of faculty grievances, late resignation and professional ethics, faculty workload, teaching evaluation, government-sponsored research at universities, academic retirement and insurance plans, and leaves of absence. Information on selected judicial decisions referring to AAUP standards is included, along with AAUP's constitution, which provides an indication of the association's structure. (SW)

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# AAUP

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# AAUP

AMERICAN ASSOCIATION  
OF  
UNIVERSITY PROFESSORS

## Policy Documents & Reports

### 1984

EDITION

American Association of University Professors  
Washington, D.C.

American Association of University Professors  
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# CONTENTS

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## INTRODUCTION

ix

## ACADEMIC FREEDOM, TENURE, AND DUE PROCESS

Introduction	1
Academic Freedom and Tenure, 1940 Statement of Principles and 1970 Interpretive Comments (Vol. 64, No. 2, May 1978, pp. 108-12)	3
Statement on Procedural Standards in Faculty Dismissal Proceedings (1958) (Vol. 54, No. 4, Winter 1968, pp. 439-41)	10
Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments (1971) (Vol. 57, No. 2, Summer 1971, pp. 206-10)	14
1982 Recommended Institutional Regulations on Academic Freedom and Tenure (Vol. 69, No. 1, January-February 1983, pp. 15a-20a)	21
The Standards for Notice of Nonreappointment (1964) (Vol. 53, No. 4, Winter 1967, p. 407)	31
On the Imposition of Tenure Quotas (1973) (Vol. 59, No. 4, Winter 1973, pp. 428-30)	32
On Full-Time Non-Tenure-Track Appointments (1978) (Vol. 64, No. 3, September 1978, pp. 267-73)	35
Report of the Special Committee on Academic Personnel Ineligible for Tenure (1969) (Vol. 52, No. 3, Autumn 1966, pp. 280-82)	43
The Status of Part-time Faculty (1980) (Vol. 67, No. 1, February-March 1981, pp. 29-37)	47
Committee A Statement on Extramural Utterances (1964) (Vol. 53, No. 1, Spring 1965, p. 29)	58
Statement on Professors and Political Activity (1969) (Vol. 55, No. 3, Autumn 1969, pp. 388-89)	59
Federal Restrictions on Research: Academic Freedom and National Security (1982) (Vol. 68, No. 5, September-October 1982, pp. 18a-20a)	62
Arbitration in Cases of Dismissal (1983) (Vol. 69, No. 5, September-October 1983, pp. 15a-17a)	66
Excerpts from Report on Retirement and Academic Freedom (1968) (Vol. 54, No. 4, Winter, 1968 pp. 425-26)	70
Institutional Responsibility for Faculty Liability (1984) (Vol. 68, No. 5, September-October 1982, p. 21a)	72

## DISCRIMINATION

Introduction	73
On Discrimination (1976)	73

On Processing Complaints of Discrimination on the Basis of Sex (1977) (Vol. 63, No. 3, August 1977, pp. 231-36)	74
Affirmative Action in Higher Education: A Report by the Council Committee on Discrimination (1973) (Vol. 59, No. 2, Summer 1973, pp. 178-83)	82
Affirmative Action Plans: Recommended Procedures for Increasing the Number of Minority Persons and Women on College and University Faculties (1982) (Vol. 68, No. 1, January-February 1982, pp. 15a-20a)	90
Sexual Harassment: Suggested Policy and Procedures for Handling Complaints (1984) (Vol. 69, No. 2, March-April 1983, pp. 15a-16a)	98
Faculty Appointment and Family Relationship (1971) (Vol. 57, No. 2, Summer 1971, p. 221)	101

## COLLEGE AND UNIVERSITY GOVERNMENT

---

Introduction	103
Joint Statement on Government of Colleges and Universities (1966) (Vol. 63, No. 1, February 1977, pp. 32-36)	105
Faculty Participation in the Selection, Evaluation, and Retention of Administrators (1981) (Vol. 67, No. 5, October 1981, pp. 323-24)	111
On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines (1978) (Vol. 60, No. 2, Summer 1974, pp. 267-68)	113
The Role of the Faculty in Budgetary and Salary Matters (1972) (Vol. 62, No. 4, Winter 1976, pp. 379-81)	115
Governance Standards in Institutional Mergers and Acquisitions (1981) (Vol. 68, No. 2, March-April 1982, p. 3a)	119
Joint Statement on Faculty Status of College and University Librarians (1973) (Vol. 59, No. 2, Summer 1973, pp. 266-67)	121

## COLLECTIVE BARGAINING

---

Introduction	123
Statement on Collective Bargaining (1984) (Vol. 69, No. 5, September-October 1983, p. 14a)	125
Arbitration of Faculty Grievances. A Report of a Joint Subcommittee of Committees A and N (1973) (Vol. 59, No. 2, Summer 1973, pp. 168-70)	127

## PROFESSIONAL ETHICS

---

Introduction	131
Statement on Professional Ethics (1966) (Vol. 55, No. 1, Spring 1969, pp. 86-87)	133
A Statement of the Association's Council: Freedom and Responsibility (1970) (Vol. 56, No. 4, Winter 1970, pp. 375-76)	135

Statement on Recruitment and Resignation of Faculty Members (1961) (Vol. 54, No. 3, Autumn 1968, pp. 363-64)	137
A Report from Committee B: Late Resignation and Professional Ethics (1968) (Vol. 54, No. 3, Autumn 1968, pp. 362-63)	139

## STUDENT RIGHTS AND FREEDOMS

---

Joint Statement on Rights and Freedoms of Students (1967) (Vol. 54, No. 2, Summer 1968, pp. 258-61)	141
--	-----

## COLLEGE AND UNIVERSITY ACCREDITATION

---

The Role of the Faculty in the Accrediting of Colleges and Universities (1968) (Vol. 54, No. 2, Summer 1968, pp. 264-65)	147
---	-----

## RESEARCH AND TEACHING

---

Introduction	149
Statement on Faculty Workload (1970) (Vol. 56, No. 1, Spring 1970, pp. 30-32)	151
Statement on Teaching Evaluation (1975) (Vol. 61, No. 2, Summer 1975, pp. 200-02)	154
On Preventing Conflicts of Interest in Government-Sponsored Research at Universities (1965) (Vol. 51, No. 1, Spring 1965, pp. 42-43)	158

## COLLATERAL BENEFITS

---

Introduction	161
Statement of Principles on Academic Retirement and Insurance Plans (1980) (Vol. 66, No. 5, September 1980, pp. 321-23)	163
Statement of Principles on Leaves of Absence (1972) (Vol. 58, No. 2, Summer 1972, pp. 244-45)	167
Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies (1974) (Vol. 60, No. 2, Summer 1974, pp. 164-65)	170

## CONSTITUTION

---

Introduction	173
The Constitution of the Association (Vol. 65, No. 7, November 1979, pp. 457-60)	175

## APPENDIX

---

Selected Judicial Decisions Referring to AAUP Standards	181
Index	185

# INTRODUCTION

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For nearly seventy years, the American Association of University Professors has been engaged in developing standards for sound academic practice and in working for the acceptance of these standards by the community of higher education. The Association has long been viewed as the authoritative voice of the academic profession in this regard.

This volume presents in convenient format a wide range of policies as they have been formulated by standing and special committees, at times in cooperation with other organizations, and determined by the Association's national Council and by the Annual Meeting of the membership. Included also are a number of reports on significant topics that have been approved for publication. Additional policy documents and reports have been published periodically in *Academe: Bulletin of the American Association of University Professors*. Statements of official policy are also found in the published reports of applicable committees and the published record of meetings of the Council and the Annual Meeting. Those interested are invited to consult with the Association's Washington Office staff about policies on particular subjects that are not included in this volume but may be published elsewhere.

The names of the Association's staff are printed in each issue of *Academe*, and Association committees and their membership are listed annually, usually in the last *Academe* issue of the year. An examination of the Association's Constitution, which is reprinted in this volume, together with the staff and committee rosters provides an outline of the Association's structure.

Active membership in the AAUP is open to teachers and research scholars holding faculty status in accredited institutions, or in institutions which are candidates for accreditation. Academic librarians are eligible, as are counselors holding faculty status and other professional appointees included with the faculty in a collective bargaining unit.

Graduate Student membership is open to persons who are presently, or within the past five years have been, enrolled in graduate studies in accredited institutions, and who are not eligible for active membership.

Associate membership is reserved for active or graduate student members who become administrative officers with less than half a normal teaching or research program. Emeritus membership is open to active or associate members retired for reasons of age. Public membership is open to all persons not eligible for active, graduate student, associate, or emeritus membership.

Inquiries concerning membership should be addressed to the Association's Washington Office.

The Washington Office staff, as one of its key functions, is available to provide interpretations of Association policies and to advise as to their applicability in particular situations. This service is offered to members and nonmembers alike, to faculty members, to administrators, and to others who may be interested. Leaders of local AAUP chapters and state conferences can also be approached for advice on matters of concern. A major responsibility of a chapter or conference is to seek the adoption or retention of local institutional regulations that comport with Association policies.

The nature and value of Association policy documents are explained in detail in an article, "The Usefulness of AAUP Policy Statements," by Ralph S. Brown and Matthew W. Finkin (*AAUP Bulletin*, March 1978, pp. 5-11). Each author has served the Association as general counsel and as chairman of its Committee A on Academic Freedom and Tenure. The following text is excerpted from their article.



The policy documents of the American Association of University Professors may be used in one of three ways. First, they offer guidance to all components of the academic community either for the development of institutional policy or for the resolution of concrete issues as they arise. Second, some documents, like the *Recommended Institutional Regulations on Academic Freedom and Tenure* (RIR), are fashioned in a form that is explicitly adaptable as official institutional policy, and they formalize particular advice the AAUP staff gives in recurring situations. Only recently, and thus far to a limited extent, has a third use developed. parties to lawsuits—both administrations and faculty—have begun to invoke AAUP standards to buttress their cases, either because these standards express academic custom generally or because they serve as an aid to the interpretation of institutional regulations or policies that derive from AAUP sources. [Some legal decisions that have relied on AAUP policy statements, and a few explanatory articles, are listed in an appendix at the end of this volume.] The value of AAUP standards in litigation depends, however, on their intrinsic persuasiveness and the degree to which they enjoy widespread acceptance. Their usefulness in litigation is directly proportional to their usefulness in other settings.

### THE FORMATION OF AAUP POLICY

In recent years, AAUP documents that appear to merit continuing reference have been collected for convenience in a single pamphlet entitled *AAUP Policy Documents and Reports*—familarly known as the "Redbook." However, this compendium is neither the exclusive source of AAUP policy, nor does it, standing alone, at all reflect the elaborate and often time-consuming process by which policy is proposed, tested, reshaped, and, finally, adopted. Notably, the published reports of *ad hoc* investigating committees on conditions of academic freedom and tenure, approved for publication by the Association's Committee A, develop a species of common law that guides Committee A's deliberations and is often of wider interest. The contents of these reports are shared in advance with the affected institutional administrations to assure their factual accuracy; comments of the administration on issues of policy or interpretation are noted so that the reader may make an independent judgment of the situation.

Proposed policies, like the *Recommended Institutional Regulations*, that interpret the broad language of the 1940 *Statement of Principles on Academic Freedom and Tenure* are published first for the comment of the academic community. Criticism and suggestions are frequently submitted by college and university administrators and by the national organizations that represent them. The soundness and phrasing of proposed policy statements are then reviewed in light of these remarks as well as comments from AAUP's membership and other interested persons. A revised text might then be published for comment once more, an amended text proposed for final adoption, or no action taken, thereby holding a particular formulation in abeyance pending further experience with the problem.

The policy statements of the Association enjoy varying levels of organizational endorsement. Some are in tentative form and are designed to generate further discussion within the academic community, some bear the imprimatur of one or another standing committee, some are officially adopted by the governing Council and some are endorsed by the Annual Meeting of members and chapter representatives. This variety is not inadvertent. The percipient reader will regard this disparity not as a defect but as a testimonial. It is precisely because the Association generates policy through deliberation rather than through pronouncement—because it prefers the slow crystallization of opinion in the academic community to the instantaneous response of elected or appointed leaders—that it publishes proposed standards before it votes on them and that it lets them pass through various stages of ratification, assessing their worth and reliability by a slow and careful means.

A practice recommended with diffidence by Committee A (or another of AAUP's alphabet) may constitute the closest approximation to wisdom on the subject for the time being, it would be needlessly impoverishing to cast it aside until it was moved along for superior endorsement. Such endorsement is not automatically forthcoming. Committee reports on a knotty issue may be rejected by the Council or the Annual Meeting, sometimes more than once. Such reports are *not* printed in the *Policy Documents*.

We have tried to clarify the internal processes that affect the presentation of AAUP policy statements. We naturally believe that their value reflects the anxious care that has gone into their preparation. But many of the key statements are not simply AAUP's own, the pronouncements of professors only. AAUP has a long history of collaboration with other organizations that are dominated by college and university presidents, who have views that sometimes diverge from those of the academy of teachers.

The conspicuous example of the collaborative statement is, of course, the fundamental 1940 *Statement of Principles on Academic Freedom and Tenure*, a joint enterprise with the Association of American Colleges that has been endorsed by more than one hundred other organizations in higher education. The substantial number of endorsing organizations stands as ample testimony to the normative value of the 1940 *Statement*.

## ADOPTING OR DISCLAIMING AAUP POLICIES

Probably hundreds of colleges and universities have invoked the 1940 *Statement* in their regulations or handbooks. Adoption of or reference to the 1940 *Statement* does not necessarily entail a commitment to the many AAUP policy statements that the Association has derived from the 1940 *Statement* and from its own evolving ideas of good practice. Surely no one would contend that adherence in 1950 to the 1940 *Statement*, without more, "binds" an institution to AAUP interpretations of 1984, in the sense that the later interpretations become an amendment to the institution's regulations. Similarly, if a college incorporates parts of the *Recommended Institutional Regulations* in its own regulations, later revision by AAUP will not alter what the institution has adopted, except on those few occasions when the college's rules express an intent to submit to AAUP revisions, sight unseen.

We do not mean to say that later views will or should have no influence. The advantage of using the language of something as familiar as the 1940 *Statement* is that one has access to a good deal of commentary, to a body of custom—to be sure, far from monolithic—in the academic community, and to a growing number of judicial decisions. All these familiar aids to interpretation help one understand what one is getting into and initially to avoid undesired consequences. A possible disadvantage is that new interpretations will later appear—with AAUP only one of many sources—that may not be wanted. If the new interpretation is persuasive to an authoritative decision-maker, like a judge or an arbitrator, one will be stuck with it in the particular case. And what then? If those with a voice in framing rules concur, then the rule can be changed. That, in a simple-minded way, is how institutions adapt to a changing scene.

If an institution resolutely tries to wall itself off from such outside influences, it loses the good along with the bad. In the case of AAUP policies, it is a gross error to regard them as altogether bestowing privileges on faculty. The 1940 *Statement* and attendant glosses can be positively helpful to administrators in rejecting unfounded faculty grievances.<sup>1</sup>

## AAUP STANDARDS IN THE COURTS

We do not unreservedly admire the increasing resort to the courts in academic disputes. Even aside from the burden of "six-figure lawyers' fees"—burdens which fall on both sides in litigation—the rising tide of litigation shows that we have failed to keep our disputes within the academic family.

<sup>1</sup>For example, a federal district court, in holding that certain language used by a faculty member was not protected by the First Amendment, referred to the requirement of "appropriate restraint" contained in the 1940 *Statement* (*Starsky v. Williams*, 353 F.Supp. 900 [D. Ariz. 1972], *aff'd in part, rev'd in part*, 512 F.2a 109 [9th Cir. 1975]). In another case, a federal appellate court reversed a lower court decision holding that a university regulation, under which a tenured faculty member was dismissed for "adequate cause," was unconstitutionally vague and overbroad. The appellate court took notice that the university regulation "was adopted almost verbatim from the 1940 *Statement of Principles of the American Association of University Professors*" and construed an Advisory Letter by the Association interpreting the 1940 *Statement* as eliminating "any overbreadth resulting in facial invalidity" of the university regulation. *Adamjan v. Jacobsen*, 523 F.2d 929 (9th Cir. 1975). On remand, the district court sustained the dismissal of the faculty member under this regulation.

But let us take the scene as it is. There are more and more court cases because faculty members, when they believe that they have been injured, for example, by denial of due process, by an infringement of academic freedom, or by unfair treatment in a retrenchment measure, conclude that they will not and should not give up if they can get help from the law. The immediate question, when college administrations and professors do go to law, is how judges view, and how should they view, AAUP policy statements.

Sometimes questions of due process and of academic freedom have constitutional dimensions. Expert though judges may be on the First and Fourteenth Amendments, the application of these broad mandates to a particular case is often not self-evident. Due process is a flexible concept. Academic due process is not the same as due process before the Interstate Commerce Commission. The views of experts are one guide to decision. We submit that AAUP has some expertise in academic due process, and, as we suggested earlier, by adhering to a familiar standard, an institution often will save itself from legal sanctions that may attend an unknown standard.

In cases that do not invoke constitutional questions, a court will probably be trying to interpret a university handbook or regulations. The absence of detailed individual contracts, which are not common in the academic world, makes such documents the chief source of guidance toward the rights and duties of all parties. When regulations use terms customary in the academic world like "tenure," it is helpful to look to the academic community's understanding about what the term means, which to a large extent is found in the 1940 *Statement* and the commentary upon it. When regulations explicitly refer to the 1940 *Statement*, it is relevant to consider its history, later bilateral interpretations, and unilateral AAUP refinements as a guide to what the *Statement* means in a particular situation. The weight to be accorded these different kinds of interpretations varies. The AAUP has been at pains to distinguish them. Statements like the 1940 *Statement* that have joint authorship and extensive endorsement represent a consensus that extends beyond the faculty organization. Unilateral AAUP pronouncements, such as the RIR or the opinions of an *ad hoc* investigating committee adopted by Committee A, represent AAUP's opinion of how the 1940 *Statement* should be read. The AAUP has not argued that adopting the 1940 *Statement* necessarily binds any institution to a unilateral interpretation of it, nor has any court so held. What the AAUP has said in its briefs is that, insofar as the courts are concerned, these documents should be understood as reasoned argument. To the extent that they reflect a reasoned exposition of how the controversy should be resolved, a court may well be persuaded by them—unless, of course, some party makes a better, i.e., a more reasoned argument.

In sum, to the extent that the standards of academic freedom and tenure built up by the AAUP over nearly seventy years represent a body of persuasive professional opinion, the courts should give weight to them; if the standards are arbitrary or unreasoned, they should not.

# ACADEMIC FREEDOM, TENURE AND DUE PROCESS

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From its inception in 1915, the main work of the Association has been in the area of academic freedom and tenure. Policy in this vital field has evolved gradually but continuously since that time. In the year of its founding the Association formulated a "Declaration of Principles," a statement on academic freedom and tenure and professional responsibility, which concluded with a section enumerating desirable procedures. This statement was put to immediate use, by the organization's standing Committee A on Academic Freedom and Tenure, in dealing with particular cases. Ten years later, the American Council on Education called a conference of a number of its constituent members, among them the AAUP, for the purpose of formulating a shorter statement that would take into account a decade's experience. The product of this effort became known as the 1925 Conference Statement on Academic Freedom and Tenure; it was endorsed by the Association of American Colleges in 1925 and by this Association in 1926. Beginning in 1934, the two endorsing organizations again joined in a series of conferences. The result was the present policy document, the landmark 1940 Statement of Principles on Academic Freedom and Tenure, which in later years has been further endorsed by over one hundred additional learned societies and educational associations, and which in 1970 was supplemented by a series of "Interpretive Comments."

Since 1940 the Association has issued other policy statements and reports which explain and develop aspects of the Statement of Principles and which also set forth procedural standards for academic due process in a variety of situations. The most generally used among these statements are the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings (developed jointly with the Association of American Colleges), the 1971 Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments, and the Recommended Institutional Regulations on Academic Freedom and Tenure.

The Association, also from its inception, has assumed responsibility not only for promulgating principles and standards but also for implementing them in specific situations. Believing that unrectified departures from sound academic standards do injury to the entire academic profession, the Association in addition publishes reports of ad hoc investigating committees on specific cases at colleges and universities that raise issues of academic freedom and tenure. These reports offer helpful guidance for the understanding of later situations confronted by the Association and constitute implementation of Association policy. They also develop a species of common law that guides Committee A's deliberations and is often of wider interest. Finally, these reports contribute to the ongoing process of education in accepted principles and practice which is the central purpose and the most important activity of the Association.

# Academic Freedom and Tenure

## 1940 Statement of Principles and Interpretive Comments

*In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.*

*The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges during 1969.*

**T**he purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher<sup>1</sup> or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights. [1]<sup>2</sup>

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

### ACADEMIC FREEDOM

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. [2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment. [3]

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free

<sup>1</sup>The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

<sup>2</sup>Bold-face numbers in brackets refer to Interpretive Comments which follow.

from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman. [4]

## ACADEMIC TENURE

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

2. Beginning with appointment to the rank of full-time instructor or a higher rank [5], the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. [6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. [7]

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have. [8]

4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution. [9]

5. Termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*.

## 1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural

utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a)(4) of the section on *Academic Tenure*. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

## 1970 INTERPRETIVE COMMENTS

*Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty, members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the Joint Committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.*

*The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.*

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that Association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 *Statement*, to formulate the most important of these refinements. Their incorporation here as *Interpretive Comments* is based upon the premise that the 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 *Statement*; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents* 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 *Statement* on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both Associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to the institution and students, and in his conduct when resigning from his institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted by the Fifty-second Annual Meeting of the AAUP as Association policy and published in the *AAUP Bulletin* (Autumn 1966, pp. 290-91).

2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for the teacher to avoid persistently intruding material which has no relation to his subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 *Statement*, and we do not now endorse such a departure.

4. This paragraph is the subject of an Interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the 1940 *Statement* should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (*AAUP Bulletin*, Spring, 1965, p. 29) which states inter alia. "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph V of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary as well as to the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of his specific title.\*

6. In calling for an agreement "in writing" on the amount of credit for a faculty member's prior service at other institutions, the *Statement* furthers the general policy of full understanding by the professor of the terms and conditions of his appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution.\*\*

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 *Statement* with respect to the termination of services of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

- (1) Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

\*For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (Autumn 1966): 280-82.

\*\*For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *AAUP Bulletin* 64 (September 1978): 274-75.



(2) Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year, or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during his probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph, is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 *Statement* is silent.

The 1958 *Statement* provides: "Suspension of the faculty member during the proceedings involving him is justified only if immediate harm to himself or others is threatened by his continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

## ENDORSERS

*The following organizations officially endorsed the 1940 Statement in the years indicated.*

Association of American Colleges .....	1941
American Association of University Professors .....	1941
American Library Association (adapted for librarians) .....	1946
Association of American Law Schools .....	1946
American Political Science Association .....	1947
American Association of Colleges for Teacher Education .....	1950
American Association for Higher Education .....	1950
Eastern Psychological Association .....	1950
Southern Society for Philosophy and Psychology .....	1953
American Psychological Association .....	1961
American Historical Association .....	1961
Modern Language Association of America .....	1962
American Economic Association .....	1962
American Agricultural Economics Association .....	1962
Midwest Sociological Society .....	1963
Organization of American Historians .....	1963
American Philological Association .....	1963
American Council of Learned Societies .....	1963

Speech Communication Association .....	1963
American Sociological Association .....	1963
Southern Historical Association .....	1963
American Studies Association .....	1963
Association of American Geographers .....	1963
Southern Economic Association .....	1963
Classical Association of the Middle West and South .....	1964
Southwestern Social Science Association .....	1964
Archaeological Institute of America .....	1964
Southern Management Association .....	1964
American Theatre Association .....	1964
South Central Modern Language Association .....	1964
Southwestern Philosophical Society .....	1964
Council of Independent Collèges .....	1965
Mathematical Association of America .....	1965
Arizona-Nevada Academy of Science .....	1965
American Risk and Insurance Association .....	1965
Academy of Management .....	1965
American Catholic Historical Association .....	1966
American Catholic Philosophical Association .....	1966
Association for Education in Journalism .....	1966
Western History Association .....	1966
Mountain-Plains Philosophical Conference .....	1966
Society of American Archivists .....	1966
Southeastern Psychological Association .....	1966
Southern Speech Communication Association .....	1966
American Association for the Advancement of Slavic Studies .....	1967
American Mathematical Society .....	1967
College Theology Society .....	1967
Council on Social Work Education .....	1967
American Association of Colleges of Pharmacy .....	1967
American Academy of Religion .....	1967
Association for the Sociology of Religion .....	1967
American Society of Journalism School Administrators .....	1967
John Dewey Society .....	1967
South Atlantic Modern Language Association .....	1967
American Finance Association .....	1967
Association for Social Economics .....	1967
United Chapters of Phi Beta Kappa .....	1968
American Society of Christian Ethics .....	1968
American Association of Teachers of French .....	1968
Eastern Finance Association .....	1968
American Association for Chinese Studies .....	1968
American Society of Plant Physiologists .....	1968
University Film Association .....	1968
American Dialect Society .....	1968
American Speech-Language-Hearing Association .....	1968
Association of Social and Behavioral Scientists .....	1968
College English Association .....	1968
National College Physical Education Association for Men .....	1969
American Real Estate and Urban Economics Association .....	1969
History of Education Society .....	1969
Council for Philosophical Studies .....	1969

American Musicological Society .....	1969
American Association of Teachers of Spanish and Portuguese .....	1969
Texas Junior College Teachers Association .....	1970
College Art Association of America .....	1970
Society of Professors of Education .....	1970
American Anthropological Association .....	1970
Association of Theological Schools .....	1970
American Association of Schools and Departments of Journalism .....	1971
American Business Law Association .....	1971
American Council for the Arts .....	1972
New York State Mathematics Association of Two-Year Colleges .....	1972
College Language Association .....	1973
Pennsylvania Historical Association .....	1973
Massachusetts Regional Community College Faculty Association .....	1973
American Philosophical Association*** .....	1974
American Classical League .....	1974
American Comparative Literature Association .....	1974
Rocky Mountain Modern Language Association .....	1974
Society of Architectural Historians .....	1975
American Statistical Association .....	1975
American Folklore Society .....	1975
Association for Asian Studies .....	1975
Linguistic Society of America .....	1975
African Studies Association .....	1975
American Institute of Biological Sciences .....	1975
Conference on British Studies .....	1975
Texas Association of College Teachers .....	1976
Society for Spanish and Portuguese Historical Studies .....	1976
Association for Jewish Studies .....	1976
Western Speech Communication Association .....	1976
Texas Association of Colleges for Teacher Education .....	1977
Metaphysical Society of America .....	1977
American Chemical Society .....	1977
Texas Library Association .....	1977
American Society for Legal History .....	1977
Iowa Higher Education Association .....	1977
American Physical Therapy Association .....	1979
North Central Sociological Association .....	1980
Dante Society of America .....	1980
Association for Communication Administration .....	1981
American Association of Physics Teachers .....	1982
Middle East Studies Association .....	1982

\*\*\*Endorsed by Association's Western Division in 1952, Eastern Division in 1953, and Pacific Division in 1962.

# Statement on Procedural Standards in Faculty Dismissal Proceedings

*The following Statement was prepared by a joint committee representing the Association of American Colleges and the American Association of University Professors and was approved by these two associations at their annual meetings in 1958. It supplements the 1940 Statement of Principles on Academic Freedom and Tenure by providing a formulation of the "academic due process" that should be observed in dismissal proceedings. The exact procedural standards here set forth, however, "are not intended to establish a norm in the same manner as the 1940 Statement of Principles on Academic Freedom and Tenure, but are presented rather as a guide...."*

## INTRODUCTORY COMMENTS

**A**ny approach toward settling the difficulties which have beset dismissal proceedings on many American campuses must look beyond procedure into setting and cause. A dismissal proceeding is a symptom of failure; no amount of use of removal process will help strengthen higher education as much as will the cultivation of conditions in which dismissals rarely if ever need occur.

Just as the board of control or other governing body is the legal and fiscal corporation of the college, the faculty are the academic entity. Historically, the academic corporation is the older. Faculties were formed in the Middle Ages, with managerial affairs either self-arranged or handled in course by the parent church. Modern college faculties, on the other hand, are part of a complex and extensive structure requiring legal incorporation, with stewards and managers specifically appointed to discharge certain functions.

Nonetheless, the faculty of a modern college constitute an entity as real as that of the faculties of medieval times, in terms of collective purpose and function. A necessary pre-condition of a strong faculty is that it have first-hand concern with its own membership. This is properly reflected both in appointments to and in separations from the faculty body.

A well-organized institution will reflect sympathetic understanding by trustees and teachers alike of their respective and complementary roles. These should be spelled out carefully in writing and made available to all. Trustees and faculty should understand and agree on their several functions in determining who shall join and who shall remain on the faculty. One of the prime duties of the administrator is to help preserve understanding of those functions. It seems clear on the American college scene that a close positive relationship exists between the excellence of colleges, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership. Such a condition is in no wise inconsistent with full faculty awareness of institutional factors with which governing boards must be primarily concerned.

In the effective college, a dismissal proceeding involving a faculty member on tenure, or one occurring during the term of an appointment, will be a rare exception, caused by individual human weakness and not by an unhealthy setting. When it does come, however, the college should be prepared for it, so that both institutional integrity and individual human rights may be preserved during the process of resolving the trouble. The faculty must be willing to recommend the dismissal of a colleague when necessary. By the same token, presidents and governing boards must be willing to give full weight to a faculty judgment favorable to a colleague.

One persistent source of difficulty is the definition of adequate cause for the dismissal of a faculty member. Despite the 1940 *Statement of Principles on Academic Freedom and Tenure* and subsequent attempts to build upon it, considerable ambiguity and misunderstanding persist throughout higher education, especially in the respective conceptions of governing boards, administrative officers, and faculties concerning this matter. The present statement assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal, bearing in mind the 1940 *Statement* and standards which have developed in the experience of academic institutions.

This statement deals with procedural standards. Those recommended are not intended to establish a norm in the same manner as the 1940 *Statement of Principles on Academic Freedom and Tenure*, but are presented rather as a guide to be used according to the nature and traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community.

## PROCEDURAL RECOMMENDATIONS

### 1. Preliminary Proceedings Concerning the Fitness of a Faculty Member

When reason arises to question the fitness of a college or university faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with him in personal conference. The matter may be terminated by mutual consent at this point; but if an adjustment does not result, a standing or *ad hoc* committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation to effect an adjustment if possible and, if none is effected, to determine whether in its view formal proceedings to consider his dismissal should be instituted. If the committee recommends that such proceedings should be begun, or if the president of the institution, even after considering a recommendation of the committee favorable to the faculty member, expresses his conviction that a proceeding should be undertaken, action should be commenced under the procedures which follow. Except where there is disagreement, a statement with reasonable particularity of the grounds proposed for the dismissal should then be jointly formulated by the president and the faculty committee; if there is disagreement, the president or his representative should formulate the statement.

### 2. Commencement of Formal Proceedings

The formal proceedings should be commenced by a communication addressed to the faculty member by the president of the institution, informing the faculty member of the statement formulated, and informing him that, if he so requests, a hearing to determine whether he should be removed from his faculty position on the grounds stated will be conducted by a faculty committee at a specified time and place. In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare his defense. The faculty member should be informed, in detail or by reference to published regulations, of the procedural rights that will be accorded to him. The faculty member should state in reply whether he wishes a hearing and, if so, should answer in writing, not less than one week before the date set for the hearing, the statements in the president's letter.

### 3. Suspension of the Faculty Member

Suspension of the faculty member during the proceedings involving him is justified only if immediate harm to himself or others is threatened by his continuance. Unless legal considerations forbid, any such suspension should be with pay.

### 4. Hearing Committee

The committee of faculty members to conduct the hearing and reach a decision should be either an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice

of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chairman.

#### 5. *Committee Proceeding*

The committee should proceed by considering the statement of grounds for dismissal already formulated and the faculty member's response written before the time of the hearing. If the faculty member has not requested a hearing, the committee should consider the case on the basis of the obtainable information and decide whether he should be removed; otherwise the hearing should go forward. The committee, in consultation with the president and the faculty member, should exercise its judgment as to whether the hearing should be public or private. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter set forth in the president's letter to the faculty member should be received.

The president should have the option of attendance during the hearing. He may designate an appropriate representative to assist in developing the case; but the committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case.

The faculty member should have the option of assistance by counsel, whose functions should be similar to those of the representative chosen by the president. The faculty member should have the additional procedural rights set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and should have the aid of the committee, when needed, in securing the attendance of witnesses. The faculty member or his counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all witnesses adverse to him. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as his statements, should nevertheless be disclosed to the faculty member. Subject to these safeguards, statements may, when necessary be taken outside the hearing and reported to it. All of the evidence should be duly recorded. Unless special circumstances warrant, it should not be necessary to follow formal rules of court procedure.

#### 6. *Consideration by Hearing Committee*

The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or his counsel and the representative designated by the president to argue orally before it. If written briefs would be helpful, the committee may request them. The committee may proceed to decision promptly, without having the record of the hearing transcribed, where it feels that a just decision can be reached by this means; or it may await the availability of a transcript of the hearing if its decision would be aided thereby. It should make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable. Publicity concerning the committee's decision may properly be withheld until consideration has been given to the case by the governing body of the institution. The president and the faculty member should be notified of the decision in writing and should be given a copy of the record of the hearing. Any release to the public should be made through the president's office.

#### 7. *Consideration by Governing Body*

The president should transmit to the governing body the full report of the hearing committee, stating its action. On the assumption that the governing board has accepted the principle of the faculty hearing committee, acceptance of the committee's decision would normally be expected. If the governing body chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The decision of the hearing committee should either be sustained or the proceeding be returned to the committee with objections.

specified. In such a case the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the governing body make a final decision overruling the committee.

#### *8. Publicity*

Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should include a statement of the hearing committee's original action, if this has not previously been made known.

# Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments<sup>1</sup>

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*The Statement which follows was prepared by the Association's Committee A on Academic Freedom and Tenure. It was first published in somewhat different format as a draft report in the March 1970 AAUP Bulletin, with comments solicited from members, chapters, and conferences. It was adopted by the Council of the American Association of University Professors in April 1971 and endorsed by the Fifty-seventh Annual Meeting as Association policy.*

## INTRODUCTION<sup>2</sup>

**T**he steady growth in the number of institutions new to college and university traditions, and in the number of probationary faculty members, has underscored the need for adequate procedures in reaching decisions on faculty renewals and for the protection of the probationary faculty member against decisions either in violation of his academic freedom or otherwise improper. Related to this need has been a heightened interest in providing the faculty member with a written statement of reasons for a decision not to offer him reappointment or to grant him tenure. At the Association's Fifty-fifth Annual Meeting, held on April 30 and May 1, 1969, a motion was adopted urging Committee A

to consider adoption of the position that notice of nonreappointment of probationary faculty be given in writing and that it include the reasons for the termination of the appointment. In any allegation that the reasons are false, or unsupported by the facts, or violative of academic freedom or procedures the proof should rest with the faculty member.

The position which the Annual Meeting urged Committee A to consider had been the primary topic of discussion at the December 14-15, 1968, meeting of the Committee A Subcommittee on Nontenured Faculty, and it was discussed at length again at the subcommittee's meeting on October 11, 1969, at the regular Committee A meetings of April 27-28 and October 29-30, and at a special meeting of Committee A on January 9-10, 1970. The present statement embodies the consensus arrived at during those meetings.

It has long been the Association's position, as stated in *The Standards for Notice of Nonreappointment*, that "notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing." Although the Association has not attempted to discourage the giving of reasons, either orally or in writing, for a notice of nonreappointment, it has not required that reasons be given.

In considering this question, Committee A endeavored to appraise the advantages and disadvantages of the Association's present policy and the proposed policy in terms of the Association's traditional concern for the welfare of higher education and its various components, including probationary faculty members. The committee also examined the question of giving

<sup>1</sup>These procedures do not apply to special appointments, clearly designated in writing at the outset as involving only a brief association with the institution for a fixed period of time.



reasons in the context of the entire probationary period. As a result, this *Statement* goes beyond the question of giving reasons to the more fundamental subject of general fairness in the procedures related to renewal or nonrenewal of term appointments and the granting of tenure.

## STATEMENT

### THE PROBATIONARY PERIOD: STANDARDS AND CRITERIA

The 1940 *Statement of Principles on Academic Freedom and Tenure* prescribes that "during the probationary period a teacher should have the academic freedom that all other members of the faculty have." A number of the nontenured faculty member's rights provide support for his academic freedom. He cannot, for example, be dismissed before the end of a term appointment except for adequate cause which has been demonstrated through academic due process—a right he shares with tenured members of the faculty. If he asserts that he has been given notice of nonreappointment in violation of academic freedom, he is entitled to an opportunity to establish his claim in accordance with Regulation 10 of Committee A's *Recommended Institutional Regulations*. He is entitled to timely notice of nonreappointment in accordance with the schedule prescribed in the statement on *Standards for Notice of Nonreappointment*.<sup>2</sup>

Lacking the reinforcement of tenure, however, the academic freedom of the probationary faculty member has depended primarily upon the understanding and support of his faculty colleagues, the administration, and professional organizations, especially the Association. In the 1966 *Statement on Government of Colleges and Universities*, the Association and other sponsoring organizations have asserted that "faculty status and related matters are primarily a faculty responsibility, this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." It is Committee A's view that collegial deliberation of the kind envisioned by the *Statement on Government* will minimize the risk both of a violation of academic freedom and of a decision which is arbitrary or based upon inadequate consideration.

Frequently the young faculty member has had no training or experience in teaching, and his first major research endeavor may still be uncompleted at the time he starts his career as a college teacher. Under these circumstances, it is particularly important that there be a probationary period—a maximum of seven years under the 1940 *Statement of Principles on Academic Freedom and Tenure*—before tenure is granted. Such a period gives the individual time to prove himself, and his colleagues time to observe and evaluate him on the basis of his performance in the position rather than on the basis only of his education, training, and recommendations.

Good practice requires that the institution (department, college, or university) define its criteria for reappointment and tenure and its procedures for reaching decisions on these matters. The 1940 *Statement of Principles* prescribes that "the precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated." Committee A also believes that fairness to the faculty member prescribes that he be informed, early in his appointment, of the substantive and procedural standards which will be followed in determining whether or not his appointment will be renewed or tenure will be granted.

We accordingly make the following recommendation:

1. *Criteria and Notice of Standards.* The faculty member should be advised, early in his appointment, of the substantive and procedural standards generally employed in decisions affecting

<sup>2</sup>The *Standards for Notice* are as follows:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
2. Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
3. At least twelve months before the expiration of an appointment after two or more years in the institution.

renewal and tenure. Any special standards adopted by his department or school should also be brought to his attention.

### THE PROBATIONARY PERIOD: EVALUATION AND DECISION

The relationship of the senior and junior faculty should be one of collegueship, even though the nontenured faculty member knows that in time he will be judged by his senior colleagues. Thus the procedures adopted for evaluation and possible notification of nonrenewal should not endanger this relationship where it exists, and should encourage it where it does not. The nontenured faculty member should have available to him the advice and assistance of his senior colleagues; and the ability of senior colleagues to make a sound decision on renewal or tenure will be enhanced if an opportunity is provided for a regular review of the qualifications of nontenured faculty members. Total separation of the faculty roles in counseling and evaluation may not be possible and may at times be unproductive: for example, an evaluation, whether interim or at the time of final determination of renewal or tenure, can be presented in such a manner as to assist the nontenured faculty member as he strives to improve his performance.

Any recommendation regarding renewal or tenure should be reached by an appropriate faculty group in accordance with procedures approved by the faculty. Because it is important to both the faculty member and the decision-making body that all significant information be considered, he should be notified that a decision is to be made regarding renewal of his appointment or the granting of tenure and should be afforded an opportunity to submit material in writing which he believes to be relevant to that decision.

We accordingly make the following recommendations:

2 (a) *Periodic Review*. There should be provision for periodic review of the faculty member's situation during the probationary service.

(b) *Opportunity to Submit Material*. The faculty member should be advised of the time when decisions affecting renewal and tenure are ordinarily made, and he should be given the opportunity to submit material which he believes will be helpful to an adequate consideration of his circumstances.

Observance of the practices and procedures outlined above should minimize the likelihood of reasonable complaint if the nontenured faculty member is given notice of nonreappointment. He will have been informed of the criteria and procedures for renewal and tenure; he will have been counseled by faculty colleagues; he will have been given an opportunity to have all material relevant to his evaluation considered, and he will have received a timely decision representing the view of faculty colleagues.

### NOTICE OF REASONS

With respect to giving reasons for a notice of nonreappointment, practice varies widely from institution to institution, and sometimes within institutions. At some, in accordance with the institution's regulations, the faculty member is provided with a written statement of the reasons. At others, generally at the discretion of the department chairman, he is notified of the reasons, either orally or in writing, if he requests such notification. At still others, no statement of reasons is provided even upon request, although information is frequently provided informally by faculty colleagues.

Resolving the question of whether a faculty member should be given a statement of reasons, at least if he requests it, requires an examination of the needs both of the institution and of the individual faculty member.

A major responsibility of the institution is to recruit and retain the best qualified faculty within its means. In a matter of such fundamental importance, the institution, through the appropriate faculty agencies, must be accorded the widest latitude consistent with academic freedom and the standards of fairness. Committee A recognizes that the requirement of giving reasons may

lead, however erroneously, to an expectation that the decision-making body must justify its decision. A notice of nonreappointment may thus become confused with dismissal for cause, and under these circumstances the decision-making body may become reluctant to reach adverse decisions which may culminate in grievance procedures. As a result there is a risk that the important distinction between tenure and probation will be eroded.

To be weighed against these important institutional concerns are the interests of the individual faculty member. He may be honestly unaware of the reasons for a negative decision, and the decision may be based on a judgment of shortcomings which he could easily remedy if informed of them. A decision not to renew an appointment may be based on erroneous information which the faculty member could readily correct if he were informed of the basis for the decision. Again, the decision may be based on considerations of institutional policy or program development which have nothing to do with the faculty member's competence in his field, and if not informed of the reasons he may mistakenly assume that a judgment of inadequate performance on his part has been made. In the face of a persistent refusal to supply the reasons, a faculty member may be more inclined to attribute improper motivations to the decision-making body or to conclude that its evaluation has been based upon inadequate consideration. If he wishes to request a reconsideration of the decision, or a review by another body, his ignorance of the reasons for the decision will create difficulties both in reaching a decision whether to initiate such a request and in presenting his case for reconsideration or review.

After careful evaluation of these competing concerns, Committee A has concluded that the reasons in support of the faculty member's being informed outweigh the countervailing risks. Committee A emphasizes that in reaching this conclusion it does not consider it appropriate to require that every notice of nonreappointment be accompanied by a written statement of the reasons for nonreappointment. It may not always be to the advantage of the faculty member to be informed of the reasons, particularly in writing. If he is informed of them, he can be placed under an obligation to divulge them to the appointing body of another institution if it inquires why he is leaving his present position. Similarly, a written record is likely to become the basis for continuing responses by his former institution to prospective appointing bodies and may thus jeopardize his chances for obtaining positions over an extended period.

At many institutions, moreover, the procedures of evaluation and decision may make it difficult, if not impossible, to compile a statement of reasons which precisely reflects the basis of the decision. When a number of faculty members participate in the decision, they may oppose a reappointment for a variety of reasons, few or none of which may represent a majority view. To include every reason, no matter how few have held it, in a written statement to the faculty member may misrepresent the general view and damage unnecessarily both the faculty member's morale and his professional future.

In many situations, of course, a decision not to reappoint will not reflect adversely upon the faculty member. An institution may, for example, find it necessary for financial or other reasons to restrict its offerings in a given department. A number of institutions appoint more faculty members than they expect to give tenure, at such institutions a limit has been placed on the number of faculty at each rank, and the acquisition of tenure depends not only upon satisfactory performance but also upon an opening in the ranks above instructor or assistant professor. Nonrenewal in these cases is not likely to be psychologically damaging or to suggest a serious adverse judgment.

In these situations, providing a statement of reasons, either written or oral, should pose no difficulty, and such a statement may in fact assist the faculty member in his search for a new position. In other situations, in spite of his awareness of the considerations cited above, the faculty member may ask to be advised of the reasons which contributed to his nonreappointment, and Committee A believes that he should be given such advice. It believes also that he should have the opportunity to request a reconsideration by the decision-making body.

We accordingly make the following recommendation:

3. *Notice of Reasons.* In the event of a decision not to renew his appointment, the faculty member should be informed of the decision in writing, and, if he so requests, he should be advised of

the reasons which contributed to that decision. He should also have the opportunity to request a reconsideration by the decision-making body.

### WRITTEN REASONS

Having been given orally the reasons which contributed to his nonreappointment, the faculty member, to avoid misunderstanding, may request that they be confirmed in writing. He may wish to petition the appropriate faculty committee, in accordance with Regulation 10 of Committee A's *Recommended Institutional Regulations*, to consider an allegation that the reasons he was given violate his academic freedom, or that the primary reasons for the notice of nonreappointment were not stated and constitute a violation of his academic freedom. He may wish to petition a committee, in accordance with Regulation 15 of the *Recommended Institutional Regulations*, to consider a complaint that the decision resulted from inadequate consideration and was therefore unfair to him. He may feel that a written statement of reasons may be useful to him in pursuing his professional career.

If the department chairman or other appropriate institutional officer to whom the request is made feels that confirming the oral statement in writing may be damaging to the faculty member on grounds such as those cited earlier in this statement, Committee A believes that it would be desirable for him to explain the possible adverse consequences of confirming the oral statement in writing. If in spite of this explanation the faculty member continues to request a written statement, Committee A believes that his request should be honored.

We accordingly make the following recommendation:

4. *Written Reasons.* If the faculty member expresses a desire to petition the grievance committee (such as is described in Regulations 10 and 15 of Committee A's *Recommended Institutional Regulations*), or any other appropriate committee, to use its good offices of inquiry, recommendation, and report, or if he makes the request for any other reason satisfactory to himself alone, he should have the reasons given in explanation of the nonrenewal confirmed in writing.

### REVIEW PROCEDURES: ALLEGATIONS OF ACADEMIC FREEDOM VIOLATIONS

The best safeguard against a proliferation of grievance petitions on a given campus is the observance of sound principles and procedures of academic freedom and tenure and of institutional government. Committee A believes that observance of the procedures recommended in this statement—procedures which would provide guidance to nontenured faculty members, help assure them of a fair professional evaluation, and enlighten them concerning the reasons contributing to key decisions of their colleagues—would constitute a further step in the achievement of harmonious faculty relationships and the development of well-qualified faculties.

Even with the best practices and procedures, however, faculty members will at times feel that they have been improperly or unjustly treated and may wish another faculty group to review a decision of the faculty body immediately involved. Committee A believes that fairness to both the individual and the institution requires that the institution provide for such a review when it is requested. A possible violation of academic freedom is of vital concern to the institution as a whole, and where a violation is alleged it is of cardinal importance to the faculty and the administration to determine whether substantial grounds for the allegation exist. The institution should also be concerned to see that decisions respecting reappointment are based upon adequate consideration, and provision should thus be made for a review of allegations by affected faculty members that the consideration has been inadequate.

Because of the broader significance of a violation of academic freedom, Committee A believes that the procedures to be followed in these two kinds of complaints should be kept separate. Regulation 10 of the *Recommended Institutional Regulations*, mentioned earlier in this statement, provides a specific procedure for the review of complaints that academic freedom has been violated.<sup>3</sup>

<sup>3</sup>Faculties processing complaints under Regulations 10 and 15 may wish to secure the further advice of the Association's Washington Office.

If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations violative of (1) academic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, physical handicap, marital status, or sexual or affectional preference, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committee, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based, and the burden of proof shall rest upon the faculty member. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision against reappointment to come forward with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a *prima facie* case.

We accordingly make the following recommendation:

5. *Petition for Review Alleging an Academic Freedom Violation (Regulation 10, Recommended Institutional Regulations)*. Insofar as the petition for review alleges a violation of academic freedom, the functions of the committee which reviews the faculty member's petition should be the following:

- (a) To determine whether or not the notice of nonreappointment constitutes on its face a violation of academic freedom.
- (b) To seek to settle the matter by informal methods.
- (c) If the matter remains unresolved, to decide whether or not the evidence submitted in support of the petition warrants a recommendation that a formal proceeding be conducted in accordance with Regulations 5 and 6 of the *Recommended Institutional Regulations*, with the burden of proof resting upon the complaining faculty member.

### REVIEW PROCEDURES: ALLEGATIONS OF INADEQUATE CONSIDERATION

Complaints of inadequate consideration are likely to relate to matters of professional judgment, where the department or departmental agency should have primary authority. For this reason, Committee A believes that the basic functions of the review committee should be to determine whether adequate consideration was given to the appropriate faculty body's decision and, if it determines otherwise, to request reconsideration by that body.

It is easier to state what the standard "adequate consideration" does not mean than to specify in detail what it does. It does not mean that the review committee should substitute its own judgment for that of members of the department on the merits of whether the candidate should be reappointed or given tenure. The conscientious judgment of the candidate's departmental colleagues must prevail if the invaluable tradition of departmental autonomy in professional judgments is to prevail. The term "adequate consideration" refers essentially to procedural rather than substantive issues. Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation by the department over the import of the evidence in the light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a *bona fide* exercise of professional academic judgment? These are the kinds of questions suggested by the standard "adequate consideration."

If in applying this standard the review committee concludes that adequate consideration was not given, its appropriate response should be to recommend to the department that it assess the merits once again, this time remedying the inadequacies of its prior consideration.

An acceptable review procedure, representing one procedural system within which such judgments may be made, is outlined in Regulation 15 of the *Recommended Institutional Regulations*, as follows:

If any faculty member alleges cause for grievance in any matter not covered by the procedures described in the foregoing Regulations, the faculty member may petition the elected faculty grievance committee [here name the committee] for redress. The petition will set forth in detail the nature of the grievance and will state against whom the grievance is directed. It will contain any factual or other data which the petitioner deems pertinent to the case. Statistical evidence of improper discrimination, including discrimination in salary, may be used in establishing a *prima facie* case. The committee will decide whether or not the facts merit a detailed investigation, if the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, upon request, be provided an opportunity to present the grievance to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of administration will serve on the committee.

We accordingly make the following recommendation:

6. *Petition for Review Alleging Inadequate Consideration* (Regulation 15, *Recommended Institutional Regulations*). Insofar as the petition for review alleges inadequate consideration, the functions of the committee which reviews the faculty member's petition should be the following:

- (a) to determine whether the decision of the appropriate faculty body was the result of adequate consideration in terms of the relevant standards of the institution, with the understanding that the review committee should not substitute its judgment on the merits for that of the faculty body;
- (b) to request reconsideration by the faculty body when the committee believes that adequate consideration was not given to the faculty member's qualifications (in such instances, the committee should indicate the respects in which it believes the consideration may have been inadequate);
- (c) to provide copies of its report and recommendation to the faculty member, the faculty body, and the president or other appropriate administrative officer.

# 1982 Recommended Institutional Regulations on Academic Freedom and Tenure

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Recommended Institutional Regulations on Academic Freedom and Tenure set forth, in language suitable for use by an institution of higher education, rules which derive from the chief provisions and interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure and of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings. The Recommended Institutional Regulations were first formulated by Committee A on Academic Freedom and Tenure in 1957. A revised and expanded text, approved by Committee A in 1968, reflected the development of Association standards and procedures as set forth in the 1961 Statement on Recruitment and Resignation of Faculty Members, the 1964 Statement on the Standards for Notice of Nonreappointment, and the 1966 Statement on Government of Colleges and Universities. Texts with further revisions were approved by Committee A in 1972 and again in 1976.

The current revision, approved by Committee A in 1982, is based upon the Association's continuing experience in evaluating regulations actually in force at particular institutions. The 1982 revision is also based upon further definition of the standards and procedures of the Association as set forth in the 1970 Interpretive Comments of the 1940 Statement of Principles, the 1971 Council Statement on Freedom and Responsibility, the 1971 Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments, the 1972 Statement of Principles on Leaves of Absence, recommended procedure adopted by the Council in 1976 on Termination of Faculty Appointments because of Financial Exigency, Discontinuance of a Program or Department, or Medical Reasons, the 1976 policy On Discrimination, and the 1977 statement On Processing Complaints of Discrimination on the Basis of Sex. The Association will be glad to assist in interpretation of the regulations or to consult about their incorporation in, or adaptation to, the rules of a particular college or university.

## FOREWORD

**T**hese regulations are designed to enable the [named institution] to protect academic freedom and tenure and to assure academic due process. The principles implicit in these regulations are for the benefit of all who are involved with or are affected by the policies and programs of the institution. A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

### 1. STATEMENT OF TERMS OF APPOINTMENT

- (a) The terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member.

Any subsequent extensions or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be stated or confirmed in writing and a copy will be given to the faculty member.

- (b) With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special conditions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.
- (c) Except for faculty members who have tenure status, every person with a teaching or research appointment of any kind will be informed each year in writing of the appointment and of all matters relative to eligibility for the acquisition of tenure.

## 2. PROBATIONARY APPOINTMENTS

- (a) Probationary appointments may be for one year, or for other stated periods, subject to renewal. The total period of full-time service prior to the acquisition of continuous tenure will not exceed \_\_\_\_\_ years,<sup>1</sup> including all previous full-time service with the rank of instructor or higher in other institutions of higher learning [except that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years; the terms of such extension will be stated in writing at the time of initial appointment].<sup>2</sup> Scholarly leave of absence for one year or less will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted.
- (b) The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. Any special standards adopted by the faculty member's department or school will also be transmitted. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material believed to be helpful to an adequate consideration of the faculty member's circumstances.
- (c) Regardless of the stated term or other provisions of any appointments, written notice that a probationary appointment is not to be renewed will be given to the faculty member in advance of the expiration of the appointment, as follows: (1) not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (2) not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (3) at least twelve months before the expiration of an appointment after two or more years of service at the institution. The institution will normally notify faculty members of the terms and conditions of their renewals by March 15, but in no case will such information be given later than \_\_\_\_\_.<sup>3</sup>
- (d) When a faculty recommendation or a decision not to renew an appointment has first been reached, the faculty member involved will be informed of that recommendation or decision in writing by the body or individual making the initial recommendation or decision; the faculty member will be advised upon request of the reasons which contributed to that decision. The faculty member may request a reconsideration by the recommending or deciding body.
- (e) If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.

<sup>1</sup>Under the 1940 *Statement of Principles on Academic Freedom and Tenure*, this period may not exceed seven years.

<sup>2</sup>The exception here noted applies only to an institution whose maximum probationary period exceeds four years.

<sup>3</sup>April 15 is the recommended date.



- (f) Insofar as the faculty member alleges that the decision against renewal by the appropriate faculty body was based on inadequate consideration, the committee which reviews the faculty member's allegation will determine whether the decision was the result of adequate consideration in terms of the relevant standards of the institution. The review committee will not substitute its judgment on the merits for that of the faculty body. If the review committee believes that adequate consideration was not given to the faculty member's qualifications, it will request reconsideration by the faculty body, indicating the respects in which it believes the consideration may have been inadequate. It will provide copies of its findings to the faculty member, the faculty body, and the president or other appropriate administrative officer.

### 3. TERMINATION OF APPOINTMENT BY FACULTY MEMBERS

Faculty members may terminate their appointments effective at the end of an academic year, provided that they give notice in writing at the earliest possible opportunity, but not later than May 15, or thirty days after receiving notification of the terms of appointment for the coming year, whichever date occurs later. Faculty members may properly request a waiver of this requirement of notice in case of hardship or in a situation where they would otherwise be denied substantial professional advancement or other opportunity.

### 4. TERMINATION OF APPOINTMENTS BY THE INSTITUTION

- (a) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.
- (b) If termination takes the form of a dismissal for cause, it will be pursuant to the procedure specified in Regulation 5.

#### *Financial Exigency*

- (c) (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably *bona fide* financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

[NOTE: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent,<sup>4</sup> and that all feasible alternatives to termination of appointments have been pursued.

<sup>4</sup>See "The Role of the Faculty in Budgetary and Salary Matters," (*AAUP Bulletin* 62 [Winter 1976], 379-81), and especially the following passages:

The faculty should participate both in the preparation of the total institutional budget, and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plants and grounds, etc.). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board....

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institutionwide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.<sup>5</sup> The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of age and length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedure.]

(2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

- (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
- (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
- (iii) Whether the criteria are being properly applied in the individual case.

(3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

*Discontinuance of Program or Department Not Mandated by Financial Exigency*<sup>6</sup>

(d) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur as a result of *bona fide* formal

<sup>5</sup>See "Statement on Government of Colleges and Universities" (AAUP Bulletin 63 [February 1977]: 375-79), and especially the following passage:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.

<sup>6</sup>When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of Regulation 4(c) above will apply.

discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[NOTE: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

(2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training, will be preferred. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[NOTE: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4(d). In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

#### *Termination for Medical Reasons*

(e) Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, for medical reasons, will be based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty member will be given severance salary not less than as prescribed in Regulation 8.

#### *Review*

(f) In cases of termination of appointment, the governing board will be available for ultimate review.

### **5. DISMISSAL PROCEDURES**

(a) Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.

(b) Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee] which may, failing to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate.

(c) A dismissal, as defined in Regulation 5(a), will be preceded by a statement of reasons, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee [insert name of committee].<sup>7</sup> Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause.<sup>8</sup>

(1) Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension which is intended to be final is a dismissal, and will be treated as such. Salary will continue during the period of the suspension.

(2) The hearing committee may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.

(3) Service of notice of hearing with specific charges in writing will be made at least twenty days prior to the hearing. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the hearing tribunal will evaluate all available evidence and rest its recommendation upon the evidence in the record.

(4) The committee, in consultation with the president and the faculty member, will exercise its judgment as to whether the hearing should be public or private.

(5) During the proceedings the faculty member will be permitted to have an academic advisor and counsel of the faculty member's choice.

(6) At the request of either party or the hearing committee, a representative of a responsible educational association will be permitted to attend the proceedings as an observer.

(7) A verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost, at the faculty member's request.

(8) The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole.

(9) The hearing committee will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.

(10) The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The administration will cooperate with the hearing committee in securing witnesses and making available documentary and other evidence.

<sup>7</sup>This committee should not be the same as the committee referred to in Regulation 5(b)(2).

<sup>8</sup>Regulations of the institution should provide for alternates, or for some other method of filling vacancies on the hearing committee resulting from disqualification, challenge without stated cause, illness, resignation, or other reason.

(11) The faculty member and the administration will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the committee determines that the interests of justice require admission of their statements, the committee will identify the witnesses, disclose their statements, and if possible provide for interrogatories.

(12) In the hearing of charges of incompetence, the testimony will include that of qualified faculty members from this or other institutions of higher education.

(13) The hearing committee will not be bound by strict rules of legal evidence, and may admit any evidence which is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.

(14) The findings of fact and the decision will be based solely on the hearing record.

(15) Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by either the faculty member or administrative officers will be avoided so far as possible until the proceedings have been completed, including consideration by the governing board of the institution. The president and the faculty member will be notified of the decision in writing and will be given a copy of the record of the hearing.

(16) If the hearing committee concludes that adequate cause for dismissal has not been established by the evidence in the record, it will so report to the president. If the president rejects the report, the president will state the reasons for doing so, in writing, to the hearing committee and to the faculty member, and provide an opportunity for response before transmitting the case to the governing board. If the hearing committee concludes that adequate cause for a dismissal has been established, but that an academic penalty less than dismissal would be more appropriate, it will so recommend, with supporting reasons.

## 6. ACTION BY THE GOVERNING BOARD

If dismissal or other severe sanction is recommended, the president will, on request of the faculty member, transmit to the governing board the record of the case. The governing board's review will be based on the record of the committee hearing, and it will provide opportunity for argument, oral or written or both, by the principals at the hearings or by their representatives. The decision of the hearing committee will either be sustained or the proceeding returned to the committee with specific objections. The committee will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The governing board will make a final decision only after study of the committee's reconsideration.

## 7. PROCEDURES FOR IMPOSITION OF SANCTIONS OTHER THAN DISMISSAL

- (a) If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 will govern such a proceeding.
- (b) If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 15, petition the faculty grievance committee for such action as may be appropriate.

## 8. TERMINAL SALARY OR NOTICE

If the appointment is terminated, the faculty member will receive salary or notice in accordance with the following schedule: at least three months, if the final decision is reached by March 1 (or three months prior to the expiration) of the first year of probationary service;

at least six months, if the decision is reached by December 15 of the second year (or after nine months but prior to eighteen months) of probationary service, at least one year, if the decision is reached after eighteen months of probationary service or if the faculty member has tenure. This provision for terminal notice or salary need not apply in the event that there has been a finding that the conduct which justified dismissal involved moral turpitude. On the recommendation of the faculty hearing committee or the president, the governing board, in determining what, if any, payments will be made beyond the effective date of dismissal, may take into account the length and quality of service of the faculty member.

## 9. ACADEMIC FREEDOM AND PROTECTION AGAINST DISCRIMINATION

- (a) All members of the faculty, whether tenured or not, are entitled to academic freedom as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, formulated by the Association of American Colleges and the American Association of University Professors.
- (b) All members of the faculty, whether tenured or not, are entitled to protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance, including but not limited to race, sex, religion, national origin, age, physical handicap, marital status, or sexual or affectional preference.

## 10. COMPLAINTS OF VIOLATION OF ACADEMIC FREEDOM OR OF DISCRIMINATION IN NONREAPPOINTMENT

If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations violative of (1) academic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, physical handicap, marital status, or sexual or affectional preference, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committees, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based, and the burden of proof will rest upon the faculty member. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision against reappointment to come forward with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a *prima facie* case.

## 11. ADMINISTRATIVE PERSONNEL

The foregoing regulations apply to administrative personnel who hold academic rank, but only in their capacity as faculty members. Administrators who allege that a consideration violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, significantly contributed to a decision to terminate their appointment to an administrative post, or not to reappoint them, are entitled to the procedures set forth in Regulation 10.

## 12. POLITICAL ACTIVITIES OF FACULTY MEMBERS

Faculty members, as citizens, are free to engage in political activities. Where necessary, leaves of absence may be given for the duration of an election campaign or a term of office, on timely application, and for a reasonable period of time. The terms of such leave of absence will be set forth in writing, and the leave will not affect unfavorably the tenure status of a faculty member, except that time spent on such leave will not count as probationary service unless otherwise agreed to.

\*See "Statement on Professors and Political Activity," *AAUP Bulletin* 55 (Autumn 1969): 388-89.

[NOTE: Regulations 13, 14, and 15 are suggested in tentative form, and will require adaptation to the specific structure and operations of the institution, the provisions as recommended here are intended only to indicate the nature of the provisions to be included, and not to offer specific detail.]

### 13. GRADUATE STUDENT ACADEMIC STAFF

- (a) The terms and conditions of every appointment to a graduate or teaching assistantship will be stated in writing, and a copy of the appointment document will be supplied to the graduate or teaching assistant.
- (b) In no case will a graduate or teaching assistant be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)
- (c) A graduate or teaching assistant who establishes a *prima facie* case to the satisfaction of a duly constituted committee that a decision against reappointment was based significantly on considerations violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.
- (d) Graduate or teaching assistants will have access to the faculty grievance committee, as provided in Regulation 15.

### 14. OTHER ACADEMIC STAFF

- (a) In no case will a member of the academic staff<sup>10</sup> who is not otherwise protected by the preceding regulations which relate to dismissal proceedings be dismissed without having been provided with a statement of reasons and an opportunity to be heard before a duly constituted committee. (A dismissal is a termination before the end of the period of appointment.)
- (b) With respect to the nonreappointment of a member of such academic staff who establishes a *prima facie* case to the satisfaction of a duly constituted committee that a consideration violative of academic freedom, or of governing policies against improper discrimination as stated in Regulation 10, significantly contributed to the nonreappointment, the academic staff member will be given a statement of reasons by those responsible for the nonreappointment and an opportunity to be heard by the committee.

### 15. GRIEVANCE PROCEDURE

- (a) If any faculty member alleges cause for grievance in any matter not covered by the procedures described in the foregoing Regulations, the faculty member may petition the elected faculty grievance committee [here name the committee] for redress. The petition will set forth in detail the nature of the grievance and will state against whom the grievance is directed. It will contain any factual or other data which the petitioner deems pertinent to the case. Statistical evidence of improper discrimination, including discrimination in salary,<sup>11</sup> may be used in establishing a *prima facie* case. The committee will decide whether or not the facts merit a detailed investigation; if the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision to come forward with evidence in support of their decision. Submission of a petition will not automatically entail investigation or detailed consideration thereof. The committee may seek to bring about a settlement of the issue satisfactory to the parties. If in the opinion of the committee such a settlement is not possible or is not appropriate, the committee will report its findings and recommendations to the petitioner and to the appropriate administrative officer and faculty body, and the petitioner will, upon request, be provided an opportunity to present

<sup>10</sup>Each institution should define with particularity who are members of the academic staff.

<sup>11</sup>See Scott, *Higher Education Salary Evaluation Kit* (Washington, D.C.: American Association of University Professors, 1977).

the grievance to them. The grievance committee will consist of three [or some other number] elected members of the faculty. No officer of administration will serve on the committee.

#### NOTE ON IMPLEMENTATION

The Recommended Institutional Regulations here presented will require for their implementation a number of structural arrangements and agencies. For example, the Regulations will need support by:

(a) channels of communication among all the involved components of the institution, and between them and a concerned faculty member.

(b) definitions of corporate and individual faculty status within the college or university government, and of the role of the faculty in decisions relating to academic freedom and tenure,

(c) appropriate procedures for the creation and operation of faculty committees, with particular regard to the principles of faculty authority and responsibility.

The forms which these supporting elements assume will of course vary from one institution to another. Consequently, no detailed description of the elements is attempted in these Recommended Institutional Regulations. With respect to the principles involved, guidance will be found in the 1966 *Statement on Government of Colleges and Universities*, jointly formulated by the American Council on Education, the Association of Governing Boards of Universities and Colleges, and the American Association of University Professors.



# The Standards for Notice of Nonreappointment

The following statement was adopted by the Council of the American Association of University Professors in October 1963 and endorsed by the Fiftieth Annual Meeting in 1964 as Association policy.

**B**ecause a probationary appointment, even though for a fixed or stated term, carries an expectation of renewal, the faculty member should be explicitly informed of a decision not to renew his appointment, in order that he may seek a position at another college or university. Such notice should be given at an early date, since a failure to secure another position for the ensuing academic year will deny the faculty member the opportunity to practice his profession. The purpose of this statement is to set forth in detail, for the use of the academic profession, those standards for notice of nonreappointment which the Association over a period of years has actively supported and which are expressed as a general principle in the 1940 *Statement of Principles on Academic Freedom and Tenure*.

## THE STANDARDS FOR NOTICE

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

(1) *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

2. *Not later than December 15 of the second academic year of service*, if the appointment expires at the end of that year, or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

# On the Imposition of Tenure Quotas

*The statement which follows was approved by the Association's Committee A on Academic Freedom and Tenure and adopted by the Council of the American Association of University Professors in October 1973.*

**M**any institutions of higher education have had to consider ways of accommodating the number and composition of their faculty to a static or declining financial situation. The Association has developed criteria applicable where a reduction in faculty positions is contemplated because of financial exigency or discontinuance of a program.<sup>1</sup> This statement will concern itself with institutional policies designed to shape the overall composition of the faculty by limiting the number of tenured positions, and especially with those policies which establish a fixed maximum percentage of faculty who may possess tenure at a given time.<sup>2</sup>

The Association, while recognizing the concerns that motivate such quotas, opposes them. They are an unwise solution to the problem they purport to solve, and can have grave consequences for the institutions that adopt them. Moreover, they are not compelled, for there are other more nearly satisfactory alternatives available.

Recognizing that tenure best protects academic freedom, but that it is usually undesirable to afford tenure automatically upon an individual's joining a faculty, the American Association of University Professors has supported the employment of a stated maximum probationary period, of sufficient but not excessive length, during which the academic qualifications and performance of newer faculty members can be evaluated in terms of institutional standards and expectations. Indeed, it is principally to provide each institution with a reasonable opportunity of assessing the skills of probationary appointees in terms of its tenure standards (and the availability of others whom it may also desire to consider for tenured appointment) that this Association has not favored policies of automatic tenure. However, to continue the service of faculty members beyond the maximum probationary period, while withholding tenure, presents an unwarranted hazard to their academic freedom.

Accordingly, institutions may properly set high standards for tenure, but they subvert the functions of tenure standards if they provide that, no matter how clearly nontenured faculty members meet any stated academic standard (and no matter how well they compare with the tenured faculty and all others whom the institution is able to attract to that faculty), the system is such as to require their termination from the very positions in which they have served with

<sup>1</sup>See Regulation 4(c) and (d) of Committee A's "Recommended Institutional Regulations on Academic Freedom and Tenure" (*Academe* 69 [January-February 1983]: 16a-17a).

See also the Association's statement on "The Role of the Faculty in Budgetary and Salary Matters" (*AAUP Bulletin* 62 [Winter 1976]: 379-81) and "On Institutional Policies Resulting from Financial Exigency: Some Operating Guidelines" (*AAUP Bulletin* 60 [Summer 1974]: 267-68).

<sup>2</sup>The report and recommendations of the Commission on Academic Tenure in Higher Education, published in 1973, called for "policies relating to the proportion of tenured and nontenured faculty that will be compatible with the composition of [the institution's] present staff, its resources, and its future objectives." See *Faculty Tenure* (San Francisco: Jossey-Bass Publishers, 1973), pp. 45-51, and particularly the commission's recommendation on pages 50 and 51.

unqualified distinction. Holding faculty members in nontenured service, and then releasing them because a numerical limit on tenured positions prohibits their retention, has the effect of nullifying probation. All full-time appointments, excepting only special appointments of specified brief duration and reappointments of retired faculty members on special conditions, should be either probationary relating to continuous tenure or with continuous tenure.<sup>3</sup> To make appointments which are destined to lead to nonretention because of a fixed numerical quota of tenured positions, obviating any realistic opportunity for the affected individuals to be evaluated for tenure on their academic record, is to depart from a basic feature of the system of tenure and thus to weaken the protections of academic freedom.

A variation to nonretention because of a tenure quota, one which Committee A finds wholly inimical to the principles of academic freedom which tenure serves, is the policy adopted at a few institutions of withholding tenure from admittedly qualified candidates who have completed the maximum probationary period but retaining them in a kind of holding pattern, perpetually more vulnerable than their tenured colleagues to termination, unless and until the quota eases for them and they too are granted tenure. Assuming they have fully earned an entitlement to tenure, there can be no justification for continuing them in a less favorable and more vulnerable status than their tenured colleagues.

Committee A, accordingly, opposes the adoption of tenure quotas for the following reasons:

(a) if combined with the possibility of additional term contracts beyond the period of maximum probationary service plainly adequate to determine the individual's entitlement to tenure, the system indefensibly extends conditions of jeopardy to academic freedom;

(b) probation with automatic termination is not probation; those whom quotas affect by automatically excluding them from consideration for tenure essentially are reduced to a terminal class of contract workers rendered incapable of full and equal faculty membership irrespective of the nature of the service they have given and irrespective of the professional excellence of that service;

(c) in designating a portion of the probationary regular faculty as ineligible to continue, in order to cope with needs of staff flexibility and financial constraints, a quota system is a crude and unjust substitute for more equitable methods of academic planning.

Committee A, in registering its concern over the fixing of a maximum numerical percentage of tenured faculty, does not suggest that an institution should be unconcerned with appointment policies which will permit it to bring new members into its faculty with some regularity. A sound academic program needs elements not only of continuity but of flexibility, which is served by the continuing opportunity to recruit new persons and to pursue new academic emphases. It is desirable for a faculty to include those recently arrived from the seminars of our graduate schools as well as those who are well established as scholars and teachers.

Such considerations of flexibility are often adduced in support of tenure quotas. But this misses two central points. First, the system of tenure does not exist as subordinate to convenience and flexibility. The protection of academic freedom must take precedence over the claimed advantages of increased flexibility.

Second, imposing a numerical limit on the percentage of tenured faculty disregards a range of other ways to attain a desired mix of senior and junior faculty. Indeed, it imposes an inequitable burden on a vulnerable portion of the faculty in a facile response to issues of academic staffing that should reflect far more comprehensive planning. Establishing fixed quotas may deprive the profession of a large part of the generation of scholars and teachers which currently populates the nontenured positions at our colleges and universities. It would be preferable by far to employ a variety of other measures—some affecting tenured faculty, others affecting probationary and nontenured faculty, and still others affecting prospective faculty members—to ensure that the necessary burdens of financial stringency and lack of growth are shared to some extent by all academic generations.

<sup>3</sup>See "Recommended Institutional Regulations on Academic Freedom and Tenure," Regulation 1(b).

While opposing the imposition of tenure quotas, Committee A recognizes that the general proportion of a faculty on tenure can have an important long-range bearing on the nature and quality of an institution of higher education. Given a situation in which there is small prospect for significant growth in the total size of the faculty, considerations which merit attention include.

A. The desired distribution of tenured and nontenured faculty should be viewed as a long-term goal rather than a short-term solution. The ratio of tenured faculty is itself the dynamic consequence of a complex of academic decisions and developments, each of which can be reconsidered. These include: (1) the rate of growth of the institution and its faculty; (2) the fraction of those appointed initially to tenured or probationary positions; (3) the use of visiting faculty members; (4) the use of graduate assistants; (5) the average length of the probationary period of nontenured faculty members who ultimately achieve tenure; (6) the fraction of nontenured faculty members who ultimately achieve tenure; (7) the institutional policy on retirement; and (8) the age distribution of the total faculty.

B. A satisfactory long-range plan may well imply that, along the way, the proportion of the faculty on tenure will at first increase and then, as the force of the plan takes effect, decrease. Just as the end of growth in the size of the faculty leads to a gradual increase in the ratio of those tenured, so the gradual aging of the present faculty will ultimately lead to a tendency for the ratio to decline. Most changes in academic personnel policies require some lag in time before full implementation and impact, and there is nothing disastrous in a temporary bulge in the percentage of faculty members on tenure. On the other hand, long-range injury to an institution may result from rigid and hasty application of any single presumed remedy, such as the imposition of a fixed quota.

C. It should be recognized that, in the short run, reducing the proportion of a faculty on tenure produces very little benefit by way of flexibility. It is only over a period of several years that a change in the proportion acquires pertinency. If an institution finds itself, at the beginning of development of a long-range plan, at or near a preferred distribution which it wishes generally to maintain, it may well be sensible to choose consciously to exceed the desired distribution temporarily while the steps necessary to return to that distribution take effect.

D. Equity and institutional morale demand that all or almost all of the burden of satisfying the desired tenure ratio should not be placed upon the probationary faculty. Attractive accelerated retirement opportunities for senior tenured faculty present one possible alternative. Additionally, consideration may be given to planning carefully the proportion of teaching and research done by full-time and part-time tenured and probationary faculty, teaching assistants, and temporary appointees.

Foreclosing promotion to a tenured position because of a numerical quota is unacceptable. Stricter standards for the awarding of tenure can be developed over the years, with a consequent decrease in the probability of achieving tenure. But it is essential to distinguish a deliberate change in standards, retaining a positive probability of an individual's achieving tenure pursuant to well-defined criteria and adequate procedures for evaluation and review, from a situation in which the granting of tenure, for reasons unrelated to the individual's merits, is never a realistic possibility.

# On Full-Time Non-Tenure-Track Appointments

*The report which follows was prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure. It was approved for publication by the committee in June 1978 for the information of the profession.*

It has always been known, though not widely advertised, that some institutions of higher education were in the settled habit of retaining small numbers of full-time nontenured teachers on indefinitely renewable appointments. A large private university in New England has (until recently) always staffed its elementary foreign language courses with full-time teachers on yearly renewable appointments; at other institutions, remedial writing courses, or remedial and elementary mathematics courses, have been similarly staffed. Teachers retained in this status rarely complained of it so long as their renewals were forthcoming every year. Readers of the *AAUP Bulletin* were notified of such practices only in those cases in which, after, say, ten or twelve years, the expected renewal did not come forth, and the rejected faculty member sought the assistance of the Association.<sup>1</sup>

During the past few years, Committee A has been receiving scattered reports which appear to indicate that there has been a substantial increase in the extent to which institutions of higher education are staffed by full-time "non-tenure-track" or "nontenurable" teachers. At its meeting in June 1977, Committee A appointed a subcommittee to undertake an inquiry.

With the assistance of the Washington Office staff, a request for information was sent to the Association's local chapters at a sample consisting of seventy-two institutions: twelve "Small Private," ten "Large Private," thirteen "Catholic," eight "State Colleges," nineteen "Large Public," and ten "Predominantly Black." The chapters were asked:

1. Does your institution appoint persons at whatever rank or title to full-time teaching positions that may be renewed annually but not regard the service thus given as leading towards consideration for tenure?
2. Is this practice supported by official institutional policy? If so, could you please send the text of relevant policy documents?
3. How common is the practice at your institution? How many "non-tenure-track," full-time teaching appointees are there? Is this practice on the increase?

Similar requests for information were made through the *AAUP Bulletin*, *Academe*, and the *Chapter/Conference Letter*.

In all, seventy-four responses were received. Many were long and detailed, and many enclosed copies of institutional regulations and of sample letters of appointment. Of interest also were the job-placement bulletins we received; these included the American Psychological Association's *Placement Bulletin*, the Modern Language Association's *Job Information List* (English Edition and Foreign Language Edition), the American Mathematical Society's *Mathematical Sciences Employment Register*, and the American Sociological Association's *Employment Bulletin*. Our respondents had plainly taken our request for information seriously, and many had invested considerable time and effort in complying with it; we are very grateful to all of them.

<sup>1</sup>See, for example, "Lehigh University: A Report on a Case of Excessive Probation," *AAUP Bulletin* 61 (April 1975): 74-77.

## INFORMATION RECEIVED

In short, there *has* been a substantial increase in the extent to which institutions of higher education are staffed by full-time "non-tenure-track" teachers.

These teachers are of three kinds. The first hold indefinitely renewable appointments: the faculty members are appointed for one or more years and are told that their appointments may be renewed—no limit is placed on the number of possible renewals. The second hold "limited renewable" appointments: the faculty members are told that their (usually one-year) appointments may be renewed so many times only—thus they may remain on the faculty for a maximum of, in many places, three years, in one place as many as seven years. The third occupy "folding chairs": the faculty members' initial appointments (usually for two or three years) are explicitly terminal—no renewal is possible under any circumstances.

What we call "folding chairs" are relatively new in academic life, and they require a closer description. It is and always has been a common practice in higher education to make visiting or temporary appointments. A distinguished scholar indicates interest in teaching in that location for a year and works out an appointment as visiting professor. A faculty member goes on leave for a year, and someone must be brought in as a replacement. The students discover ecology or Ayn Rand or health food, and someone is brought in for a term or a year to meet the demand. Such appointments differ radically from "folding chairs." The reason for these appointments is (as in the first kind of case) the identification of a person whom the institution wishes to invite to visit, or (as in the second and third kinds of cases) the identification of a short-term teaching need. By contrast, the occupants of folding chairs are not themselves identified, positions being created for them to fill. Nor do they supply what anyone at the institution regards as a short-term teaching need. Here are some examples:

(a) All but one of the junior members of the philosophy department of a major private university in New England occupy three-year folding chairs. They have the title "Assistant Professor," and they do a considerable amount of the department's undergraduate teaching.

(b) All six instructors in the English department of a large public university in the Southwest occupy two-year folding chairs. Their teaching loads consist largely of courses in Freshman composition, but they teach courses for sophomores as well.

(c) A respondent from a small private college in the Northeast estimates that approximately 10 percent of the faculty occupy folding chairs, mostly of one or two years' duration, these faculty members are mainly in the English department and primarily teach English composition.

The practice of appointing teachers to folding chairs is, however, much less common than the practice of giving teachers limited renewable appointments. *Many* institutions, large and small, public and private, all over the country, now have policies under which new faculty members may be given appointments of this kind. Here are some examples:

(a) A large regional public university in the Midwest has recently adopted a policy under which the question of whether an appointment is to a "tenure-track" or a "temporary" position turns on matters such as departmental enrollment figures and "tenure density"; anyone appointed to a "temporary" position receives a one-year appointment, renewable for no more than four additional one-year terms.

(b) The history department of a large public university in the Southwest has approval from the administration to make "two non-tenure-track appointments for next year. The persons hired can be renewed for two years, that is, be appointed for three years. The administration says under no circumstances can they be appointed four consecutive years." They are to teach "American history survey and an occasional upper division course."

(c) A small private college in the Midwest has adopted a policy which concludes with the words: "The College will ultimately seek to fill at least 25 percent of all full-time faculty positions with visiting ranks." "Visiting ranks" are visiting instructor and visiting assistant professor; faculty members with these titles are to receive an initial one-year appointment, which may be renewed only twice.

(d) The staffing policy at a state college in the Northwest declares it a college objective that 10 percent of the faculty be "term faculty," i.e., faculty members who "may not be given more than three successive and continuous full-time academic year appointments."

(e) Over 15 percent of the full-time faculty members at a small private college in the East are "nontenurable," i.e., they have one-year appointments, renewable annually, but "in no event" may their service at the college exceed seven years.

This last example is of particular interest. None of our respondents spoke to the question of why limited renewable appointments are preferred over unlimited renewable appointments, or vice versa. We shall report below on the reasons why an institution adopts such staffing policies as we are describing here; but the reader's attention is drawn now to that number seven—it is not unreasonable to suppose that we see here a distorted mirror image of a very familiar policy for tenure.

A number of respondents enclosed copies of institutional policy documents which explicitly say that faculty members may hold unlimited renewable appointments. Two examples may perhaps suffice:

(a) A major private university in the Midwest allows "people who have exceptional competence in teaching" to be appointed to the position of senior lecturer—a senior lecturer may hold this position indefinitely, but is subject to "an academic review" at least once every three years.

(b) A large regional public university on the West Coast has recently adopted a more general policy: it has simply declared "a moratorium on the practice of limiting the length of service of full-time temporary faculty."

At other institutions—and there appear to be a sizeable number of them—stated institutional policy does not explicitly permit unlimited renewable appointments, though the practice of issuing them is nevertheless condoned. Here are two examples:

(a) A respondent from the philosophy department at a regional public university in the Midwest writes that the university's handbook makes no provision for non-tenure-track appointments, but that he believes the practice is common throughout the university; in any case, five out of the eleven members of his own department hold unlimited renewable contracts.

(b) Roughly 10 percent of the full-time faculty members at a public community college in the East reportedly serve on indefinitely renewable ten-month appointments—these faculty members are informed in June that they and the college now no longer have any responsibilities to each other, and in August that they are to become new faculty members in September. This policy is neither described nor explained in the faculty handbook.

As we mentioned above, our respondents did not address the question of why their institutions prefer limited renewable appointments to unlimited renewable appointments, or vice versa, nor, indeed, was there explanation for the choice of the folding chair. We shall do some speculating on this question in the following section. What we did receive were reports about—in some cases, copies of—institutional documents explaining why an increase in non-tenure-track faculty members generally was thought necessary. The explanations were very similar; in fact, the same words and phrases appeared again and again. The institution (it was said) needed the flexibility with which to face shifts in student interests and shrinking enrollments; the institution needed a "buffer of term faculty"; the institution would otherwise soon be "tenured in." One senior administrator wrote to his faculty that an increase in "temporary faculty" would serve as a protection for tenure; we take it he had in mind protecting the already tenured by increasing the supply of those who can simply be nonrenewed (as opposed to being dismissed) in case of financial difficulty. One senior faculty member wrote to us that his colleagues (who voted to allow unlimited renewable appointments) thought it would result in less "personal hardship."

It is unclear from the letters we received just what has been the effect so far of the increase in numbers of non-tenure-track appointments. Some of our respondents did tell us about the quality of life of those who hold such appointments in their institutions, and suggested that an increase would be likely to have a harmful effect. The salaries of non-tenure-track appointees vary. At some institutions they are paid less than "regular" (i.e., probationary and tenured) faculty members, at others, comparably well. At some institutions they receive merit pay increases

automatically on renewal; at others, they are told that pay increases may be given on renewal, but should not be expected. On the whole, their fringe benefits appear to be comparable to those received by the "regular" faculty. But two features of their careers were stressed again and again: uncertainty and lack of community with their colleagues.

1. *Uncertainty.* The career of the faculty members on probation is uncertain: they cannot be certain that they will be awarded tenure. And it might be thought that in at least *this* respect the life of non-tenure-track appointees is clearer: they know that they cannot be awarded tenure. Indeed, it might be thought that the life of the occupants of folding chairs is clearest of all: they know that the initial appointment is terminal. But *do* non-tenure-track appointees know such things? Suppose a young faculty member turns out to be a first-rate scholar and teacher; a sane department chairman goes to the dean and asks that an exception be made, and all alert, sane non-tenure-track appointees know this. If they did not know this, a glance at their own institutional regulations would often make it plain. We found, again and again, that institutional regulations which laid out careful limits to the time a non-tenure-track appointee may remain in the institution went on, two or three paragraphs later, to say that in case of resignation, retirement, or death, the non-tenure-track faculty member (in the same or some other department) may move into, or at any rate be considered for, a tenure-track appointment. (No generalization can be drawn about whether or not time spent in one track counts as time in probation when a faculty member changes tracks; some institutions count the time, some do not.)

And there are two features of the life of the non-tenure-track appointee which make it considerably more uncertain. At most institutions, the probationary faculty member is given adequate notice of nonreappointment: if the institution's notice policy does not meet the Association's standards, it at least purports to be an approximation to it. At a minimum, the appointments of probationary faculty members do not just *run out* if they are not to be renewed: they are given notice that they will not be. Moreover, probationary faculty members in most institutions are given reasons why they are not to be reappointed if that is the case. By contrast, non-tenure-track appointees are in many institutions told explicitly that they have no right to a presumption that they will be renewed if they perform well, and it is a common practice to give them no notice and no reasons in the case of nonreappointment. Where they can be reappointed, then—i.e., where they are on unlimited renewable appointments, or limited renewable appointments which have not reached the limit—they do not know until the last minute (in one institution, one month before the start of the new academic year) whether they will be reappointed, and may never know why they are not.

But it is not uncertainty which most marks the careers of non-tenure-track appointees; what most marks their careers is:

2. *Lack of community with their colleagues.* Those of our respondents who occupy non-tenure-track positions were most bitter about this feature of their lives. They are not required to do research, which may sound like an advantage; they are not expected to do research, which plainly is not. They are not invited to serve on departmental committees; they are not even encouraged to participate in department meetings. The "regular" faculty members on probation are sought out: their senior colleagues want to find out what they are like. The non-tenure-track appointees are isolated: as one senior faculty member said, "No one likes to make friends with a dying person."

It was these two features of the career of the non-tenure-track appointee which were emphasized by those of our respondents who thought it likely that an increase in the number of such appointments would have a harmful effect on their institutions. Our respondents take it that such appointees are unlikely to be deeply concerned about or interested in the future of their institution, or even in the quality of their teaching. It would, after all, be no surprise if the occupants of folding chairs, for example, were to prefer that these chairs not fold on them, and thus were to start looking for another job the day after the day they first sit in them.

Two final points should be noted:

1. Many of our respondents told us about institutional arrangements under which nontenured "research faculty" members may remain on indefinitely renewable contracts. These faculty



members have a variety of different titles; they are supported either wholly or in part by extra-institutional funds; the percentage of their time which they spend in teaching varies widely. One of our respondents—from a large private university in New England—wrote that “there is nothing about the extent of their research involvement that is unique [in my institution], however, and other, tenured members of the faculty are just as heavily involved in research, and as heavily supported by contracts.” But we have thought it best not to report on institutional practices regarding the “research faculty”: our primary concern here is with the faculty member who teaches full-time, and members of the “research faculty” rarely (if ever) do.

2. Fourteen of our respondents told us that, to the best of their knowledge, their institutions make no full-time non-tenure-track appointments at all, or do so only *very* rarely, and then only in *very* special circumstances. In light of the fact that some of these letters displayed uncertainty, generalization about their authors’ institutions may be unreliable. It may just be worth mentioning, however, that eleven of the fourteen institutions are small private colleges and universities, seven of them in the East.

## COMMENTARY

The 1940 *Statement of Principles on Academic Freedom and Tenure* provides:

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their services should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

The 1940 *Statement* does not prescribe that every faculty member appointed to an institution of higher education must pass through a probationary period in that institution before acquiring tenure at that institution: it goes on to say that

when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it *may* be agreed in writing that his new appointment is for a probationary period of not more than four years....[emphasis supplied]

thereby showing that it envisages the possibility of granting tenure to faculty members at the time of initial appointment. Why *any* term of probationary service? One answer is plain enough: a new appointee may appear to be first-rate but not prove to be so, and the institution therefore wishes time to assess actual performance. This first answer addresses itself to the person. What we wish to attend to is a second answer, namely, that the teaching position the institution wishes to fill may not be one which it wishes to fill with a permanent occupant. This second answer addresses itself to the position.

The 1940 *Statement* makes no distinction among kinds of teaching positions: it speaks throughout of teachers, and nowhere of teachers of this or teachers of that. It does indirectly take note of the part-time teacher: it speaks of “full-time service,” thereby indirectly drawing attention to the fact of part-time service. But it is silent on any possible distinctions among full-time teachers,<sup>2</sup> and it is they alone who concern us here.

However, the Association has recognized a distinction among kinds of teaching positions. Regulation 1(b) of the *Recommended Institutional Regulations on Academic Freedom and Tenure* states:

With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special conditions, all full-time appointments to the rank of instructor or higher are of two kinds. (1) probationary appointments; (2) appointments with continuous tenure.

<sup>2</sup>The 1940 *Statement* says: “Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years....” Its language thus suggests a possible distinction between the full-time teacher who holds the rank of instructor or higher, and the full-time teacher who does not—thus the full-time teacher who is called (as it might be) “lecturer.” But it seems plain that the authors of the 1940 *Statement* had no such distinction in mind; and one of the 1970 Interpretive Comments—number 5—specifies that “the concept of rank of full-time instructor or a higher rank is intended to include any person who teaches a full-time load regardless of his specific title.”

This provision dates back to Committee A's first issuance of recommended institutional regulations in 1956. Thus the Association has long recognized that some full-time teachers may differ from members of the "regular" faculty in this respect: they are neither on probation nor tenured.

What counts as a "special appointment clearly limited to a brief association with the institution"? The hypothetical cases we gave earlier were meant to be representative examples. They were cases in which an institution makes what is clearly a short-term appointment (a) because it becomes aware of a person whom it wishes to invite for a visit, or (b) because it becomes aware of what it in good faith takes to be a short-term need for teaching in the area in which the appointment is made.

No Association document spells out precisely what is covered by the expression "special appointments clearly limited to a brief association with the institution." It is plain, however, that some of the non-tenure-track arrangements surveyed in the preceding section do not fall within the letter of that exception, and we think it plain that none of them falls within its spirit.

We should stop for a moment to attend to that phrase "non-tenure-track." It (and its ugly cousin "nontenurable") is everywhere nowadays: in institutional regulations, in letters of appointment, in job advertisements. Here is a sample ad (one of many sent to us) which appeared in the Modern Language Association's *Job Information List* (Foreign Edition) for February 1977:

#### FRENCH

Entry-level, non-tenure-track position, fall 1977. Ph.D. required. *French* but also qualified in another language, preferably *German*. *Vitae* may be mailed to....

Neologisms abound in academic life, but why this one? We take "non-tenure-track" to mean "not-tenured-and-not-probationary"; why not say *that*? We hazard a guess that at least some of those who prefer to say "non-tenure-track" have in mind an arrangement falling within the scope of the exception allowed by Regulation 1(b). Regulation 1(b) uses the phrase "special appointments," and makes exception for them, doesn't it? Well, a research appointment is a special appointment, and so is a visiting appointment; here is simply a new kind of special appointment, the non-tenure-track appointment.

It is plain, however, that an indefinitely renewable appointment does not fall within the letter of the exception allowed by Regulation 1(b). A person who is given a one- (or two- or three-) year contract which may be renewed indefinitely certainly does not have a special appointment clearly limited to a brief association with the appointing institution.

It is plain also that the appointment made under a limited renewable contract which allows its holder a maximum of seven years at the institution is also not a special appointment clearly limited to a brief association with the institution. Seven years in this context is not brief.

What of the limited renewable appointment which allows a stay of only two or three years? What of the two- or three-year folding chair? Perhaps two or three years could count as brief. It seems to us very possible that institutions which allow such appointments as these do so in the thought that they do, after all, fall within the scope of the exception allowed by Regulation 1(b).

But do they? Consider, for example, the advertisement quoted above. It was placed by the Modern Languages Department of a large private university in the East. We do not know if that university allows its non-tenure-track people to be reappointed indefinitely, but suppose it does not: suppose that the person hired is limited in one or another way to a two-year stay at the university. What the individual is to teach is French (and perhaps some German)—and French is not a subject for which it can be supposed that a university of that size has only a short-term need.

Suppose an institution feels what it thinks *may or may not* be just a short-term need for teaching in a certain area. Suppose, for example, that a small college feels a need for teaching in anthropology: the professor of social studies teaches a course in anthropology, but he lacks time to work up more of it and the students want more. So it seems a good idea to advertise a position in anthropology. But will there be continued student interest? The college (let us suppose) simply does not know. How can the college honestly say that its young teacher of anthropology whom it hires is on probation? However good the new teacher may be, there may just not turn out

to be enough continued student interest to warrant the continued investment of money that making the *position* a permanent one would require.

But we believe that if the college thinks there may be a continuing interest among the students, then it can honestly say that its young teacher of anthropology is on probation—it can regard that teacher as differing from probationary colleagues who teach, let us say, American history only in that the subject is also on probation.

What is striking about the non-tenure-track arrangements which we have been surveying is that the appointments made under them are in subjects which can in no way be regarded as on probation. The vast majority of colleges and universities routinely make American history, philosophy, English literature and composition, and French available to their students.

We think that it is this fact that marks such an appointment as falling outside the spirit of the exception allowed by Regulation 1(b). We think that the word "special" in the words of that regulation carries a weight of its own: we think that the spirit of the exception allowed by Regulation 1(b) is such as to require *both* that the appointment be clearly limited to a brief association with the institution, *and* that the appointment be "special"—and an appointment made to a candidate for a job in a subject central to an institution's educational program, which is not a job as replacement for someone on leave, is not in the required sense special.

Well, no policy is sacred; why not emend Regulation 1(b)? To what might it be emended? Why not replace it with the following:

With the exception of appointments to positions clearly identified as non-tenure-track positions, and reappointments of retired faculty members on special conditions, all full-time appointments to the rank of instructor or higher are of two kinds. (1) probationary appointments, (2) appointments with continuous tenure.

And how would an institution choose which positions to identify as non-tenure-track? One possibility is this. the position of teacher of elementary French, the position of teacher of freshman composition, the position of teacher of survey courses in American history—the position of "introducer" to a subject—should all be non-tenure-track. (Some institutions *appear* to be headed in this direction.) But we think this a very poor choice on its face: there is no need to dwell on the likely consequences for the quality of undergraduate education in an institution which makes this choice.

A more plausible choice is to work out a rough formula which takes into consideration such factors as current and projected enrollment, relative centrality of the field in the institution's educational program, tenure percentages, and the like. (At some institutions, rough formulae of this kind have already been worked out.) Why not?

We understand—we take very seriously indeed—the financial difficulties and the uncertainties which incline colleges and universities to wish to move in this direction. We nevertheless think the move seriously misguided, for the following reasons.

1. *We think it unjust and inequitable.*

As the Association's 1973 statement *On the Imposition of Tenure Quotas* says, the teachers who would occupy the positions identified as non-tenure-track would be mere "contract workers" who are "incapable of full and equal faculty membership irrespective of the nature of the service they have given and irrespective of the professional excellence of that service." Teachers who fill such positions have second-class status, and an injustice is done them in two ways. (a) they are in that status through no fault of their own—their talents are as great, and their background and training as good, as their colleagues', and it is no fault of theirs that the institution planned badly in the past, and (b) they have no way out of that status (unless the institution's regulations leave more or less elastic chinks for squeezing through into the elect), whatever their merits and however great their contributions to the institution may be.

2. *We think it a threat to academic freedom.*

Nontenured teachers are more vulnerable to a threat to academic freedom than tenured teachers. Are nontenured teachers who are not on probation more vulnerable to such a threat than nontenured teachers who are on probation?

Obviously yes, in the case of teachers who hold unlimited renewable appointments. The teachers who must go, hat in hand, every year (or every two years, or every three years), indefinitely into the future, to ask if they may stay, are not teachers who can feel free to speak and write the truth as they see it.

And what of teachers who hold limited renewable appointments, or who occupy folding chairs? We think even they are more vulnerable than the teachers who are on probation. As we said earlier, their careers are no less uncertain than those of the teachers on probation; and we drew attention to the fact that such systems impose no requirement to give reasons for nonreappointment, thereby increasing the possibility of nonrenewals on improper grounds.

A further point should be noted. While no one *needs* to slide down a slippery slope, some are particularly inviting. Consider again our candidate replacement for Regulation 1(b):

With the exception of appointments to positions clearly identified as non-tenure-track positions, and reappointments of retired faculty members on special conditions, all full-time appointments to the rank of instructor or higher are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.

An institution at which *no one* had tenure would be acting in accordance with this regulation, so long as it was careful to make plain that *all* its positions are non-tenure-track positions. This replacement for Regulation 1(b) would legitimize the gradual phasing out of tenure entirely.

No doubt there are institutions which would not go, or even wish to go, quite so far. But why not cut back drastically? If having some non-tenure-track positions gives an institution some flexibility, will not having more such positions provide more flexibility?

College and university administrators all over the country are concerned about the possibility that there may soon (or even already) be too many tenured faculty members on their campuses, and they are right to be concerned. Nevertheless, it is worth stressing the importance of not having too few. As we said, nontenured teachers are more vulnerable to a threat to academic freedom than tenured teachers—the major protection for the nontenured teacher is in an independent and strong, and therefore of necessity large, group of tenured colleagues.

### 3. *We think it is unnecessary.*

As the statement *On the Imposition of Tenure Quotas* says, "the protection of academic freedom must take precedence over the claimed advantages of increased flexibility." The statement goes on to suggest (a) that the increase in flexibility which can be bought by the creation of a second-class faculty status is neither so great nor so immediate as at first appears, and (b) that there are other ways of obtaining flexibility, ways which are both more equitable and less damaging to morale. We need not repeat the statement's arguments here. We merely endorse them.

## CONCLUSIONS

We think that the very limited exceptions allowed by Regulation 1(b) are the most that should be allowed. The teacher with tenure is a teacher whose service can be terminated only for adequate cause; and we think that every full-time teacher should either have that status or be a candidate for it—save only for those who fall under the exceptions allowed by Regulation 1(b), in particular, those who are visitors, or temporary replacements, or for whose subjects the institution in good faith expects to have only a short-term need.

We think that administrators and faculty members who support institutional arrangements of the kind we have been surveying should recognize clearly that they are supporting practices which are inequitable, harmful to morale, and a threat to academic freedom.

# Report of the Special Committee on Academic Personnel Ineligible for Tenure

*The report which follows was approved by the Association's Committee A on Academic Freedom and Tenure in October 1969.*

## PREAMBLE

The special committee considered problems with regard to nontenure positions particularly as they concern three categories of academic people: (1) part-time teachers, (2) full-time teachers who are not considered regular members of faculties, and (3) persons who are appointed to full-time research positions. The special committee's first effort has been to survey and analyze the policies and practices of reputable universities with regard to nontenure positions, reports of which were previously made to the Council and Committee A. Its second concern has been to examine these practices in relation to the 1940 *Statement of Principles on Academic Freedom and Tenure* of the Association of American Colleges and the American Association of University Professors. Its third and final effort has been to formulate an interpretation of the 1940 *Statement* that might serve to guide the Association in advising interested persons about problems and disputes involving nontenure appointments.

The special committee soon concluded that the 1940 *Statement* could not be interpreted as guaranteeing tenure rights to part-time teachers. Its provisions for a probationary period apply explicitly to "...appointment to the rank of full-time instructor or higher rank." The special committee feels, however, that the Association should continue to be actively concerned with cases belonging to this category, and should use its influence to persuade institutions to adopt and use suitable grievance procedures, so that disputes involving part-time teachers can be judiciously resolved within the institutions. Where such procedures are inadequate or lacking, the Association should vigorously uphold the right of part-time teachers to the same academic freedom that teachers with tenure have. This policy should of course apply equally to full-time teachers during their probationary period.

There has been much discussion by the special committee, as there has been among other organs of the Association, of the question whether the increasing use of people without doctors' degrees as full-time teachers calls for clarification of the probationary requirements set forth by the 1940 *Statement*. That is, does an educational institution have to count years of full-time service accumulated by a tenure candidate before he has received his doctorate in determining when the decision to grant or not grant tenure must be made? Or, conversely, is it legitimate for an institution to appoint a doctoral candidate as a full-time teacher, in a rank below, or different from, that of instructor, and consider that his term of probation for tenure begins only if and when he receives the doctorate? The 1940 *Statement*, whether intentionally or not, appears to leave room for the second interpretation by saying that the probationary period should begin with appointment at the rank of instructor or a higher rank. It does not, however, say at what rank a full-time teacher with the doctorate must be appointed. After full discussion, the special committee is unanimously agreed that the first interpretation should be Association

policy; that is, any person whom an institution appoints to a full-time teaching position should be treated as a candidate for tenure under the requirements of the 1940 *Statement*, no matter what rank or title he may be given by the institution. If an institution wants to exclude a doctoral candidate (or any other person whom it considers inadequately qualified for regular faculty membership and status) from tenure candidacy, it should not appoint him as a full-time teacher. The special committee believes that less injustice will be done, both to teachers and to institutions, if this policy is enforced than if the apparent loophole is left open.<sup>1</sup> The special committee believes that anyone who does an instructor's work should be given appropriate rank and privileges. In short, the special committee wishes to eliminate the second problem category by refusing to grant that, for purposes of the 1940 *Statement*, there is any such thing as a full-time teacher at a rank below that of instructor.

The third problem category, that of research people who are not teachers, is relatively new to higher education. It was not foreseen, and its full effect on the regulation and conduct of academic institutions is not yet foreseeable. In particular, it seems clear to the special committee that the two associations had no major category of such academic people in mind when they formulated the 1940 *Statement*. A question may be, therefore, whether it is possible for the special committee to apply the 1940 *Statement* to this category. Its deliberations may in fact have led to another question: does the 1940 *Statement* itself need some revision, amendment, or supplement in order to provide proper guidance for Association policy in this area? The 1940 *Statement* plainly assumes that the normal basic activity of university professors is teaching and that research is a functionally related activity by means of which teaching is enriched and extended. On this assumption it is entirely reasonable and proper to maintain, as the 1940 *Statement* evidently does, that a researcher is the same thing as a teacher insofar as his right to academic freedom, his status as a faculty member, and his entitlement to tenure are concerned. In 1940, with negligible exceptions, researchers in universities were teachers, part of whose teaching was by word of mouth and part by the medium of print. The two parts served the same purpose of transmitting the teacher's individual ideas into the arena of public discussion, and the same principles of freedom and of responsibility applied to both.

Now, however, there are an important number of researchers working in universities and university-operated agencies to whom this assumption does not so clearly apply. Workers on Department of Defense and Atomic Energy Commission projects offer the extreme example; but anyone who works on a project which is defined by a contract between the employing institution and a sponsoring agency, government, industry, or foundation is likely to be more or less limited in his freedom to decide for himself what line of investigation he will pursue. The question arises whether universities ought to be engaged in this kind of contract research at all. The special committee regards this as an important question, but not one that can be settled at this time by a component of the AAUP. The fact is that many of the best universities are so engaged, and the question to be answered is what the AAUP policy should be toward the people involved, particularly concerning the conditions of academic freedom and tenure under which they work.

The special committee recognizes that many and perhaps most of the researchers doing contract work are qualified by education and training to be members of teaching faculties. What makes them different is their function. A related consideration, which administrators are quick to point out, is that the shifting character of the financial support for contract work imposes a special problem in relation to tenure. It is not so much a matter of the total amount of money available as it is of the fact that individual research contracts run for limited terms, and that

<sup>1</sup>Several sentences, which appeared here in the original report of the special committee and alluded to employment conditions then current, are omitted as being no longer applicable.

researchers are not always transferable from one contract project to another within the same institution. Administratively, the logical solution is to let the individual researcher's contract run for not longer than the term of the project contract. The situation is roughly parallel to that which arises when an institution decides to discontinue a course or department or college. The AAUP recognizes that legitimate academic reasons may require such a change, and that it is not always possible for the institution to retain all the people whose positions are eliminated. Such a situation, rare in teaching faculties, is normal and frequent in contract research.

These problems are closely related to the fact that many research projects are carried out by teams of researchers under the supervision of project directors. The director of a project, often a faculty member with tenure, and very often a kind of entrepreneur in proposing the project and attracting financial support for it from sources outside the institution, has a legitimate need for freedom in the selection and rejection of team members, and for adequate authority to assign their tasks and coordinate their activities. Furthermore, individual team members are not free to publish results of work they have done on the project without the consent of other members and especially of the director. For these reasons, traditional concepts of academic freedom and tenure do not apply to the activities of contract research teams. The special committee has gone as far as it believes possible, under the circumstances, in asserting and defending in the statement which follows such academic freedom and job security as can be had. Its members feel that an effort to go beyond the limits imposed by the facts of the situation would make the statement weaker, not stronger.

The special committee is by no means indifferent to the conditions under which members of contract research project teams have to work, nor does it advocate indifference on the part of the AAUP. It believes that good administrative and personnel policies ought to operate in this area as in all other areas of academic life, and that the AAUP should try to define good policies and encourage institutions to apply them. It also believes that, whenever academic institutions designate full-time researchers as faculty members, either by formal appointment or by conferring the titles of instructor, assistant or associate professor, or professor, those researchers should have all the rights of other faculty members, and that the AAUP should apply the *1940 Statement of Principles* to them as strictly as to anyone else.

### STATEMENT OF THE SPECIAL COMMITTEE ON ACADEMIC PERSONNEL INELIGIBLE FOR TENURE

A clear definition of acceptable academic practice in American colleges and universities requires some amplification and interpretation of the *1940 Statement of Principles on Academic Freedom and Tenure*. Most of the *1940 Statement* applies without change to the operation of universities today. The academic freedom statement, however, leaves some question about the freedom of research for the secondary staff of large research projects restricted by government or industrial support and security. The academic tenure provisions leave some doubt about the tenure rights of part-time teachers and of persons appointed with titles other than those of the four ranks of instructor to professor.

To make quite clear that the policy of the Association provides protection in matters of academic freedom to all teachers at all ranks and on any fractional appointment and to all investigators with university appointments, the following amplifying statement is proposed.

1. The academic freedom of all teachers and investigators with full-time or part-time appointments in a university should have the full protection of the Association.

The committee recognizes that it is appropriate to have, within the university, faculty members with instructor or professorial status who are exclusively investigators. These professors should be selected by the faculty and should have the full privileges of other professors. The following statement is within the *1940 Statement* but more directly describes the status of the research faculty member with an academic appointment.

- 2 Full-time teachers and investigators who are appointed to the rank of instructor, assistant professor, associate professor, and professor should have the rights and privileges appropriate to their rank, including tenure or the eligibility for tenure after the appropriate probationary period.

Acceptable academic practice for tenure is described in the 1940 *Statement of Principles* only for full-time appointments beginning with the rank of instructor. The special committee recommends that these provisions be extended to include all full-time teaching appointments in the university. Part-time appointments are often given to scholars who are still working on their advanced degree programs. If, however, a full-time appointment can be made as a lecturer or acting instructor, without obligating the institution to a limited probationary period, it will diminish the protection of the Association's statement of policy on tenure. To provide for protection of the young teacher's tenure rights, the committee proposes:

- 3 All full-time teachers, but not investigators, in the universities regardless of their titles should acquire tenure after a probationary period as provided for appointments to the rank of full-time instructor or a higher rank in the 1940 *Statement*.

The Association extends the full protection of academic freedom to all teachers and investigators on full-time or part-time university appointments. The policy for the tenure of investigators with full-time university appointments without one of the usual academic ranks has not been adequately determined. In the science and technology areas of the twenty largest universities, there are now twice as many full-time investigators as full-time academic appointments. Most of these investigator appointments are made from research grants of short duration that are subject to frequent and uncertain renewal. The selection and termination of appointees is made by the project director without the usual procedures for review involved in departmental academic appointments. Until the funds for the support of investigators are assured for substantial periods and until the university determines policies for the distribution and use of these funds, it will be difficult for the university to assume the obligation for continuous tenure appointments. The committee makes no recommendation for a tenure policy for investigators who do not have regular academic appointments.



# The Status of Part-Time Faculty

The report which follows was prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure. It was approved for publication by the committee in November 1980 for the information of the profession.

Consistent with the 1940 *Statement of Principles on Academic Freedom and Tenure*, which calls for academic freedom for everyone engaged in teaching or research, Committee A, through successive editions of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, has set forth safeguards for the academic freedom of all teachers and researchers, full-time or part-time, tenured or nontenured, regular faculty or graduate assistants. The *Recommended Institutional Regulations* contain provisions for academic due process for all teachers and researchers, again including those who serve less than full-time; these provisions recognize, as do the courts, that due process is a flexible concept and that the extent of procedural protections depends, in part, upon the magnitude of the contemplated abridgment of rights.<sup>1</sup> Additional policies applicable to faculty members serving less than full-time are developed in the Association's statement on *Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies* and in Committee W's statement on *Senior Appointments with Reduced Loads*. In 1979, Committee A authorized the publication of a statement, *Academic Freedom and Due Process for Faculty Members Who Serve Less Than Full-Time*, which is a compilation of existing policies relating to part-time service. This subcommittee's task has been to expand upon that statement and offer new propositions, consistent with Association principles, to address some of the continuing problems concerning part-time faculty members.<sup>2</sup>

While the Association has long recognized that part-time service has a place on a college or university faculty and that certain rights ought to be afforded to faculty members serving less than full-time, it has not addressed itself comprehensively to the status, role, rights and privileges, and responsibilities of part-time members of a faculty. The role of part-time faculty members in institutional life, their participation in academic governance, their entitlement to particular provisions of academic due process, and their eligibility for tenure in part-time positions, all need to be discussed. Guidelines are needed to assist colleges and universities in setting appropriate standards for the employment of part-time faculty members. The treatment of part-time faculty members, in terms of salary and fringe benefits and of security of employment, also deserves examination. This report is designed to address these issues and to offer propositions and guidelines to assist colleges and universities in formulating policy relating to part-time members of the faculty.

<sup>1</sup>Regulation 1(a) specifies that "the terms and conditions of every appointment to the faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the faculty member." Regulation 14(a), which would be applicable to part-time faculty in any case where Regulations 5 and 6 may not be, calls for "a statement of reasons and an opportunity to be heard before a duly constituted committee" prior to involuntary termination before the end of a period of appointment. Regulation 14(b) and Regulation 15 afford part-time faculty members access to grievance committees under certain stipulated conditions.

<sup>2</sup>The subcommittee is indebted to members of our parent committee and other Association committees and to individual members and chapters, most notably the valuable studies of our Portland State University chapter, for their contributions to the content of this report.

## I. BACKGROUND

### A. *The Increasing Use of Part-time Faculty in the 1970s*

The last decade has seen a dramatic growth, in both relative and absolute terms, in the use of part-time faculty members in higher education. Figures provided by the National Center for Education Statistics indicate that part-time faculty now comprise 32 percent of the total teaching force in higher education.<sup>3</sup> Between the years 1972 and 1977, the rate of faculty growth was 50 percent for part-time staff and 9 percent for full-time staff. The most widespread use of part-time teachers is in two-year community colleges, where they now constitute 51 percent of the faculty.<sup>4</sup> Approximately 24 percent of the faculty at four-year liberal arts colleges are part-time faculty members,<sup>5</sup> and approximately 20 percent of the faculty at research universities are part-timers.<sup>6</sup> In the last few years, the rate of growth of part-time faculty in liberal arts colleges seems to have been decreasing, but the increase in the growth rate of this population in community colleges continues. At some community colleges almost the entire faculty serves on a part-time basis.

The growth of part-time service in higher education has brought with it a host of problems. They involve the rights, privileges, and economic welfare of this category of faculty members, most of whom currently enjoy only marginal status. The problems also involve the relationship with full-time faculty within their institution and the institution's responsibilities to students in programs which are staffed largely or wholly by part-time faculty members. Who are these part-timers? What do they do? What skills do they possess? This knowledge should assist in determining what legitimate expectations part-time service engenders and how they can be met. There are, in addition, legitimate concerns relating to the expectations of students and flexibility in institutional staffing.

### B. *The Present Statement*

This report is concerned with all categories of part-time faculty members, irrespective of the proportion of service they provide, their official status at the institution that employs them, or the specific nature of their service. There are only two categories of part-timers which will be excluded from consideration. (1) graduate assistants who are teaching part-time at the university where they are students, and (2) teachers who hold "part-time" positions but, in fact, have a load equivalent to that of a full-time faculty position. In the first instance, the dual role of faculty and student raises problems which should be considered separately. In the second case, exclusion is warranted because the Association's position is that the part-timer who performs the duties and has the teaching load equal to those of a full-timer at the institution is entitled, regardless of his or her specific title, to the rights and privileges of a full-time faculty member.<sup>7</sup>

The basic concerns are two-fold: (1) that part-time faculty members not be exploited and (2) that they not be engaged to replace full-time faculty members with a result that would undermine the protection of academic freedom which faculty tenure provides and the amount of just compensation which faculty members have achieved. The common concern for academic quality should encompass provision for appropriate review of the qualifications of part-time faculty members, their participation in the planning and implementation of the curriculum, their availability to students for advice and counseling, their ability to keep current in their respective

<sup>3</sup>The total number of faculty members in higher education is reported to be 675,000, with 32 percent of them serving part-time. The figure does not include graduate assistants.

<sup>4</sup>"The Loneliness of the Part-time Lecturer," *The Times Higher Education Supplement*, March 3, 1980.

<sup>5</sup>*Ibid.*

<sup>6</sup>David W. Leslie and Ronald B. Head, "Part-time Faculty Rights," *Educational Record* 10 (Winter 1979): 46.

<sup>7</sup>Also excluded from this report are issues relating to those who have full-time appointments with the institution but whose faculty responsibilities are less than full-time. See 1970 Interpretive Comment number 5 of the "1940 Statement of Principles" (*Academe* 64 [May 1978]: 108-12).

fields,<sup>8</sup> and the chilling effect on their teaching which lack of the protections of academic due process may engender. A balance must be struck if the long-term interests of full-time and part-time faculty members, of students, and of higher education and research in general are to be served.

### C. Part-Time Service Viewed in the Context of the 1940 Statement

Although the Association has concerned itself with the academic freedom of all faculty members, part-time as well as full-time, it has not advocated extending the system of academic tenure so broadly. The 1940 *Statement of Principles on Academic Freedom and Tenure* refers, with respect to tenure, only to those appointed to full-time service. It mentions only full-time service in defining the probationary years preceding the attainment of tenure. The underlying concept is that responsibility for academic quality falls upon those who, fully committed to academic life, have shaped and taught the courses central to the academic mission of their institution.

This concept has rested on a view of the academic profession in which part-time service has been occasional and on an *ad hoc* basis. It provided a way to staff classes in response to temporary or emergency needs; it offered apprentice training to graduate students; and it allowed adjunct professors with highly specialized training to be engaged to teach an occasional course. It was also viewed as allowing an institution economic as well as academic flexibility. It was cost effective. It was not seen as entailing an ongoing institutional commitment, nor was it viewed as affecting long-term individual interests. The concept assumed that those holding part-time positions were not and should not be a part of the institution in the manner of full-time members of the faculty upon whom rested the responsibility for the quality and character of the institution's academic program.

The subcommittee believes that the propositions to be advanced below on the role and rights of part-time faculty are consonant with the 1940 *Statement of Principles*, responsive to contemporary concerns, and mindful of the needs both of colleges and universities and of the individuals who are directly affected.

## II. WHO ARE THE PART-TIME FACULTY?

While the categories of part-time faculty service are manifold and difficult to classify, we can describe briefly a few "typical" part-time situations:

### 1. Part-timers who would prefer full-time positions

These individuals, who constitute 30 percent of the part-time faculty,<sup>9</sup> most resemble full-time faculty in their commitment, in the duties they perform, and, in many cases, in their academic qualifications, they are also the most susceptible to exploitation. They teach part-time—sometimes simultaneously at several institutions—only because they cannot get full-time positions. They may have previously taught full-time and been denied reappointment or tenure, sometimes at the very institution where they now serve part-time. While some may not have met the scholarly requirements for retention, for many there was simply no available full-time position. As part-timers, their teaching loads, while primarily if not exclusively in elementary courses, are in some instances heavier in contact hours than those of their full-time colleagues. They are frequently paid a small per-course remuneration and have only those fringe benefits mandated by law. Sometimes they have no office space, no library facilities, no access to laboratories, no secretarial support. Most of them would oppose an "up-or-out" tenure policy for part-time faculty, for they perceive it as likely to end their tenuous hold on the institution. They do want, and by and large they need, increased employment security and better compensation.

<sup>8</sup>Due to other commitments, to high teaching loads carried perhaps simultaneously at several institutions, to lack of access to laboratories, libraries, and computers, and to lack of a reward system, many part-time faculty members report difficulty in keeping up with their fields.

<sup>9</sup>Howard P. Tuckman, William D. Vogler, and Jaime Caldwell, *Part-Time Faculty Series* (Washington, D.C.: AAUP, 1978). These empirical studies were made possible by a grant to AAUP from the Ford Foundation. Six articles were included in the above publication, and a seventh appeared in *Academe* 66 (March 1980): 71-76.

2. Those who serve part-time by choice but have no full-time employment outside the home  
These faculty members tend to have a wide range of qualifications, of duties, of commitment to their institutions, and of reasons for preferring part-time status. Some are like full-time faculty members in every way except the percentage of time devoted to academic employment; they choose to spend some time with their families, tending to their investments, free-lance writing, consulting, painting, or whatever. Many of them want to be evaluated for tenure by the same qualitative standards as are their full-time colleagues so that, since they meet the tests, albeit on a part-time basis, they are entitled to tenure's protections.

Others, however, may be committed primarily to teaching and provide instruction in the basic courses at institutions where full-time faculty members are expected to concentrate on research. Many of these part-timers would welcome the opportunity to participate in faculty government, and in particular in planning the curriculum and advising students. Some would want to be evaluated for tenure, but according to different criteria from those applied to full-time faculty members. Most are not compensated on a basis comparable to full-timers at the institution, and most have little security of employment, even after having taught successfully for many years. They often have no access to group insurance plans, retirement plans, and unemployment benefits.

### 3. Those who have full-time employment elsewhere

While these faculty members do not tend to rely on their teaching for security of employment, as teachers they are entitled to protections of academic due process which, more often than not, stated institutional policies fail to assure them. The specialists who teach certain advanced courses which enrich the curriculum may well prefer not to assume any additional institutional responsibilities; others, especially those who teach core courses such as elementary mathematics or accounting, English composition, or clinical law, might improve both the course offerings and their own performance by participating in departmental discussion and planning. For those with full-time positions elsewhere, access to fringe benefits is not generally of significant concern; few, however, would not welcome better pay.

### 4. The retirees

Faculty members who retire from full-time service either at the normal age of retirement or at an earlier age sometimes continue to teach part-time. Frequently, in surrendering tenure, they are left without any protections of due process. Sometimes fringe benefits are also cut off<sup>10</sup> and their pay is reduced to a low per-course stipend. They cannot seek tenure once again, but they do seek equitable treatment.

The categorization we have offered is based largely on the part-time faculty member's own commitment. The subcommittee believes that, when a faculty member's primary commitment is to an institution, the institution should make a corresponding commitment, particularly in terms of security of employment and of financial compensation. The difficulties arise in determining the specific circumstances in which the commitment by the university should arise and what form it should take.<sup>11</sup>

Some view the concerns of part-time faculty members as essentially a women's issue. It is true that the interest at some institutions in making part-time faculty members eligible for tenure was generally in response to a perceived need to provide flexibility for women who wanted to devote significant time to their families while pursuing a full-fledged academic career.<sup>12</sup> It is

<sup>10</sup>Employers may be restricted in this practice under new EEOC guidelines on the enforcement of the Age Discrimination in Employment Act.

<sup>11</sup>That primary economic dependence on the employing institution should be a consideration in determining what degree of protection part-time faculty should have remains an issue. Typically such an argument has been made to the disadvantage of two-income families, but not to that, for example, of the medical school faculty member with a private practice or of the independently wealthy. We reject the degree of economic dependence upon a college or university as a consideration in determining faculty status.

<sup>12</sup>Other women have preferred to consider their home commitment as primary, in their cases, the part-time academic employment can be regarded in the same way as for those whose primary commitment is to other remunerative employment.

also true that women are, in comparison to their representation among the community of full-time faculty, disproportionately represented in part-time positions. Many women, however, teach on a part-time basis only because they cannot obtain full-time positions. It is therefore important to note that colleges and universities cannot meet their obligation to provide equal employment opportunity by having a substantial number of their female appointees on a part-time status which provides them with little or no opportunity for movement to full-time positions. The subcommittee does not view the concerns surrounding part-time faculty members as generally constituting women's issues. They are concerns which involve faculty members of both sexes.

### III. POLICY PROPOSALS

#### A. Tenure for Part-Time Faculty

The 1973 report of the Commission on Academic Tenure in Higher Education discussed part-time faculty service and found merit in the view that individuals who regularly provide part-time service on an institution's faculty should be accorded tenure if they qualify for it. The commission recommended that "institutions consider modifying their tenure arrangements in order to permit part-time faculty service under appropriate conditions to be credited towards the award of tenure, and to permit tenure positions to be held by faculty members who for family or other appropriate reasons cannot serve on a full-time basis."<sup>13</sup> During the past decade, a number of institutions have modified their tenure regulations so as to permit tenure positions to be held on a part-time basis.<sup>14</sup> From what the subcommittee has been able to discover, the number of faculty members who have actually been granted tenure in a part-time position is very small.

Although we recognize that the large majority of part-timers neither need nor desire the privileges of tenure and that for the most part colleges and universities have used part-time faculty service in a manner compatible with the health and quality of the institution,

WE RECOMMEND that colleges and universities, depending upon the manner in which they utilize part-time faculty service, consider creating a class of regular part-time faculty members, consisting of individuals who, as their professional career, share the teaching, research, and administrative duties customary for faculty at their institution, but who for whatever reason do so less than full-time. They should have the opportunity to achieve tenure and the rights it confers. The Association stands ready to provide guidance to institutions wishing to develop such policies.<sup>15</sup>

#### B. Security of Employment for Part-Time Faculty

The part-time faculty member who is like the full-time faculty member in qualifications and responsibilities frequently has a comparable commitment to his or her institution. Many part-timers who teach year in and year out can and should participate in institutional life in a way that is both impracticable and unnecessary for part-timers whose involvement is occasional or peripheral. The

<sup>13</sup>*Faculty Tenure*, Commission on Academic Tenure in Higher Education (San Francisco: Jossey-Bass 1973), 78-81. The commission, an independent body, undertook a comprehensive study of the tenure system. The project was sponsored jointly by AAUP and the Association of American Colleges. Funding was provided by the Ford Foundation.

<sup>14</sup>American, Colgate, Columbia, Cornell, Princeton, Rutgers, Stanford, and Wesleyan Universities, UCLA and the University of Wisconsin are among the institutions known to us to have developed policies allowing tenure for part-timers.

<sup>15</sup>These rights do not include entitlement to a full-time position should the part-time faculty member wish to become full-time. Moreover, the class should be defined through the regular procedures of the institution, like the full-time faculty member, the part-time faculty member in this class should not be allowed to waive a decision on tenure.

In addition, we would not insist that part-timers who, for example, conduct courses not carrying academic credit should be included in the tenure system. The centrality of the courses that are taught is a legitimate consideration, but we resist viewing it as a consideration applicable only to part-time faculty. If full-time members of the faculty are to be eligible for certain considerations, so should part-time faculty members who possess the same academic qualifications and teach in the same type of program.

part-timer engaged only for highly specialized courses may also have only a modest commitment to the institution. The distinctions in duration of service and in commitment suggest that different types of part-timers are entitled to different degrees of security.

Some institutions, as we have stated, have acknowledged these distinctions by defining a class of part-timers eligible for tenure with attendant rights and responsibilities. Of more concern, however, is minimal employment security for much larger numbers of part-time faculty, based not on probation and potential tenure but on more careful initial screening and periodic review by faculty colleagues.

We realize that fluctuations in enrollment can create unanticipated staffing needs. In most instances, however, one should be able to anticipate at least a term in advance how many sections of a given course will need to be staffed. In practice, colleges and universities often staff courses at the last minute, and as a consequence part-time appointments are made, typically upon the recommendation of a chairman to a dean without benefit of opinion from others in the department. This practice has fostered a two-class system in which part-timers are often isolated from their full-time colleagues. Often they are left out of departmental meetings; they do not participate in curriculum planning; they have no vote in departmental affairs; and they are afforded no opportunity for peer review or for advancement through the academic ranks.

WE RECOMMEND that part-time faculty not be appointed routinely or repeatedly at the last minute. The practice of continually appointing the same part-timer on term-by-term contracts with employment contingent upon enrollment is, in the large majority of cases, callous and unnecessary.

WE RECOMMEND that in those instances when cancellation of a course leaves a part-timer without an expected appointment, financial compensation should be made for the time spent in preparing the course and for dealing with the course prior to its cancellation.

WE RECOMMEND that, where part-time employment is not casual and occasional, colleges and universities should endeavor to regularize their use of part-time faculty members so that they can be appointed in closer conformity to standards and procedures governing full-time faculty.

We hesitate a little in recommending formal notice requirements or a presumption of renewal after a specified period. We have seen such policies lead to subversion of the principle of adequate notice by issuing blanket notification of nonrenewal by the specified date, with the real decision in individual cases held off until later. Part-time as well as full-time faculty are, however, entitled to individual consideration in the renewal process. Accordingly,

WE RECOMMEND that part-time faculty who have been employed for six or more terms, or consecutively for three or more terms, receive a full term's notice. Any lesser period may prevent their re-entry into the part-time market, given the cyclical nature of academic appointments. The issuance of notice should be preceded by a more thorough faculty role in the evaluation process than is customarily the case with part-time faculty. WE RECOMMEND that colleges and universities accord part-time faculty members the protections of academic due process summarized in the Association's *Academic Freedom and Due Process for Faculty Members Who Serve Less Than Full-Time*. In particular, part-time faculty should have access to the institution's regular grievance procedure.

### C. *The Role of Part-Time Faculty in Academic Governance*

The differing levels of involvement of part-time faculty in the life of the institution should be reflected in the degree of their involvement in institutional governance. The occasional part-timer usually has nothing to do with faculty as a whole, and even his or her participation in departmental committees and curriculum planning tends to be negligible. The more considerable commitment of the part-timer whose service is more like that of a full-timer does, however, raise the question of whether these part-timers should have the right or the obligation to participate in governance and departmental decisions; whether, for example, they should have voting rights. Empirical evidence demonstrates that most part-timers, even the regular part-timer whose responsibilities include many nonteaching activities, tend to have little formal role in university or departmental governance.<sup>16</sup> As a consequence, their status within the university or college community is diminished.

<sup>16</sup>Tuckman, Vogler, and Caldwell, *op. cit.*

Crucial for the sense of professional pride and responsibility which characterizes the academic profession is the central role which full-time faculty members traditionally play in the determination of the structure and content of curricula, individual courses, and teaching materials. Similarly, a sense of professionalism is derived from the significant role faculty play in governing academic departments and in the governance of institutions of higher learning. Without access to the governing bodies, a faculty member's sense of professionalism is impaired, to the potential detriment of the quality of the educational process in which he or she is involved. Faculty members who are treated like "hired hands," with lesson plans they have played no role in generating, may be insufficiently motivated to perform with the care and ingenuity of the faculty member who is actively involved in shaping his or her environment.

When a faculty is organized for purposes of collective bargaining, the appropriate test of inclusion in the bargaining unit that is used by the National Labor Relations Board is whether or not a "community of interest" or a "mutuality of interest" exists between the members of the proposed unit. If there is a category of part-time faculty comprised of those who are eligible for tenure, it appears likely that they would be included in a bargaining unit with full-time faculty. Indeed, the few part-time faculty members who are in this category are often called "fractional time" or "full-time with reduced load" rather than part-time. Similar claims for inclusion might be made by part-time faculty members paid on a *pro rata* basis,<sup>17</sup> independent of their qualifications or security entitlements. Politically, the inclusion of part-timers is often viewed as threatening to the interests of the full-time faculty, and, to the degree that the part-time faculty and full-time faculty have different commitments to the institution, the threat becomes more real. There is a basic problem as to whether a bargaining unit composed primarily of full-time faculty members can fairly represent the part-time faculty if they are included in the bargaining unit. And, if the part-time faculty are excluded from the unit, will the administration exploit them and use them to undercut the full-time faculty?<sup>18</sup> Throughout this statement on part-time faculty problems, we make proposals designed for the better integration of part-time faculty and full-time faculty. We believe that a better integration will improve the quality of education and the academic climate. We also believe that, as institutions move towards improved communication between part-time and full-time faculty, the likelihood of the difficulties posed above occurring in a collective bargaining situation will be lessened.

Universities and colleges should recognize that participation in academic governance is likely to enhance a faculty member's sense of professionalism and elicit a higher quality of performance than can otherwise be expected. Moreover, the institution would benefit from the part-timer's contributions.

WE RECOMMEND, whenever possible and erring on the side of inclusion rather than exclusion, that part-time faculty be involved in the determination of goals, of techniques and schedules for those courses which they teach. Moreover, they should be actively involved in planning the curricula of which their courses are a part. To the extent that other, more general, considerations which are dealt with by departmental or institution-wide committees impinge on these more specific matters relative to courses taught by part-time faculty, part-time faculty members should serve as participating members on such committees. If part-time faculty members are subject to appropriate review procedures and have, as they should, access to the regular institutional grievance procedure, they should also be represented on the bodies concerned with these matters when cases involving part-time faculty are heard.

#### *D. Compensation and Fringe Benefits for Part-Time Faculty*

Recent studies suggest that most part-time faculty members teach at a per-course rate less than

<sup>17</sup>A part time faculty member who receives *pro rata* compensation is paid that percentage of the compensation of a similarly qualified full-time faculty member represented by the ratio of the part-time teaching load (measured by contact hours) to the full-time counterpart. Under this arrangement, other responsibilities are not taken into consideration in determining workload.

<sup>18</sup>At some institutions the part-time faculty have a separate bargaining unit, this can also lead to playing off the interests of the two units against one another.

that paid to full-time faculty members.<sup>19</sup> Data also suggest that they receive fewer fringe benefits than their full-time counterparts. This is especially true where the individual part-timer teaches less than half time and does not participate in the range of faculty responsibilities outside the classroom. There is also a small portion of the part-time labor market that is paid on a *pro rata* basis and is eligible for cost-of-living and merit increases. One study concludes that a little more than one-quarter of all institutions currently prorate compensation.<sup>20</sup> The practice of paying a flat payment per course or per student hour to part-time faculty does little to relate the part-time salary payment scale to the salary rates paid to full-time faculty. Bearing in mind that part-time faculty members differ widely among themselves in the nature of the duties they perform, the qualifications they possess, and the disciplines in which they work, and appreciating the differences among them in need, expectation, and bargaining power, we believe that simple fairness obligates institutions to rationalize their compensation of part-timers and to develop policies that treat part-timers equitably.

WE RECOMMEND that colleges and universities, through their regular procedures, devise equitable scales for paying part-time faculty members.

Although the task is difficult, it is necessary for colleges and universities to develop appropriate criteria for comparing part-time and full-time responsibilities, properly taking into account non-teaching activities and individual qualifications. The criteria would enable an institution to determine which part-timers appropriately should be paid on a *pro rata* scale and which should be paid on a per-course or per-student-hour basis. In either case, some provision should be made for merit, seniority, and cost-of-living increases.

Discussion regarding compensation of part-time faculty often proceeds upon the assumption that for many compensation is extra, a component, but not an essential component, of the family income. This appears no longer to be the case for an increasing number of part-timers.<sup>21</sup> Even if it were true, we do not believe that the degree of individuals' financial dependency on their employer should enter significantly into a determination of compensation for part-time faculty. In the past, such considerations contributed unduly to the practice of paying housewives who taught part-time appreciably less than their male counterparts.<sup>22</sup> These considerations are often cited in defense of various scales of compensation and of particular salaries as well as to justify other employers' practices. We believe that they should not be relevant to the measurement of the degree of a faculty member's commitment to his or her institution nor of the commitment that institution should make to the faculty member.

In discussing compensation we must also bear in mind that colleges and universities utilize part-time faculty members in order to effect monetary economies and flexibility in staffing the academic program. What must be guarded against are practices which exploit the part-time faculty, contribute to poor morale, and adversely affect the quality of education. Such practices inevitably injure not only part-time faculty, but also their full-time colleagues and, most of all, the students.

For many part-timers, a wage scale based on a per-course rate or a per-hour rate is reasonable. The full-time faculty member who teaches an additional course as an overload may be paid for it on a per-course basis; the business executive, secondary-school teacher, lawyer, or government official who teaches a single course, either occasionally or regularly, does not look to the part-time position as a primary professional commitment. By and large, these part-time teachers teach for stimulation, prestige, and variety, while the pay provided them supplements their basic income. More importantly, many of these part-timers are appointed to teach, and the nonteaching functions performed by full-time faculty are not their concern. Their own professional development is not significantly related to their part-time teaching work. The time they spend on reading

<sup>19</sup>See Howard P. Tuckman and William D. Vogler, "The 'Part' in Part-Time Wages," and "The Fringes of a Fringe Group: Part-Timers in Academe," *Part-Time Faculty Series* (Washington, D.C.: AAUP, 1978).

<sup>20</sup>Leslie and Head, p. 60.

<sup>21</sup>Tuckman and Vogler, note 19 above, pp. 50-52.

<sup>22</sup>Barbara H. Tuckman and Howard P. Tuckman, "Part Timers, Sex Discrimination, and Career Choice at Two-Year Institutions. Further Findings from the AAUP Survey," *Academe* 66 (March 1980): 71-76.



and research, on participating in meetings and presenting talks, usually relates to their primary employment and is compensated by that employer. If, in line with our previous recommendations, some of these part-time faculty do become more involved in advising, departmental and curriculum work, and related responsibilities, their compensation should reflect this greater commitment.

Of particular concern to us is the 30 percent of the part-time faculty population who teach one or more courses only because they cannot find a full-time position. Often the income they derive from their teaching – and some piece together two or three part-time positions at different institutions in order to have the equivalent of a full-time position – provides their sole means of support. These faculty members tend to teach the same courses regularly and frequently perform at least part of the range of nonteaching duties of their full-time counterparts. They deserve adequate compensation and security, being peculiarly vulnerable to the exploitation we discussed earlier. These part-time faculty members are also the unwilling subject of the tensions affecting the members of the full-time faculty who have a voice in the establishment of rates of part-time compensation. If a certain amount of highly cost-effective teaching is done by part-time faculty, their own compensation will be higher. On the other hand, this would mean that the out-of-classroom duties associated with the courses and students taught by the part-time faculty must often be performed by the full-time faculty. If the ratio of full-time to part-time becomes small, the full-time faculty can become overburdened and the quality of education will suffer. Moreover, increasing numbers of part-time faculty are being appointed in an attempt to avoid any institutional commitment to tenure, the presence of large numbers of faculty serving "at will" can have a chilling effect on general conditions of academic freedom at the institution as well as on academic quality. Finally, the presence of a source of cheap substitute labor may well depress the compensation scale of full-time faculty. What is required is a balance between retaining institutional flexibility and avoiding the exploitation of part-time faculty which may lead to the exploitation of full-time faculty as well.

Accrediting bodies have been guided by various ratios to express the desired balance between full-time and part-time faculty in a healthy academic institution. Such ratios grew out of the perception that part-time faculty, because of their commitment of time to an institution, were unable to provide the amount of administrative service, curricular planning, and service in academic governance considered appropriate to sustain a vigorous academic enterprise. Currently it is more difficult to gauge what proportion of a curriculum in a variety of disciplines can be taught by part-time faculty without endangering the quality of education. Colleges and universities must be mindful of the dangers of misusing part-time faculty and eroding their academic standards. They must recognize the diverse ways in which part-time service can be used and the variety of needs of the different kinds of part-time faculty members they employ. Where the part-time faculty members function largely as full-time faculty but on reduced time, and where they are similarly qualified, institutions should develop commensurate pay scales and fringe benefit packages. They should consider whether *pro rata* compensation would, in the long run, enhance not only the purses of the part-timers but the health of the institution as a whole.

There is no overriding legal principle requiring that part-time faculty receive prorated compensation, but considerations of fairness and regard for overall institutional welfare point to an increasing need to identify the part-timers who are carrying workloads that can be legitimately considered comparable to a portion of a full-time workload at the same institution and to compensate them on a *pro rata* basis.

WE RECOMMEND that the part-time faculty member whose contribution to the academic program of the institution and to its academic life is equal to that of a full-timer except for the proportion of time given to the position, and whose qualifications are comparable, receive prorated compensation.<sup>23</sup>

If an equivalency between full-time and part-time workloads is inappropriate, pay scales should be devised which reflect the similarities and differences that distinguish part-time workloads from full-time ones. The criteria should include (1) the nature of the service being performed – whether

<sup>23</sup>A policy of prorated compensation is often seen as an attempt to eliminate part-time faculty by making them as expensive to employ as are full-timers. This is not what we propose. We believe there should be the option of part-time employment for those who prefer it and, moreover, that only those whose qualifications and duties are comparable in every way except in amount of time to those of full-time faculty have a claim for *pro rata* compensation.

it includes nonteaching functions such as advising, research, curriculum planning, and participation in governance; (2) the qualifications of the faculty member, (3) the length of time, either continuous or interrupted, served by the part-timer at the particular institution, and (4) the market value of the discipline being taught. These criteria would enable colleges and universities to compare full-time workloads meaningfully and to determine which of their part-time faculty deserve *pro rata* compensation, which deserve a salary scale that rewards merit and length of service, and which can be appropriately compensated on a per-course or per-hour basis, and at what rates.

Institutions should also devise ways to reward part-time faculty members who teach continuously over a number of years, whether they carry only one course per term or a heavier load. Career progression is one mechanism to recognize meritorious work, another is to insure periodic raises for continuing part-time faculty, on either a seniority or a merit basis. This allows a measure of reward for the more senior part-timer and acknowledges the contribution that continuity of instruction makes to academic life. A system of merit pay would also help prevent the lapse in skills which may occur if part-timers continue to be treated as marginal and are given no incentive to maintain or improve their skills.

Fringe benefits are another means by which colleges and universities can offer security and monetary rewards to their part-time faculty. Fringe benefit policies in higher education vary widely and reflect the essentially unplanned and unregulated growth of policies designed to attend to the needs and interests of part-timers. The average part-timer is not likely to receive fringe benefit coverage, other than that mandated by law, from his or her academic appointment. Only a limited number of institutions have developed fringe benefit policies in which the benefits for part-timers are prorated in proportion to their workload.<sup>24</sup> Many colleges and universities make no contributions to the costs of the fringe benefits extended to part-time faculty members, and often they do not even provide part-timers with access to the fringe benefits available to full-time faculty. A substantial number of part-time faculty members have no retirement, disability, health, or life insurance coverage through their employment.<sup>25</sup>

A part-timer's need for fringe benefit coverage varies in accordance with his or her dependence upon the employing institution as the primary source of income and benefits. Nonetheless, we would assert here too that need alone should not dictate the liberality of an institution's fringe benefit policy. Rather, fringes should be viewed in part as a means to grant recognition of the vital services being performed by a faculty member, part-time or full-time. While remaining mindful of the administrative costs entailed in extending different types of benefit coverage,

WE RECOMMEND that colleges and universities design policies on fringe benefits which reflect the varying kinds of commitments made by the part-time members of the faculty.

WE RECOMMEND that the part-timer whose work is indistinguishable from the full-timer with the exception of the proportion of time spent in the activity should have the opportunity to participate in nonmandatory fringe benefits on a prorated basis if his or her workload at the institution is continuous over several years. Where institutions have developed tenure policies for part-time faculty members, fairness urges that these institutions provide part-timers who are eligible for tenure with, at a minimum, access to the full range of fringe benefits available to their full-time colleagues. They should also be allowed access to fringe benefits such as group medical or dental programs on a prorated basis.

Institutions which make nonmandatory fringe benefits available to part-timers on a prorated basis will have to establish criteria to compare the workloads of part-time faculty to full-time faculty. We realize that this will incur increased administrative costs, and the certification of workload for the purposes of establishing eligibility for fringe benefits can also add to administrative costs.

It should also be noted that because there are a "large and increasing number of part-timers who are forced to rely on their earnings from part-time employment as a sole source of income,"<sup>26</sup>

<sup>24</sup>Howard P. Tuckman and William D. Vogler, "The Fringes of a Fringe Group. Part-Timers in Academe," *Part-Time Faculty Series* (Washington, D.C.: AAUP, 1978), 40-42.

<sup>25</sup>*Ibid.*

<sup>26</sup>*Ibid.* p. 49.

we are discussing a group of faculty members whose situation is economically most precarious, and made more so by the lack of such employment security benefits as unemployment insurance, social security, and retirement benefits. An infusion of university funds to enhance their benefit package rather than their salary could well be a more efficient use of funds for employer and employee alike.

In determining which benefits ought to be prorated for part-timers, the cost of providing such nonmandatory benefits as life and medical insurance, workers' compensation, and sick leave will have to be weighed against the importance of the benefit in relation to the category of part-timer involved. At a minimum, however,

WE RECOMMEND equal access for all part-timers to such fringe benefits as medical and dental services, and, where possible, the prorating of the employer's contribution. Institutions should endeavor to provide part-timers with access to retirement or life insurance coverage which has a vested component<sup>27</sup> as well as a number of fringe benefits, e.g., tuition remission, which are of less out-of-pocket cost to an institution but which may be extremely valuable to the part-timer.

Needed now are clearly articulated individual institutional policies that address *which* fringe benefits should be made available to part-timers, on what basis, and at what costs. Varying approaches are possible. All, however, should have certain common goals: (1) that part-timers be treated consistently, (2) that part-timers be given access to all fringe benefits; (3) that continuing and substantial service performed by a part-timer entitles the part-timer to a degree of security; (4) that incentives are needed for part-time faculty to retain and improve their skills, and (5) that a part-timer whose duties and qualifications are essentially equivalent to those of his or her full-time counterpart should receive compensation proportionate to the full-time counterpart.

The implementation of many of the recommendations of this report will inevitably result in increased costs to the college or university employing part-time faculty. Some full-time faculty members, and some part-timers, may view some of these recommendations as antithetical to their interests. To the extent that the result of changes in policies regarding part-time faculty is an improvement in the quality of education, we believe that they should be sought; if, however, they can be shown to diminish flexibility severely, both for the institution in its special staffing needs and for those faculty members who choose for personal reasons a less than full-time commitment to teaching, particular changes may not be desirable. Colleges and universities should arrive at an appropriate balance after weighing the various considerations. Ultimately, if part-time faculty can attain a less precarious status, the academic enterprise as a whole should benefit.

<sup>27</sup>TIAA-CREF allows a part-time faculty member to participate in its annuity plans, even in the absence of an employer's contribution. This can afford a useful tax shelter to some.

# Committee A Statement on Extramural Utterances

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*The Statement which follows was approved by the Association's Committee A on Academic Freedom and Tenure in October 1964. Its purpose is to clarify those sections of the 1940 Statement of Principles on Academic Freedom and Tenure relating to the faculty member's exercise of freedom of speech as a citizen.*

**T**he 1940 *Statement of Principles* asserts the faculty member's right to speak or write, as a citizen, free from institutional censorship or discipline. At the same time it calls attention to the faculty member's special obligations arising from his position in the community: to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every effort to indicate that he is not an institutional spokesman. An interpretation of the 1940 *Statement*, agreed to at a conference of the Association of American Colleges and the AAUP held on November 8, 1940, states that an administration may file charges in accordance with procedures outlined in the *Statement* if it feels that a faculty member has failed to observe the above admonitions and believes that his extramural utterances raise grave doubts concerning his fitness for his position.

In cases involving such charges, it is essential that the hearing should be conducted by an appropriate—preferably elected—faculty committee, as provided in Section 4 of the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.<sup>1</sup> The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his position. Extramural utterances rarely bear upon the faculty member's fitness for his position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar. In the absence of weighty evidence of unfitness, the administration should not prefer charges; and if it is not clearly proved in the hearing that the faculty member is unfit for his position, the faculty committee should make a finding in favor of the faculty member concerned.

Committee A asserts that it will view with particular gravity an administrative or board reversal of a favorable faculty committee hearing judgment in a case involving extramural utterances. In the words of the 1940 *Statement of Principles*, "the administration should remember that teachers are citizens and should be accorded the freedom of citizens." In a democratic society freedom of speech is an indispensable right of the citizen. Committee A will vigorously uphold that right.

<sup>1</sup>Section 4 provides:

The committee of faculty members to conduct the hearing and reach a decision should be either an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chairman.

# Statement on Professors and Political Activity

*The Statement which follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure and approved by Committee A. It was adopted by the Council of the American Association of University Professors in May 1969, and endorsed by the Fifty-fifth Annual Meeting as Association policy. It was endorsed in 1970 by The Association of American Colleges.*

## INTRODUCTION

**T**he institutional regulations of many colleges and universities govern the participation of professors in political activity and public office holding. These regulations vary from absolute prohibitions against holding public office, campaigning for public office, or participating in the management of political campaigns, to requirements that professors engaging in such political activities merely inform administrative authorities in the college or university of their activities.

Some idea of the variety of regulations is suggested by the following examples. A large private institution in the Southwest states that when a member of the faculty accepts "appointment to or becomes a candidate for any public office whatever" his connection with the university is automatically severed. A state university in the South declares that when any staff member becomes a candidate for public office or takes an active part in the support of any political party or a candidate for office, he thereby automatically severs his connection with the university. A state college in the Northwest prohibits its faculty and other employees from holding any political party office or participating in the "management of a partisan political campaign." A less common regulation is found at a Midwestern state university which requires nontenured faculty members to resign before seeking full-time public office but allows a faculty member on tenure to request a leave of absence. This same university allows political activity only in parties that are qualified to place candidates on the ballot in that state. Given the widespread tendency of states to make it difficult for "third parties" to get on the ballot, such a regulation could prove to be very restrictive.

Some institutions allow participation only in local political activities. For example, one Southern state university requires a professor to resign before participating in a political campaign, as a candidate or manager, for state or federal office, but permits political activity at the local level. Other institutions prohibit professors from seeking or holding salaried public office but, by implication at least, permit them to hold nonpaying positions. One Southern state has such a regulation for all its public institutions of higher education. One university in that system, however, also prohibits holding appointive or elective public office without pay. One private university in the far West allows faculty members to hold remunerative part-time public offices while their university salaries are continued, but requires that they turn over to the university all compensation received for serving in the public office.

A number of colleges and universities require that professors obtain permission from administrative officers before engaging in political activity. Very few of those with such requirements specify the terms under which such permission will be granted or withheld, thus allowing for arbitrary decisions. Other institutions simply require that administrative officers be informed

of the intent to seek or accept appointment to public office. A number of colleges and universities, including some state institutions, have regulations which conform to the principles stated below.

Some institutional regulations make reference to federal law governing political activities of federal employees, since faculty members frequently receive federal funds. There seems to be some misunderstanding of the relevance of this law. The federal Hatch Act prohibits federal employees and employees of state and local agencies paid wholly or in part from federal funds, among other things, to "take any active part in political management or political campaigns." It was amended in 1942 to exempt explicitly from this quoted provision and certain others not involving oppressive or corrupt conduct any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Territorial possession of the United States, or by any recognized religious, philanthropic, or cultural organization," even though payment of salaries comes from federal funds. This amendment, which was stated to embody the original understanding and intent of Congress, was supported by expressions of confidence in the teaching profession and of the value attached to political activity by its members, subject to proper state, local, and institutional limitations.

Some states, in laws designed to restrict the political activities of state employees, have not been as careful as the federal Hatch Act to exclude from the terms of such laws the employees of educational institutions. Thus, some of these laws are ambiguous regarding the freedom of professors in public institutions to engage in political activity. For example, the statutes of one state say that "contributions to aid the election of any other person to public office shall not be made or accepted by holders of nonelective public positions." Another state prohibits a holder of a public office not filled by election from contributing to the election of any person to public office, or party position.

In view of the range and variety of institutional and legislative restrictions on political activities of professors, the American Association of University Professors feels the need of a definition of rights and obligations in this area. The following statement is offered as a guide to practice. It is hoped that colleges and universities will formulate and publish regulations consistent with these principles.

## STATEMENT

1 The college or university faculty member is a citizen and, like other citizens, should be free to engage in political activities so far as he is able to do so consistently with his obligations as a teacher and scholar.

2 Many kinds of political activity (e.g., holding part-time office in a political party, seeking election to any office under circumstances that do not require extensive campaigning, or serving by appointment or election in a part-time political office) are consistent with effective service as a member of a faculty. Other kinds of political activity (e.g., intensive campaigning for elective office, serving in a state legislature, or serving a limited term in a full-time position) will often require that the professor seek a leave of absence from his college or university.

3 In recognition of the legitimacy and social importance of political activity by professors, universities and colleges should provide institutional arrangements to permit it, similar to those applicable to other public or private extramural service. Such arrangements may include the reduction of the faculty member's workload or a leave of absence for the duration of an election campaign or a term of office, accompanied by equitable adjustment of compensation when necessary.

4 A faculty member seeking leave should recognize that he has a primary obligation to his institution and to his growth as an educator and scholar, he should be mindful of the problem which a leave of absence can create for his administration, his colleagues, and his students, and he should not abuse the privilege by too frequent or too late application or too extended a leave. If adjustments in his favor are made, such as a reduction of workload, he should expect them to be limited to a reasonable period.

5. A leave of absence incident to political activity should come under the institution's normal rules and regulations for leaves of absence. Such a leave should not affect unfavorably the tenure status of a faculty member, except that time spent on such leave from academic duties need not count as probationary service. The terms of a leave and its effect on the professor's status should be set forth in writing.

# Federal Restrictions on Research Academic Freedom and National Security<sup>1</sup>

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Preservation of academic freedom has been a central concern of the American Association of University Professors throughout the organization's history. In recent years the federal government, in the cause of national security, has taken a series of actions which, in sum, represent a threat to academic freedom. Even more worrisome is the *trend* toward increasing restrictions on research, foreshadowing not merely a threat to, but a significant infringement of, academic freedom. This report summarizes the experience of the last several years and questions the argument that the needs of national security require restrictions of academic freedom.

## ACTIONS OF THE FEDERAL GOVERNMENT

Principally through classification and export control laws, but also by means of visa regulations, the federal government can restrain the flow of scientific and technological information which it considers would harm national security if made public.

Such restrictions have usually been applied to research carried out by governmental agencies and to the activities of private contractors who accept the government's secrecy requirements. However, during the past five years, national security concerns have led the government to restrain the open communication of unclassified scientific information developed by researchers outside government. The Department of Commerce required that the American Vacuum Society withdraw invitations to East European scientists scheduled to attend an international conference on magnetic bubble memory devices. The Department of State notified organizers of a laser technology conference that eight Soviet scientists invited to a meeting in San Diego would be denied visas and that a Soviet postdoctoral researcher at the University of Texas, co-author of a paper submitted to the conference, could not travel to San Diego. The Department of State also asked the University of Minnesota to restrict access to unclassified information by a visiting scholar from the People's Republic of China in residence at the university. The university declined to cooperate. A request by the State Department through the National Academy of Sciences

<sup>1</sup>The Association's Committee A on Academic Freedom and Tenure authorized in 1981 a new subcommittee on federal restrictions on research. The committee had received reports of several initiatives by government agencies to restrain the open circulation of ideas and expressed its concern over the implications of these actions for academic freedom. The report below is the first in a series of reports prepared by the subcommittee and approved for publication by Committee A. It takes issue with attempted restrictions by the federal government on the free communication of unclassified ideas for purposes of national security, viewing them as endangering academic freedom. Two additional reports have been issued by Committee A. "The Enlargement of the Classified Information System" (*Academe*, January-February 1983) seriously questions the expansion of the authority of government officials to classify information as secret. "Government Censorship and Academic Freedom" (*Academe*, November-December 1983) concludes that an executive branch directive for controlling the release of classified information to the public through a system of prior review by government officials presents a grave threat to freedom of research. Additionally, the Association's Council endorsed a statement approved by Committee A that reiterates the committee's serious concern with government restraints on scholarly and scientific pursuits which—by their nature, their sweep, and their intimidating character—greatly endanger academic freedom (*Academe*, March-April 1984).



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that a Soviet expert in robotics be similarly restrained when visiting Stanford University was also rebuffed. The State Department subsequently prevented the Soviet scientists from entering the country.

Statements by government officials have heightened concerns that government agencies are moving to restrict the free exchange of nonclassified scientific ideas. Admiral B. R. Inman, until recently deputy director of the Central Intelligence Agency, told a meeting of the American Association for the Advancement of Science that "publication of certain technical information could affect the national security in a harmful way," and cited information about crop projections and manufacturing processes as examples. The deputy secretary of defense was more forceful. "Since the military posture of this nation relies so heavily on its technical leadership, the Defense Department views with alarm blatant and persistent attempts to siphon away our militarily related critical technologies." Even government voices which have sought to reassure the academic community have been edged with qualification. The Defense Department Science Board Task Force on University Responsiveness to National Security Requirements, in a report dated January 1982, observed that the Department of Defense is "assiduously rejecting any control guidelines that would restrain the development and dissemination of the fruits of basic research." However, in its findings, the Science Board stated that "sensitive, nonclassified information should be subject to limitations on its distribution" taking into consideration the "special requirements for basic research."

Other initiatives, while not directly aimed at the academic community, underscore apprehensions that the government is seeking to impede the flow of nonclassified information. Notable among these developments is Executive Order 12356 (April 13, 1982), which expands the authority of government officials to classify information on broadened national security grounds. The executive order removes a previous requirement that decisions to classify information must be balanced against the public's right to know and provides that "if there is reasonable doubt about the need to classify... the information shall be considered classified."

In sum, the government, concerned that the open circulation of scientific ideas benefits our adversaries, principally the Soviet Union, to the disadvantage of the nation's security interests, has placed restrictions on foreign scientists and students invited to attend scientific meetings in this country, has tried to isolate visiting scholars and students at American universities from certain fields of research, and has suggested a broadened conception of threats to national security that appears to encompass research and teaching in our colleges and universities. The government has also adopted an executive order which makes it easier to classify information as secret.

## RESPONSES TO THESE ACTIONS

The academic community and others have reacted to these developments in a number of ways. In February 1981, the Public Cryptography Study Group, convened by the American Council on Education with its membership drawn from the academic community and the National Security Agency, recommended a voluntary system of prior review of cryptology manuscripts, this in response to an assertion by the National Security Agency that some published information concerning cryptology could harm national security. The Mathematics and Computer Science Advisory Subcommittees of the National Science Foundation objected to the Study Group's recommendations as "unnecessary, unprecedented, and likely to cause damage to the ability and willingness of American research scientists to stay at the forefront of research in public sector uses of cryptography." The American Council on Education, the National Association of State Universities and Land-Grant Colleges, and the Association of American Universities have established with the Defense Department a University Forum to discuss mutual concerns, among them export control policies. The forum is co-chaired by the president of Stanford University and the undersecretary of defense for research, and its other members are presidents of major research universities. The National Academy of Sciences has assembled a Panel on Scientific Communication and National Security, chaired by Dale Corson, to examine the relationship between university research and national security. The panel is expected to report by March

1983. The Committee on Scientific Freedom and Responsibility of the American Association for the Advancement of Science, chaired by Leonard M. Rieser, is "exploring potential conflicts between national security interests and the traditions promoting the free exchange of unclassified research information with the scientific and engineering communities."

## ACADEMIC FREEDOM AND NATIONAL SECURITY

Academic freedom is the right to inquire, to teach, to speak, and to publish professionally. Some suggest that academic freedom is claimed as a special privilege by self-interested professors, perhaps seeking, in Admiral Inman's words, to "immunize themselves from social responsibility." Academic freedom certainly benefits professors, but its primary purpose is to advance the general welfare. Learning, intellectual development, and progress—material, scientific, and technological—require freedom of thought, expression, and communication within colleges and universities, and the freedom to carry the results of inquiry beyond academic institutions. Academic freedom can scarcely fulfill its role in contributing to the general welfare, including national security, if those professionals engaged in research are prevented from learning the results of investigations carried out by colleagues in this country and abroad.

In our view, the public's interest in academic freedom may be compromised only when the open communication of nonclassified information poses great risks of substantial harm so immediate that there is no way to guard against them except by restricting such communication.

As we understand it, the government's position is as follows. The Soviet Union's military capabilities, quantitatively and qualitatively, have expanded at an alarming pace. We may have contributed to this expansion through the unfettered flow of scientific knowledge across national borders. Military power is highly dependent upon science and sophisticated technology, and high technology, whatever its source, can have military significance. Until recently, most research on technology related to the military was carried out by the government, by industry, and by a handful of research laboratories affiliated with universities but administratively, and often physically, separate from them (for example, the Livermore Laboratory at the University of California). The sources of scientific ideas potentially useful to our adversaries have grown with the military's reliance upon scientific information, additionally complicated by rapid strides in commercial technologies (for example, computers) which have national security applications. The present system for controlling the dissemination of militarily related information is suitable for dealing with the export of technical information aimed at preventing immediate military use of American technology by the Soviet Union. The pressing problem relates to unclassified scientific information developed by academic researchers. Can ways be found to restrain the dissemination of only that research the disclosure of which could harm national security?

The government's position, as just described, warrants close attention. The margin of effectiveness provided to a nation's military power through technology may be crucial. However, the government does not claim, to the best of our knowledge, that the danger presented by the unhampered flow of unclassified information is the likelihood of sudden and disastrous gains by the Soviet Union. Rather it contends that scientific information may help the Soviet Union improve industries which in turn provide support for the development of weapons. On the basis of these conjectures the case for restraining academic freedom is not convincing. Were we to accept the long-term considerations which the government seems to advance as appropriate reasons for limiting the exercise of academic freedom, claims on behalf of national security no matter how broad or indefinite could be used to justify any manner of restraints on academic freedom at any time. The likely result would be permanent damage to society's interest in academic freedom.

Moreover, if we keep in mind the large volume of scientific information and advanced technology obtained by the Soviet Union from West Germany, France, Sweden, Japan, and other countries, it is unclear how restraining the flow of unclassified information can achieve its objective of retarding, let alone preventing, Soviet military advances. Such restraints would more likely hinder our own progress in military-related technology than they would hamper the progress

of potential enemies. We note also that by the government's own estimates, Soviet technology has profited far more from the importation (both legal and illegal) of hardware from the West than from ideas appearing in the open literature.

An academic researcher who makes a discovery which it is believed could harm the nation's security if obtained by an adversary undoubtedly has a moral obligation to society to inform the government of what has been discovered prior to publication. The record of college and university researchers as a group does not justify the suspicion that they will not act responsibly in this regard. Attempts to codify such moral obligations, whether through legislation, administrative regulation, or other means, are not likely to succeed in their primary purpose and are likely to do considerable damage, both to our traditions of openness and to the effectiveness of our scientific and engineering efforts.

We are mindful of the risks that may accompany the exercise of academic freedom. But there is the major hazard of discouraging imagination, thought, and inquiry. It is from vigorous intellectual combat that new ideas emerge. The trial and error of searching for truth, of challenging settled habits of thinking and proposing fresh hypotheses which themselves may call forth ideas that displace them, is the crucially distinctive quality of the university as a community of scholars. Restraints or pressures by outside authorities inhibit the free and spirited exchanges which underlie advances in scholarship and discoveries through research. The path to safety lies in the opportunity to discuss ideas freely. The need is for more academic freedom, not less.

# Arbitration in Cases of Dismissal

## A Report of a Joint Subcommittee of Committees A and N

*The report which follows was approved for publication by the Council of the American Association of University Professors in June 1983.*

In 1973, Committees A and N approved publication in the *AAUP Bulletin* of a report which was addressed to the topic "Arbitration of Faculty Grievances."<sup>1</sup> That report, prepared by a joint subcommittee, was viewed by the committees as a first statement on the relationship of arbitration of faculty grievances to established Association policies. The present report amplifies on the development of arbitral practices in higher education, with particular emphasis on the question of arbitration of dismissal cases.<sup>2</sup> Consistent with the Association's longstanding obligations to the profession to define sound academic practice, this report was prepared after analysis of collective bargaining agreements reached by agents, AAUP and otherwise, and of the relationship of contractual provisions for dismissal to the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and the 1966 *Statement on Government of Colleges and Universities*. It should be added parenthetically that arbitration of faculty status disputes is not limited to institutions with collective bargaining agreements. Members of the subcommittee were aware of one large public system and one large private university which do not have collective bargaining, but which do have faculty regulations which provide for arbitration of certain faculty status matters.

As was noted in the 1973 report, the *Statement on Government of Colleges and Universities*, drafted jointly by the Association, the American Council on Education, and the Association of Governing Boards of Universities and Colleges, gives to the faculty primary responsibility for making decisions on faculty status and related matters. The *Statement on Government* asserts, "The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

Any discussion of Association policy on dismissals should, of course, begin with the provisions of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. Both documents are joint policies of the Association and the Association of American Colleges. The "Academic Tenure" section of the 1940 *Statement* includes a basic outline of the procedural steps necessary for review of the termination for cause of a teacher previous to the expiration of a term appointment. The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* supplements the 1940 *Statement* by describing the academic due process that should be observed in dismissal proceedings. The Association has also provided a fuller codification of appropriate dismissal procedures in Regulations 5 and 6 of its *Recommended Institutional Regulations on Academic Freedom and Tenure*.

<sup>1</sup>*AAUP Bulletin* 59 (Summer 1973): 163-67.

<sup>2</sup>The comments on arbitration of dismissal cases are also applicable to those instances in which an administration seeks not to dismiss, but to impose a severe sanction, cf. the Association's "Recommended Institutional Regulations on Academic Freedom and Tenure," Regulation 7(a), (*Academe* 69 [January-February 1983], 15a-20a).

## COLLECTIVE BARGAINING MODIFICATION

Collective bargaining normally results in a formally negotiated contract governing terms and conditions of employment, the provisions of the collective agreement define the legal rights and duties of faculty, administrators, and trustees. Customarily, the collective agreement authorizes a neutral third party, an arbitrator, to resolve disputes which arise under it. In contrast to most litigation, negotiated arbitration clauses afford the administration and the faculty opportunity to prescribe the procedures and standards which apply and, most important, jointly to select the decision maker.

It is appropriate to restate here the four factors which the 1973 subcommittee noted as essential for the effective use of arbitration:

1. sound internal procedures preliminary to arbitration which enjoy the confidence of both faculty and administration;
2. careful definition of both arbitral subjects and standards to be applied by arbitration,
3. the selection of arbitrators knowledgeable in the ways of the academic world, aware of the institutional implications of their decisions, and, of course, sensitive to the meaning and critical value of academic freedom; and
4. the assurance that the hearing will include evidence relating to the standards and expectations of the teaching profession in higher education and that appropriate weight will be given to such evidence.

This subcommittee concludes that in cases of dismissal the faculty member may properly be given the right, following a proceeding in accordance with the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the *Recommended Institutional Regulations*, to appeal a negative decision to an arbitrator. The subcommittee believes that the 1958 *Statement* provides the most appropriate model for faculty dismissal proceedings. However, where alternatives are implemented, it urges that they should at least make provision for meaningful faculty participation in the dismissal process and for compliance with the requirements of academic due process in the formal dismissal hearing.

## ESSENTIAL PRELIMINARY FACULTY PARTICIPATION

Before any formal procedures are invoked, the subcommittee believes that the essential faculty procedures preliminary to any contemplated dismissal, already set forth in Association policy statements,<sup>3</sup> should be followed. The subcommittee is particularly disturbed by contractual dismissal procedures which do not provide in any way for formal faculty participation in a mediative effort prior to the formulation of dismissal charges. It is the subcommittee's opinion that such participation is necessary both to resolve disputes short of formal proceedings and to advise the administration on the wisdom of further pursuit of a particular matter.

In the event that an administration, after receiving faculty advice, chooses to formulate charges for dismissal of a tenured member of an institution's faculty or a nontenured faculty member during the term of appointment, a hearing of the charges should be held, whether or not the faculty member exercises the right to participate in the hearing. A dismissal is not simply a grievance which may not be pursued. A dismissal is a sanction of the highest order requiring a demonstration of cause regardless of the faculty member's individual action or inaction in contesting the charge.

## ARBITRATION FOLLOWING A FACULTY HEARING

It is common practice with the profession that, following a hearing before a faculty committee, the hearing committee presents a report to the president who, in turn, either accepts the report

<sup>3</sup>See "Statement on Procedural Standards in Faculty Dismissal Proceedings," *AAUP Bulletin* 54 (Winter 1968), Section 1, and "Recommended Institutional Regulations on Academic Freedom and Tenure," *Academic* 69 (January-February 1983), Regulation 5(c)(1).

or returns it to the committee with reasons for its rejection prior to transmittal of the report to the governing board. The governing board, in turn, has traditionally made the final decision after study of the recommendations presented to it. In the event that the board disagrees with the faculty committee's recommendations, the board should remand the matter to the committee and provide an opportunity for reconsideration. This subcommittee recommends that, after the board's ruling, a faculty member who has pursued these traditional procedures should be given the right to proceed to arbitration. If the collective bargaining agreement provides for arbitration of faculty status disputes, it would be anomalous to deny the right to arbitrate a dismissal, while lesser matters dealing with faculty status may be arbitrated. More important, arbitration in this setting is not a substitute for unfettered trustee judgment, but for the courts; thus, it is not a question of whether institutional officers will be subject to external review, but of what forum is best equipped to perform the task.

It is normally the collective bargaining representative's responsibility to control access to arbitration. The subcommittee believes, however, that the issue of dismissal is of such magnitude that an individual against whom dismissal charges have been sustained by the institutional review processes up to and including the institution's board of trustees should have an unfettered right to seek arbitral review. Moreover, the nature of a dismissal charge against an individual is such, with each case standing on its own merits, that arbitration decisions in dismissal cases should not be considered to have created precedent for other arbitrations dealing with dismissals.

Thus, the subcommittee recommends that, in cases where the collective bargaining representative decides not to appeal a dismissal to arbitration, the individual be given the right to seek arbitral review independently. In that event, the individual would be expected to bear those costs of the arbitration normally assumed by the collective bargaining representative.

As the 1973 subcommittee noted, it is of critical importance "... that in the agreement to arbitrate any matter affecting faculty status, rights, and responsibilities, the judgment of the faculty as a professional body properly vested with the primary responsibility for such determinations be afforded a strong presumption in its favor." This subcommittee agrees and accordingly recommends that, particularly on questions of academic fitness and the norms of the profession, the arbitrator should give great weight to the findings and recommendations of the faculty hearing committee.

The subcommittee recommends that the collective bargaining agreement not limit the scope of the issues which may come to an arbitrator in a dismissal case. The arbitration decision should, of course, be based on the record. The subcommittee recommends that the collective bargaining agent have the right to participate in the proceedings in order to inform the arbitrator fully about the standards applicable to the case under review. The recommendation to permit the arbitrator to examine the procedures leading to the dismissal charges, the procedures for review of the charges, and the substance of the record developed in the hearings before the faculty committee as well as the arbitration is based on the expectation that the parties will select an arbitrator sensitive to the standards and practices of the local and national academic communities.

The procedures of the actual arbitration proceeding should be codified in advance and either spelled out in the collective bargaining agreement or, if there is a known policy which would guide the proceeding, referred to in the agreement. One policy often referred to in agreements at private institutions is the Voluntary Labor Arbitration Rules of the American Arbitration Association; agreements at public institutions often cite the arbitration rules of the agency which administers the state's collective bargaining statute.

## ALTERNATIVE ARBITRATION PROCEDURES

The above proposal contemplates the addition of arbitration to procedures already required by the 1958 *Statement on Procedural Standards* and the *Recommended Institutional Regulations*. The proposal does no violence to the basic fabric of the 1940 *Statement*, for the basic dismissal decision is arrived at with full due process within the local academic community. Arbitration merely substitutes an expert neutral—jointly selected—for the judiciary in any subsequent contest over

whether the decision was procedurally deficient or substantially in error under standards widely recognized in the academic world.

The subcommittee recognizes that, in the interest of expeditious adjudication of dismissal charges, some institutions in collective bargaining have devised alternative dismissal procedures. Such procedures range from direct arbitration of dismissal cases to modifications of the 1958 *Statement* procedures which incorporate arbitration as part of the formal hearing process, thereby obviating the need for an additional arbitration step upon completion of the internal institutional process.

The subcommittee cannot embrace a position that abandons a model of the faculty as a professional body passing in judgment upon its members. Thus, it must reject resort to arbitration as a permissible alternative to the 1958 *Statement* procedures unless certain additional requirements are met. Alternative procedures, designed to comply with the spirit of the 1958 *Statement*, would have to be examined on a case-by-case basis. At a minimum, the subcommittee would expect such procedures to comply with the 1958 *Statement on Procedural Standards* in the following respects:

1. There should be specific provision for faculty participation in a mediative effort prior to the formulation of dismissal charges.
2. There should be significant faculty representation on the hearing panel in a formal hearing of any charges.
3. The formal hearing procedures should comply with the requirements of academic due process as outlined in the *Recommended Institutional Regulations*.

### SUMMARY

In summary, the subcommittee has concluded that it is permissible to have potential dismissal of a faculty member subject to review of an outside arbitrator who may make a binding decision. Disputes concerning the dismissal of a faculty member from a tenured position or of a nontenured faculty member during the term of appointment require faculty participation in an effort to mediate the dispute and require a formal hearing.

Consistent with the 1958 *Statement on Procedural Standards* and the *Recommended Institutional Regulations*, after presidential and board review we believe arbitral review may be appropriate. Alternative procedures providing for arbitration at an earlier stage may be acceptable, provided they ensure faculty participation in a mediative effort prior to formulation of dismissal charges, significant faculty participation in a hearing of such charges, and adherence in the formal hearing to the procedural requirements of academic due process.

# Retirement and Academic Freedom

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A Report on Retirement and Academic Freedom, prepared by a subcommittee of Committee A, was approved for publication by Committee A and the Council in October 1968 and was published in the Winter 1968 AAUP Bulletin and in previous editions of Policy Documents and Reports.

Much of that 1968 report is no longer applicable, particularly with the amendments to the federal Age Discrimination in Employment Act that since 1982 have served to prohibit a mandatory retirement age below seventy for college and university faculty members. At a number of institutions, however, there exists the possibility of reappointment for limited periods beyond age seventy when tenure ceases, often on an annual basis. At these institutions where the pattern of retirement is flexible, there are possible threats to the academic freedom of faculty members who are approaching retirement age or who have been reappointed after reaching that age. In these cases, the following excerpts from the 1968 report continue to apply.

In institutions with a flexible retirement age at which decisions on retirement are made by administrators, professors who wish to continue their academic work beyond the minimum retirement age may hesitate to express opinions contrary to administrative policy, to defend an outspoken colleague, or otherwise to take positions contrary to those who have the power to retire them. The occasional victimization of a bold professor would give reality to this fear. Also, self-restriction of freedom may result from the possibility of nonreappointment. In contrast, where there is a fixed retirement age, with no possibility of deviation, professors are not normally subject to penalty, no matter how critical they may be of institutional policy or how much outside influence for their nonreappointment is brought to bear on the institution.

The number of people who suffer from the threat of nonreappointment may not be large. As people become older, some become more outspoken in the defense of debatable ideas; others, recognizing the validity of arguments on both sides of a question, see less need to champion locally unpopular causes. However, freedom for the entire academic community, including its older members, must be scrupulously preserved.

At institutions which have flexible retirement ages, what safeguards are or should be available to faculty during the period in which tenure no longer protects the academic freedom and procedural safeguards of the professor as teacher, scholar, and citizen? The approach used by the 1940 *Statement of Principles on Academic Freedom and Tenure* for instructional staff who have not yet achieved tenure gives applicable guidance. "During the probationary period a teacher should have the academic freedom that all other members of the faculty have." Like probationary teachers, faculty members who have lost tenure because of age should have available to them appropriate hearing procedures if they can present a *prima facie* case of not being reappointed for reasons violative of their academic freedom. Like the probationary appointee, these faculty members should receive explicit and timely notice of nonreappointment: not later than December 15 (or at least six months prior to the expiration of the appointment); or, if the faculty members are in their first year of service at an institution other than the one at which they had tenure, not later than March 1 (or at least three months prior to the appointment's expiration). Where there is a strong tradition of academic freedom and good practice, the problem of involuntary retirement of outspoken professors before the maximum retirement age does not exist.



The surest protection against premature retirement as a penalty for expressing criticism or dissent is active participation by the faculty in the governance of the institution. Decisions not to continue the services of a professor to the maximum permissible age should be made only after the appropriate administrative officer has received the advice of representatives of the faculty and should be subject to appeal to the proper body or committee of the faculty. Details of the procedure, together with a statement of the reasons which would occasion a professor's retirement before the stated maximum age, should be clearly promulgated in writing and available to the professor at the time of appointment.

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Whatever circumstances and conditions affecting retirement are present in an institution of higher education, professors should be assured that, even if tenure is ended, the principles of academic freedom, as stated in the 1940 *Statement of Principles*, are applicable to them.

# Institutional Responsibility for Faculty Liability

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*The following statement, formulated by a subcommittee of Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Council in June 1984 as Association policy.*

**T**here has been in recent years a steady growth in lawsuits filed against faculty members over the discharge of their professional responsibilities. Legal actions have been initiated by colleagues, by rejected applicants for faculty positions, by students, by administrators, and by persons outside the academic community. Litigation has concerned, among numerous issues, admission standards, grading practices, denial of degrees, denial of reappointment, denial of tenure, dismissals, and allegations of defamation, slander, or personal injury. The increasing number of these lawsuits, which often reflect a lack or misuse of appropriate procedures for evaluation and review within an academic institution, is much to be regretted. The parties concerned are subject not only to damage to reputation but also to significant financial liability, which may include cost of legal representation, loss of time, court costs and expenses, and judgments of the court or out-of-court settlements. Colleges and universities have a responsibility for assuring legal representation and indemnification to members of their faculties who are subject to lawsuits stemming from their professional performance in institutional service.

## STATEMENT

Committee A recommends that colleges and universities adopt a comprehensive general policy on legal representation and indemnification available to members of their faculties. The policy should assure effective legal and other necessary representation and full indemnification in the first instance for any faculty member named or included in lawsuits or other legal proceedings arising from an act or omission in the discharge of institutional or professional duties or in the defense of academic freedom at the institution. It should also include specific provisions as follows:

(a) The policy should include all stages of legal action, threatened or pending, in a judicial or administrative proceeding.

(b) The policy should assure effective legal representation of the faculty member's interests, whether by the institution's regular counsel or by specially retained counsel, with due attention to potential conflicts of interest.

(c) The policy should be applicable whether or not the institution is also named or included in the legal action.

(d) The policy should provide for all legal expenses, for all other direct costs, and for court judgments and settlements.

(e) The policy may provide for legal representation and indemnification through insurance.

(f) The policy may provide for a faculty committee to make recommendations on the application of the policy to extraordinary circumstances not foreseen at the time of promulgating the policy of general application.

# DISCRIMINATION

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**R**eflecting positions taken by previous Annual Meetings, the Association's Council in 1976 adopted a brief formal statement On Discrimination. Primarily through its Committee W on the Status of Women in the Academic Profession and Committee A on Academic Freedom and Tenure, the Association has developed and issued several policy statements and reports that address potential inequities and discriminatory treatment of faculty members at colleges and universities. For over a decade, new and revised statements of policy have been free of gender-specific language. The documents in this section include policy on faculty appointments and family relationships, procedural standards for processing complaints of discrimination, and recommended criteria and procedures for advancing affirmative action and for dealing with sexual harassment. Revisions in the Recommended Institutional Regulations on Academic Freedom and Tenure, found in the preceding section, provide safeguards of academic due process in responding to allegations of discrimination (see, in particular, Regulations 10 and 15). Additional policy statements and reports on concerns that bear on discrimination (e.g., Leaves of Absence for Child-bearing, Child rearing, and Family Emergencies, On the Status of Part-Time Faculty, and On Full-Time, Non-Tenure Track Appointments) are found in other sections of this volume.

## On Discrimination

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*The statement which follows, reflecting positions taken by the Sixty-first and Sixty-second Annual Meetings, was adopted in October 1976 by the Association's Council.*

**T**he Association is committed to use its procedures and to take measures, including censure, against colleges and universities practicing illegal or unconstitutional discrimination, or discrimination on a basis not demonstrably related to the job function involved, including but not limited to age, sex, physical handicap, race, religion, national origin, marital status, or sexual or affectional preference.

# On Processing Complaints of Discrimination on the Basis of Sex

*The report which follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure. It was approved by Committee A and adopted by the Council as Association policy in October 1977. It was endorsed by the Sixty-fourth Annual Meeting in June 1978.*

## I. BACKGROUND AND PURPOSE

The 1971 Annual Meeting approved a resolution which called upon the Association to

develop procedures as quickly as possible to use various measures, including censure, against colleges and universities practicing any sort of discrimination contrary to AAUP policy, including discrimination on the basis of age, sex, race, color, religion, national origin, or marital status.

In response to this resolution, the Council of the Association established a Committee on Discrimination, whose first report was published in the summer of 1972.<sup>1</sup> The Council Committee interpreted the 1971 resolution of the Annual Meeting

as asking that the Association expand its traditional concern for the freedom of academics to include explicitly concern for the opportunity *to be* an academic, and as urging that the Association, through its statements and its actions, manifest a commitment to protect faculty members from retributive action not only for what they say and do, but also for what they *are*.

The Council Committee recommended to Committee A two changes in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The first recommendation proposed that Regulation 1, which provides for a statement of terms of appointment, be amended to include the following language:

Appointments will be made on the basis of the prospective fitness of faculty members in their professional capacities as teachers or researchers and will be without prejudice with respect to race, sex, religion, or national origin.

In its spring 1972 meeting, Committee A, while noting that the proposed addition to Regulation 1 is "obviously commendable on first impression," requested a more precise definition "of standards for determining when considerations of race, sex, religion, or national origin may or may not be appropriate and relevant in decisions on faculty appointment."<sup>2</sup>

Committee A did, however, implement the second recommendation of the Council Committee and modified Regulation 10 to provide nontenured faculty members with recourse to an appeals procedure, potentially involving a full hearing, if they believe that nonrenewal of appointment "may have been based on reasons violating the institution's own policy with respect to

<sup>1</sup>AAUP Bulletin 58 (June 1972): 160-63.

<sup>2</sup>"Report of Committee A, 1971-72," AAUP Bulletin 58 (June 1972): 153, 154.

discrimination." The report of Committee A pointed out that this modification, while providing faculty access to institutional procedures, did not "express an Association position on the ultimate question as to what constitutes permissible or impermissible discrimination."

The 1972 Council Committee report concluded that "complaints of discrimination against particular individuals generally can and should be processed adequately under existing Association policy and procedure." In addition, despite a number of reservations discussed in its report, the Council Committee concluded that in appropriate circumstances a formal Association investigation of "cases and conditions involving patterns of discrimination" should be authorized.

The 1973 report of the Council Committee on Discrimination, entitled "Affirmative Action in Higher Education" and published in the summer of 1973, stressed that institutions of higher education should review and, where necessary, revise their standards for academic recruitment, appointment, and advancement in order to promote affirmative action.<sup>4</sup> It also approved of "statistical forecasts under an affirmative action plan" as "entirely sound and congenial to the standards of the AAUP."

Committee A again considered the Association's practice regarding discrimination at its June 1975 meeting, and its chairman reported to the 1975 Annual Meeting as follows.

With respect to discrimination, reported cases that will show our members and the community of higher education that we mean what we have been saying are conspicuous by their absence. I believe that such cases can be developed, they do not have to be fabricated. I believe that it is proper for the Annual Meeting once again to direct such a course. I believe that such a direction, and its implementation, would be far more effective than once more attempting to redefine discrimination in terms of academic freedom, and thus, as it were, to smuggle it into our existing doctrine.

The chairman of Committee A accordingly proposed, and the 1975 Annual Meeting adopted, the following resolution, which the chairman characterized as "essentially a reaffirmation" of the 1971 resolution:

The Association is committed to use its procedures and to take measures, including censure, against colleges and universities practicing any sort of discrimination contrary to AAUP policy, including discrimination on the basis of age, sex, physical handicap, race, color, religion, national origin, or marital status.

The general secretary and the national staff are directed actively to look out for, develop, and report to Committee A for action, selected cases of discrimination, especially against women.

After discussion of the second paragraph of this motion at the meeting of Committee A in June 1976, the committee voted to establish a subcommittee, with one member designated by Committee W on the Status of Women in the Academic Profession, to study the problems involved in identifying and processing a complaint of sex discrimination.

The 1973 report of the Council Committee on Discrimination, "Affirmative Action in Higher Education," aptly describes the problems facing the community of higher education which wishes simultaneously to preserve its professional standards and "compensate for past failures to reach the actual market of intellectual resources available to higher education." The report identifies

*Ibid.*, p. 154. Regulation 10 currently states: "If a faculty member on probationary or other nontenured appointment alleges that a decision against reappointment was based significantly on considerations violative of (1) academic freedom or (2) governing policies on making appointments without prejudice with respect to race, sex, religion, national origin, age, physical handicap, marital status, or sexual or affectional preference, the allegation will be given preliminary consideration by the [insert name of committee], which will seek to settle the matter by informal methods. The allegation will be accompanied by a statement that the faculty member agrees to the presentation, for the consideration of the faculty committees, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee so recommends, the matter will be heard in the manner set forth in Regulations 5 and 6, except that the faculty member making the complaint is responsible for stating the grounds upon which the allegations are based, and the burden of proof will rest upon the faculty member. If the faculty member succeeds in establishing a *prima facie* case, it is incumbent upon those who made the decision against reappointment to come forward with evidence in support of their decision. Statistical evidence of improper discrimination may be used in establishing a *prima facie* case."

<sup>4</sup>AAUP Bulletin 59 (June 1973): 178-83.

a number of factors endemic to the academic enterprise at this time and in this country which work effectively to deny women a place in the university proportionate to their numbers and qualifications. It does not, however, speak to Association procedures which would assist in remedying the problems it so cogently identifies. The subcommittee, therefore, has decided to describe the types of evidence relevant to determining the existence of sex discrimination and to develop guidelines to help faculty members, administrative officers, and the staff of the Association to identify and process complaints of sex discrimination.

Formulating the criteria by which the Association defines and processes complaints presents an extremely difficult task. The 1965 "Report of the Special Committee on Procedures for the Disposition of Complaints under the Principles of Academic Freedom and Tenure," by Sanford H. Kadish, Ralph S. Brown, Jr., and Walter P. Metzger, pointed out that this difficulty exists with respect to the entire range of Committee A activity.<sup>5</sup> Selecting and processing cases for action from the large number of complaints which reach the Washington staff necessarily involve "a large element of discretion." As a result, any formulation of criteria "would have to be accomplished in general terms which by themselves did not automatically dictate judgment." The report concluded that the articulation of general standards for judgment should be encouraged. The result "would not be to restrain the staff's discretion but to rationalize its exercise."

The importance of proving motivation in order to sustain a complaint of sex discrimination, and the limited experience in dealing with such complaints both within and outside the Association, suggest that the recommendation in the 1965 report is particularly applicable to this area. This report attempts to articulate relevant standards for judgment in dealing with complaints involving sex discrimination.

## II. THE NATURE OF SEX DISCRIMINATION CLAIMS

Sex discrimination can occur at every stage of decision in an individual's teaching career (e.g., entry, salary, fringe benefits, assignments, academic rank, reappointment, tenure, and retirement). At each stage, some complaints of sex discrimination may be accompanied by supporting evidence of a relatively conventional kind. More often than not, however, sex discrimination claims present the special difficulty of probing motivation.

### A. The Importance of Motivation

Most complaints involving sex discrimination require proof of an improper motive for an otherwise proper action. The need to assess motivation in processing complaints is not limited to those alleging sex discrimination. Many other complaints involving a faculty member's status, such as allegations that the faculty member's appointment was not renewed for reasons violative of academic freedom or that a dismissal for financial exigency was in bad faith, rest upon demonstration of improper motivation. To a significant extent, evidence to support allegations of sex discrimination must be sought in much the same way as in other complaints of violations of Association standards.

Proving improper motivation can, however, be more difficult in the area of sex discrimination because it is the kind of discrimination that often relates to who a person *is* rather than to what a person says or does.<sup>6</sup> In a complaint involving academic freedom, for example, the complainant will generally assert that the adverse action which allegedly constitutes a violation of academic freedom is a retaliation for something the complainant did or said and that, but for the protected speech or conduct, the adverse action would not have occurred. Sex discrimination, on the other hand, may not result from anything anyone says or does. The involuntary characteristic of sex may itself motivate discrimination. It is difficult in such circumstances to point to an "incident" to which the alleged discrimination can be traced, a fact which ordinarily makes proof of discrimination much more elusive.

<sup>5</sup>AAUP Bulletin 51 (May 1965): 210-21.

<sup>6</sup>See the 1972 "Report of the Council Committee on Discrimination," AAUP Bulletin 58 (June 1972): 160.

Principles and standards relating to academic freedom, moreover, have gained more widespread acceptance in the academic community than any analogous principles and standards in the area of sex discrimination in academic life. Consequently, it seems reasonable to anticipate that some faculty members and administrative officers may be less sensitive to, and less supportive of, complaints of sex discrimination than experience has shown them to be concerning complaints raising issues of academic freedom.

### B. Evidence of Sex Discrimination

Ascertaining whether improper motive was exercised in a given case becomes more manageable when the general search for bias is made more concrete. The categories listed below are intended to specify the types of evidence from which sex discrimination can be inferred. While descriptive, they are not intended to be exhaustive.

These categories consist, in general, of evidence specifically related to sex, and evidence reflecting general institutional deficiencies not specifically related to sex. Direct evidence of sexual bias and unequal application of standards are examples of evidence specifically related to sex. Vague criteria for appointment and promotion, failure to give reasons for nonrenewal upon the faculty member's request, inadequate grievance mechanisms, and deviations from procedures normally employed by an institution are examples of evidence reflecting general deficiencies in procedure. This second type of evidence, while not necessarily as probative of sex discrimination as evidence which is specifically related to sex, might, where there is more direct evidence, be considered part of the totality of circumstances from which sex discrimination can be inferred.

1. *Direct evidence of sex discrimination.* Criteria which are themselves discriminatory, and sexist statements or conduct, provide direct evidence of sex discrimination. Criteria used for making decisions in colleges and universities are rarely discriminatory on their face. It is highly unlikely that such criteria would be used to select for or against a sexual characteristic.<sup>7</sup> Sexist statements or conduct, whether or not well-intentioned, also constitute direct evidence of sex discrimination, and are much more common than obviously discriminatory criteria. Such evidence would be present, for example, if a member of a tenure committee stated, "Women make bad engineers" or "I will resign if a woman is granted tenure."

2. *Unequal application of standards.* Unequal treatment of men and women provides one of the most telling forms of evidence of sex discrimination. A criterion might be applied to a member of one sex but not to a similarly situated member of the opposite sex, or the same criterion might be applied more rigorously to a member of one sex than to a similarly situated member of the opposite sex. For example, a woman may be denied tenure (1) for lack of a Ph.D. in a department that has recently granted tenure to a man without one, (2) because of "inadequate teaching" when her teaching evaluations are virtually identical to those of a male faculty member who has been granted tenure, or, (3) where standards traditionally considered important by the institution would have strongly suggested a different result.

Because sex discrimination is seldom overt, statistical evidence is an essential tool. Statistics may not, alone, establish discrimination, but they can provide an adequate basis for requesting an explanation from the institution. In approving the "relevance of statistics as a means of shifting the burden to come forward with evidence," the Council Committee pointed to the historically effective application of statistics in detecting and remedying racial discrimination in the composition of juries. The committee noted that, because it was virtually impossible to prove that the persistent absence of blacks from juries was the result of discrimination in each particular case, federal courts came to regard the significant disparity in the proportion of blacks on juries as permitting a *prima facie* inference that racial discrimination was a contributing element. This inference shifted the burden to the state, even though overt discrimination could not be proved in an individual case.

The following types of statistical data, while not individually or collectively determinative,

<sup>7</sup>An exception would be an improper anti nepotism regulation. See "Faculty Appointment and Family Relationship," *AAUP Bulletin* 57 (June 1971): 221.

may be meaningful in cases involving allegations of sex discrimination at the college and university level. (1) salary differentials between men and women (comparisons should, where possible, take into account factors such as institution, department, rank, and years of experience),<sup>8</sup> (2) numerical differentials between men and women (comparisons should, where possible, take into account the same factors as in salary differentials, and also tenured or nontenured status), (3) the proportion of women on the faculty in relation to (a) the number of qualified women available for appointment, and (b) affirmative action goals, (4) changes in the percentage of women on the faculty, (5) the number and distribution of women on decision-making bodies, and (6) differential promotion and tenuring rates. The Association should intensify its work in gathering and developing such statistical data to the extent that they are not already available from other sources.

3. *General deficiencies in procedure.* The general deficiencies in procedure summarized above are familiar to the Association's work. The operating assumption that procedural irregularities often indicate substantive violations has guided traditional Committee A work. The Association, when presenting an academic freedom case to administrative officers, often refers to inadequate evaluation procedures and provisions for due process, the failure to state reasons for nonreappointment, or the statement of vague reasons, as increasing its concern.<sup>9</sup> The Association, on occasion, has also expressed concern over a substantive decision which is an inexplicable departure from results generally reached in similar circumstances. The importance of circumstantial evidence in establishing sex discrimination suggests careful attention to this factor.

It is important to reiterate that these types of evidence from which sex discrimination can be inferred are not exhaustive, and that they cannot be fitted into an abstract formula which might indicate in advance the precise combination of relevant criteria that would create a presumption of sex discrimination in a particular case. The identification and processing of complaints involving sex discrimination must depend on accumulated precedent and on the sensitivity and judgment of those responsible for seeing them to a conclusion.

### III. PROCESSING BY THE ASSOCIATION OF COMPLAINTS OF SEX DISCRIMINATION

This section of the subcommittee's report, while it may also be applicable in part to review bodies at colleges and universities, discusses particular aspects of the processing by the Association's staff of complaints of sex discrimination. As in the subcommittee's specification of evidence of sex discrimination, this discussion is not intended to be exhaustive.

#### A. *The Complaint*

1. *Complaint evaluation.* The faculty member who believes his or her rights as an academic have been infringed and who seeks the assistance of the Association is expected to present relevant evidence. Faculty colleagues and members of the Association's staff can often be helpful in clarifying issues and identifying the kind of evidence that may be pertinent. Staff members should help faculty members recognize and develop complaints involving sex discrimination by explaining what constitutes "evidence" and by guiding complainants in collecting such evidence. Inquiries currently made of complainants who allege certain procedural violations (for example, seeking, *inter alia*, letters of appointment, the faculty handbook, the current contract, and a letter of termination) provide an appropriate analogy.

2. *"Mixed" complaints.* Complaints by faculty members will often include the possibility of both sex discrimination and other violations of Association policy. Thus, for example, the com-

<sup>8</sup>See Scott, *Higher Education Salary Evaluation Kit. A Recommended Method for Flagging Women and Minority Persons for Whom There Is Apparent Salary Inequity and a Comparison of Results and Costs of Several Suggested Methods* (Washington, D.C.: American Association of University Professors, 1977).

<sup>9</sup>See "Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments," *AAUP Bulletin* 57 (June 1971): 206-10.



plaint may involve late notice or excessive probation as well as sex discrimination. Although the former grounds may more easily be established, any evidence of sex discrimination should be carefully collected and weighed. The more obvious violation, standing alone, may ultimately be deemed an inadequately serious matter to warrant further action. The complaint of sex discrimination, on the other hand, may reflect serious problems which should be pursued. Collecting evidence of sex discrimination is therefore important even when the complaint could be processed on some other, more easily established, ground.

3. *Multiple jurisdictions.* Complainants should be systematically informed by the staff of their right to go to the Equal Employment Opportunity Commission (EEOC), to other state and federal administrative agencies, and to the courts. The Association in principle is willing to proceed even if an EEOC complaint or a judicial action is also initiated, but it is often more difficult for the Association to pursue a complaint which is simultaneously pending before an administrative or judicial body. College and university officials are less likely to cooperate with representatives of the Association in both the production and assessment of relevant evidence when other proceedings have been instituted.

These facts should be conveyed to complainants, but without any suggestion that the complainant's election of institutional, administrative, and/or judicial remedies would preclude the Association's involvement in a complaint of sex discrimination any more than in a complaint involving academic freedom. In appropriate circumstances, the Association should pursue the complaint and attempt to discover the relevant evidence even though institutional officials may decline to cooperate in the inquiry.

#### B. Case Status

A "complaint" becomes a "case" in Association terminology when the general secretary, or a staff member acting on behalf of the general secretary, communicates with a college or university administration to express the Association's concern, usually with a recommendation for corrective action.

1. *Informal assistance.* The Association's staff may, and often should, take a variety of steps before deciding whether the evidence warrants opening a case, including the collection and analysis of data, letters or calls of inquiry, informal efforts to resolve the difficulty, and assistance in helping the complainant pursue remedies through institutional channels. Institutional channels, including hearings before faculty committees as provided by the *Recommended Institutional Regulations*, are in many instances the best forum for an initial review of the range of complaints brought to the attention of the Association. The particular difficulties inherent in proving sex discrimination underline the value of such hearings, which give institutions an opportunity to resolve disputes internally and produce a record upon which the institution's own action can later be reviewed by the Association under a standard of reasonableness. The test for taking any of these steps should be the same for complaints alleging sex discrimination as for any other complaint, whether the action contemplated is an appropriate measure under the circumstances. The complainant need not provide the Association with any specific quantum of proof to gain informal assistance.

2. *Standard for opening a case.* A case may be opened when the information available to the staff permits a reasonable inference of a significant departure from principles or procedural standards supported by the Association. This is no magical moment, clear to all involved. It is the point at which staff can responsibly state to the administration that a credible claim appears to exist. The initial approach to the administration should explain that the assessment offered has been based primarily on information received from other sources and should invite the administration to comment and to provide information which might add to the Association's understanding of the matter.

This procedure for opening a case applies to the entire range of Committee A complaints and, in essence, reflects the judgment that there is an adequate basis for asking the university to provide a valid explanation. Placing a burden of explanation on the university can be justified on two grounds. (1) sufficient evidence exists to enable the Association's staff to make a reasonable

inference that a lack of adherence to standards supported by the Association may have occurred, and (2) the university has better access to the reasons for its position.

3 *The response of the administration.* On some occasions, an administration will respond by accepting the staff's recommendation for corrective action. On other occasions, the administration's explanation of its position will prove, after further discussion with the complainant, to meet the Association's concerns. On still other occasions, an administration may state reasons which appear valid on their face, but are in fact a pretext that camouflages a departure from principles or procedural standards supported by the Association. As in establishing an inference that a departure may have occurred, it will often be necessary to rely on circumstantial evidence to demonstrate that an apparently valid reason is actually a pretext. These determinations are difficult and must be made carefully. The Association does not, for example, substitute its own judgment for the professional judgment of an academic department. Nor does it do so in evaluating a claim of sex discrimination. In an assessment of whether a stated reason is valid, it is not the right to judge that is being questioned, nor the expertise of the judges, but whether the judgment was, in fact, professional and nondiscriminatory. Thus, an administration's apparently valid explanation of an action against a complainant, like the staff's expression of its reasonable inference that sex discrimination was actually a factor in such a decision, is rebuttable rather than conclusive.

### C. Formal Investigation

1. *Standard for authorizing an investigation.* The degree of importance of the principles and procedural standards at issue in a particular case, the degree of seriousness of the case itself, and the utility of an investigation and a potential published report, are major factors in a decision by the general secretary to authorize an investigation by an *ad hoc* committee. The resolutions passed by the 1971 and 1975 Annual Meetings emphasize that the Association has committed itself to use all its applicable procedures and sanctions, including censure, in appropriate cases involving sex discrimination. The importance of clarifying and elaborating Association policy in the area of sex discrimination is an additional factor to consider in a decision to investigate.

2. *Investigation during litigation.* The 1965 "Report of the Special Committee on Procedures for the Disposition of Complaints under the Principles of Academic Freedom and Tenure" pointed out that the pendency of litigation often makes it difficult for the Association to conduct a formal investigation. Institutional officials may, on the advice of counsel, decline to cooperate. As the 1965 report noted, this position may be justified, or it may unreasonably be used as an obstructive device.<sup>10</sup> Moreover, the importance of such cooperation may vary from case to case. In determining whether to authorize a formal investigation while litigation is pending, the interests of the Association, which are based on its own standards of proper academic practice, may be different from the issues before the courts.

3. *Composition and briefing of investigating committees.* The Association properly strives to have at least one person on each investigating committee who has previously served on such a committee. The need for experience likewise suggests that an *ad hoc* committee investigating a case potentially involving sex discrimination have a member adequately experienced and that the committee be well briefed on the nature of such claims and how they are handled by courts and agencies.

4. *"Mixed" cases.* Investigating committees are likely to be presented with cases involving both sex discrimination and other issues of concern to the Association. In addition, investigating committees may encounter general practices of sex discrimination unrelated to the case that originally prompted the investigation. The question arises whether in these situations the committee should address the sex discrimination issues even though a report might be written without reference

<sup>10</sup>Committee A has periodically reviewed this issue. The difficulties in proceeding with the investigation are noted in "The Report of Committee A, 1971-72," *AAUP Bulletin* 58 (June 1972): 145. In 1974, the committee "reaffirmed its position that litigation and investigation can be pursued simultaneously under certain circumstances." See *AAUP Bulletin* 61 (April 1975): 16.

to sex discrimination. While decisions on the scope of an investigation rest in the last analysis with the *ad hoc* committee itself, the 1965 report concluded that reports of investigating committees should not be restricted to the particular issues which prompted the investigation.

The Association's functions in freedom and tenure cases are not restricted to judging the particular case of the aggrieved professor. We are not merely an academic legal aid society, but a force for academic freedom and tenure throughout American higher education. When that force can be exerted by dealing generally with the health of the institution under investigation or by dealing with issues of a potentially recurrent character, we believe the opportunity should be taken. An investigation should be regarded as an occasion for the advancement of the principles of the Association rather than as a step in a grievance process, while reports of this character may take somewhat longer they are worth the cost. And where the pursuit of not strictly material issues carries the committee to areas of uncertain and fruitless speculation the staff and Committee A may be relied upon to reduce the report to its proper dimension.

The subcommittee reaffirms this view, with the caveat that the investigating committee must in each situation determine whether the facts are so unclear that comment might be premature. The inquiries and reports of investigating committees in cases involving claims of sex discrimination, therefore, should address these claims, as they relate both to the individual complainant and to the institution generally, even though other aspects of the complaint could be addressed without reaching them.

#### IV. GENERAL PATTERNS OF SEX DISCRIMINATION IN THE ABSENCE OF AN INDIVIDUAL COMPLAINT

Investigations normally are not authorized unless the Association has received an individual complaint. The 1965 report, however, concludes that in certain circumstances investigations should proceed in the absence of an individual complaint. The report points out that conditions in general may be so bad that it would be artificial to dwell on a single offense, that professors may be too intimidated to initiate a complaint, and that severe violations may occur which do not cost anyone a job. It notes with approval a particular investigation that was authorized because of reports of generally poor conditions rather than as a result of a specific complaint and expresses the hope that further investigations will be authorized in this manner.

The reasons stated in the 1965 report for supporting investigations in the absence of specific cases apply with special force to matters of sex discrimination. Statistical evidence might identify situations that are generally so bad that adequate grounds to justify an investigation already are present. Professors who feel discriminated against, and those who might have evidence of discrimination, seem especially likely to feel intimidated, particularly by the threat of adverse future actions. Further, these cases are more likely than most to place the individual faculty member in opposition to colleagues, rather than only to the administration. In addition, the merits of an individual's case would not be at issue in analyzing a general pattern, a significant consideration given the difficulty of proving discrimination in particular cases. Finally, investigations based on statistical data would often enable the Association to focus on the basic source of the problem. The relevant statistical base for a general pattern would often be larger, and might therefore provide more meaningful comparisons than are possible in individual cases.

Investigations based on statistical data, once adequately developed, should be a useful supplement to the case method, and, in some respects, could deal with the available evidence more effectively than the case method. Egregious patterns and examples of sex discrimination, as revealed by statistical data and proper investigation and analysis, should be brought to the attention of the profession.

# Affirmative Action in Higher Education

## A Report by the Council Committee on Discrimination

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*The report which follows was presented in April 1973 to the Council and to the Fifty-ninth Annual Meeting.*

**T**he Council Committee on Discrimination has been directed to formulate a position on the role of affirmative action in the elimination of discriminatory practices in academic recruiting, appointment, and advancement. In doing so, we begin with the premise that discrimination against women and minorities in higher education is both reprehensible and illegal and reaffirm the emphatic condemnation of such practices by the AAUP.

More particularly, it is to the specific meaning and implications of affirmative action that our concern is directed, and especially to the question of so-called "preferential" or "compensatory" treatment of women and minorities. Because the phrase "affirmative action" has been assigned such extraordinarily different meanings by different persons and agencies, however, we mean to set the tone for this report at the beginning by stating our own position as to what it must mean consistent with the standards of the AAUP. It is that affirmative action in the improvement of professional opportunities for women and minorities must be (and readily can be) devised wholly consistent with the highest aspirations of universities and colleges for excellence and outstanding quality, and that affirmative action should in no way use the very instrument of racial or sexual discrimination which it deplors.

The plans which we commend are those which are entirely affirmative, i.e., plans in which "preference" and "compensation" are words of positive connotation rather than words of condescension or *noblesse oblige*—preference for the more highly valued candidate and compensation for past failures to reach the actual market of intellectual resources available to higher education. The committee believes that the further improvement of quality in higher education and the elimination of discrimination due to race or sex are not at odds with each other, but at one. What is sought in the idea of affirmative action is essentially the revision of standards and practices to assure that institutions are in fact drawing from the largest marketplace of human resources in staffing their faculties, and a critical review of appointment and advancement criteria to insure that they do not inadvertently foreclose consideration of the best qualified persons by untested presuppositions which operate to exclude women and minorities. Further, faculties are asked to consider carefully whether they are requiring a higher standard and more conclusive evidence of accomplishment of those women and minorities who are considered for appointment and advancement. What is asked for in the development of an affirmative action plan is not a "quota" of women or blacks, but simply a forecast of what a department or college would expect to occur given the *nondiscriminatory* use of *proper* appointment standards and recruiting practices—with the expectation that where the forecast turns out to be wide of the mark as to what actually happens, the institution will at once make proper inquiry as to why that was so. In essence, it is measures such as these which the committee believes to be required by the federal

government in the case of universities using federal funds, and we do not see that there is in such requirements anything which the AAUP should find inconsistent with its own goals. Indeed, there may be more reason for concern that affirmative action of this kind which is critical to the abatement of discrimination may fail to be pursued with vigor than that it may be pursued too zealously. At the present moment, the politics of reaction are a greater source for concern than the possibility that affirmative action might lend itself to heavy-handed bureaucratic misapplication.

## 1. DEFINING THE CRITERIA OF MERIT

"Excellence" and "quality" are not shibboleths with which institutions of higher learning may turn away all inquiry. Rather, they are aspirations of higher education which are thought to be served by seeking certain attributes and skills in those to be considered for academic positions. Some of these appear almost intuitively to be clearly related to certain standards customarily used by universities, others less obviously so but nonetheless determined by experience to "work," and still others are not infrequently carried along largely by custom and presupposition. Where a long period of time has passed since any serious study has been made to review the effects and the assumptions of stated or unstated standards of appointment and advancement (or where no study was ever made, but the standards were simply adopted on the strength of common custom and plausible hypothesis), it would be reasonable in any case to expect a conscientious faculty to reconsider the matter from time to time. When the use of certain unexamined standards tends to operate to the overwhelming disadvantage of persons of a particular sex or race who have already been placed at a great disadvantage by other social forces (not exclusive of past practices within higher education itself), it is even more reasonable to expect that an institution of higher learning would especially consider its standards in light of that fact as well. To determine whether it is inadvertently depriving itself of a larger field of potential scholars and teachers than simple economy requires, even while compounding the effects of prior discrimination generally.

We cannot assume uncritically that present criteria of merit and procedures for their application have yielded the excellence intended, to the extent that the use of certain standards has resulted in the exclusion of women and minorities from professional positions in higher education, or their inclusion only in token proportions to their availability, the academy has denied itself access to the critical mass of intellectual vitality represented by these groups. We believe that such criteria must thus be considered deficient on the very grounds of excellence itself.

The rationale for professional advancement in American higher education has rested upon the theoretical assumption that there is no inherent conflict between the principles of intellectual and scholarly merit and of equality of access to the academic profession for all persons. In practice, this access has repeatedly been denied a significant number of persons on grounds related to their membership in a particular group. In part, this denial of access has resulted from unexamined presuppositions of professional fitness which have tended to exclude from consideration persons who do not fall within a particular definition of the acceptable academic person. This is in part, but only in part, a function of the procedures through which professional academics have been sought out and recognized within the academy. Insofar as few are called, the range of choice must necessarily be a narrow one, and those fewer still who are chosen tend to mirror the profession's image of what it is, not what it should or might be. Beyond procedural defects, however, the very criteria by which professional recognition is accorded have necessarily tended to reflect the prejudices and assumptions of those who set them, and professional recognition and advancement have generally been accorded those who most closely resemble the norm of those who have in the past succeeded in the academy.

It is therefore incumbent upon the academic community, as the first test of equal opportunity, to require something more: that the standards of competence and qualification be set independently of the actual choices made, ostensibly according to these standards, for otherwise, a fatal circularity ensues, in which the very standards of fitness have no independent parameters other than survival itself.

Where a particular criterion of merit, even while not discriminatory on its face or in intent, nonetheless operates to the disproportionate elimination of women and minority group persons, the burden upon the institution to defend it as an appropriate criterion rises in direct proportion to its exclusionary effect. Where criteria for appointment or promotion are unstated, or so vaguely framed as to permit their arbitrary and highly subjective application in individual cases, the institution's ability to defend its actions is the less. While we do not mean to suggest that criteria for academic appointment and advancement be reduced to an easily quantifiable set of attributes or credentials, all of which might be possessed uniformly by a large number of persons otherwise wholly unsuited to the position in question, we are convinced that a reluctance or inability to explicate and substantiate the criteria and standards employed generally and in a given instance does nothing to dispel the notion that something more than chance or intuition has been at work.

## 2. THE CRITICAL REVIEW AND REVISION OF STANDARDS FOR ACADEMIC APPOINTMENT AND ADVANCEMENT

The range of permissible discretion which has been the norm in reaching professional judgments offers both a hazard and a valuable opportunity to the academic community. The hazard stems from the latitude for the operation of tacit and inadvertent or explicit prejudices against persons because of race or sex, and their consequent exclusion on indefensible grounds when the standards are clearly met, the opportunity stems from the possibility for broadening the internal criteria for choice in accordance with a general notion of excellence, and hence expanding that notion.

As faculty members keenly aware from our own experience that it may not be possible to verify every consideration taken into account or to experiment wildly, we cannot, of course, urge an abandonment of common sense or common experience. Nor, frankly, have we learned of anything in the specifics of federal guidelines which does so. Rather, what is called for is a review to determine whether we have taken too much for granted in ways which have been harmful, to an extent that institutions themselves may not have known, and a consideration of alternatives which would be neither unreasonable nor unduly onerous in the avoidance of inadvertent discrimination and unwarranted exclusion. Specifically, the review and revision of criteria for academic appointment and advancement should be sensitive to the following considerations.

(a) The greater the effect of a given standard in diminishing the opportunity of women and minorities for possible appointment, the greater the corresponding responsibility to determine and to defend the particular standard as necessary and proper. The disqualification of larger percentages of women and minorities by standards which are only hypothetically related to professional excellence may, understandably, invite skepticism and inquiry.

(b) Standards which may serve valid professional and institutional interests, but which are more exclusionary than alternative standards sufficient to serve those interests, should be reconsidered in light of the less exclusionary alternatives. For instance, an institution-wide antinepotism rule is doubtless connected with a legitimate interest to avoid conflicts of loyalties among faculty members, but its exclusionary effect is far broader than a rule that requires faculty members to excuse themselves from participating in particular decisions involving family members, and in practice the exclusionary effect of overly broad antinepotism rules has overwhelmingly disabled a far greater proportion of women than men from consideration for academic appointment. The Association has already called for the curtailment of such rules.

(c) Criteria adopted to limit the field of eligible candidates largely (if not exclusively) for reasons of administrative convenience or out of past habits especially need to be reconsidered. For example, candidates may be sought only from those few graduate programs which in the past have provided the majority of the institution's staff, or application may be limited only to those who have had prior teaching experience. To the extent that such a policy of presumed efficiency excludes persons who may be equally excellent, the interest of economy should be carefully weighed against the tendency of the standard to disqualify a disproportionate number of women and minority persons.

(d) The overall excellence of a given department may be better assured by considering its existing strengths and weaknesses and, accordingly, varying the emphasis given to different kinds of individual qualification for appointment from time to time, rather than applying a rank-order of standards of fitness identically in every case. The failure to consider appointments in terms of a balance of qualities within a department may in fact result in less overall excellence than otherwise. Exactly as excellence of a *total* department is the goal, consideration of different kinds of skills and interests in different persons becomes important in order to maintain that kind of excellence and to liberalize the emphasis given to the appointment of persons stronger in certain respects than those in which the department is already very notable.

We would go further in this observation. An institution which professes to be concerned with many things not only must indicate by its appointment practices that it means what it declares, but must act consistently with that declaration thereafter in the advancement, salary, and respect for the appointee. It is unacceptable and hypocritical to make an appointment of a candidate based on a belief that that candidate, whose strongest assets are different from those of the existing faculty, is appointed precisely because his or her strengths are valued in what they add to the quality of the department, and thereafter nonetheless treat that person as less valuable when it comes to subsequent consideration in respect to salary, tenure, and similar considerations.

(e) The consideration of diversity of characteristics among the faculty of a given department or institution may be relevant to excellence and to affirmative action in an even larger and more important sense. Ordinarily, an institution would never think to list a narrow range of "age" as a categorical criterion of eligibility for academic appointment, precisely because it is a wholly inappropriate means of categorically eliminating great numbers of people who may be as well qualified as or better qualified than others. To restrict eligible candidates as a general and categorical matter to persons between, say, thirty and fifty years old would be thrice wrong. It unduly narrows the field of excellent people by an exclusionary standard which may work against the achievement of the highest quality of faculty obtainable, it is discriminatory and unfair to the well-qualified persons whom it categorically excludes, it may weaken the faculty in the particular sense of staffing it in a flat and homogeneous manner, depriving it of perspectives and differences among persons of more diverse ages.

It is nonetheless true that a characteristic which may be indefensible when used as a categorical standard of ineligibility is neither inappropriate nor invidious when it is taken into consideration affirmatively in choosing between two or more otherwise qualified persons, when it is related to securing a larger diversity than currently exists within the faculty. As between two otherwise well-qualified persons, a general concern for balance and the subtler values of diversity from the heterogeneity of younger and older faculty members has quite commonly found expression in resolving a preference between two candidates for a given position—never as a reflection upon, or as an "exclusionary" device against, the one, but as a relevant factor in light of the existing composition of the faculty.

The point may be generalized. meeting a felt shortage of tenured professors by preferring a more experienced and senior person, broadening the professional profile within a department, most of whose faculty secured their degrees from the same institution, by preferring in the next several appointments well-qualified persons of a different academic graduate exposure or professional background, leavening a faculty predominantly oriented toward research and publication with others more interested in exploring new teaching methods, and vice-versa. It is useless to deny that we believe such considerations are relevant, as indeed we familiarly and unself-consciously take them into account all the time, and rightly so, never in lieu of seeking the "best qualified person," but as contributing to a sensible decision of what constitutes the best qualified person in terms of existing needs and circumstance.

As we do not think this Association would disapprove conscientious efforts by academic faculties to register an affirmative interest, as they often have, in the positive improvement of their departments in the several ways we have just illustrated, but rather that this Association would (and does) regard those efforts as wholly conducive to fairness and quality, we do not see any sufficient reason to be less approving in the affirmative consideration of race or sex.

We would go further to say that special efforts to attract persons to improve the overall diversity of a faculty, and to broaden it specifically from its unisex or uniface sameness, seem to us to state a variety of affirmative action which deserves encouragement. A preference in these terms, asserted affirmatively to enrich a faculty in its own experience as well as in what it projects in its example of mutually able men and women, and mutually able blacks and whites, seems to us to state a neutral, principled, and altogether precedented policy of preference.

The argument to the special relevance of race and sex as qualifying characteristics draws its strength from a recognition of the richness which a variety of intellectual perspectives and life experiences can bring to the educational program. It is more than simply a matter of providing jobs for persons from groups which have in the past been unfairly excluded from an opportunity to compete for them, it is a matter of reorganizing the academic institution to fulfill its basic commitment to those who are seriously concerned to maintain the academic enterprise, as a vital social force. The law now requires the elimination of discriminatory practices and equality of access for all persons regardless of race or sex, moral justice requires an end to prejudice and an increase of opportunities for those who have been denied them in the past by prejudice, enlightened self-interest requires that an institution reexamine its priorities where standards of merit are concerned, to revitalize the intellectual life of the community through the utilization of heretofore untapped resources. Most important, insofar as the university aspires to discover, preserve, and transmit knowledge and experience not for one group or selected groups, but for all people, to that extent it must broaden its perception of who shall be responsible for this discovery, preservation, and transmission. In so doing, it broadens the base of intellectual inquiry and lays the foundation of more human social practices.

(f) It is far from clear that every qualification we may associate with excellence in teaching and research is in fact as important as we are inclined to view it, or that our predisposition to certain qualities we habitually associate with significant scholarship is as defensible as we may earnestly suppose. There is, as we have noted, a certain circularity in the verification of standards insofar as professors may discern "excellence" in others who resemble themselves, and thus, by their appointment and advancement decisions, generate the proof that merit is the function of those resemblances. It is also far from clear that some degree of frank experimentation in academic appointment would not yield significant information in terms of how a faculty decides what is to be taught, or what is an appropriate or interesting subject for research and publication. It is surely not impossible, for instance, to question whether what is not taught and what is not researched is at least as much a function of parochialism and endless circularity of education and teaching as it is a function of wise perspective in determining what is truly important. The point need not be labored, however, for the professional literature concerned with higher education has itself repeatedly expressed these same concerns.

Nevertheless, the point has relevance to an affirmative action plan in the following sense. An institution appropriately concerned with its own continuing development may well wish to involve a component of experimentalism in its own staff policies—deliberately reserving discretion to depart from standards and criteria it generally employs precisely as a means of determining whether there may be important scholarly and educational functions to be served by standards different from those it ordinarily applies. The selection of some faculty "out of the ordinary" is itself very much a part of an institution's continuing concern with excellence in this sense. The preference for candidates who bring to a particular position certain differences of experience and background which the university may very properly be reluctant to adopt, as a general matter in advance of any opportunity to determine what kind of difference they may make, but which it needs to take into account in order to have that opportunity, is neither invidious to others nor irrelevant to a university's legitimate aspirations. This consideration, while it exists quite apart from the need for an affirmative action plan in the improvement of equal opportunity for women and minorities, may nevertheless affect and help to broaden the design of that plan.



### 3. THE REVIEW AND REVISION OF ACADEMIC RECRUITMENT POLICIES

It must be obvious that even the most conscientious review and revision of eligibility, appointment, and advancement standards can have little effect in the shaping of academic faculties independent of recruiting practices. Even supposing that all of the preceding concerns for excellence, diversity, and experimentalism are nominally composed in the standard of a department or institution, they may yield very little if the manner in which the department goes about the business of finding qualified persons is itself so confined that in fact only a very few qualified persons are likely to turn up, and these not necessarily the best qualified. Additionally, it is now abundantly clear that certain conventional ways of locating possible candidates may operate to the disproportionate exclusion of women and minorities from equal opportunity for consideration—not necessarily as a consequence of willful discrimination but as a practical matter nonetheless. It is natural, for instance, that members of an appointments committee would seek names of possible candidates from acquaintances at other institutions—and that the resulting suggestions may substantially underestimate the availability of interested, qualified women and minority persons in a number of ways. For example, the institution from which the references are sought may be one which has proportionately fewer women or minority persons among its graduates or graduate students than other institutions. Or, the acquaintances providing the reference may act on presuppositions respecting the interest, qualification, or availability of women and minorities, and thus underrepresent them in their references.

Even if we were to assume, therefore, that there is no *willful* discrimination against women and minorities in the easy custom of recruiting principally by personal inquiry and reference, still the consequence of exclusion by inadvertence is grossly unfair—and altogether inconsistent with the development of excellence in higher education.

The call for affirmative action plans provides an occasion we believe is long overdue—to re-examine recruiting practices and patterns, and to revise them with the specific ambition of broadening the field of persons whose interest and qualifications the institution should want to know of and correspondingly providing them an opportunity to express their interest. In our view, this is an area in which we should be particularly concerned with “under-utilization” of qualified women and minority persons, i.e., that customary and unexamined parochialism in recruiting practices seriously understates the availability of persons fully qualified according to an institution’s own standards, and that they do so disproportionately with respect to women and minority persons.

The committee does not think it feasible to blueprint the particular ways in which each discipline, department, or institution can best proceed consistent with reasonable economy—for the means of reaching larger numbers of qualified candidates differs considerably from discipline to discipline. In nearly all cases, however, it may be necessary to assess academic staffing needs more in advance of the time when the appointment is itself to be made, i.e., to provide greater lead-time in order that new ways of locating additional qualified persons can be given a chance to work successfully. In some disciplines, moreover, it may be feasible through national professional associations to enlist the aid of a national service, readily providing a point of contact between interested candidates and available positions, vastly improving the field of available candidates with very little expense or time to a given department. For more than a decade, the Association of American Law Schools has provided a directory and registry for those interested in law teaching, for instance, and its use by a great number of law schools is now exceedingly well established. Similarly, many of the disciplinary associations in the humanities and social sciences operate professional registers and employment information bulletins, which provide a mutually satisfactory opportunity for prospective applicants and employers to make themselves known to one another. Far from being regarded as introducing an unhelpful and inefficient element in recruiting, such services should be seen as contributing to the efficiency and quality of academic staffing.

Finally, given the procedural inequity of past recruiting practices which have not only worked with discriminatory effect against women and minorities but which may well have had an

additional effect of discouraging their interest in considering an academic career, we believe that a highly principled argument for preference and compensation may be made which bears on the generation of the pool of candidates to be considered. Since good evidence exists to support the claim that overwhelmingly there has been an initial skewing of the candidate pool in traditional search and recruitment procedures, it may reasonably be argued that equity itself now requires a certain "preference" whose effects are "compensatory" in the special sense that more attention and care shall be paid where little or none was paid before, and this is not to the special advantage of women or blacks, for example, but for the equalization of their opportunity, in the face of prior disadvantage. Such preference and compensation does not discriminate against majority candidates, but puts them on an equal footing for the first time.

#### 4. STATISTICAL FORECASTS UNDER AN AFFIRMATIVE ACTION PLAN AND THE MONITORING OF EQUAL PROTECTION

Litigation and government inquiry are substantial risks in any case where the observable facts do not seem to support a claim of nondiscrimination. Historically, the relevance of statistics as a means of shifting the burden to come forward with evidence has most frequently been allowed by courts in respect to racial discrimination and the right to trial by jury. As the actual means which may have been used to compose a jury list are often not subject to public view, it proved virtually impossible for black defendants to establish that the persistent absence of blacks from grand juries and trial juries was, in each particular case, the result of willful discrimination. Where a comparison of census figures respecting the proportion of jury-eligible blacks in a given community would give rise to an expectation that over a substantial period of time approximately the same proportion of persons called for jury duty would similarly be black, but where in fact few or none were black, it became familiar that the federal courts would regard the fact of a continuing and significant disparity as yielding a *prima facie* inference that racial discrimination was a contributing element. The effect of the inference was to shift to the state the duty to come forward with evidence which would explain the result on grounds other than racial discrimination. Without doubt, this development in the law—which now has analogues in many other areas as well, including employment—was important to the effective detection and remedying of racial discrimination. We have thought it important to recall this fragment of civil rights history as a useful way of placing in perspective our several observations about "goals" and "targets," which have become misidentified as "quotas" in the litany of criticism of affirmative action plans.

In accordance with present requirements of the federal government, a "goal" and the timetable for its fulfillment are to be set by the institution itself. The means of arriving at the "goal" include exactly the kind of measures we have already discussed in the review and revision of criteria of eligibility and the review and revision of recruiting practices. In this framework, the "goal" is nothing more or less than an expectation of what an institution has reason to suppose will result under conditions of nondiscrimination, given its standards and recruiting practices, in light of the proportion of those within the field of eligibility and recruitment who are women or members of minority groups. Indeed, the word "goal" is itself something of a misnomer insofar as it suggests that the production of percentages is some kind of end in itself. Rather, what is contemplated is the specification of an expectation as to what the institution has reason to believe should appear in the ordinary course of events, given valid criteria of eligibility, proper recruiting practices, and the fair and equal consideration of equally qualified women and minority members in the actual course of selecting among candidates. Essentially, it is an arrangement which leaves open to public review the logic by which the expectation was determined, the general legality of standards which inform the criteria applied in personnel actions, the technical quality of the statistical analyses upon which conclusions are reached, and the degree of integrity with which an institution has adhered to a procedure which it has itself designed. The Committee on Discrimination believes that this part of an affirmative action plan is entirely proper and extremely important in several respects.

(a) Depending upon the unit for which the forecast is made, it will enable an institution to continue a policy of decentralized appointments recommended by the faculties of its respective

departments and colleges, while simultaneously providing it with a means of insuring that racial and sexual discrimination is not in fact contributing to those staffing decisions.

(b) It provides the government agency responsible for making certain that institutions assisted by public funds are not in fact violating executive, statutory, and constitutional requirements of equal protection with a means of fulfilling that responsibility.

(c) It provides the institution with a means of rebutting allegations of racial or sexual discrimination, insofar as simplistic impressions of disproportionality might otherwise support an inference of discrimination where, in fact, no such inference is warranted.

Beyond this, conscientious efforts to project personnel needs and to forecast the extent to which affirmative action plans should tend to make a real difference in the employment opportunities of women and minority persons may serve a broader interest as well. As citizens as well as educators we all have a common interest in attempting to determine how effective our separate and combined efforts are likely to be in the abatement of discrimination and the amelioration of effects from past discrimination. The knowledge these efforts can help to provide is not without significance in assessing whether or not we have done too little in this sensitive area of civil and human rights. It may help, moreover, not only to fortify the thinking of institutions of higher learning in terms of their own role, but in considering more knowledgeably what attention needs to be given to other institutions as well—institutions not involved in higher education, but whose existence and operation nonetheless profoundly affect the equal opportunity of women and minorities.

To be effective even in the three respects we have noted, however, it is obvious that additional reports and records must be made and maintained by the university—information to be periodically supplied by the various departments and colleges. An institution's willingness and ability to keep a careful and accurate record of personnel actions is of paramount importance. Among these is the requirement that educational institutions collect and analyze personnel statistics by race and sex, so as to determine whether there is cause for inquiry and explanation where actual staffing practices fall short of expectations under a policy of nondiscrimination. The same need to establish reliable information on actual recruiting practices under an affirmative action plan also holds.

Finally, we think it important to note again the point, purpose, and relationships of the several parts of an affirmative action plan. It is a plan which is well designed to improve both quality and equal opportunity, but it is a plan which makes an assumption. It assumes that institutions of higher education are what they claim they are—and that all of us as teachers and professors are also what we say we are, that we mean to be fair, that our concern with excellence is not a subterfuge, that we are concerned to be just in the civil rights of *all* persons in the conduct of our profession. If the assumption is a false one, then it will quickly appear that affirmative action plans can go the way of other proposals which are intellectually sound but which so frequently fail in their assumptions about the nature of people. For without doubt, the temptation will appear to the indifferent and the cynical to distinguish between the appearance and the substance of such a plan and to opt for the appearance alone: the token production of "adequate" numbers of women and blacks to avoid the likelihood of contract suspensions or federal inquiry, even while disparaging their presence and assigning the "blame" to the government. However, we do not doubt in this respect that institutions of higher learning will thus reveal more about *themselves* in the manner in which they respond to the call for affirmative action than is revealed about the consistency of such plans with excellence and fairness in higher education. For its own part, the Committee on Discrimination believes that plans reflected in the body of this report are entirely sound and congenial to the standards of the Association, and we commend them for the opportunity they provide for the further improvement of higher education as well as for their contribution to the field of civil rights.

# Affirmative Action Plans

## Recommended Procedures for Increasing the Number of Minority Persons and Women on College and University Faculties<sup>1</sup>

What is sought in the idea of affirmative action is essentially the revision of standards and practices to assure that institutions are in fact drawing from the largest marketplace of human resources in staffing their faculties and a critical review of appointment and advancement criteria to insure that they do not inadvertently foreclose consideration of the best qualified persons by untested presuppositions which operate to exclude women and minorities.

*Affirmative Action in Higher Education: A Report by the Council Committee on Discrimination*

Since this statement was issued in 1973, the commitment of the American Association of University Professors to affirmative action in higher education has remained strong. Our concern has been heightened, in fact, by a number of worrisome trends:

1. Although some faculty have vigorously supported affirmative action, faculty have too often abrogated their traditional role in institutional policy formulation and implementation by allowing administrators to assume major responsibility for affirmative action requirements.
2. The administrations of many institutions have promulgated rules which not only intrude into the academic decision-making process, but are counterproductive to the aims of affirmative action.
3. Insufficient progress has been made in removing the vestiges of discrimination and achieving equality.<sup>2</sup>
4. Failure of many universities and colleges to end discriminatory policies and practices or to provide effective internal means of redress has led faculty members to resort to federal agencies and the courts. At the same time, enforcement activities have been viewed as unwarranted interference with institutional autonomy.

<sup>1</sup>This report results from the deliberation of the Council Committee on Affirmative Action Guidelines and of Committee W on the Status of Women in the Academic Profession. It was approved for publication by Committee W and adopted by the Council in June 1983 as Association policy.

<sup>2</sup>See, e.g., Committee Z annual reports on the Economic Status of the Profession, published annually in *Academe: Bulletin of the AAUP*. The reports show that the number of faculty members who are women is holding fairly steady but that the gap between men's and women's average salaries is widening. See also *Climbing the Academic Ladder: Doctoral Women Scientists in Academe*, by the Committee on the Education and Employment of Women in Science and Engineering (National Research Council, 1979). Higher education cannot shift the blame for the scarcity of women in its upper echelons to early societal influences. Data show that the percentage of women in each rank becomes successively less; they also show that the percentage of women faculty members is less than the percentage of Ph.D. recipients who are women (although not all faculty members have Ph.D.'s), which, in turn, is less than the percentage of master's recipients who are women, which, in turn, is less than the percentage of bachelor's degree recipients who are women. In fact, currently more than 50 percent of all undergraduates are women. In the case of minorities, the situation is somewhat different: the percentage among college and university students, after an initial modest increase, has fallen and remains substantially below their percentage in the population as a whole.

5. Criticism of affirmative action has been widespread and has provided a handy target for the critics of government regulation of academic institutions although other aspects of government regulation may in fact be far more intrusive and expensive to implement.

### AAUP POLICIES

In view of these concerns, now is an appropriate time for the AAUP not only to reaffirm its stand in support of affirmative action but to suggest ways that affirmative action might be implemented in such a fashion as to be both effective and consonant with AAUP standards. The AAUP has long endorsed the principle of nondiscrimination, and the 1973 report of the Council Committee on Discrimination saw affirmative action as a necessary corollary to that principle.<sup>3</sup> Although affirmative action involves the identification of groups, such identification need not and should not imply a remedy which sacrifices individual rights to purported group entitlements. The AAUP has consistently supported the rights of individuals, advocating that an individual receive neither more nor less favorable treatment simply because of his or her race or sex.<sup>4</sup>

We believe that the following forms of affirmative action are consistent with the principle of nondiscrimination in the protection of individual rights:

1. *Examination of policies to be certain that they are scrupulously nondiscriminatory in principle and in practice, followed by corrective action where needed.* Included would be a review of recruitment practices to insure all qualified candidates for a position an opportunity to be considered fairly; to eliminate stereotyping assumptions, such as a belief that women with young children will be unable to devote themselves adequately to their profession; and to provide adequate internal grievance procedures for those who perceive that they have been the victims of discrimination.

2. *Examination of policies and procedures that, while facially neutral, have an adverse impact on women or minorities.* Whenever possible, they should be eliminated or replaced by less exclusionary policies designed to accomplish the same legitimate purpose.<sup>5</sup> The goal is to do away with gratuitous barriers to the fair consideration of women and minorities. Examples would be the narrowing of antinepotism policies or the liberalization of child-bearing and child-rearing leave policies. Another, less direct, action might be provision for day-care facilities, the absence of which tends to have a heavier impact on women than on men.

3. *Race- or sex-sensitive selectivity.* Awareness of race or sex in the appointment and retention process reaches a more difficult concept, but one that we believe was affirmatively addressed by the 1973 committee and by the AAUP's *amicus* brief in the *Bakke* case.<sup>6</sup> It is contemplated that in

<sup>3</sup>This committee report endorsed federal guidelines establishing numerical goals and timetables and asked institutions to "review the effects and the assumptions of stated or unstated standards of appointment and advancement, to provide statistical forecasts under an affirmative action plan, and to monitor equal protection provisions." (*Affirmative Action in Higher Education: A Report by the Council Committee on Discrimination*, AAUP Bulletin 59 [Summer 1973]: 178).

<sup>4</sup>This is the basis of the AAUP's position on pension benefits that similarly situated men and women should receive equal periodic benefits. To give each man more in benefits to make up for the fact that more men die early means that men and women who in fact live the same number of years will be treated differently. The Supreme Court in *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), found this difference in treatment to be an illegal preference for group rights over individual rights. Limited federal legislation guaranteeing group entitlement has been upheld by the Supreme Court in *Fullilove v. Klutznick*, 448 U.S. 448 (1980), but there is no general constitutional provision for group rights, which would, for example, provide for representational voting as is done by some governments. While the AAUP recognizes, as does federal law, the right of religious institutions to formulate appointment policies based on religious affiliation, it has never endorsed a policy of guaranteed representation of certain groups in employment.

<sup>5</sup>See "Affirmative Action in Higher Education," note 3 above.

<sup>6</sup>AAUP brief *amicus curiae* in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). In this brief the AAUP took the position that when (a) a faculty was convinced on the merits that racial heterogeneity was in fact relevant to conditions of its own professional excellence, and when (b) failure to "count" race might necessarily frustrate that possibility to improve its excellence, then it might consider race in deciding on admissions. Mr. Justice Powell found this to be the sole basis on which it was constitutional for a public university to make any use of race.

the interest of "diversity" a faculty might make the academic judgment that it would be desirable to have more men or more women or more black or more white persons among the faculty or student body. Such a judgment raises a delicate matter in that we must assure that the call for diversity does not itself lead to a violation of individual rights. It also raises the question of what types of considerations may appropriately be taken into account in the development and application of assessment criteria. At church-related institutions (although probably not at public institutions), for example, a religious affiliation may be considered in providing a degree of homogeneity in institutional values. With respect to political views, on the other hand, the AAUP would not endorse the right of a faculty to make judgments based on diversity criteria, nor could a public institution do so legally. At the same time there are some considerations that faculty might quite properly take into account in order to achieve a certain heterogeneity they might view as beneficial to the college or university's stated purpose. Institutional diversity may, in itself, be an appropriate goal. Under certain circumstances it can be sound policy to avoid appointing large numbers of Ph.D.'s from a single institution, apart from the merits of individual candidates, and an age mix may also be sought in a manner consistent with nondiscrimination principles.

Affirmative action may thus permit the inclusion of sex or race among a number of characteristics assessed in a potential candidate—along with his or her publications, area of specialization, academic credentials, etc. Sound academic practice requires that these criteria provide the basis for a complex assessment of relative merit and not merely establish a large pool of minimally qualified candidates. Nonetheless, it is frequently the case that the selection process generates a group of two or more highly rated candidates who are viewed as approximately equivalent. In such circumstances, and in the interests of diversity, affirmative action considerations might control the final selection. This type of selectivity is still consistent with the principle of nondiscrimination in that, as a matter of faculty judgment, the decision may be made that more males are needed in a predominantly female department or more whites at a predominantly black institution.<sup>7</sup> It should be kept in mind, however, that what is permissible or desirable in race- or sex-sensitive selectivity in the appointment process differs from what may be permissible in subsequent personnel decisions.<sup>8</sup>

4 *The establishment of achievable goals for the appointment of women and minority faculty members.* A "goal is nothing more or less than an expectation of what an institution has reason to suppose will result under conditions of nondiscrimination."<sup>9</sup> The setting of goals in an affirmative action plan does not guarantee representation for the groups for whom the goals are set, but it does serve as a useful monitoring device consistent with the principle of nondiscrimination and the rights of individuals.

Despite recognition of past and continuing discrimination in higher education and the slow progress in achieving a more diverse faculty in terms of race and sex, the AAUP does not support affirmative action that would set rigid quotas in the appointment of faculty members. We recognize that special efforts may be needed to attract and retain women and minority faculty members. It is our position, however, that if the first three means of implementing affirmative action described above were fully implemented at colleges and universities, there would be no need to mandate appointments from underrepresented groups. Where the principle of nondiscrimination is truly operative, the expectation is that all groups, where large enough units were considered, would achieve adequate representation.<sup>10</sup> The focus of our concern, in light

<sup>7</sup>While the body of this statement refers rather consistently to women and minorities because that is where the problem usually is, it is recognized that affirmative action may be desirable to increase the number of men or whites on the faculty in some cases. Again, that would be an academic judgment by the faculty.

<sup>8</sup>See below, 2e. Professional Advancement (ii).

<sup>9</sup>"Affirmative Action in Higher Education. A Report by the Council Committee on Discrimination," *AAUP Bulletin* 59 (Summer 1973): 182.

<sup>10</sup>We recognize the great difficulties in eliminating the historical effects of discrimination, nonetheless, we believe these historical disabilities can be remedied through a truly nondiscriminatory system without the imposition of mandatory quotas or a double standard which would merely perpetuate the myth of inferiority.

of our equal concern for the rights of individual candidates, must necessarily fall on the decision-making process and how to make it as nondiscriminatory as possible within the academic setting. It is important that faculty take the initiative in the setting of numerical goals as well as in other aspects of affirmative action, if, however, individual departments are unwilling to accept responsibility, then there must be effective means within the institution to insure that provisions are made for equality of opportunity.

The AAUP recognizes that a fundamental commitment to nondiscrimination and equal opportunity requires the careful development and vigorous implementation and monitoring of affirmative action plans designed to meet the needs and standards of the academic community. In line with the types of affirmative action described above, affirmative action plans may include a wide range of lawful and academically sound corrective policies and procedures employed to overcome the effects of past or present barriers to equal employment opportunity. We believe that such plans are essential not only to insure that equal opportunity is realized, but also to remove those vestiges of past discrimination which would otherwise perpetuate indefinitely the disadvantages of unequal treatment.

The second assumption on which these procedures are founded is that primary responsibility for affirmative action should reside within the academic community and especially with the faculty. Members of the academic community frequently regard affirmative action as a bureaucratic intrusion and respond with merely cosmetic formal compliance. We ought instead to recognize that outside pressure, though at times intrusive and insensitive, is sometimes required to stimulate the reform of long-standing discriminatory policies and procedures. We need, in fact, to reexamine long-standing policies to ascertain whether there are some facially neutral policies which have an adverse impact on women or minority persons without providing a substantial contribution to academic excellence. We need to integrate affirmative action efforts into the routine conduct of personnel decisions through established procedures for peer review and collegial governance. While the primary responsibility lies within the institutions, we recognize that their policies and judgments cannot be exempted from administrative and judicial scrutiny and review. The right to institutional autonomy does not include the right to violate the law. The role of the government should, however, vary inversely with the efforts of the academic community to implement the principles of nondiscrimination.

## AFFIRMATIVE ACTION PLANS

### *1. Designing the Plan*

Consonant with principles of sound academic governance,<sup>11</sup> the faculty should play a major role in formulating an institution's affirmative action plan. To the extent that persons affected participate in the development and ratification of a plan, the document's acceptability will be enhanced.

The content of affirmative action plans should be sensitive to classifications requiring academic expertise. Attention must also be paid to institutional policies governing tenure and promotion, fringe benefits and salary, and to any other area of professional life where vestiges of bias may persist. The most difficult aspect of plan development is the formulation of goals and timetables that not only are realistic but also will serve as an incentive to maximum effort in providing equality of opportunity. Realism requires an honest recognition of diminishing resources, shrinking enrollments, and the limits of the candidate pool available to a specific institution and in specific disciplines or professional fields.

The existence of a formal document which sets forth the institution's commitment to equal opportunity obligations, including goals, timetables, and procedures for the rectification of inequities, should be publicized. Incorporating the plan in faculty, staff, and student handbooks assures its availability and facilitates its use as a ready reference.

<sup>11</sup>See "Statement on Government of Colleges and Universities," *AAUP Bulletin* 63 (February 1977), 375-79.

## 2. Implementing the Plan

### a. The Affirmative Action Office

- (i) The institution should establish an affirmative action office.
- (ii) An affirmative action officer for faculty should be a person selected by a representative committee on which faculty have a major role, it is preferable that the person selected have had faculty experience in order to assure an understanding of the role of faculty and to foster cooperation.
- (iii) The affirmative action officer should have power of effective oversight of search and appointment procedures for faculty and academic administrative positions and their implementation. For example, the affirmative action officer should have the authority, upon determining that a department's search for candidates has not been adequate, to defer an appointment pending appropriate faculty and administrative review.
- (iv) The affirmative action officer should play a role in the normal personnel-action procedures of the institution, including promotion, tenure, and salary determinations. Timely reviews of individual actions should be complemented by public disclosure through periodic reports on the overall situation at the institution with respect to personnel decisions affecting faculty status.
- (v) The administration of an institution's affirmative action program should encourage and provide a mechanism for faculty participation. Support from members of the faculty and the administration is of the utmost importance. A committee established by the appropriate institutional governing body should be responsible for promoting the policies established in the institution's affirmative action plan and for periodic review of the plan once adopted. An institution-wide committee would be able to see to the integration of the affirmative action plan into the personnel decision-making process and the coordinating of equal opportunity activities on campus.
- (vi) A charge for implementation of the affirmative action plan should be given by the president of the institution to the affirmative action officer and to the committee that has oversight responsibilities. This charge should be communicated to the faculty, staff, and students.

### b. Recruitment

- (i) A plan for the recruitment of minority persons and women should be developed by each department and approved by the affirmative action officer.
- (ii) Departments should establish search committees which would work in consultation with the department chairperson and other members of the department toward meeting departmental goals in appointing minority persons and women.
- (iii) Plans for recruitment should include advertising in appropriate professional publications, in newsletters of minority or women's groups, and in publications of minority and women's caucuses, or professional organizations.<sup>12</sup> If a search is to be internal only, announcements should be circulated only internally. The deadline for applications should allow for a reasonable period of time after the announcement appears.
- (iv) Descriptions of vacant positions should be clear concerning teaching load, research expectation, departmental duties, and other responsibilities. Criteria and procedures for reappointment, promotion, and tenure at the institution should be available for all interested candidates.
- (v) Search committees should ask minority and women's caucuses of professional organizations for suggestions of candidates.
- (vi) Department chairpersons at graduate universities should be asked to call the opening to the attention of their current students or recent graduates.

<sup>12</sup>It should not be necessary to note that positions that have already been filled, or for which the candidate has already been selected, should not be advertised.



- (vii) Search committees should consider going beyond those institutions from which faculty for the institution have been traditionally recruited. Consistent use of the same few institutions may perpetuate a pattern of discrimination in faculty hiring. In addition to broadening the base of sources from which candidates are seriously considered and appointed, the regularly recruited institutions should be asked to submit names of all qualified candidates.
- (viii) Search committees should contact the minority and women graduates (or men in departments where there are few men) and present and former members of the department for suggestions of possible candidates.
- (ix) Departments might well consult with the appropriate minority and women's groups on campus to secure their aid in recruitment efforts.
- (x) Women and minority candidates who have recently acquired their professional training, after having been absent from formal academic pursuits for some years, should be judged with other recently trained persons for the same positions.
- (xi) In recruiting for faculty, the standards should be the same for all candidates. White males should not be considered on "promise" and all others, of comparable education and accomplishments, on "achievement." Search committees should be sensitive in reading letters of reference for indications of bias.
- (xii) The fact that the pool of minority persons and women candidates for a particular vacancy is small should not be used as an excuse for not attempting to recruit for such candidates.

*c. Screening of Candidates.*

- (i) Search committees should make every effort to include among the applicants a diversity of candidates. After receipt of candidates' credentials and accompanying letters of recommendation, search committees should invite applicants—men and women, majority and minority—to the campus for interviews.
- (ii) When feasible, the affirmative action officer and/or members of the appropriate minority or women's group on campus should be invited to meet with the minority or women candidates. It is important for the candidates to know that there are current faculty members who are minority persons or women.

*d. Appointments*

- (i) Appointments should be made on the basis of individual merit. Careful consideration should be given to the criteria traditionally used for merit to be certain that they serve to further academic excellence. It is especially important to reconsider any facially neutral policies which have an adverse impact on affirmative action efforts that is disproportionate to their contribution to the determination of merit. The need for an institution to justify a criterion as appropriate rises in direct proportion to its exclusionary effect.
- (ii) Offers to minority and women candidates should be made as attractive as possible; e.g., appointment to full-time probationary or tenured positions, arranging course assignments in an area of the candidate's specialty, or a part-time appointment when mutually desirable or advantageous. This last item requires special attention because of the tendency to relegate women involuntarily to part-time or irregular positions on the faculty.
- (iii) Reports on faculty personnel decisions should include information on the department's search for minority and women candidates, interviews held, and the basis for a final choice.

*e. Professional Advancement*

- (i) Criteria for reappointment, promotion, or tenure should have been made clear to the candidate at the time of his or her appointment. They should be reviewed with the appointee on a regular basis afterwards.

- (ii) Sexual or racial qualifications for reappointment, promotion, or the granting of tenure should not be introduced. Although a decision to seek diversity may be a legitimate factor in the appointment process, denial of retention or advancement because of this consideration is inappropriate and often a breach of stated criteria and expectations. While it is understood that needs of institutions change, a redefinition of criteria and/or the imposition of requirements substantially different from those stated at the time of the initial appointment are suspect, and should be carefully examined for their potentially discriminatory impact.
- (iii) As in the case of all new appointees, care should be taken not to appoint a woman or minority candidate to a position for which she or he is marginally qualified and then to provide no opportunity for professional development, such as a lightened teaching load to enable access to further study or research opportunities. Without support for professional development that is made available to all new appointees equitably, these faculty members often are denied reappointment. The cycle is likely to be repeated with their replacements. Where this occurs, there may be the appearance of a viable affirmative action program without the reality of one.
- (iv) Because the number of minority and women faculty members at most institutions is small, it is important that they be made to feel welcome at the institution and educated into practical professional concerns. They should be given advice, if needed, on appropriate journals for the publication of scholarly papers, on obtaining grant support, and on participation in professional meetings and conferences.
- (v) There are various incentives which an institution can provide for the professional development of faculty members in junior academic positions, including postdoctoral opportunities in those fields historically closed to women and minorities, early leaves or sabbaticals, summer research grants, and funds for attendance at professional meetings. Because women and minority persons have traditionally been excluded in disproportionate numbers from such support, special encouragement may be required to insure their participation.

#### f. Retrenchment

In those situations where an administration moves to terminate the positions of faculty members on continuous appointment on grounds of financial exigency or discontinuance of program, Regulation 4 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*<sup>13</sup> recognizes that "judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status." That is, special care should be taken that the burden of retrenchment does not fall inequitably on those for whom affirmative action was taken. The same careful scrutiny must be given to retrenchment criteria as to those used in appointment, promotion, and tenure.

### 3. Monitoring the Plan

Through its governance structure, the faculty is best qualified to assure that the letter and spirit of affirmative action are followed in the search for new appointees, as well as in promotion, retention, and tenure decisions. Furthermore, it is essential that the faculty, in conjunction with the administration, establish and implement appropriate grievance procedures. Information regarding nondiscrimination policies, and notice of the recourse available should they not be followed, should be distributed to the faculty. Grievance committees should have access to the files and statements on which disputed decisions have been based, and, upon request, the faculty member should be provided an explanation of decisions affecting his or her status on the faculty.

<sup>13</sup>See *Academe* 69 (January-February 1983): 16a, 17a.

## CONCLUSIONS

Progress in the appointment and professional advancement of women and minority persons in higher education has been exceedingly slow. There are few minority and women faculty members in most academic fields, those there are tend to be concentrated in the lower academic ranks and in part-time and temporary positions. Unequal treatment of the underrepresented groups continues. The AAUP surveys of faculty compensation consistently show a gap in salary between men and women faculty members, a gap which increases with rank.<sup>14</sup> It is clear that discrimination has not been eliminated and effective affirmative action plans are necessary. We urge a greater commitment, psychologically, ideologically, and materially, to the basic principles and to the implementation and monitoring of affirmative action plans, so as to approach real equality of opportunity.

<sup>14</sup>See, e.g., "Annual Report on the Economic Status of the Profession 1979-1980," *Academe* 66 (September 1980): 260-320.

# Sexual Harassment

## Suggested Policy and Procedures for Handling Complaints

*The report which follows was approved by Committee W on the Status of Women in the Academic Profession and adopted by the Council in June 1984 as Association policy.*

**T**he American Association of University Professors has traditionally opposed every kind of practice that interferes with academic freedom. In recognition of the profession's own responsibility to protect that freedom, moreover, the Association has frequently spoken to the need for colleges and universities to provide appropriate ethical standards and to provide suitable internal procedures to secure their observance.

Recently, national attention has focused on complaints of sexual harassment in higher education. These particular complaints invoke the Association's more general commitment to the maintenance of ethical standards and the academic freedom concerns these standards reflect. In its 1966 *Statement on Professional Ethics*, the Association reiterated the ethical responsibility of faculty members to avoid "any exploitation of students for . . . private advantage." The applicability of this general norm to a faculty member's use of institutional position to seek unwanted sexual relations with students (or anyone else vulnerable to the faculty member's authority) is clear.

Similarly, the Association's 1970 *Statement on Freedom and Responsibility* restated that "intimidation and harassment" are inconsistent with the maintenance of academic freedom on campus. The *Statement* is no less germane because one is being made unwelcome because of sex, rather than unwelcome because of race, religion, politics, or professional interests. The unprofessional treatment of students and colleagues assuredly extends to sexual discrimination and sexual harassment, as well as to other forms of intimidation.

In our view, it is incumbent upon a university or college to make plain the general policy we have just described, with an established procedure for its implementation. The institution should also make clear that sexual harassment and attempted sexual duress are included under the head of unprofessional conduct threatening to the academic freedom of others.

Federal guidelines have treated sexual harassment as a problem calling for distinct treatment,<sup>1</sup> and not all institutions find it sufficient to treat it under existing policy and procedures. Recently, some have developed definitions of exceptional detail (e.g., the University of Wisconsin). Others have adopted the EEOC definition (e.g., Northeastern University). Still others have adopted some modification of the EEOC version (e.g., Wellesley College). Whatever approach is adopted,

<sup>1</sup>In November 1980, the Equal Employment Opportunity Commission (EEOC) issued a set of *Guidelines on Discrimination Because of Sex*, which includes a section that deals with sexual harassment. The EEOC concluded that "harassment [of employees] on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964." The courts have upheld the EEOC position, and have extended the coverage of Title IX of the Education Amendments of 1972 to prohibit employment discrimination in federally assisted programs (*North Haven Board of Education v. Bell*, 102 S. Ct. 1912 [1981]). The EEOC *Guidelines* suggest that employers are obliged to have such policies, and to be certain that employees are aware of them. Naturally, any individual involved in a sexual harassment incident reserves the right to pursue the matter in the courts or before governmental agencies. These avenues, which are potentially lengthy and costly, may be avoided through appropriate and effective internal guidelines, procedures, and remedies.

it should be made clear that the institution does not condone abuses by faculty members of the academic freedom of others, whether in respect to sexual harassment or otherwise, and that genuine internal recourse is available against such misconduct. As advice to colleges and universities desiring a separate statement of policy on sexual harassment, the Association proposes the following:

## I. STATEMENT OF POLICY

It is the policy of this institution that no member of the academic community may sexually harass another. Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. Any such proposals are made under circumstances implying that one's response might affect such academic or personnel decisions as are subject to the influence of the person making such proposals; or
2. Such conduct is abusive of others and implies, in an abusive manner, a discriminatory hostility toward their personal or professional interests because of their sex.<sup>2</sup>

## II. APPLICABLE PROCEDURES

### *Bringing a Complaint:*

1. Any member of the college or university community who believes that he or she has been the victim of sexual harassment as defined above (the complainant) may bring the matter to the attention of the individual(s) designated to handle complaints of discrimination (such as the grievance officer or another officer on campus sensitive to the issues involved).<sup>3</sup>

2. The complainant should present the complaint as promptly as possible after the alleged harassment occurs. One consequence of the failure to present a complaint promptly is that it may preclude recourse to legal procedures should the complainant decide to pursue them at a later date.

3. The initial discussion between the complainant and the grievance officer should be kept confidential, with no written record.

4. If the complainant, after an initial meeting with the grievance officer, decides to proceed, the complainant should submit a written statement to the grievance officer. Cases involving sexual harassment are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case should be limited, in order that the privacy of all individuals involved is safeguarded as fully as possible.

5. The grievance officer should inform the alleged offender of the allegation and of the identity of the complainant. A written statement of the complaint should be given to both parties. Every effort should be made to protect the complainant from retaliatory action by those named in the complaint.

<sup>2</sup>The law is unsettled as to the extent of an employer's responsibility for sexual harassment perpetrated by its employees. *Alexander v. Yale University*, 631 F.2d 178 (2nd Cir. 1980); *Barnes v. Costle*, 561 F.2d 993 (D.C. Cir. 1977). As a general principle, the employer should be responsible for all conduct within subparagraph 1 of the above definition. It should be responsible for conduct falling entirely within subparagraph 2 if appropriate officials of the institution are aware, or should reasonably be aware, of the conduct and fail to take remedial action. Appropriate officials would include the grievance officer or any supervisor of the alleged offender.

<sup>3</sup>The grievance officer at his or her discretion should counsel the complainant about other avenues for pursuing the complaint, such as state or local government human rights agencies and the federal EEOC. Deadlines for filing complaints with these agencies, such as the 180-day requirement for filing employment discrimination claims with the EEOC, should be explained. The grievance officer might also suggest that the complainant seek legal counsel.

## Resolution of a Complaint

1 Promptly after a complaint is submitted, the grievance officer should initiate whatever steps he or she deems appropriate to effect an informal resolution of the complaint acceptable to both parties.

2. The complainant, if unsatisfied with the resolution proposed by the grievance officer, should have access to the grievance procedures at the institution upon prompt submission of a written request to the grievance officer.

3. *Review by a faculty committee of a complaint against a faculty member.*<sup>4</sup> Members of the faculty review committee should meet to discuss the complaint. Unless the committee concludes that the complaint is without merit, the parties to the dispute should be invited to appear before the committee and to confront any adverse witnesses. The committee may conduct its own informal inquiry, call witnesses, and gather whatever information it deems necessary to assist it in reaching a determination as to the merits of the allegations.<sup>5</sup> Once such a determination has been reached, it should be communicated in writing to both parties and to the grievance officer. A summary of the basis for the determination should be provided to either party upon request.

4. *Corrective action and/or disciplinary measures.* If the review committee's findings do not lead to a mutually acceptable resolution, and if the committee believes that reasonable cause exists for seeking sanctions against a faculty offender, the grievance officer should forward the recommendation immediately to the chief administrative officer or his or her designate. The chief administrative officer shall then proceed in the manner set forth in Regulation 7 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*<sup>6</sup> except that the need for a preliminary review will be precluded.

Well-publicized procedures such as these will help to create an atmosphere in which individuals who believe that they are the victims of harassment are assured that their complaints will be dealt with fairly and effectively. It is more important still to create an atmosphere in which instances of sexual harassment are discouraged. Toward this end, all members of the academic community should support the principle that sexual harassment represents a failure in ethical behavior and that sexual exploitation of professional relationships will not be condoned.

<sup>4</sup>The Association seeks through these guidelines to urge the adoption by colleges and universities of adequate due process provisions for all members of the academic community—students, faculty, and staff—where there has been an allegation of sexual harassment. It has developed specific review procedures to handle complaints involving faculty members.

<sup>5</sup>Regulation 7 reads as follows. "Procedures for Imposition of Sanctions Other than Dismissal. (a) If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 [dismissal procedures] will govern such a proceeding. (b) If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, such as a reprimand, it will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a major sanction has been incorrectly imposed under this paragraph, or that a minor sanction has been unjustly imposed, may, pursuant to Regulation 15, petition the faculty grievance committee for such action as may be appropriate."

# Faculty Appointment and Family Relationship

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*The following statement, prepared initially by the Association's Committee W on the Status of Women in the Academic Profession, was approved by that committee and by Committee A on Academic Freedom and Tenure. The statement was adopted by the Council of the American Association of University Professors in April 1971 and endorsed by the Fifty-seventh Annual Meeting as Association policy. It was endorsed by the Board of Directors of the Association of American Colleges at its June 1971 meeting.*

In recent years, and particularly in relation to efforts to define and safeguard the rights of women in academic life, members of the profession have evidenced increasing concern over policies and practices which prohibit in blanket fashion the appointment, retention, or the holding of tenure of more than one member of the same family on the faculty of an institution of higher education or of a school or department within an institution (so-called "antinelopism regulations"). Such policies and practices subject faculty members to an automatic decision on a basis wholly unrelated to academic qualifications and limit them unfairly in their opportunity to practice their profession. In addition, they are contrary to the best interests of the institution, which is deprived of qualified faculty members on the basis of an inappropriate criterion, and of the community, which is denied a sufficient utilization of its resources.

The Association recognizes the propriety of institutional regulations which would set reasonable restrictions on an individual's capacity to function as judge or advocate in specific situations involving members of his or her immediate family. Faculty members should neither initiate nor participate in institutional decisions involving a direct benefit (initial appointment, retention, promotion, salary, leave of absence, etc.) to members of their immediate families.

The Association does not believe, however, that the proscription of the opportunity of members of an immediate family to serve as colleagues is a sound method of avoiding the occasional abuses resulting from nepotism. Inasmuch as they constitute a continuing abuse to a significant number of individual members of the profession and to the profession as a body, the Association urges the discontinuance of these policies and practices, and the rescinding of laws and institutional regulations which perpetuate them.

# COLLEGE AND UNIVERSITY GOVERNMENT

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**S**ince 1916, the Association has been concerned with ensuring meaningful faculty participation in institutional governance. Committee T on College and University Government composed its first statement on the subject in 1920, emphasizing the importance of faculty-involvement in personnel decisions, selection of administrators, preparation of the budget, and determination of educational policies. Refinements were introduced in 1938 and 1958-64, and efforts toward a joint statement began in 1963, first with the American Council on Education and then also with the Association of Governing Boards of Universities and Colleges. The culmination of these efforts was the 1966 Statement on Government of Colleges and Universities. This statement, with its call for shared responsibility among the different components of institutional government and its specification of areas of primary responsibility for governing boards, administrations, and faculties, remains the Association's central policy document relating to academic governance. It has been supplemented over the years by a series of derivative policy statements, including those on budgetary and salary matters, financial exigency, the selection, evaluation, and retention of administrators, institutional mergers and acquisitions, and the faculty status of college and university librarians, all of which are included in this volume.



# Joint Statement on Government of Colleges and Universities

*Editorial Note. The Statement which follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. The Statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.*

*It is not intended that the Statement serve as a blueprint for government on a specific campus or as a manual for the regulation of controversy among the components of an academic institution, although it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structure and procedures. The Statement does not attempt to cover relations with those outside agencies which increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning; e.g., the United States Government, the state legislatures, state commissions, interstate associations or compacts, and other interinstitutional arrangements. However, it is hoped that the Statement will be helpful to these agencies in their consideration of educational matters.*

*Students are referred to in this Statement as an institutional component coordinate in importance with trustees, administrators, and faculty. There is, however, no main section on students. The omission has two causes: (1) the changes now occurring in the status of American students have plainly outdistanced the analysis by the educational community, and an attempt to define the situation without thorough study might prove unfair to student interests, and (2) students do not in fact presently have a significant voice in the government of colleges and universities; it would be unseemly to obscure, by superficial equality of length of statement, what may be a serious lag entitled to separate and full confrontation. The concern for student status felt by the organizations issuing this Statement is embodied in a note "On Student Status" intended to stimulate the educational community to turn its attention to an important need.*

*This Statement was jointly formulated by the American Association of University Professors, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. In October 1966, the Board of Directors of the ACE took action by which the Council "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the institutions which are members of the Council." The Council of the AAUP adopted the "Statement," in October 1966, and it was endorsed by the Fifty-third Annual Meeting in April 1967. In November 1966, the Executive Committee of the AGB took action by which that organization also "recognizes the Statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the governing boards which are members of the Association."*

## I. INTRODUCTION

*This Statement is a call to mutual understanding regarding the government of colleges and universities. Understanding, based on community of interest, and producing joint effort, is essential for at least three reasons. First, the academic institution, public or private, often has become less autonomous; buildings, research, and student tuition are supported by funds over which the college or university exercises a diminishing control. Legislative and executive governmental authority, at all levels, plays a part in the making of important decisions in academic policy.*

If these voices and forces are to be successfully heard and integrated, the academic institution must be in a position to meet them with its own generally unified view. Second, regard for the welfare of the institution remains important despite the mobility and interchange of scholars. Third, a college or university in which all the components are aware of the interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems.

## II. THE ACADEMIC INSTITUTION: JOINT EFFORT

### A. Preliminary Considerations

The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

Joint effort in an academic institution will take a variety of forms appropriate to the kinds of situations encountered. In some instances, an initial exploration or recommendation will be made by the president with consideration by the faculty at a later stage; in other instances, a first and essentially definitive recommendation will be made by the faculty, subject to the endorsement of the president and the governing board. In still others, a substantive contribution can be made when student leaders are responsibly involved in the process. Although the variety of such approaches may be wide, at least two general conclusions regarding joint effort seem clearly warranted: (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

### B. Determination of General Educational Policy

The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his charge and to attain the goals of the institution. The interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict. Essential to a solution is a reasonably explicit statement on general educational policy. Operating responsibility and authority, and procedures for continuing review, should be clearly defined in official regulations.

When an educational goal has been established, it becomes the responsibility primarily of the faculty to determine appropriate curriculum and procedures of student instruction.

Special considerations may require particular accommodations: (1) a publicly supported institution may be regulated by statutory provisions, and (2) a church-controlled institution may be limited by its charter or bylaws. When such external requirements influence course content and manner of instruction or research, they impair the educational effectiveness of the institution.

Such matters as major changes in the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration, and faculty prior to final decision.

### C. Internal Operations of the Institution

The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community. Effective planning demands that the broadest possible exchange of information and opinion

should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

A second area calling for joint effort in internal operation is that of decisions regarding existing or prospective physical resources. The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections. The function of each component in budgetary matters should be understood by all; the allocation of authority will determine the flow of information and the scope of participation in decisions.

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive officer of the governing board and as the chief academic officer of the institution and the faculty. His dual role requires that he be able to interpret to board and faculty the educational views and concepts of institutional government of the other. He should have the confidence of the board and the faculty.

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of and in consultation with the appropriate faculty.

Determinations of faculty status, normally based on the recommendations of the faculty groups involved, are discussed in Part V of this *Statement*; but it should here be noted that the building of a strong faculty requires careful joint effort in such actions as staff selection and promotion and the granting of tenure. Joint action should also govern dismissals; the applicable principles and procedures in these matters are well established.<sup>1</sup>

#### D. *External Relations of the Institution*

Anyone—a member of the governing board, the president or other member of the administration, a member of the faculty, or a member of the student body or the alumni—affects the institution when he speaks of it in public. An individual who speaks unofficially should so indicate. An official spokesman for the institution, the board, the administration, the faculty, or the student body should be guided by established policy.

It should be noted that only the board speaks legally for the whole institution, although it may delegate responsibility to an agent.

The right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of his own institution is a part of his right as a citizen and should not be abridged by the institution.<sup>2</sup> There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

<sup>1</sup>See the 1940 *Statement of Principles on Academic Freedom and Tenure* (AAUP Bulletin 64 [May 1978]: 108-12) and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (AAUP Bulletin 54 [Winter 1968]: 439-41). These statements have been jointly approved or adopted by the Association of American Colleges and the American Association of University Professors; the 1940 *Statement* has been endorsed by numerous learned and scientific societies and educational associations.

<sup>2</sup>With respect to faculty members, the 1940 *Statement of Principles on Academic Freedom and Tenure* reads: "The

### III. THE ACADEMIC INSTITUTION: THE GOVERNING BOARD

The governing board has a special obligation to assure that the history of the college or university shall serve as a prelude and inspiration to the future. The board helps relate the institution to its chief community, e.g., the community college to serve the educational needs of a defined population area or group, the church-controlled college to be cognizant of the announced position of its denomination, and the comprehensive university to discharge the many duties and to accept the appropriate new challenges which are its concern at the several levels of higher education.

The governing board of an institution of higher education in the United States operates, with few exceptions, as the final institutional authority. Private institutions are established by charters, public institutions are established by constitutional or statutory provisions. In private institutions the board is frequently self-perpetuating, in public colleges and universities the present membership of a board may be asked to suggest candidates for appointment. As a whole and individually when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to insure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership.

Since the membership of the board may embrace both individual and collective competence of recognized weight, its advice or help may be sought through established channels by other components of the academic community. The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.

One of the governing board's important tasks is to insure the publication of codified statements that define the over-all policies and procedures of the institution under its jurisdiction.

The board plays a central role in relating the likely needs of the future to predictable resources, it has the responsibility for husbanding the endowment, it is responsible for obtaining needed capital and operating funds, and in the broadest sense of the term it should pay attention to personnel policy. In order to fulfill these duties, the board should be aided by, and may insist upon, the development of long-range planning by the administration and faculty.

When ignorance or ill-will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution.<sup>3</sup>

### IV. THE ACADEMIC INSTITUTION: THE PRESIDENT

The president, as the chief executive officer of an institution of higher education, is measured

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college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman."

<sup>3</sup>Traditionally, governing boards developed within the context of single-campus institutions. In more recent times, governing and coordinating boards have increasingly tended to develop at the multi-campus, regional, systemwide, or statewide levels. As influential components of the academic community, these supra-campus bodies bear particular responsibility for protecting the autonomy of individual campuses or institutions under their jurisdiction and for implementing policies of shared responsibility. The American Association of University Professors regards the objectives and practices recommended in the 1966 *Statement* as constituting equally appropriate guidelines for such supra-campus bodies, and looks toward continued development of practices that will facilitate application of such guidelines in this new context. [Preceding note adopted by the Council in June 1978.]

largely by his capacity for institutional leadership. He shares responsibility for the definition and attainment of goals, for administrative action, and for operating the communications system which links the components of the academic community. He represents his institution to its many publics. His leadership role is supported by delegated authority from the board and faculty. As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for his institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of his administration.

The president must at times, with or without support, infuse new life into a department; relatedly, he may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty, but in the interest of academic standards he may also seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to insure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources, he has ultimate managerial responsibility for a large area of nonacademic activities, he is responsible for public understanding, and by the nature of his office is the chief spokesman of his institution. In these and other areas his work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

## V. THE ACADEMIC INSTITUTION: THE FACULTY

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, manpower limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chairman or head of a department, who serves as the chief representative of his department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chairman or department head should not have tenure in his office; his tenure as a faculty member is a matter of separate right. He should serve for a stated term but without prejudice to re-election or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chairman has a special obligation to build a department strong in scholarship and teaching capacity.

Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.<sup>4</sup>

The agencies may consist of meetings of all faculty members of a department, school, college, division, or university system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees, (2) joint *ad hoc* committees, (3) standing liaison committees, (4) membership of faculty members on administrative bodies, and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed.

## ON STUDENT STATUS

When students in American colleges and universities desire to participate responsibly in the government of the institution they attend, their wish should be recognized as a claim to opportunity both for educational experience and for involvement in the affairs of their college or university. Ways should be found to permit significant student participation within the limits of attainable effectiveness. The obstacles to such participation are large and should not be minimized: inexperience, untested capacity, a transitory status which means that present action does not carry with it subsequent responsibility, and the inescapable fact that the other components of the institution are in a position of judgment over the students. It is important to recognize that student needs are strongly related to educational experience, both formal and informal. Students expect, and have a right to expect, that the educational process will be structured, that they will be stimulated by it to become independent adults, and that they will have effectively transmitted to them the cultural heritage of the larger society. If institutional support is to have its fullest possible meaning it should incorporate the strength, freshness of view, and idealism of the student body.

The respect of students for their college or university can be enhanced if they are given at least these opportunities: (1) to be listened to in the classroom without fear of institutional reprisal for the substance of their views, (2) freedom to discuss questions of institutional policy and operation, (3) the right to academic due process when charged with serious violations of institutional regulations, and (4) the same right to hear speakers of their own choice as is enjoyed by other components of the institution.

<sup>4</sup>The American Association of University Professors regards collective bargaining, properly used, as another means of achieving sound academic government. Where there is faculty collective bargaining, the parties should seek to assure appropriate institutional governance structures which will protect the right of all faculty to participate in institutional governance in accordance with the 1966 *Statement*. [Preceding note adopted by the Council in June 1978.]

# Faculty Participation in the Selection, Evaluation, and Retention of Administrators

*The statement which follows, a revision and expansion of the 1974 statement on Faculty Participation in the Selection and Retention of Administrators, was prepared by the Association's Committee T on College and University Government. It was adopted by the Council of the American Association of University Professors in June 1981 and endorsed by the Sixty-seventh Annual Meeting as Association policy.*

**T**he 1966 *Statement on Government of Colleges and Universities* rests largely upon the conviction that interdependence, communication, and joint action among the constituents of a college or university enhance the institution's ability to solve educational problems. As one facet of this interdependence, the *Statement* asserts the expectation that faculty members will have a significant role in the selection of academic administrators, including the president, academic deans, department heads, and chairmen.<sup>1</sup> As a corollary, it is equally important that faculty members contribute significantly to judgments and decisions regarding the retention or nonretention of the administrators whom they have helped select.

## THE SELECTION OF ADMINISTRATORS

The *Statement* emphasizes the primary role of faculty and board in the search for a president. The search may be initiated either by separate committees of the faculty and board or by a joint committee of the faculty and board or of faculty, board, students, and others; and separate committees may subsequently be joined. In a joint committee, the numbers from each constituency should reflect both the primacy of faculty concern and the range of other groups, including students, that have a legitimate claim to some involvement. Each major group should elect its own members to serve on the committee, and the rules governing the search should be arrived at jointly. A joint committee should determine the size of the majority which will be controlling in making an appointment. When separate committees are used, the board, with which the legal

<sup>1</sup>According to the "Statement on Government of Colleges and Universities" (*AAUP Bulletin* 63 [February 1977]: 32-36):

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested....

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of and in consultation with the appropriate faculty. [P. 33]

The chairman or head of a department, who serves as the chief representative of his department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chairman or department head should not have tenure in his office; his tenure as a faculty member is a matter of separate right. He should serve for a stated term but without prejudice to reelection or to reappointment by procedures which involve appropriate faculty consultation. [P. 35]

power of appointment rests, should either select a name from among those submitted by the faculty committee or should agree that no person will be chosen over the objections of the faculty committee.

The role of the faculty in the selection of an administrator other than a president should reflect the extent of legitimate faculty interest in the position. In the case of an academic administrator whose function is mainly advisory to a president or whose responsibilities do not include academic policy, the faculty's role in the search should be appropriate to its involvement with the office. Other academic administrators, such as the dean of a college or a person of equivalent responsibility, are by the nature of their duties more directly dependent upon faculty support. In such instances, the composition of the search committee should reflect the primacy of faculty interest, and the faculty component of the committee should be chosen by the faculty of the unit or by a representative body of the faculty. The person chosen for an administrative position should be selected from among the names submitted by the search committee. The president, after fully weighing the views of the committee, will make the final choice. Nonetheless, sound academic practice dictates that the president not choose a person over the reasoned opposition of the faculty.

### THE EVALUATION OF ADMINISTRATORS

Institutions should develop procedures for periodic review of the performance of presidents and academic administrators. The purpose of such periodic reviews should be the improvement of the performance of the administrator during his or her term of office. This review should be conducted on behalf of the governing board for the president, or on behalf of the appointing administrator for other academic administrators. Fellow administrators, faculty, students, and others should participate in the review according to their legitimate interest in the result, with faculty of the unit accorded the primary voice in the case of academic administrators. The governing board or appointing administrator should publish a summary of the review, including a statement of actions taken as a result of the review.

### THE RETENTION OF ADMINISTRATORS

A more intensive review, conducted near the end of a stated term of administrative service, may be an appropriate component of the decision to retain or not to retain an administrator. When used for such a purpose, the review should include such procedural steps as formation of an *ad hoc* review committee, with different constituencies represented according to their legitimate interest in the result, consideration of such added data as the administrator's self-assessment and interviews with appropriate administrators and faculty and students, and submission of a report and recommendations, after the subject administrator has had an opportunity to comment on the text, to the board or appointing administrator. The board or appointing administrator should accept the recommendations of the review committee, except in extraordinary circumstances and for reasons communicated to the committee with an opportunity for response by the concerned parties prior to a final decision. The report should be made public, except for such sections as the board or appointing administrator and the review committee agree to be confidential, together with an account of actions taken as a result of the review.

All decisions on retention and nonretention of administrators should be based on institutionalized and jointly determined procedures which include significant faculty involvement. With respect to the chief administrative officer, the 1966 *Statement* specifies that the "leadership role" of the president "is supported by delegated authority from the board and faculty." No decision on retention or nonretention should be made without an assessment of the level of confidence in which he or she is held by the faculty. With respect to other academic administrators, sound practice dictates that the president should neither retain an administrator found wanting by faculty standards nor arbitrarily dismiss an administrator who meets the accountability standards of the academic community. In no case should a judgment on retention or nonretention be made without consultation with all major constituencies, with the faculty involved to a degree at least co-extensive with its role in the original selection process.

The president and other academic administrators should in any event be protected from arbitrary removal by procedures through which both their rights and the interests of various constituencies are adequately safeguarded.



# On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines

The guidelines which follow reflect Association policy as set forth in the Recommended Institutional Regulations on Academic Freedom and Tenure, The Role of the Faculty in Budgetary and Salary Matters, and other policy documents. They were formulated by the Association's staff, in consultation with the Joint Committee on Financial Exigency, Committee A on Academic Freedom and Tenure, and Committee T on College and University Government. They were first issued in 1971 and reissued in slightly revised form in 1972. The current-text includes revisions approved by Committee A in 1978.

1. There should be early, careful, and meaningful faculty involvement in decisions relating to the reduction of instructional and research programs. In making such decisions, financial considerations should not be allowed to obscure the fact that instruction and research constitute the essential reason for the existence of the university.

2. Given a decision to reduce the overall academic program, it should then become the primary responsibility of the faculty to determine where within the program reductions should be made. Before any such determination becomes final, those whose life's work stands to be adversely affected should have the right to be heard.

3. Among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program should necessarily come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs.

4. As particular reductions are considered, rights under academic tenure should be protected. The service of a tenured professor should not be terminated in favor of retaining someone without tenure who may at a particular moment seem to be more productive. Tenured faculty members should be given every opportunity, in accordance with Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*,<sup>1</sup> to readapt within a department or elsewhere within the institution, institutional resources should be made available for assistance in readaptation.

<sup>1</sup>The text of *Recommended Institutional Regulation 4(c)*, is as follows:

- (c) (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably *bona fide* financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

[NOTE. Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent, and that all feasible alternatives to termination of appointments have been pursued.

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty

5. In some cases, an arrangement for the early retirement of a tenured faculty member, by investing appropriate additional institutional funds into the individual's retirement income (ordinarily feasible only when social security benefits begin), may prove to be desirable if the faculty member is agreeable to it.

6. In those cases where there is no realistic choice other than to terminate the services of a tenured faculty member, the granting of at least a year of notice should be afforded high financial priority.

7. The granting of adequate notice to nontenured faculty should also be afforded high financial priority. The nonreappointment of nontenured faculty, when dictated by financial exigency, should be a consideration independent of the procedural standard outlined in *Recommended Institutional Regulation 4(c)*, with one exception. When the need to make reductions has demonstrably emerged after the appropriate date by which notice should be given, financial compensation to the degree of lateness of notice should be awarded when reappointment is not feasible.

8. A change from full-time to part-time service, on grounds of financial exigency, may occasionally be a feature of an acceptable settlement, but in and of itself such a change should not be regarded as an alternative to the protections set forth in the *Recommended Institutional Regulation 4(c)* or as a substitute for adequate notice.

9. When, in the context of financial exigency, one institution merges with another, or purchases its assets, the negotiations leading to merger or purchase should include every effort to recognize the terms of appointment of all faculty members involved. When a faculty member who has held tenure can be offered only a term appointment following a merger or purchase, the faculty member should have the alternative of resigning and receiving at least a year of severance salary.

10. When financial exigency is so dire as to warrant cessation of operation, the institution should make every effort in settling its affairs to assist those engaged in the academic process so that, with minimal injury, they can continue their work elsewhere.

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status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body. The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of age and length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedure.]

(2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

(ii) The validity of the educational judgments and the criteria for identification for termination, but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it. (*Academe* 69 [January-February 1983]: 15a-20a.)

# The Role of the Faculty in Budgetary and Salary Matters

*The statement which follows was prepared by the Association's Committee on College and University Government. It was adopted by the Council of the American Association of University Professors in May 1972 and endorsed by the Fifty-eighth Annual Meeting as Association policy.*

## I. GENERAL PRINCIPLES

The purpose of this statement is to define the role of the faculty in decisions as to the allocation of financial resources according to the principle of shared authority as set forth in the 1966 *Statement on Government of Colleges and Universities*,<sup>1</sup> and to offer some principles and derivative guidelines for faculty participation in this area. On the subject of budgeting in general, it is asserted in the *Statement on Government*:

The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections. The function of each component in budgetary matters should be understood by all; the allocation of authority will determine the flow of information and the scope of participation in decisions.

Essentially two requirements are set forth in this passage:

A. *Clearly understood channels of communication and the accessibility of important information to those groups which have a legitimate interest in it.*

B. *Participation by each group (governing board, president, and faculty)<sup>2</sup> appropriate to the particular expertise of each.* Thus the governing board is expected to husband the endowment and obtain capital and operating funds; the president is expected to maintain existing institutional resources and create new ones; the faculty is expected to establish faculty salary policies and, in its primary responsibility for the educational function of the institution, to participate also in broader budgetary matters primarily as these impinge on that function. All three groups, the *Statement on Government* makes clear, should participate in long-range planning.

## II. FACULTY PARTICIPATION IN BUDGETING

The faculty should participate both in the preparation of the total institutional budget, and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plant and grounds, etc.). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources

<sup>1</sup>Jointly formulated by the American Council on Education, the Association of Governing Boards of Universities and Colleges, and the American Association of University Professors. See *AAUP Bulletin* 63 (February 1977): 32-36.

<sup>2</sup>The participation of students in budgetary decisions affecting student programs and student life is taken for granted in this document, but no attempt is made to define the nature of that participation here.

and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. Such an institution-level body, representative of the entire faculty, can play an important part in mediating the financial needs and the demands of different groups within the faculty and can be of significant assistance to the administration in resolving impasses which may arise when a large variety of demands are made on necessarily limited resources. Such a body will also be of critical importance in representing faculty interests and interpreting the needs of the faculty to the governing board and president. The presence of faculty members on the governing board itself may, particularly in smaller institutions, constitute an approach that would serve somewhat the same purpose, but does not obviate the need for an all-faculty body which may wish to formulate its recommendations independent of other groups. In addition, at public institutions there are legitimate ways and means for the faculty to play a role in the submission and support of budgetary requests to the appropriate agency of government.

Budgetary decisions directly affecting those areas for which, according to the *Statement on Government*, the faculty has primary responsibility—curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process—should be made in concert with the faculty. Certain kinds of expenditures related to the academic program, such as the allocation of funds for a particular aspect of library development, student projects under faculty sponsorship, or departmental equipment, will require that the decision-making process be sufficiently decentralized to permit autonomy to the various units of the faculty (departments, divisions, schools, colleges, special programs) in deciding upon the use of their allocations within the broader limits set by the governing board, president, and agencies representative of the entire faculty. In other areas, such as faculty research programs, or the total library and laboratory budget, recommendations as to the desirable funding levels for the ensuing fiscal period and decisions on the allocation of university funds within the current budget levels should be made by the university-level, all-faculty committee as well as by the faculty agencies directly concerned.<sup>3</sup> The question of faculty salaries, as an aspect of faculty status, is treated separately below.

Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and as specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of any reduction—should participate at the department, college or professional school, and institution-wide levels in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.<sup>4</sup> The question of possible reductions in salaries and fringe benefits is discussed in Section III below. The faculty should play a fundamental role in any decision which would change the basic character and purpose of the institution, including transformation of the institution, affiliation of part of the existing operation with another institution, or merger, with the resulting abandonment or curtailment of duplicate programs.

<sup>3</sup>For obvious reasons, the focus here is on funding from the resources of the institution, and not from external agencies such as private contractors or the federal government. Even in these cases, however, it may be possible in certain circumstances for the faculty to play a part in deciding further on the allocation of a particular grant to various purposes related to the project within the institution. There should be careful faculty and administrative scrutiny as to the methods by which these funds are to be employed under the particular contract.

<sup>4</sup>On the question of due process and appropriate terminal settlements for individual faculty members (on tenure or prior to the expiration of a term appointment) whose positions are being abolished, see "Recommended Institutional Regulations on Academic Freedom and Tenure," *Academe* 69 (January-February 1983). Regulation 4(c).

Before any decisions on curtailment become final, those whose work stands to be adversely affected should have full opportunity to be heard. In the event of a merger, the faculties from the two institutions should participate jointly in negotiations affecting faculty status and the academic programs at both institutions. To the extent that major budgetary considerations are involved in these decisions, the faculty should be given full and timely access to the financial information necessary to the making of an informed choice. In making decisions on whether teaching and research programs are to be curtailed, financial considerations should not be allowed to obscure the fact that instruction and research constitute the essential reason for the existence of the university. Among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program necessarily should come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs.

### III. FACULTY PARTICIPATION IN DECISIONS RELATING TO SALARY POLICIES AND PROCEDURES

The *Statement on Government* asserts that "the faculty should actively participate in the determination of policies and procedures governing salary increases." Salaries, of course, are part of the total budgetary picture, and, as indicated above, the faculty should participate in the decision as to the proportion of the budget to be devoted to that purpose. However, there is also the question of the role of the faculty as a body in the determination of individual faculty salaries.

#### A. *The Need for Clear and Open Policy*

Many imagined grievances as to salary could be alleviated, and the development of a system of accountability to reduce the number of real grievances could be facilitated, if both the criteria for salary raises and the recommendatory procedure itself were (1) designed by a representative group of the faculty in concert with the administration, and (2) open and clearly understood.<sup>5</sup> Such accountability is not participation *per se*, but it provides the basis for a situation in which such participation can be more fruitful.

Once the procedures are established, the person or group who submits the initial salary recommendation (usually the department chairman, alone or in conjunction with an elected executive committee of the department) should be informed of its status at each further stage of the salary-determination process. As the *Statement on Government* points out, the chief competence for the judgment of a colleague rests in the department, school, or program (whichever is the smallest applicable unit of faculty government within the institution), and in most cases the salary recommendation presumably derives from that judgment. The recommending officer should have the opportunity to defend that recommendation at a later stage in the event of a serious challenge to it.

#### B. *Levels of Decision Making*

Not all institutions provide for an initial salary recommendation by the departmental chairman or his equivalent, the Association regards it as desirable, for the reasons already mentioned, that the recommendation normally originate at the departmental level. Further review is normally conducted by the appropriate administrative officers, they should, when they have occasion to question or inquire further regarding the departmental recommendation, solicit informed faculty advice by meeting with the departmental head or chairman and, if feasible, the elected body of the faculty. It is also desirable that a mechanism exist for review of a salary recommendation, or of a final salary decision, by a representative elected committee of the faculty above the department level in cases involving a complaint.<sup>6</sup> Such committee should have access to information on faculty

<sup>5</sup>This section does not take into account those situations in which salaries are determined according to a step system and/or a standard salary is negotiated for each rank. The salary policy and, in effect, individual salaries are public information under such systems.

<sup>6</sup>See the *Recommended Institutional Regulations on Academic Freedom and Tenure*, Regulation 15, "Grievance Procedures."

salary levels. Another faculty committee, likewise at a broader level than that of the department, may be charged with the review of routine recommendations.

Of the role of the governing board in college and university government, the *Statement on Government* says: "The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers, the president and the deans, and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation." The *Statement* adds that "in the broadest sense of the term" the board "should pay attention to personnel policy." The thrust of these remarks is that it is inadvisable for a governing board to make decisions on individual salaries, except those of the chief administrative officers of the institution. Not only do such decisions take time which should be devoted to the board's functions of overview and long-range planning, but such decisions also are in most cases beyond the competence of the board.

When financial exigency leads to a reduction in the overall salary budget for teaching and research, the governing board, while assuming final responsibility for setting the limits imposed by the resources available to the institution, should delegate to the faculty and administration concurrently any further review of the implication of the situation for individual salaries, and the faculty should be given the opportunity to minimize the hardship to its individual members by careful examination of whatever alternatives to termination of services are feasible.

### C. Fringe Benefits

The faculty should participate in the selection of fringe benefit programs and in the periodic review of those programs. It should be recognized that of these so-called fringe benefits, at least those included in Committee Z's definition of total compensation have the same standing as direct faculty salaries and are separated for tax purposes. They should be considered and dealt with in the same manner as direct payment of faculty salary.

# Governance Standards in Institutional Mergers and Acquisitions

The statement which follows is excerpted from a longer draft statement, On Institutional Mergers and Acquisitions, which was prepared by a joint subcommittee of Committees A and T and approved for publication by the parent committees and by the Council in November 1981. Committee T in February 1983 approved the separate publication of the following section of that statement, entitled "Procedural Standards in Implementation," that deals with the faculty's role.

**P**rotection of faculty rights and prerogatives in a merger situation requires early and full faculty involvement in any discussions leading to a merger.

The role of the faculty, first in the planning of an institutional merger or acquisition, and then in implementing it, derives from the principles of shared responsibility and authority as set forth in the *Statement on Government of Colleges and Universities*. Because, according to the *Statement on Government*, "the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process," and because these areas will inevitably be affected by a merger or acquisition, it is imperative that the faculty of the concerned institutions be afforded a meaningful role in the planning and implementation of mergers and acquisitions. This role is set forth with additional particularity in the Association's statement on *The Role of the Faculty in Budgetary and Salary Matters*:

The faculty should play a fundamental role in any decision which would change the basic character and purpose of the institution, including transformation of the institution, affiliation of part of the existing operation with another institution, or merger, with the resulting abandonment or curtailment of duplicate programs.

Before any decisions on curtailment become final, those whose work stands to be adversely affected should have full opportunity to be heard. In the event of a merger, the faculties from the two institutions should participate jointly in negotiations affecting faculty status and the academic programs at both institutions.

The essential point is that the faculty of both institutions should be involved before decisions or commitments to affiliate have been made, or before any decisions on curtailment of programs (if such decisions are an aspect of the affiliation) become final. Preliminary or exploratory discussions about the possibility of institutional affiliation may in some instances occur without full faculty involvement, but full involvement of the faculties of both institutions should begin early in any course of discussion which appears likely to eventuate in an affiliation; any final commitment bearing on institutional affiliation made without full faculty involvement would be inimical to the principles set forth in the *Statement on Government of Colleges and Universities* and *The Role of the Faculty in Budgetary and Salary Matters*.

The possibility for abuse of the merger situation is greatest in those cases in which a condition of imminent or existing exigency is offered as the basis for exceptional treatment of the tenure commitment as outlined above. As in any instance in which a condition of financial exigency is offered as a justification for modification of tenure obligations, the decision on the financial situation of the institution is too grave, and its consequences too far-reaching, to be made solely

in restricted administrative circles. Any decision to seek merger in a context of financial exigency should be made with the fullest possible participation of the faculty in the institution which would be acquired. The faculty of the institution which is experiencing severe financial difficulties should be informed as early and as specifically as possible of those difficulties, and that faculty should participate fully in any decision to seek merger as an alternative to possible extinction.

Merger of two institutions when one is experiencing financial exigency may present opportunities to preserve faculty positions and protect faculty status. At the same time, care must be taken that merger is not employed as a means of breaching tenure obligations. The Association offers its advice and assistance, as early as possible in the course of merger negotiations, to assure compliance with the standards set forth in this statement. In all merger situations, the Association is prepared to enforce adherence to these standards, in accordance with its established procedures for processing complaints and cases.



# Joint Statement on Faculty Status of College and University Librarians

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*The following Statement was prepared by the Joint Committee on College Library Problems, a national committee representing the Association of College and Research Libraries, the Association of American Colleges, and the American Association of University Professors. The Statement was officially endorsed by the Board and Annual Meeting of the Association of College and Research Libraries in 1972. It was adopted by the Council of the American Association of University Professors in April 1973 and endorsed by the Fifty-ninth Annual Meeting as Association policy.*

**A**s the primary means through which students and faculty gain access to the storehouse of organized knowledge, the college and university library performs a unique and indispensable function in the educational process. This function will grow in importance as students assume greater responsibility for their own intellectual and social development. Indeed, all members of the academic community are likely to become increasingly dependent on skilled professional guidance in the acquisition and use of library resources as the forms and numbers of these resources multiply, scholarly materials appear in more languages, bibliographical systems become more complicated, and library technology grows increasingly sophisticated. The librarian who provides such guidance plays a major role in the learning process.

The character and quality of an institution of higher learning are shaped in large measure by the nature of its library holdings and the ease and imagination with which those resources are made accessible to members of the academic community. Consequently, all members of the faculty should take an active interest in the operation and development of the library. Because the scope and character of library resources should be taken into account in such important academic decisions as curricular planning and faculty appointments, librarians should have a voice in the development of the institution's educational policy.

Librarians perform a teaching and research role inasmuch as they instruct students formally and informally and advise and assist faculty in their scholarly pursuits. Librarians are also themselves involved in the research function; many conduct research in their own professional interests and in the discharge of their duties.

Where the role of college and university librarians, as described in the preceding paragraphs, requires them to function essentially as part of the faculty, this functional identity should be recognized by granting of faculty status. Neither administrative responsibilities nor professional degrees, titles, or skills, *per se*, qualify members of the academic community for faculty status. The function of the librarian as participant in the processes of teaching and research is the essential criterion of faculty status.

College and university librarians share the professional concerns of faculty members. Academic freedom, for example, is indispensable to librarians, because they are trustees of knowledge with the responsibility of insuring the availability of information and ideas, no matter how controversial, so that teachers may freely teach and students may freely learn. Moreover, as members of the academic community, librarians should have latitude in the exercise of their professional

judgment within the library, a share in shaping policy within the institution, and adequate opportunities for professional development and appropriate reward.

Faculty status entails for librarians the same rights and responsibilities as for other members of the faculty. They should have corresponding entitlement to rank, promotion, tenure, compensation, leaves, and research funds, and the protection of academic due process. They must go through the same process of evaluation and meet the same standards as other faculty members.<sup>1</sup>

On some campuses, adequate procedures for extending faculty status to librarians have already been worked out. These procedures vary from campus to campus because of institutional differences. In the development of such procedures, it is essential that the general faculty or its delegated agent determine the specific steps by which any professional position is to be accorded faculty rank and status. In any case, academic positions which are to be accorded faculty rank and status should be approved by the senate or the faculty-at-large before submission to the president and to the governing board for approval.

With respect to library governance, it is to be presumed that the governing board, the administrative officers, the library faculty, and representatives of the general faculty will share in the determination of library policies that affect the general interests of the institution and its educational program. In matters of internal governance, the library will operate like other academic units with respect to decisions relating to appointments, promotions, tenure, and conditions of service.<sup>2</sup>

<sup>1</sup>Cf 1940 "Statement of Principles on Academic Freedom and Tenure," *AAUP Bulletin* 64 (May 1978): 108-12; 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," *AAUP Bulletin* 54 (Winter 1968): 439-41; 1972 "Statement of Principles on Leaves of Absence," *AAUP Bulletin* 58 (Summer 1972): 244-45.

<sup>2</sup>Cf 1966 "Statement on Government of Colleges and Universities," *AAUP Bulletin* 63 (February 1977): 32-36.

# COLLECTIVE BARGAINING

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**A**lthough collective bargaining in higher education was discussed by the president of the Association in his address to the Annual Meeting in 1919, the issue was not faced directly by the AAUP until the 1960s, when the policy-making committees of the Association began developing statements of principles on the subject. Since collective negotiations by faculty members constituted a form of governance, Committee T on College and University Government or special subcommittees were usually involved in addressing the issues raised by collective bargaining. In 1970, Committee N on Representation of Professional and Economic Interests was established by the Council. In 1973, following intensive debate within the Association, the Annual Meeting adopted the AAUP's first Statement on Collective Bargaining, which recognized formal bargaining as a "major additional way of realizing [the Association's] goals in higher education." After over a decade of experience with bargaining, Committee N in 1984 approved a revision of the Statement on Collective Bargaining which was adopted by the Council and endorsed by the Seventieth Annual Meeting.

The Association's collective bargaining chapters have utilized formal negotiations to bring the protections of a legally binding contract to the rights and prerogatives of faculty members, as a collective body and as individuals.

# Statement on Collective Bargaining

*The following Statement, a revision of a statement adopted in 1973, was prepared by the Association's Committee N on Representation of Economic and Professional Interests in consultation with the Collective Bargaining Congress. It was approved by Committee N and adopted by the Council in June 1984 and endorsed by the Seventieth Annual Meeting as Association policy.*

**T**he basic purposes of the American Association of University Professors are to protect academic freedom, to establish and strengthen institutions of faculty governance, to provide fair procedures for resolving grievances, to promote the economic well-being of faculty and other academic professionals, and to advance the interests of higher education. Collective bargaining is an effective instrument for achieving these objectives.

The presence of institutions of faculty governance does not preclude the need for or usefulness of collective bargaining. On the contrary, collective bargaining can be used to increase the effectiveness of those institutions by extending their areas of competence, defining their authority, and strengthening their voice in areas of shared authority and responsibility. Collective bargaining gives the faculty an effective voice in decisions which vitally affect its members' professional well-being, such as the allocation of financial resources and determination of faculty salaries and benefits.

As a national organization which has historically played a major role in formulating and implementing the principles that govern relationships in academic life, the Association promotes collective bargaining to reinforce the best features of higher education. The principles of academic freedom and tenure, fair procedures, faculty participation in governance, and the primary responsibility of the faculty for determining academic policy will thereby be secured.

For these reasons, the Association supports efforts of local chapters to pursue collective bargaining.

## POLICY FOR COLLECTIVE BARGAINING CHAPTERS

- A. When a chapter of the Association enters into collective bargaining, it should seek to:
1. protect and promote the professional and economic interests of the faculty as a whole in accordance with the established principles of the Association;
  2. maintain and enhance within the institution structures of representative governance which provide full participation by the faculty in accordance with the established principles of the Association;
  3. obtain explicit guarantees of academic freedom and tenure in accordance with the principles and stated policies of the Association;
  4. create orderly and clearly defined procedures for prompt consideration of problems and grievances of members of the bargaining unit, to which procedures any affected individual or group shall have access.
- B. In any agency shop or compulsory dues check-off arrangement, a chapter or other Association agency should incorporate provisions designed to accommodate affirmatively asserted conscientious objection to such an arrangement with any representative.

C. The principle of shared authority and responsibility requires a process of discussion, persuasion, and accommodation within a climate of mutual concern and trust. Where that process and climate exist, there should be no need for any party to resort to devices of economic pressure such as strikes, lockouts, or unilateral changes in terms and conditions of employment by faculty or academic management. Normally, such measures are not desirable for the resolution of conflicts within institutions of higher education.

Therefore, the Association urges faculties and administrations in collective bargaining to seek mutual agreement on methods of dispute resolution, such as mediation, fact-finding, or arbitration. Where such agreement cannot be reached, and where disputes prove themselves resistant to rational methods of discussion, persuasion, and conciliation, the Association recognizes that resort to economic pressure through strikes or other work actions may be a necessary and unavoidable means of dispute resolution.

Participation in a strike or other work action does not by itself constitute grounds for dismissal or for other sanctions against faculty members. Moreover, if action against a faculty member is proposed on this, as on any ground encompassed by the 1940 *Statement of Principles on Academic Freedom and Tenure*, the proceedings must satisfy the requirements of academic due process supported by the Association. The Association will continue to protect the interests of members of the profession who are singled out for punishment on grounds which are inadequate or unacceptable, or who are not afforded all the protection demanded by the requisites of due process.

# Arbitration of Faculty Grievances

## A Report of a Joint Subcommittee of Committees A and N

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The report which follows was prepared by a joint subcommittee of the Association's Committees A and N at their respective meetings in March and April 1973 and was approved for publication by the parent committees.

### I. INTRODUCTION

Collective bargaining by faculties in higher education has been accompanied by the use of arbitration<sup>1</sup> for the resolution of disputes involving questions of contractual application or interpretation which may include matters of faculty status and rights. It should be noted that the use of arbitration does not wholly depend on the existence of a collective bargaining relationship. It may be provided for in institutional regulations, agreed to between an internal faculty governing body and the administration, or utilized on an *ad hoc* basis in a particular case. The enforceability of agreements to arbitrate future disputes, however, is a legal question involving both federal and state law. Since arbitration developed in the industrial context, it must be given the closest scrutiny when applied to the needs of higher education. Accordingly, this joint subcommittee was given the task of providing an initial review of that application.

### II. PRELIMINARY CONSIDERATIONS

The Association has been committed, since its founding in 1915, to securing a meaningful role for the faculty in decisions on matters of faculty status, rights, and responsibilities. The *Statement on Government of Colleges and Universities*, drafted jointly with the American Council on Education and the Association of Governing Boards of Universities and Colleges, provides a brief discussion of the bases for this position:

The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and the president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The *Statement* does not suggest a formal device to resolve disputes between faculty and governing board. Indeed, resort to any body outside the institution, such as the courts, for an official resolution of disputes in matters of faculty status, rights, and responsibilities poses a serious

<sup>1</sup>Arbitration is a term describing a system for the resolution of disputes whereby the parties consent to submit a controversy to a third party for decision. The decision may be advisory only but is usually agreed to be binding. The parties participate in the selection of the arbitrator and may shape the procedure to be used; costs are usually borne equally between them.

challenge to accepted notions of institutional autonomy. Moreover, a survey of current practices, admittedly limited, reveals that arbitration has been used not solely to break impasses between faculty and governing board but to review the soundness of faculty decisions themselves. This suggests an additional problem of the relationships of arbitration to faculty-autonomy.

### III. THE USE OF ARBITRATION

In many situations, administrators are responsive to faculty recommendations and indeed may welcome them. In such cases the resort to arbitration will probably not be perceived as necessary. In some situations, however, administrators or trustees are unresponsive to Association standards and faculty actions, and final legal authority to resolve matters of faculty status usually lies with the governing board concerned. In such cases, outside impartial review may well be useful. It must also be recognized that in many situations faculty do not enjoy or exercise a degree of independence adequate to the assurance of protections embodied in Association standards. In this situation also, independent impartial review may play a role. For example, disputes regarding the appropriateness of individual salaries, or the imposition of penalties for alleged violations of institutional regulations, or the termination of academic appointments for reason of financial exigency, or decisions affecting a faculty member's teaching duties or programs of instruction are the sort of controversies resolution of which may be fostered in varying degrees by arbitration.

It seems clear that where resort to a formal external agency is deemed necessary, arbitration affords some advantages over judicial proceedings. In a court challenge, the procedure and substance are prescribed by federal and state constitutions, statutes, and judicial decisions in whose formulation the profession has almost no role. In contrast, arbitration procedures and substantive rights are largely within the joint power of the administration and the faculty's collective representative to prescribe. Hence the parties to the academic relationship can shape procedures to their special needs, formulate substantive rules embodying the standards of the profession, and select decision makers with special competence in the field. In addition, arbitration may prove a quicker and less expensive remedy.

Thus, where the faculty does not share in the making of decisions or its voice is not accorded adequate weight, arbitration may have particular utility. However, the finality of arbitral review also has its hazards, especially in the present nascent state of arbitral doctrine, and because of the slight experience of arbitrators in academic settings. Accordingly, arbitration may play a useful role in an academic setting to the extent it can foster rather than impair the sound workings of institutional government.

It is suggested that four factors are essential for the effective use of arbitration: (1) sound internal procedures preliminary to arbitration which enjoy the confidence of both faculty and administration; (2) careful definitions of both arbitral subjects and standards to be applied by the arbitrator; (3) the selection of arbitrators knowledgeable in the ways of the academic world, aware of the institutional implications of their decisions, and, of course, sensitive to the meaning and critical value of academic freedom; and (4) the assurance that the hearing will include evidence relating to the standards and expectations of the teaching profession in higher education, and that appropriate weight will be given to such evidence.

#### 1. Preliminary Procedures

Arbitration should be used most discriminatingly. It is not a substitute for proper procedures internal to the institution but should serve only as a final stage of that procedure. The availability of this forum should assist in rendering the earlier procedures more meaningful. Indeed, the submission of an inordinate number of grievances to arbitration may be significantly erosive of healthy faculty-administration relations.

The Association has suggested preliminary procedures for the adjustment of general faculty complaints and grievances.<sup>2</sup> With more detail, the Association has crystallized procedures to be utilized

<sup>2</sup>"Recommended Institutional Regulations on Academic Freedom and Tenure," *Academe* 69 (January-February 1983): Regulation 15.

in dismissal proceedings,<sup>3</sup> proposed procedures to be used in hearing allegations of violations of academic freedom in the nonreappointment of nontenured faculty,<sup>4</sup> and, most recently, adopted detailed provisions dealing with decisions on nonreappointment and review therefrom not raising issues of academic freedom.<sup>5</sup>

The subcommittee recognizes that a wide variety of institutional practice exists in American higher education and that the degree to which faculties actually possess the decision-making authority recommended in the foregoing varies accordingly. It may not be possible, then, to propose a single model of arbitration responsive to these varying institutional patterns and the many kinds of issues which could conceivably be presented for an arbitral determination. The subcommittee believes it of critical importance, however, that in the agreement to arbitrate any matter affecting faculty status, rights, and responsibilities, the judgment of the faculty as the professional body properly vested with the primary responsibility for such determinations be afforded a strong presumption in its favor.

## 2. Arbitral Standards

The definition of the arbitral standard requires the most careful attention. In some instances arbitration has been used to correct only procedural departures while in others arbitral review of the merits of a decision has been afforded. The latter has proceeded under broad standards such as "just cause" for a particular action or more rigorous ones such as determining whether the questioned decision was "arbitrary and capricious."

A tentative review of arbitral decisions under the varying approaches has revealed widely differing results and in some cases a degree of arbitral unresponsiveness to the underlying academic values. Accordingly, the subcommittee believes it requisite to the use of arbitration as a means of enhancing internal government that fairly rigorous arbitral standards be established in those cases in which norms and procedures unique to higher education are implicated.

## 3. Selection and Education of Arbitrators

Much depends on the qualities of the individual selected to serve as the arbitrator and the degree to which he or she is educated by the parties to the issues for adjudication in the context of professional practice and custom and to the importance of the decision to the life of the institution. Here the Association can make a valuable contribution, whether or not a local affiliate is serving as a collective representative. As the preeminent organization of college and university faculty in the United States, the Association should share its expertise in reviewing the qualifications of proposed arbitrators and should consider, jointly with other organizations, consulting on the establishment of a national panel or regional panels of qualified individuals. Further, the Association may prepare model briefs or other materials dealing with accepted norms of academic practice to be used as educational materials before an arbitrator and should consider sponsoring, again possibly with other organizations, workshops for arbitrators on these issues. The Association should also maintain an up-to-date file of awards and provide detailed comments on their academic implications, perhaps in some published form. Since the use of arbitration in this setting is so novel, it is clear that for higher education, unlike for the industrial sector, no well-defined set of doctrines has been developed. It is incumbent on the Association to assist directly in shaping such doctrines through all available means. Toward this end the Association should establish a joint subcommittee of the national committees having an interest in this area. A detailed study of the actual effects of arbitration, under the varying approaches currently practiced and the drafting of model arbitration clauses would fall within the purview of such a body.

<sup>3</sup>1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," *AAUP Bulletin* 54 (Winter 1968): 439-41.

<sup>4</sup>"Recommended Institutional Regulations," Regulation 10.

<sup>5</sup>"Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments," *AAUP Bulletin* 57 (Summer 1971): 206-10.



Two final issues require attention. the rights of the individual under a collective agreement providing for arbitration as the terminal stage of the grievance procedure, and the Association's role in the event an arbitral award departs significantly from fundamental substantive standards sponsored by it.

Where there is an exclusive collective representative, the agent almost invariably controls access to arbitration. The subcommittee believes that this approach may be inappropriate in an academic setting and recommends that individual faculty members have access to arbitration on their own behalf if the collective representative refuses to press their claims. Because the issue placed before an arbitrator may touch deeply an individual's basic academic rights or freedoms, the individual should have the opportunity of participating in the selection of the arbitrator and have full rights to participate in all phases of the procedure, including all preliminaries, on a parity with the collective representative, if any, and the administration. Experimentation with the allocation of costs of proceedings where the representative does not itself desire to proceed to arbitration would be useful. Costs may be assessed by the arbitrator between the parties according to the gravity of the injury, if one is found, or could be borne equally by the administration and the complaining faculty member.

The Association has traditionally viewed itself as supporting basic standards and has not viewed its processes as being limited because of contrary provisions in an institution's regulations, or, for that matter, an adverse judicial determination. Equally, the Association should continue to challenge significant departures from elemental academic rights, whether or not these departures have warrant in a collective agreement or an arbitrator's award.

#### IV. SUMMARY

Arbitration can be a useful device for resolving some kinds of disputes and grievances that arise in academic life. Especially when collective bargaining is practiced, resort to arbitrators who are sensitive to the needs and standards of higher education may be the preferred way to avoid deadlocks or administrative domination. But arbitration is not a substitute for careful procedures that respect the autonomy of the faculty and administration in their respective spheres. A system of collective bargaining that routinely resorts to arbitration is an abdication of responsibility. This is especially true of the faculty's primary responsibility to deter. He who shall hold and retain faculty appointments.

# PROFESSIONAL ETHICS

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**F**rom its earliest years, the Association has recognized that the privileges associated with faculty status create a corresponding obligation to observe suitable professional and ethical standards. In his introductory address to the first meeting of the Association in 1915, President John Dewey proclaimed that one of the Association's priorities would be the development of "professional standards, standards which will be quite as scrupulous regarding the obligations imposed by freedom as jealous of the freedom itself." A Committee on University Ethics was one of the Association's original standing committees, and Professor Dewey served as its first chairman.

The 1940 Statement of Principles on Academic Freedom and Tenure declares that academic freedom "carries with it duties correlative with rights." These duties are described in the documents that follow, beginning with the Association's basic 1966 Statement on Professional Ethics. Other statements provide guidance on particular ethical situations.

The Association maintains a standing Committee on Professional Ethics. The Association views questions involving propriety of conduct as best handled within the framework of individual institutions by reference to an appropriate faculty body. While its good offices are available for advice and mediation, the Association's function in the area of ethics is primarily educative: to inform members of the higher education community about principles of professional ethics and to encourage their observance.

# Statement on Professional Ethics

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*The Statement on Professional Ethics was adopted by the Council of the American Association of University Professors in April 1966 and endorsed by the Fifty-second Annual Meeting as Association policy.*

## INTRODUCTION

**F**rom its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and in his conduct when resigning from his institution or when undertaking government-sponsored research. The *Statement on Professional Ethics* that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the variety of obligations assumed by all members of the profession. For the purpose of more detailed guidance, the Association, through its Committee B on Professional Ethics, intends to issue from time to time supplemental statements on specific problems.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The Association supports such local action and stands ready, through the general secretary and Committee B, to counsel with any faculty member or administrator concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of dismissal, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

## THE STATEMENT

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

# A Statement of the Association's Council: Freedom and Responsibility

*The following Statement was adopted by the Council of the American Association of University Professors in October 1970.*

**F**or more than half a century the American Association of University Professors has acted upon two principles: that colleges and universities serve the common good through learning, teaching, research, and scholarship; and that the fulfillment of this function necessarily rests upon the preservation of the intellectual freedoms of teaching, expression, research, and debate. All components of the academic community have a responsibility to exemplify and support these freedoms in the interests of reasoned inquiry.

The 1940 *Statement of Principles on Academic Freedom and Tenure* asserts the primacy of this responsibility. The 1966 *Statement on Professional Ethics* underscores its pertinency to the individual faculty member and calls attention to his responsibility, by his own actions, to uphold his colleagues' and his students' freedom of inquiry and to promote public understanding of academic freedom. The *Joint Statement on Rights and Freedoms of Students* emphasizes the shared responsibility of all members of the academic community for the preservation of these freedoms.

Continuing attacks on the integrity of our universities and on the concept of academic freedom itself come from many quarters. These attacks, marked by tactics of intimidation and harassment and by political interference with the autonomy of colleges and universities, provoke harsh responses and counterresponses. Especially in a repressive atmosphere, the faculty's responsibility to defend its freedoms cannot be separated from its responsibility to uphold those freedoms by its own actions.

## I.

Membership in the academic community imposes on students, faculty members, administrators, and trustees an obligation to respect the dignity of others, to acknowledge their right to express differing opinions, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus. The expression of dissent and the attempt to produce change, therefore, may not be carried out in ways which injure individuals or damage institutional facilities or disrupt the classes of one's teachers or colleagues. Speakers on campus must not only be protected from violence, but given an opportunity to be heard. Those who seek to call attention to grievances must not do so in ways that significantly impede the functions of the institution.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Faculty members may not refuse to enroll or teach students on the grounds of their beliefs or the possible uses to which they may put the knowledge to be gained in a course. The student should not be forced by the authority inherent in the instructional role to make particular personal choices as to political action or his own part in society. Evaluation of students and the award of credit must be based on academic performance professionally judged and not on matters irrelevant to that performance, whether personality, race, religion, degree of political activism, or personal beliefs.

It is a teacher's mastery of his subject and his own scholarship that entitle him to his classroom and to freedom in the presentation of his subject. Thus, it is improper for an instructor persistently to intrude material that has no relation to his subject, or to fail to present the subject matter of his course as announced to his students and as approved by the faculty in their collective responsibility for the curriculum.

Because academic freedom has traditionally included the instructor's full freedom as a citizen, most faculty members face no insoluble conflicts between the claims of politics, social action, and conscience, on the one hand, and the claims and expectations of their students, colleagues, and institutions, on the other. If such conflicts become acute, and the instructor's attention to his obligations as a citizen and moral agent precludes the fulfillment of substantial academic obligations, he cannot escape the responsibility of that choice, but should either request a leave of absence or resign his academic position.

## II

The Association's concern for sound principles and procedures in the imposition of discipline is reflected in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, the *Recommended Institutional Regulations on Academic Freedom and Tenure*, and the many investigations conducted by the Association into disciplinary actions by colleges and universities.

The question arises whether these customary procedures are sufficient in the current context. We believe that by and large they serve their purposes well but that consideration should be given to supplementing them in several respects:

First, plans for insuring compliance with academic norms should be enlarged to emphasize preventive as well as disciplinary action. Toward this end the faculty should take the initiative, working with the administration and other components of the institution, to develop and maintain an atmosphere of freedom, commitment to academic inquiry, and respect for the academic rights of others. The faculty should also join with other members of the academic community in the development of procedures to be used in the event of serious disruption, or the threat of disruption, and should insure its consultation in major decisions, particularly those related to the calling of external security forces to the campus.

Second, systematic attention should be given to questions related to sanctions other than dismissal, such as warnings and reprimands, in order to provide a more versatile body of academic sanctions.

Third, there is need for the faculty to assume a more positive role as guardian of academic values against unjustified assaults from its own members. The traditional faculty function in disciplinary proceedings has been to assure academic due process and meaningful faculty participation in the imposition of discipline by the administration. While this function should be maintained, faculties should recognize their stake in promoting adherence to norms essential to the academic enterprise.

Rules designed to meet these needs for faculty self-regulation and flexibility of sanctions should be adopted on each campus in response to local circumstances and to continued experimentation. In all sanctioning efforts, however, it is vital that proceedings be conducted with fairness to the individual, that faculty judgments play a crucial role, and that adverse judgments be founded on demonstrated violations of appropriate norms. The Association will encourage and assist local faculty groups seeking to articulate the substantive principles here outlined or to make improvements in their disciplinary machinery to meet the needs here described. The Association will also consult and work with any responsible group, within or outside the academic community, that seeks to promote understanding of and adherence to basic norms of professional responsibility so long as such efforts are consistent with principles of academic freedom.

# Statement on Recruitment and Resignation of Faculty Members

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The Statement printed below was adopted by the Association of American Colleges in January 1961 with the following reservations as set forth in a preamble prepared by that Association's Commission on Academic Freedom and Tenure:

1. No set of principles adopted by the Association can do more than suggest and recommend a course of action. Consequently, the present Statement in no way interferes with institutional sovereignty.

2. The commission realizes that the diversity of practice and control that exists among institutions of higher learning precludes any set of standards from being universally applicable to every situation.

3. The Statement is concerned only with minimum standards and in no way seeks to create a norm for institutions at which "better" practices already are in force.

4. The commission recognizes the fact that "emergency" situations will arise and will have to be dealt with. However, it urges both administration and faculty to do so in ways that will not go counter to the spirit of cooperation, good faith, and responsibility that the Statement is seeking to promote.

5. The commission believes that the spirit embodied in the proposed Statement is its most important aspect.

In view of these reservations, the Council of the American Association of University Professors in April 1961 voted approval of the Statement without adopting it as a binding obligation. Endorsement of the Statement in this form was voted by the Forty-seventh Annual Meeting.

**M**obility of faculty members among colleges and universities is rightly recognized as desirable in American higher education. Yet the departure of a faculty member always requires changes within his institution, and may entail major adjustments on the part of his colleagues, the administration, and students in his field. Ordinarily a temporary or permanent successor must be found and appointed to either his position or the position of a colleague who is promoted to replace him.

In a period of expansion of higher education, such as that already existing and promising to be even more intensified as a pattern for the coming years, adjustments are required more frequently as the number of positions and of transfers among institutions increases. These become more difficult than at other times, especially in the higher academic ranks. Clear standards of practice in the recruitment and in the resignations of members of existing faculties should contribute to an orderly interchange of personnel that will be in the interest of all.

The standards set forth below are recommended to administrations and faculties, in the belief that they are sound and should be generally followed. They are predicated on the assumption that proper provision has been made by employing institutions for timely notice to probationary faculty members and those on term appointments, with respect to their subsequent status. In addition to observing applicable requirements for notice of termination to probationary faculty members, institutions should make provision for notice to all faculty members, not later than March 15 of each year, of their status the following fall, including rank and (unless unavoidable budget procedures beyond the institution forbid) prospective salary.

1. Negotiations looking to the possible appointment for the following fall of persons who are already faculty members of other institutions, in active service or on leave-of-absence and not on terminal appointment, should be begun and completed as early as possible in the academic year. It is desirable that, when feasible, the faculty member who has been approached with regard to another position inform the appropriate officers of his institution when such negotiations are in progress. The conclusion of a binding agreement for the faculty member to accept an appointment elsewhere should always be followed by prompt notice to his institution.

2. A faculty member should not resign in order to accept other employment as of the end of the academic year, later than May 15 or 30 days after receiving notification of the terms of his continued employment the following year, whichever date occurs later. It is recognized, however, that this obligation will be in effect only if institutions generally observe the time factor set forth in the following paragraph for new offers. It is also recognized that emergencies will occur. In such an emergency the faculty member may ask the appropriate officials of his institution to waive this requirement; but he should conform to their decision.

3. To permit a faculty member to give due consideration and timely notice to his institution in the circumstances defined in paragraph 1 of these standards, an offer of appointment for the following fall at another institution should not be made after May 1. The offer should be a "firm" one, not subject to contingencies.

4. Institutions deprived of the services of faculty members too late in the academic year to permit their replacement by securing the members of other faculties in conformity to these standards, and institutions otherwise prevented from taking timely action to recruit from other faculties, should accept the necessity of making temporary arrangements or obtaining personnel from other sources, including new entrants to the academic profession and faculty personnel who have retired.

5. Except by agreement with his institution, a faculty member should not leave or be solicited to leave his position during an academic year for which he holds an appointment.



# A Report from Committee B: Late Resignation and Professional Ethics

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When Committee B on Professional Ethics presented the *Statement on Professional Ethics* to the Association's membership for adoption in 1966, it indicated intention of issuing occasional reports on specific problems. In accordance with that plan, the committee in 1968 authorized the publication of this report on its current policies and procedures, particularly as they relate to the issue of late resignations.

Of the many problems with respect to professional ethics which have been called to the attention of the Association's Washington office, the most consistent one has been that of late resignations and a failure on a faculty member's part to give due notice of resignation as defined in the *Statement on Recruitment and Resignation of Faculty Members*, endorsed as Association policy in 1961 at the Forty-seventh Annual Meeting. Over the past five years, an average of about seven situations per year involving questions of late resignation have been reported to the Association. There has been a significant increase, since the adoption of the *Statement on Professional Ethics*, in communications from faculty members seeking advice prior to making decisions on whether to resign at a late date. There has also been an increasing number of instances in which persons raising questions in the area of late resignations have offered the Association specific evidence relating to their positions and have sought specific Association action.

The *Statement on Professional Ethics* provides that, "when considering the interruption or termination of his service, he [the teacher] recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions." The *Statement on Recruitment and Resignation of Faculty Members* defines due notice as "no later than May 15 or 30 days after receiving notification of the terms of his continued employment the following year, whichever date occurs later." It recognizes that emergencies may occur, in which case "the faculty member may ask the appropriate officials of his institution to waive this requirement; but he should conform to their decision. [emphasis added]."

Committee B considers the reasonableness of prompt notice of resignation self-evident and widely recognized in the profession. It takes the need for appropriate notice most seriously. An Association which urges that faculty members be given ample notice by a university administration when their services are terminated must also make every appropriate effort to persuade faculty members to give due notice when they initiate a termination.

A faculty member who has committed his services to one academic institution and then accepts a position at another is often responding to a later offer of appointment by the other institution. The situation may be analogous to one involving a bribe; it is unethical to accept it, but equally so to offer it. The *Statement on Recruitment and Resignation of Faculty Members*, authored jointly by the American Association of University Professors and the Association of American Colleges, indicates that faculty members can be considered obligated to give due notice "only if institutions generally observe the time factor... for new offers" defined as follows: "To permit a faculty member to give due consideration and timely notice to his institution in the circumstances defined in... these standards, an offer of appointment for the following fall at another institution should not be made after May 1." Committee B regards the honoring of faculty commitments as being

in frequent cases a joint responsibility of faculty members and appointing institutions. It intends to include consideration of the party or parties making late offers in its inquiries into instances of late resignation (see Statement 5 under "Policies and Procedures" below).

Committee B views the making of charges against named persons in letters directed to the Association as a serious matter. It expects, therefore, that any party making such charges will prove willing to support them by supplying evidence as requested by Committee B, so that responsible inquiries can be made.

### **POLICIES AND PROCEDURES OF COMMITTEE B WITH RESPECT TO THE ASSOCIATION'S STATEMENT ON PROFESSIONAL ETHICS**

1. Committee B reaffirms its position, stated in the Introduction to the *Statement on Professional Ethics*, that questions involving propriety of conduct should normally be handled within the framework of individual institutions by reference to a faculty group. The primary function of such faculty activity should be educative, to inform faculty, students, and administrators about principles of professional ethics and to encourage their observance. The Association, through the general secretary and Committee B, stands ready to counsel in matters relating to such faculty function or to particular questions of professional ethics. In a breach of professional ethics deemed serious enough for the possibility of dismissal to be contemplated, the procedures followed by the institution should be in accord with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

2. The committee does not recommend or envisage public Association censure of an individual member of the academic community because of a breach of ethics. In the area of professional ethics, where censure would normally be against an individual, it is difficult to conceive of procedures for the adequate redress of wrong and assurance of effective removal of such censure.

3. Committee B is continuing its interest in specific cases of professional ethics which do not lend themselves to resolution within the confines of the college or university where they occur.

4. In inquiring into complaints involving cases of late notice of resignation, the committee attempts to secure full information from the parties primarily concerned, including persons making offers leading to late resignations. To the extent appropriate, the committee communicates its views to the principal parties directly involved.

5. The committee continues to see its own primary function as educative. It is manifestly the committee of the Association which speaks to the individual responsibility of the members of the profession. A membership association that is devoted to high standards of professional excellence need show no uneasiness over such a committee's role or voice, nor need administrations or governing boards find in its presence any reason to abrogate proper standards and principles of academic freedom and tenure, procedural due process, or a faculty's role in institutional government.

# STUDENT RIGHTS AND FREEDOMS

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## Joint Statement on Rights and Freedoms of Students

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*In June 1967, a joint committee, comprising representatives from the American Association of University Professors, United States National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors, met in Washington, D.C., and drafted the Joint Statement published below.*

*Since its formulation, the Joint Statement has been endorsed by each of its five national sponsors, as well as by a number of other professional bodies. The Association's Council adopted the Statement in October 1967 and the Fifty-fourth Annual Meeting endorsed it as Association policy.*

### PREAMBLE

**A**cademic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. As members of the academic community, students should be encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth. Institutional procedures for achieving these purposes may vary from campus to campus, but the minimal standards of academic freedom of students outlined below are essential to any community of scholars.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility.

The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community. Each college and university has a duty to develop policies and procedures which provide and safeguard this freedom. Such policies and procedures should be developed at each institution within the framework of general standards and with the broadest possible participation of the members of the academic community. The purpose of this statement is to enumerate the essential provisions for student freedom to learn.

## I. FREEDOM OF ACCESS TO HIGHER EDUCATION

The admissions policies of each college and university are a matter of institutional choice provided that each college and university makes clear the characteristics and expectations of students which it considers relevant to success in the institution's program. While church-related institutions may give admission preference to students of their own persuasion, such a preference should be clearly and publicly stated. Under no circumstances should a student be barred from admission to a particular institution on the basis of race. Thus, within the limits of its facilities, each college and university should be open to all students who are qualified according to its admission standards. The facilities and services of a college should be open to all of its enrolled students, and institutions should use their influence to secure equal access for all students to public facilities in the local community.

## II. IN THE CLASSROOM

The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.

### A. *Protection of Freedom of Expression*

Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

### B. *Protection against Improper Academic Evaluation*

Students should have protection through orderly procedures against prejudiced or capricious academic evaluation. At the same time, they are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

### C. *Protection against Improper Disclosure*

Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisers, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student.

## III. STUDENT RECORDS

Institutions should have a carefully considered policy as to the information which should be part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records should be separate, and the conditions of access to each should be set forth in an explicit policy statement. Transcripts of academic records should contain only information about academic status. Information from disciplinary or counseling files should not be available to unauthorized persons on campus, or to any person off campus without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect the political activities or beliefs of students. Provisions should also be made for periodic routine destruction of noncurrent disciplinary records. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work.

## IV. STUDENT AFFAIRS

In student affairs, certain standards must be maintained if the freedom of students is to be preserved.

### A. *Freedom of Association*

Students bring to the campus a variety of interests previously acquired and develop many

new interests as members of the academic community. They should be free to organize and join associations to promote their common interests.

1. The membership, policies, and actions of a student organization usually will be determined by vote of only those persons who hold *bona fide* membership in the college or university community.

2. Affiliation with an extramural organization should not of itself disqualify a student organization from institutional recognition.

3. If campus advisers are required, each organization should be free to choose its own adviser, and institutional recognition should not be withheld or withdrawn solely because of the inability of a student organization to secure an adviser. Campus advisers may advise organizations in the exercise of responsibility, but they should not have the authority to control the policy of such organizations.

4. Student organizations may be required to submit a statement of purpose, criteria for membership, rules of procedures, and a current list of officers. They should not be required to submit a membership list as a condition of institutional recognition.

5. Campus organizations, including those affiliated with an extramural organization, should be open to all students without respect to race, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian.

#### *B. Freedom of Inquiry and Expression*

1. Students and student organizations should be free to examine and discuss all questions of interest to them, and to express opinions publicly and privately. They should always be free to support causes by orderly means which do not disrupt the regular and essential operation of the institution. At the same time, it should be made clear to the academic and the larger community that in their public expressions or demonstrations students or student organizations speak only for themselves.

2. Students should be allowed to invite and to hear any person of their own choosing. Those routine procedures required by an institution before a guest speaker is invited to appear on campus should be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The institutional control of campus facilities should not be used as a device of censorship. It should be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or by the institution.

#### *C. Student Participation in Institutional Government*

As constituents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of the student government and both its general and specific responsibilities should be made explicit, and the actions of the student government within the areas of its jurisdiction should be reviewed only through orderly and prescribed procedures.

#### *D. Student Publications*

Student publications and the student press are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Whenever possible the student newspaper should be an independent corporation financially and legally separate from the university. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students,

the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications, the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented allegations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications the following provisions are necessary.

1. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

2. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal.

3. All university published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university, or student body.

## V. OFF-CAMPUS FREEDOM OF STUDENTS

### A. Exercise of Rights of Citizenship

College and university students are both citizens and members of the academic community. As citizens, students should enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy and, as members of the academic community, they are subject to the obligations which accrue to them by virtue of this membership. Faculty members and administrative officials should insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their exercise of the rights of citizenship both on and off campus.

### B. Institutional Authority and Civil Penalties

Activities of students may upon occasion result in violation of law. In such cases, institutional officials should be prepared to apprise students of sources of legal counsel and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but institutional authority should never be used merely to duplicate the function of general laws. Only where the institution's interests as an academic community are distinct and clearly involved should the special authority of the institution be asserted. The student who incidentally violates institutional regulations in the course of his off-campus activity, such as those relating to class attendance, should be subject to no greater penalty than would normally be imposed. Institutional action should be independent of community pressure.

## VI. PROCEDURAL STANDARDS IN DISCIPLINARY PROCEEDINGS

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition. At the same time, educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the setting of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities. In the exceptional circumstances when the preferred means fail to resolve problems of student conduct, proper procedural safeguards should be observed to protect the student from the unfair imposition of serious penalties.

The administration of discipline should guarantee procedural fairness to an accused student.

Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also take into account the presence or absence of an honor code, and the degree to which the institutional officials have direct acquaintance with student life in general and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary responsibilities of institutional officials, and the regular disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance. Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no honor codes offering comparable guarantees.

#### *A. Standards of Conduct Expected of Students*

The institution has an obligation to clarify those standards of behavior which it considers essential to its educational mission and its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct, but the student should be as free as possible from imposed limitations that have no direct relevance to his education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy and reasonableness. Disciplinary proceedings should be instituted only for violations of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

#### *B. Investigation of Student Conduct*

1. Except under extreme emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

#### *C. Status of Student Pending Final Action*

Pending action on the charges, the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well being of students, faculty, or university property.

#### *D. Hearing Committee Procedures*

When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality.

1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matters. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the president or ultimately to the governing board of the institution.



# COLLEGE AND UNIVERSITY ACCREDITATION

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## The Role of the Faculty in the Accrediting of Colleges and Universities

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*The statement which follows was prepared by the Association's Committee D on Accrediting of Colleges and Universities. It was adopted by the Council of the American Association of University Professors in April 1968 and endorsed by the Fifty-fourth Annual Meeting as Association policy.*

**I**nstitutional evaluation is a joint enterprise between institutions of higher education and the accrediting commissions of regional associations. For their most effective work the accrediting commissions require the cooperative effort of qualified faculty members and administrators, who should be encouraged by their colleges and universities to participate in the work of the commissions. Within a college or university, the nature of the accrediting process requires common enterprise among the faculty, the administration, and to some extent the governing board. The appraisal of the academic program should be largely the responsibility of faculty members. They should play a major role in the evaluation of the curriculum, the library, teaching loads and conditions, research, professional activities, laboratories and other academic facilities, and faculty welfare and compensation, all in relation to the institution's objectives and in the light of its financial resources. To higher education generally, faculty members may exercise a special responsibility as the segment of the educational community which is in the best position to recognize and appraise circumstances affecting academic freedom, faculty tenure, faculty role in institutional government, and faculty status and morale. This statement presents standards for the expression of faculty interest and responsibility in the accreditation process.

### RECOMMENDED STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1. Primary responsibility for the preparation of the academic aspects of the self-evaluation should rest with a committee composed largely of faculty members and responsible to the

faculty as a whole. Additions or deletions should be made only after consultation with the authors of the sections of the report which are affected.

2. The self-evaluation should include a description of:
  - a. conditions of academic freedom and tenure (including provisions for due process),
  - b. conditions of faculty participation in institutional government (including provisions for the orderly handling of grievances and disputes);
  - c. faculty status and morale (including working conditions and total compensation).

Significant differences of opinion in these and other areas should be reflected in the self-evaluation.

3. The completed self-evaluation should be made available to the entire faculty prior to its submission to the accrediting commission and should be subject to amendment in the light of faculty suggestions.

4. Representative faculty, including members of appropriate faculty committees, should be available to meet with the visiting committee to discuss questions of faculty concern.

5. The report of the visiting committee should be made available to the entire faculty.

6. The faculty should be fully informed of the accrediting commission's action after an evaluation and should be kept abreast of all significant developments and issues arising between the accrediting commission and the institution. It should participate, as in the self-evaluation, in any subsequent activities regarding the institution's accreditation.

### RECOMMENDED STANDARDS FOR THE REGIONAL ACCREDITING COMMISSIONS

1. Regular visiting committees should include full-time teaching or research faculty members.

2. A formally adopted institutional policy on academic freedom and tenure, consistent with the major provisions of the 1940 *Statement of Principles on Academic Freedom and Tenure*, should be a condition for accreditation.

3. Reports by regular visiting committees should take explicit account of:

- a. Conditions of academic freedom and tenure (including provisions for due process);
- b. Conditions of faculty participation in institutional government (including provisions for the orderly handling of grievances and disputes);
- c. Faculty status and morale (including working conditions and total compensation).

The reports should describe any significant shortcomings in these areas.

4. When significant shortcomings in the areas listed above have been found, the commissions should deal with these as with similar shortcomings in other areas, endeavoring to secure improvement and applying appropriate sanctions in the absence of improvement within a reasonable time.

5. A gross violation of academic freedom, tenure, or due process should, unless promptly corrected, lead to action looking towards withdrawal of accreditation.

# RESEARCH AND TEACHING

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**A**s an organization of teachers and researchers, the Association has long been concerned with the development and maintenance of effective college and university instruction, including classroom techniques, work with individual students, testing, and the use of library facilities and advanced teaching aids; with the conditions of effective research, creative work, and publication by faculty members; and with the recruitment and training of college and university faculties. The Association's standing Committee on College and University Teaching, Research, and Publication has developed policy statements relating to faculty workload and teaching evaluation and has sponsored occasional studies in these areas. The Association has also published, in conjunction with the American Council on Education, a statement On Preventing Conflicts of Interest in Government-Sponsored Research at Universities.

# Statement on Faculty Workload

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*The Statement which follows was prepared by the Association's Committee C on College and University Teaching, Research, and Publication. It was adopted by the Council of the American Association of University Professors in October 1969 and endorsed by the Fifty-sixth Annual Meeting as Association policy.*

## INTRODUCTION

**N**o single formula for an equitable faculty workload can be devised for all of American higher education. What is fair and works well in the community college may be inappropriate for the university, and the arrangement thought necessary in the technical institute may be irrelevant in the liberal arts college.

This is not to say, however, that excessive or inequitably distributed workloads cannot be recognized as such. In response to the many appeals received in recent years, therefore, this Association wishes to set forth such guidelines as can be applied generally, regardless of the special circumstances of the institution concerned:

1. A definition of maximum teaching loads for effective instruction at the undergraduate and graduate levels.
2. A description of the procedures that should be followed in establishing, administering, and revising workload policies.
3. An identification of the most common sources of inequity in the distribution of workloads.

## MAXIMUM TEACHING LOADS

In the American system of higher education, faculty "workloads" are usually described in hours per week of formal class meetings. As a measurement, this leaves much to be desired. It fails to consider other time-consuming institutional duties of the faculty member, and, even in terms of his teaching, it misrepresents the true situation. The teacher normally spends far less time in the classroom than in preparation, conferences, grading of papers and examinations, and supervision of remedial or advanced student work. Preparation, in particular, is of critical importance, and is probably the most unremitting of these demands; not only preparation for specific classes or conferences, but that more general preparation in the discipline, by keeping up with recent developments and strengthening his grasp on older materials, without which the faculty member will soon dwindle into ineffectiveness as scholar and teacher. Moreover, traditional workload formulations are at odds with significant current developments in education emphasizing independent study, the use of new materials and media, extracurricular and off-campus educational experiences, and interdisciplinary approaches to problems in contemporary society. Policies on workload at institutions practicing such approaches suggest the need for a more sophisticated discrimination and weighting of educational activities.

This Association has been in a position over the years to observe workload policies and faculty performance in a great variety of American colleges and universities, and in its considered judgment the following maximum workload limits are necessary for any institution of higher education seriously intending to achieve and sustain an adequately high level of faculty effectiveness in teaching and scholarship:

*For undergraduate instruction, a teaching load of twelve hours per week, with no more than six separate course preparations during the academic year.*

*For instruction partly or entirely at the graduate level, a teaching load of nine hours per week.*

This statement of *maximum* workload presumes a traditional academic year of not more than thirty-two weeks of classes. Moreover, it presumes no unusual additional expectations in terms of research, administration, counseling, or other institutional responsibilities. Finally, it presumes also that means can be devised within each institution for determining fair equivalents in workload for those faculty members whose activities do not fit the conventional classroom lecture or discussion pattern: for example, those who supervise laboratories or studios, offer tutorials, or assist beginning teachers.

## PREFERRED TEACHING LOADS

Even with the reservations just made, however, it would be misleading to offer this statement of maximum loads without providing some guidelines for a *preferable* pattern. This Association has observed in recent years a steady reduction of teaching loads in American colleges and universities noted for the effectiveness of their faculties in teaching and scholarship to norms that can be stated as follows:

*For undergraduate instruction, a teaching load of nine hours per week.*

*For instruction partly or entirely at the graduate level, a teaching load of six hours per week.*

The Association has observed also that in the majority of these institutions further reductions have become quite usual for individuals assuming heavier-than-normal duties in counseling, program development, administration, research, and many other activities. In a smaller number, moreover, even lower teaching loads have been established generally, for all faculty members.

It must be recognized that achievement of nine- or six-hour teaching loads may not be possible at present for many institutions. The Association believes, nevertheless, that the nine- or six-hour loads achieved by our leading colleges and universities, in some instances many years ago, provide as reliable a guide as may be found for teaching loads in any institution intending to achieve and maintain excellence in faculty performance.

## PROCEDURES

The faculty should participate fully in the determination of workload policy, both initially and in all subsequent reappraisals. Reappraisal at regular intervals is essential, in order that older patterns of faculty responsibility may be adjusted to changes in the institution's size, structure, academic programs, and facilities. Current policy and practices should be made known clearly to all faculty members, including those new to the institution each year.

The individual may have several quite different duties, some of which may be highly specialized, and the weight of these duties may vary strikingly at different times during the year. It is important, therefore, that individual workloads be determined by, or in consultation with, the department or other academic unit most familiar with the demands involved. Those responsible should be allowed a measure of latitude in making individual assignments, and care should be taken that *all* of the individual's services to the institution are considered.

## COMMON SOURCES OF INEQUITY IN THE DISTRIBUTION OF WORKLOADS

### 1. *Difficulty of Courses*

No two courses are exactly alike, and some differences among individual loads are therefore to be expected within a common twelve-hour, nine-hour, or six-hour policy. Serious inequity should be avoided, however, and the most frequent sources of difficulty are easily identified.

a. The number of different course preparations should be considered, not only the total class hours per week.

b. Special adjustments may be appropriate for the faculty member introducing a new course or substantially revising an older course. This is a matter of institutional self-interest as well as of equity; if the new course has been approved as likely to strengthen the institution's program, all appropriate measures should be taken to insure its success.

c. Extreme differences in scope and difficulty among courses should not be overlooked merely because contention might be provoked on other less obvious imbalances. The difference in difficulty among some courses is so pronounced that no faculty member concerned would deny the existence of the discrepancy. Such imbalances may occur among courses in different disciplines as well as within the same discipline. In some subjects the advanced course is the more demanding; in others, the introductory course. One course may entail constant student consultation; another may entail a heavy burden of paperwork. At least the more obvious discrepancies should be corrected.

d. The size of the classes taught should also be considered. The larger class is not always more demanding than the smaller class; but it does not follow that the question of class size can safely be ignored. In a given institution there will be many generally comparable courses, and for these the difficulty will probably be directly proportionate to the number of students involved. In some institutions aware of this problem, faculty workload is now measured in terms of student-instruction load, or "contact hours," as well as in the conventional classroom or credit hours.

Regardless of the institution's particular circumstances, it should be possible by formal or informal means to avoid serious inequities on these four major points.

## 2. Research

Increasingly each year, undergraduate as well as graduate institutions specify "research" as a major responsibility of the faculty. Lack of clarity or candor about what constitutes such "research" can lead to excessive demands on the faculty generally or on part of the faculty.

If the expectation is only of that "general preparation" already described, no additional reduction in faculty workload is indicated. Usually, however, something beyond that general preparation is meant: original, exploratory work in some special field of interest within the discipline. It should be recognized that if this is the expectation such research, *whether or not it leads to publication*, will require additional time. It is very doubtful that a continuing effort in original inquiry can be maintained by a faculty carrying a teaching load of more than nine hours; and it is worth noting that a number of leading universities desiring to emphasize research have already moved or are now moving to a six-hour policy.

If it is original work that is expected, but the institution fails to state candidly whether in practice scholarly publication will be regarded as the only valid evidence of such study, the effect may well be to press one part of the faculty into "publishing research" at the expense of a "teaching research" remainder. Neither faculty group will teach as well as before.

In short, if research is to be considered a *general* faculty responsibility, the only equitable way to achieve it would seem to be a *general* reduction in faculty workload. If the expectation is that some but not all of the faculty will be publishing scholars, then that policy should be candidly stated and faculty workloads adjusted equitably in accordance with that expectation.

## 3. Responsibilities Other Than Teaching and Research

Although faculty members expect as a matter of course to serve in student counseling, on committees, with professional societies, and in certain administrative capacities, a heavy commitment in any of these areas, or service in too many of these areas at once, will of course impair the effectiveness of the faculty member as teacher and scholar. A reduction in workload is manifestly in order when an institution wishes to draw heavily on the services of an individual in this way, or when with its approval he is engaged in community or government service. No universally applicable rule can be advanced here, but, as suggested earlier, the faculty unit responsible for individual assignments should take all such additional service into full consideration. Often, the determination of an appropriate reduction in workload depends on nothing more complex than an estimate of the hours that these additional duties will require.

# Statement on Teaching Evaluation

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*The Statement which follows was prepared by the Association's Committee C on College and University Teaching, Research, and Publication. It was adopted by the Council of the American Association of University Professors in June 1975 and endorsed by the Sixty-first Annual Meeting as Association policy.*

**I**n response to a chronic need for arriving at fair judgments of a faculty member's teaching, the Association sets forth this *Statement* as a guide to proper teaching evaluation methods and their appropriate uses in personnel decisions. This *Statement* confines itself to the teaching responsibilities of college and university professors, and is not intended as the definitive statement on reviewing and weighing all aspects of a faculty member's work. In addressing itself to teaching, the *Statement* has no intention of minimizing the importance of other faculty responsibilities. There is a need for assessment of a teacher's scholarship both more precise and more extensive than commonly employed. There is a need to define service and the value attached to it as well as to review carefully the kind and quality of service performed by faculty members. Additional guidance in the complex task of reviewing faculty service is to be found in other Association documents: the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, the *Statement on Government of Colleges and Universities*, the *Statement on Faculty Workload*, and the *Recommended Institutional Regulations on Academic Freedom and Tenure*.

## STATEMENT

Colleges and universities properly aspire to excellence in teaching. Institutional aspirations, however, have not often led to practices which clearly identify and reward teaching excellence, and the quality of teaching is not in fact the determining factor in many decisions on retention, promotion, salary, and tenure. The aspirations of faculty members are often frustrated because they must wrestle with diverse obligations—commonly identified as *teaching, research, and service*—placed upon them by the profession at large, the scholarly discipline, the institution, and their own varied interests. Establishing a positive relationship between the institution's and department's aspirations and the individual's competencies and aims is one outcome of fair and thorough faculty review procedures.

### *Institutional Values and Policies*

Making clear the expectations the institution places upon the teacher and providing the conditions and support necessary to excellent teaching are primary institutional obligations. It is a first order of business that institutions declare their values and communicate them with sufficient clarity to enable colleges and departments to set forth specific expectations as to *teaching, research, and service*, and to make clear any other faculty obligations. Both institution-wide and college or department policies on promotion, salary, and tenure should be written and subject to periodic review, a process in which faculty members must play a central part.

### *Expectations, Criteria, and Procedures*

At the college or department level, the expectations as to teaching, the weighting of teaching in relation to other expectations, and the criteria and procedures by which the fulfillment of these expectations is to be judged should be put in writing and periodically reviewed by all members of the college or department. This policy statement should specify the information

which is to be gathered for all faculty members, the basic procedures to be followed in gathering it, and the time schedule for various aspects of the review process. Such information should include first-hand data from various sources, including students, and should emphasize the primacy of faculty colleague judgments of teaching effectiveness at the first level of review and recommendation.

#### *Adequate Evaluation Data*

Casual procedures, a paucity of data, and unilateral judgments by department chairmen and deans too often characterize the evaluation of teaching in American colleges and universities. Praiseworthy and systematic efforts to improve teaching evaluation have moved toward identifying characteristics of effective teaching and recognizing and weighting the multiple aspects of an individual teacher's performance. A judicious evaluation of a college professor as teacher should include (1) an accurate factual description of what an individual does as teacher, (2) various measures of the effectiveness of these efforts, and (3) fair consideration of the relation between these efforts and the institution's and department's expectations and support.

An important and often overlooked element of evaluating teaching is an accurate description of a professor's teaching. Such a description should include number and level and kinds of classes taught, numbers of students, and out-of-class activities related to teaching. Such data should be very carefully considered both to guard against drawing unwarranted conclusions and to increase the possibilities of fairly comparing workloads and kinds of teaching, of clarifying expectations, and of identifying particulars of minimum and maximum performance. Other useful information might include evidence of the ability of a teacher to shape new courses, to reach different levels and kinds of students, to develop effective teaching strategies, and to contribute to the effectiveness of the individual's and the institution's instruction in other ways than in the classroom.

The gathering of such data can promote a careful consideration of both the institution's and the department's values. If a department, for example, places great value upon teaching large numbers of lower level students, that value should be reflected in the judgments about teachers who perform such tasks effectively. Too often, even at the simple point of numbers and kinds of students taught, departments and institutions operate on value assumptions seldom made clear to the faculty.

Another kind of data which should be systematically gathered and examined by the teacher's colleagues includes course outlines, tests, materials, and methods employed in instruction. Care should be taken that such scrutiny not inhibit the teacher, limit the variety of effective teaching styles, or discourage purposeful innovation. Evidence of a concern for teaching and teaching competence demonstrated in publications, attendance at meetings, delivery of lectures, and consulting should also be included among the essential information to be reviewed.

#### *Assessing the Effectiveness of Instruction*

*Student learning.* Evaluation of teaching usually refers to efforts made to assess the effectiveness of instruction. The most valid measure is probably the most difficult to obtain, that is, the assessment of a teacher's effectiveness on the basis of the learning of his students. On the one hand, a student's learning is importantly influenced by much more than an individual teacher's efforts. On the other, measures of before-and-after learning are difficult to find, control, or derive comparisons from. From a practical point of view, the difficulties of evaluating college teaching on the basis of changes in student performance limit the use of such a measure. The difficulties, however, should not rule out seeking reliable evidence of this kind.

*Teaching performance.* Evaluating teaching on the basis of teaching performance also presents difficulties in measurement, but the large body of research into the reliability and validity of carefully applied performance measures supports the practical usefulness of these data. Data on teaching performance commonly come from trained observers, faculty colleagues, and students. The booklet, *The Recognition and Evaluation of Teaching*, available from the Association, offers an extensive bibliography and useful guidance in gathering data from these sources.



*Student perceptions.* Student perceptions are a prime source of information from those who must be affected if learning is to take place. Student responses can provide continuing insights into a number of the important dimensions of a teacher's efforts: classroom performance, advising, informal and formal contacts with students outside of class. A variety of ways are available to gather student opinion, ranging from informal questioning of individual students about details of a specific course to campus-wide questionnaires.

Faculty members should be meaningfully involved in any systematic efforts to obtain student opinion. Cooperation among students, faculty, and administration is necessary to secure teaching performance data which can be relied upon. There is no one questionnaire or method suitable to every department or institution. Different kinds of questionnaires can be useful in assessing different kinds of courses and subject matters and to meet the need for information of a particular kind. However, a common instrument covering a range of teachers, departments, and subject matter areas has the great advantage of affording meaningful comparative data. The important consideration is to obtain reliable data over a range of teaching assignments and over a period of time. Evaluations in which results go only to the individual professor may be of use in improving an individual teacher's performance, but they contribute little to the process of faculty review. Student input need not be limited by course evaluations. Exit interviews, questionnaires to alumni, and face-to-face discussion are other ways in which student feedback can be profitably gathered.

*Classroom visitation.* Because of the usefulness of having firsthand information about an individual's teaching effectiveness, some institutions have adopted a program of classroom visitation. There are many ways of having colleagues visit classrooms, but such visits do not necessarily yield reliable data. Careful observations over a period of time may, however, be useful in evaluating instruction and in fostering effective teaching. Clearly, there must be an understanding among the visitors and the visited upon such matters as who does the visiting, how many visits are made, what visitors look for, what feedback is given to the visited, and what other use is made of the information.

*Self-evaluation.* Some institutions draw upon self-evaluation as an element in evaluating teaching. The limitations on self-evaluation are obvious, and neither the teacher nor the institution should be satisfied with self-evaluation alone. However, faculty members as individuals or as members of committees can assist colleagues in making the kind of self-evaluation which constitutes a contribution to improving and evaluating teaching. Arousing an interest in self-examination, structuring self-evaluations so that they might afford more reliable data, and giving faculty members the opportunity to assess their own teaching effectiveness and to add their own interpretation of student ratings and classroom visitations can increase the usefulness of self-evaluation as a part of the review process.

*Outside opinions.* Some institutions seek outside opinions and judgments as to a professor's competence. Reliable outside judgments about an individual's teaching, however, are difficult to secure. It would be a mistake to suppose that a college teacher's scholarly reputation is an accurate measure of his teaching. Visiting teams from the outside, given ample time to observe the teacher, to talk with students, and to examine relevant data, might prove a useful, though expensive, means of improving the quality of evaluation. Information and opinions from faculty members in other departments and from persons outside the university should be sought when an individual's teaching assignment and the informant's firsthand knowledge appear to justify their use.

#### *Procedures*

The emphasis in evaluation should be upon obtaining firsthand evidence of teaching competence, which is most likely to be found among the faculty of a department or college and the students who receive instruction. Evaluation of teaching in which an administrator's judgment is the sole or determining factor is contrary to policies set forth in the *Statement on Government of Colleges and Universities*.

The institution's commitment to teaching should be manifested in concrete ways. For example, some institutions have adopted policies which make recommendations for promotion unacceptable unless they provide strong and convincing evidence of teaching competence. Combining the systematic evaluation of teaching with direct efforts to assist teachers in developing their effectiveness is another example of institutional commitment. It is the responsibility of the institution and the colleges, departments, or other instructional divisions to establish and maintain written policies and procedures which insure a sound basis for individual judgments fairly applied to all.

Faculty members should have a primary though not exclusive role in evaluating an individual faculty member's performance as teacher. Factual data, student opinion, and colleague judgments should be central in the formal procedures for review which should involve faculty discussion and vote. Those being evaluated should be invited to supply information and materials relevant to that evaluation. If the department has not constituted final authority, the faculty's considered judgment should constitute the basic recommendation to the next level of responsibility, which may be a college-wide or university-wide faculty committee. If the chairman's recommendation is contrary to that of the faculty, the faculty should be informed of the chairman's reasons prior to the chairman's submitting his and the faculty's recommendations and should be given an opportunity to respond to the chairman's views.

The dean's function, where separate from a department chairman's or division head's, is typically that of review and recommendation either in the dean's own person or through an official review body at that level. If the recommendation at this level is contrary to that of the department chairman or faculty, opportunity should be provided for discussion with the chairman or faculty before a formal recommendation is made.

Final decisions should be made in accordance with the *Statement on Government of Colleges and Universities*. "The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with faculty judgment except in rare instances and for compelling reasons which should be stated in detail." Procedures in accordance with the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* and the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* should be provided to handle faculty grievances arising from advancement recommendations.

#### *Some Further Implications*

The responsible evaluation of teaching does not serve advancement procedures alone. It should be wisely employed for the development of the teacher and the enhancement of instruction. Both of these aims can be served by the presence of a faculty committee charged with the overall responsibility of remaining conversant with the research in evaluating teaching and of providing assistance in maintaining sound policies and procedures in reviewing faculty performance. The full dimensions of teaching should not be slighted in the desire to arrive at defensible data and systematic practices. Though teaching can be considered apart from scholarship and service, the general recognition of these three professional obligations suggests that the relationships are important. The kind of teaching which distinguishes itself in colleges and universities is integral with scholarship, has a way of getting outside classroom confines, and may exemplify the highest meaning of service. A judicious evaluation system would recognize the broad dimensions of teaching, be sensitive to different kinds and styles of instruction, and be as useful in distinguishing superior teaching from the merely competent as in identifying poor teaching.

# On Preventing Conflicts of Interest in Government-Sponsored Research at Universities

*The many complex problems that have developed in connection with the extensive sponsored research programs of the federal government have been of concern to the government, the academic community, and private industry. The Association, through its Council, and the American Council on Education, working in cooperation with the president's science advisor and the Federal Council of Science and Technology, in 1965 developed a statement of principles formulating basic standards and guidelines in this problem area.*

*An underlying premise of the statement is that responsibility for determining standards affecting the academic community rests with that community, and that conflict of interest problems are best handled by administration and faculty in cooperative effort. In addition to providing guidelines, the statement seeks to identify and alert administration and faculty to the types of situations that have proved troublesome. Throughout, it seeks to protect the integrity of the objectives and needs of the cooperating institutions and their faculties, as well as of sponsoring agencies.*

**T**he increasingly necessary and complex relationships among universities, government, and industry call for more intensive attention to standards of procedure and conduct in government-sponsored research. The clarification and application of such standards must be designed to serve the purposes and needs of the projects and the public interest involved in them and to protect the integrity of the cooperating institutions as agencies of higher education.

The government and institutions of higher education, as the contracting parties, have an obligation to see that adequate standards and procedures are developed and applied; to inform one another of their respective requirements; and to assure that all individuals participating in their respective behalfs are informed of and apply the standards and procedures that are so developed.

Consulting relationships between university staff members and industry serve the interests of research and education in the university. Likewise, the transfer of technical knowledge and skill from the university to industry contributes to technological advance. Such relationships are desirable, but certain potential hazards should be recognized.

## A. CONFLICT SITUATIONS

1. *Favoring of outside interests.* When a university staff member (administrator, faculty member, professional staff member, or employee) undertaking or engaging in government-sponsored work has a significant financial interest in, or a consulting arrangement with, a private business concern, it is important to avoid actual or apparent conflicts of interest between his government-sponsored university research obligations and his outside interests and other obligations. Situations in or from which conflicts of interest may arise are the:

a. undertaking or orientation of the staff member's university research to serve the research or other needs of the private firm without disclosure of such undertaking or orientation to the university and to the sponsoring agency;

b. purchase of major equipment, instruments, materials, or other items for university research from the private firm in which the staff member has the interest without disclosure of such interest;

c. transmission to the private firm or other use for personal gain of government-sponsored work products, results, materials, records, or information that are not made generally available (this would not necessarily preclude appropriate licensing arrangements for inventions, or consulting on the basis of government-sponsored research results where there is significant additional work by the staff member independent of his government-sponsored research),

d. use for personal gain or other unauthorized use of privileged information acquired in connection with the staff member's government-sponsored activities (the term "privileged information" includes, but is not limited to, medical, personnel, or security records of individuals, anticipated material requirements or price actions, possible new sites for government operations, and knowledge of forthcoming programs or of selection of contractors or subcontractors in advance of official announcements);

e. negotiation or influence upon the negotiation of contracts relating to the staff member's government-sponsored research between the university and private organizations with which he has consulting or other significant relationships;

f. acceptance of gratuities or special favors from private organizations with which the university does or may conduct business in connection with a government-sponsored research project, or extension of gratuities or special favors to employees of the sponsoring government agency, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties.

2. *Distribution of effort.* There are competing demands on the energies of a faculty member (for example, research, teaching, committee work, outside consulting). The way in which he divides his effort among these various functions does not raise ethical questions unless the government agency supporting his research is misled in its understanding of the amount of intellectual effort he is actually devoting to the research in question. A system of precise time accounting is incompatible with the inherent character of the work of a faculty member, since the various functions he performs are closely interrelated and do not conform to any meaningful division of a standard work week. On the other hand, if the research agreement contemplates that a staff member will devote a certain fraction of his effort to the government-sponsored research, or he agrees to assume responsibility in relation to such research, a demonstrable relationship between the indicated effort or responsibility and the actual extent of his involvement is to be expected. Each university, therefore, should—through joint consultation of administration and faculty—develop procedures to assure that proposals are responsibly made and complied with.

3. *Consulting for government agencies or their contractors.* When the staff member engaged in government-sponsored research also serves as a consultant to a federal agency, his conduct is subject to the provisions of the Conflict of Interest Statutes (18 U.S.C. 202-209 as amended) and the president's memorandum of May 2, 1963, *Preventing Conflicts of Interest on the Part of Special Government Employees*. When he consults for one or more government contractors, or prospective contractors, in the same technical field as his research project, care must be taken to avoid giving advice that may be of questionable objectivity because of its possible bearing on his other interests. In undertaking and performing consulting services, he should make full disclosure of such interests to the university and to the contractor insofar as they may appear to relate to the work at the university or for the contractor. Conflict-of-interest problems could arise, for example, in the participation of a staff member of the university in an evaluation for the government agency or its contractor of some technical aspect of the work of another organization with which he has a consulting or employment relationship or a significant financial interest, or in an evaluation of a competitor to such other organization.

## B. UNIVERSITY RESPONSIBILITY

Each university participating in government-sponsored research should make known to the sponsoring government agencies:

1. the steps it is taking to assure an understanding on the part of the university administration and staff members of the possible conflicts of interest or other problems that may develop in the foregoing types of situations, and

2. the organizational and administrative actions it has taken or is taking to avoid such problems, including:

a. accounting procedures to be used to assure that government funds are expended for the purposes for which they have been provided, and that all services which are required in return for these funds are supplied;

b. procedures that enable it to be aware of the outside professional work of staff members participating in government-sponsored research, if such outside work relates in any way to the government-sponsored research;

c. the formulation of standards to guide the individual university staff members in governing their conduct in relation to outside interests that might raise questions of conflicts of interest, and

d. the provision within the university of an informed source of advice and guidance to its staff members for advance consultation on questions they wish to raise concerning the problems that may or do develop as a result of their outside financial or consulting interests, as they relate to their participation in government-sponsored university research. The university may wish to discuss such problems with the contracting officer or other appropriate government official in those cases that appear to raise questions regarding conflicts of interest.

The above process of disclosure and consultation is the obligation assumed by the university when it accepts government funds for research. The process must, of course, be carried out in a manner that does not infringe on the legitimate freedoms and flexibility of action of the university and its staff members that have traditionally characterized a university. It is desirable that standards and procedures of the kind discussed be formulated and administered by members of the university community themselves, through their joint initiative and responsibility, for it is they who are the best judges of the conditions that can most effectively stimulate the search for knowledge and preserve the requirements of academic freedom. Experience indicates that such standards and procedures should be developed and specified by joint administration-faculty action.

# COLLATERAL BENEFITS

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**T**he Association is concerned with all aspects of the economic welfare of faculties in the setting of proper institutional management and finance, including salaries, tax problems, provision for retirement, and incidental arrangements such as insurance, treatment of outside income or other legal claims of faculty, and education of faculty children and spouses. In addition to sponsoring several studies in these areas, the Association has also adopted, with the Association of American Colleges, two joint statements of policy, one on Academic Retirement and Insurance Plans, the other on Leaves of Absence. The latter document was subsequently supplemented by the AAUP's statement on Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies.

The Association's standing Committee Z on the Economic Status of the Profession conducts an annual survey of the economic status of college and university faculty members in relation to changing circumstances and formulates standards relating to the economic status of the academic profession.

# Statement of Principles on Academic Retirement and Insurance Plans

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*The policy statement which follows, prepared by a joint committee of the American Association of University Professors and the Association of American Colleges, represents a new revision of a joint statement originally issued in 1950. Subsequent revisions, endorsed by the AAUP and AAC, were issued in 1958 and in 1969. The Statement was adopted in January 1980 by the Association of American Colleges. It was adopted by the Council of the American Association of University Professors in June 1980 and endorsed by the Sixty-sixth Annual Meeting as Association policy.*

**T**he purpose of an institution's retirement plan for faculty members and administrators and its plan for their insurance benefits should be to help educators and their families withstand the financial effects of illness, old age, and death and to increase the educational effectiveness of the college and university. The plans should be designed to attract individuals of the highest abilities to the faculty and administration, to sustain their morale, to permit them to devote their energies to the concerns of the institution and the profession, and to provide for their orderly retirement. In addition, the plans must meet the requirements of applicable federal and state laws: for example, on the federal level, the Employee Retirement Income Security Act of 1974 (ERISA), the Age Discrimination in Employment Act of 1967 as amended, Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, and the Internal Revenue Code have particular relevance.

The following practices are recommended:

1. The institution's retirement and insurance plans should:
  - a. be clearly defined,
  - b. take into account and be coordinated with old-age, survivor, disability, and medical benefits of federal Social Security and/or other applicable public programs,
  - c. permit mobility among institutions without loss of accrued retirement benefits and with little or no gap in annuity and insurance plan participation,
  - d. make available, as a matter of course, information on all benefits, including an estimation of retirement income and, when feasible, provide a program of preretirement counseling,
  - e. be reviewed periodically by a committee representing the faculty and administration of the institution with appropriate recommendations to the institution's governing board, to ensure that the plans continue to meet and reflect the needs, resources, and objectives of the institution and the participants. Retirement plans which are found to provide retirement income less than or in excess of plan objectives should be carefully reviewed in relation to the overall allocation of financial resources within the institution.

2. Where permissible by law,<sup>1</sup> the institution may establish a mandatory retirement age. This is the age at which individuals must retire unless employment is extended at the option of the institution. When extensions of service are permitted beyond mandatory retirement age, such extensions should be on an annual basis, through appropriate procedures that assure full protection of academic freedom.

3. The retirement plan for faculty members and administrative officers of the institution should provide for:

- a. *Normal Retirement.* This is a term employed in retirement planning to designate an age for setting retirement income objectives and contribution rates. The stated normal retirement age may be earlier than or may coincide with the mandatory retirement age. If the normal retirement age is earlier than the mandatory age, retirement is at the option of the individual. Plans in which the normal retirement age is set within the age range of sixty-five to seventy appear to conform with reasonable practice. The availability of an adequate retirement income at the normal retirement age can give individuals an economically viable choice of retiring before the mandatory age.
- b. *Early Retirement.* The plan should enable individuals to retire earlier than the stated normal retirement age and to begin their retirement income at that earlier age. Though plan benefits are generally reduced by early retirement, such reductions may be offset through supplemental benefit arrangements provided by the individual and/or the institution.
- c. *Phased Retirement.* The plan should enable individuals, between the ages of sixty and any mandatory retirement age, to arrange, on their own initiative, reductions in salary and services acceptable to both them and their institutions.

4. Retirement ordinarily should occur at the end of the academic year. Each institution should make clear whether the summer period attaches to the preceding or the forthcoming academic year.

5. Beginning no later than age sixty, participants should be counseled and subsequently should be reminded periodically of the retirement options and benefits provided during retirement. Individuals should notify the administration of their decision to retire as far in advance as possible.

6. Circumstances that may seem to justify involuntary retirement for reasons other than age should in all cases be considered by representatives of the faculty and administration through appropriate procedures.<sup>2</sup>

7. The retirement age for faculty may differ from the age for retirement from administrative duties. Assignment to teaching responsibilities from administrative duties is not considered a retirement.

8. The institution should provide for a plan of retirement annuities:

- a. Such a plan should require participation after not more than one year of service by all full-time faculty and administrators who have attained a specified age, not later than thirty.
- b. It should be financed by regular payments, with the institution contributing as much as or more than each participant at least until normal retirement age. Contributions should continue during leaves of absence with pay. In addition, the retirement plan should permit supplementary contributions from participants (including those on leaves of absence

<sup>1</sup>The 1978 Amendment to the Age Discrimination in Employment Act of 1967 set age seventy as the earliest permissible age for mandatory retirement, with certain exceptions, including a temporary exemption for tenured employees until July 1, 1982. In addition, some states have enacted laws (with varying dates for implementation) that affect the use of mandatory retirement age or preclude age-mandated retirement altogether.

<sup>2</sup>See, for example, the joint AAC AAUP 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," *AAUP Bulletin* 54 (Winter 1968): 439-41.



without pay). In order that participants may have the tax treatment of a noncontributory plan available to them, individuals should have the opportunity to make required and voluntary contributions by salary reduction in accordance with relevant tax laws.

- c. It should maintain contributions at a level considered sufficient to give long-term participants at normal retirement age a combined income from the retirement plan and federal Social Security that is appropriately related to their level of income prior to retirement, with provisions for continuing more than half of such income to a surviving spouse. The recommended objective for those retiring at the normal retirement age who have participated in the plan for at least thirty-five years is an after-tax income equivalent in purchasing power to approximately two-thirds of the yearly disposable salary (after taxes and other mandatory deductions) during the last few years of full-time employment.<sup>3</sup>
- d. It should ensure that the full accumulations from the participant's and the institution's contributions are fully and immediately vested in the participant, available as a benefit in case of death before annuity payments commence, and with no forfeiture in case of departure or dismissal from the institution.
- e. It should be such that the participant may receive the accumulated funds only in the form of an annuity. Exceptions might be made for (i) small proportions of the accumulations of retiring participants or (ii) small accumulations in inactive accounts.

9. The institution should help retired faculty members and administrators remain a part of the institution, providing, where possible, such facilities as a mail address, library privileges, office facilities, faculty club membership, the institution's publications, secretarial help, administration of grants, laboratory rights, faculty dining privileges, and participation in convocations and academic processions. Institutions that confer the emeritus status should do so in accordance with standards determined by the faculty and administration.

10. When a new retirement plan is initiated or an old one changed, reasonable transition provisions, either by special financial arrangements or by the gradual inauguration of the new plan, should be made for those who would otherwise be adversely affected.

11. The institution should maintain a program of group insurance financed in whole or in part by the institution and available to faculty members and administrators as soon as practicable after employment. The program should continue all coverages during leave of absence with pay, and during leave without pay unless adequate protection is otherwise provided for the individual. At the minimum, the program should include:

- a. Life insurance providing a benefit considered sufficient to sustain the standard of living of the faculty member's or administrator's family for at least one year following death. Where additional protection is contemplated, consideration should be given to providing the largest amounts of insurance at the younger ages, when the need for insurance often is greatest, with coverage decreasing as age advances and the death benefit from the retirement annuity becomes substantial.
- b. Medical expense insurance providing basic hospital-surgical medical insurance and major medical insurance, or equivalent protection, for faculty members, administrators, and their dependents. Such insurance should continue to be available through the institution (1) for retired individuals and their spouses, and (2) for surviving spouses who do not remarry and dependent children of active or retired participants who die while insured.

The joint committee recognizes that persistent inflation erodes the purchasing power of annuity incomes and urges that a study be undertaken at the earliest possible time to develop ways to alleviate this problem.

The joint committee also notes that, in 1974, the Board of Directors of the Association of American Colleges urged that "... interested parties work toward the adoption of unisex actuarial tables as the basis of fringe benefits." The 1974 Annual Meeting of the American Association of University Professors expressed its support for implementation of "... the principle of equal monthly retirement benefits for women and men faculty." In 1978, the Council of the American Association of University Professors also endorsed the principle of "... no differentiation on the basis of gender in determining the access, rates, or benefits for individuals in employer related insurance plans."

- c. Disability insurance providing a monthly income for faculty members and administrators who remain totally disabled beyond the period normally covered by salary continuation or sick pay. Provision should also be made to continue payments to the disabled individual's retirement annuity. For a person who has been disabled six months or more, the plan should provide an after-tax income including federal Social Security benefits equivalent in purchasing power to approximately two-thirds of the income realized after taxes and mandatory deductions prior to disability. The plan should be structured so that disability benefits continue to a disabled individual at least until the institution's normal retirement age, but in no event beyond age seventy. Upon cessation of benefit payments at or after normal retirement age, continuing income throughout the retirement years should be provided from the disabled individual's retirement annuities.

# Statement of Principles on Leaves of Absence

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*The following Statement, prepared by a special committee of the American Association of University Professors and the Association of American Colleges, was adopted by the Association of American Colleges at its Annual Meeting in January 1972. In May 1972 it was adopted by the Council and endorsed by the Fifty-eighth Annual Meeting as the policy of the American Association of University Professors.*

*The Statement, designed to emphasize the value of leaves of absence and give guidance to institutions in making or improving provisions for them, offers what the two associations believe to be sound standards for flexible and effective leave programs. Though limited financial resources at an individual institution may delay the immediate establishment of an ideal leave policy, careful consideration should be given to possible steps toward the early development of such a policy.*

## PURPOSES

**L**eaves of absence are among the most important means by which a faculty member's teaching effectiveness may be enhanced, his scholarly usefulness enlarged, and an institution's academic program strengthened and developed. A sound program of leaves is therefore of vital importance to a college or university, and it is the obligation of every faculty member to make use of available means, including leaves, to promote his professional competence. The major purpose is to provide opportunity for continued professional growth and new, or renewed, intellectual achievement through study, research, writing, and travel. Leaves may also be provided in appropriate circumstances for projects of direct benefit to the institution and for public or private service outside the institution.<sup>1</sup> Leaves should also be granted for illness, recovery of health, and maternity.

## DEVELOPMENT OF LEAVE POLICIES

Leave policies and procedures should be developed with full faculty participation. Faculty members, acting through appropriate representatives, should also have a key role in the selection of the recipients of individual leaves. The institution and the individual faculty member have a common responsibility for endeavoring to achieve the objective of the leave program—the institution by establishing an effective program, the faculty member by making appropriate use of it. Leave policies should be flexible enough to meet the needs of both the individual and the institution.

## ELIGIBILITY AND PROCEDURES

The purpose of a leave program is to promote the professional development of all faculty members—those who are likely to stay at the institution for a long period but also, although not necessarily to the same degree, those for whom there is no such assurance.

<sup>1</sup>Leave for the purpose of engaging in political activity is discussed in the "Statement on Professors and Political Activity," *AAUP Bulletin* 55 (Autumn 1969): 388-89.

Previous service and leaves at other institutions should be taken into consideration in determining eligibility for leave. Persons nearing retirement should be eligible for leave with pay if it is clear that the leave will achieve its purposes both for the individual and the institution.

For a nontenured faculty member on scholarly leave for one year or less, the period of leave should count as part of the probationary period as if it were prior service at another institution.<sup>2</sup> Exceptions to this policy should be mutually agreed to in writing prior to the leave.

A faculty member should apply for leave at a reasonable time in advance and through established procedures, so that the institution can more readily care for his work in his absence and so that he can plan to make the best use of his opportunity. All evidence that the leave will increase individual effectiveness or produce academically or socially useful results should be considered in evaluating applications. A leave may either involve specialized scholarly activity or be designed to provide broad cultural experience and enlarged perspective. Administrators and faculty agencies concerned with implementation of leave policies may reasonably require the individual to submit such advance plans as are likely to assure productive results.

### INDIVIDUAL AND INSTITUTIONAL OBLIGATIONS

A faculty member has an obligation to return for further service following leave of absence when the circumstances of granting the leave indicate that this is the equitable action, as is often the case when leave with pay is granted. He should of course honor an agreement to return to the institution, unless other arrangements are mutually agreed upon. The precise terms of the leave of absence should be in writing and should be given to the faculty member prior to the commencement of the leave.

Even when there is no obligation to return, the faculty member who resigns while on leave should give notice according to accepted standards. Moreover, a college or university should not knowingly invite a person to join its staff at a time when the individual cannot properly accept the invitation. In most instances, an institution which invites a faculty member to accept a new appointment while on leave should feel obliged to pay at least a portion of the cost of the leave.

### FREQUENCY AND DURATION OF LEAVES

Leaves should not be considered as deferred compensation to which a faculty member is entitled no matter what other opportunities he may have had for professional development. They should, however, be provided with reasonable frequency and preferably be available at regular intervals because they are important to the continuing growth of the faculty member and the effectiveness of the institution.

Ordinarily, leaves of absence, whatever the source of funding, should not be more than one year in length, but exceptions to this rule should be possible in cases involving health, public service, overseas appointments, or other special circumstances.

### FINANCIAL ARRANGEMENTS

Leaves of one semester at full salary or an academic year at half salary are commonly provided. The institution is not obliged to assume the financial burden of all types of leaves. It does have the obligation, however, to use its own leave funds in such a manner as to balance the opportunity for professional development among and within academic fields.

Whatever the source of funding, the amount paid to the person on leave should not depend on the cost of caring for his work in his absence, nor should a leave of absence of a year or less interfere with the opportunity for promotion or increase in salary.

<sup>2</sup>Credit for prior service toward fulfillment of the probationary period is discussed in the "1940 Statement of Principles on Academic Freedom and Tenure," *AAUP Bulletin* 64 (May 1978), 323-26. Cf. the section on Academic Tenure, paragraph a.2.

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Continuous coverage under various types of insurance programs should be provided while a faculty member is on leave. When the faculty member is on leave with pay, both the institution and the individual should continue contributions toward his retirement annuity.

If a faculty member, on leave without pay, takes a temporary but full-time appointment at another institution or organization, it is reasonable to expect the appointing institution or organization to assume the cost of institutional contributions to the individual's retirement annuity and group insurance programs.

Foundations, government agencies, and other organizations supporting leaves for scholarly purposes should include in their grants an amount sufficient to maintain institutional annuity and group insurance contributions as well as salaries.

# Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies

*The statement which follows was prepared by the Association's Committee W on the Status of Women in the Academic Profession. It was adopted by the Council of the American Association of University Professors in April 1974 and endorsed by the Sixtieth Annual Meeting as Association policy.*

## INTRODUCTION

**T**he joint *Statement of Principles on Leaves of Absence*, adopted in 1972 by the American Association of University Professors and the Association of American Colleges, recommends that leaves of absence be granted for professional growth and intellectual achievement, for public or private service outside the institution, and for "illness, recovery of health, and maternity." The following statement on *Leaves of Absence for Child-bearing, Child-rearing, and Family Emergencies*, prepared by Committee W on the Status of Women in the Academic Profession, supplements and amplifies this last provision of the *Statement of Principles on Leaves of Absence*.

## PURPOSE OF THE LEAVES

Committee W recommends that colleges and universities provide leaves of absence to faculty members for child-bearing, child-rearing, and family emergencies. Such leaves are to assist faculty members with parental responsibilities in meeting their obligations both to their professional careers and to their families, and to prevent the loss to the institution and to the academic community of substantial professional skills.

Career patterns of academic men and women vary. Academic women differ in their desire to continue or to interrupt their professional careers during the child-bearing and child-rearing years. Couples differ in the extent to which they wish to share family responsibilities. Some faculty members may wish to take a leave of absence from their professional positions to care for their children, others wish to combine parental and professional responsibilities, while still others prefer to retain their professional affiliation on a full-time basis throughout their child-bearing and child-rearing years.

An institution's policies on faculty appointments should be sufficiently flexible to permit faculty members to combine family and career responsibilities in the manner best suited to them as professionals and parents. This flexibility requires the availability of such alternatives as longer-term leaves of absence, temporary reductions in workload with no loss of professional status, and retention of full-time affiliation throughout the child-bearing and child-rearing years.

Institutional policies which require the termination of the appointment of a woman faculty member because she becomes pregnant penalize the individual unfairly. Moreover, policies which mandate the timing and duration of a leave of absence for pregnancy and childbirth do not take cognizance of particular medical needs or individual circumstances. Institutions which customarily or by policy allow paid absences for illness or temporary disability, but which deny equivalent absences for disabilities resulting from pregnancy or childbirth, discriminate against women.

Allowing leaves of absence for illness or temporary disability only in cases where faculty members are themselves ill or temporarily disabled disregards the need to provide short-term care for family members in serious emergencies. In addition, it may prevent fathers from assuming responsibilities in connection with the birth of children.

### SHORT-TERM LEAVES OF ABSENCE FOR CHILD-BEARING AND FAMILY EMERGENCIES

Most colleges and universities provide for paid short-term leaves of absence, through formal or informal arrangements, for faculty members who are ill or temporarily disabled. The conditions and duration of compensation for short-term leaves for pregnancy, childbirth, or family emergencies involving spouse, parents, or children, should be analogous to those for leaves granted for temporary disability or personal emergencies. The timing and duration of absence in such cases should be determined by mutual agreement between the faculty member and the institution, and should be based on medical need, the requirements of the educational program, and individual circumstances. Compensation during short-term leaves of absence for child-bearing or the serious illness of a family member should be consistent with customary institutional practices in cases of illness or temporary disability.

### LONGER-TERM LEAVES OF ABSENCE FOR CHILD-REARING

The rearing of children should be considered appropriate grounds for a leave of absence of a semester or more, and such leaves should be available to both men and women faculty members. The timing and duration of such leaves should be determined by mutual agreement between the faculty member and the institution. Faculty members on child-rearing leaves should receive the same considerations with respect to salary increments, insurance coverage, retirement annuities, and the like, as are received by faculty members on leave for public or private service outside the institution.

The alternative of a temporarily reduced workload should be available to faculty members with child-rearing responsibilities (see Committee W's statement on *Senior Appointments with Reduced Loads*, available from the Association's Washington office).

Individual and institutional obligations in connection with such leaves, including the timing of a tenure decision, should be those set forth in the applicable provisions of the *Statement of Principles on Leaves of Absence*.<sup>1</sup>

<sup>1</sup>AAUP Bulletin 58 (Summer 1972): 244-45.

# CONSTITUTION

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**T**he AAUP adopted a Constitution in 1916, the second year of the organization's existence. Then, as now, the document served as the primary governing instrument establishing the organization's officers, membership categories, and structure. While the Constitution has been amended many times since its adoption, it still describes the purpose of the AAUP in terms virtually identical to those used in 1916.

The Constitution establishes categories of membership (Article II) and provides that members at an educational institution may form an AAUP chapter (Article VII). The chapters may join together into state conferences for the purpose of advancing AAUP interests at the state level (Article VIII).

At the national level, the Constitution recognizes the Collective Bargaining Congress (Article IX), composed of representatives of the AAUP chapters which engage in collective bargaining, and the Assembly of State Conferences, composed of representatives of the various state conferences (Article VIII).

The president and other national officers, elected by the membership, serve two-year terms (Articles III, V). Also elected in national balloting are members of the Council, which is the Association's legislative body (Article IV). Three Council members are elected from each of ten geographical districts and serve staggered three-year terms.

The powers of the Annual Meeting (Article VI) and mechanisms for amending the Constitution (Article X) are described. Because the Constitution is altered from time to time, interested readers are invited to contact the Washington office for a copy of the current text.



# Constitution of the Association<sup>1</sup>

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## ARTICLE I—PURPOSE

The name of this Association shall be the American Association of University Professors. Its purpose shall be to facilitate a more effective cooperation among teachers and research scholars in universities and colleges, and in professional schools of similar grade, for the promotion of the interests of higher education and research, and in general to increase the usefulness and advance the standards, ideals, and welfare of the profession.

## ARTICLE II—MEMBERSHIP

1. There shall be five classes of members:

a. *Active Members.* Any person who holds a position of teaching or research in a university or college in the United States or Canada, or in the discretion of the Council in an American-controlled institution situated abroad, or in a professional school of similar grade may be admitted to *active* membership in the Association. Any professional appointee included in a collective representation unit with the faculty of an approved institution may also be admitted to *active* membership in the Association.

b. *Graduate Student Members.* Any person who is, or within the past five years has been, a graduate student may be admitted to *graduate student* membership. *Graduate student* members shall be transferred to *active* membership as soon as they become eligible.

c. *Associate Members.* Any member who ceases to be eligible for *active* or *graduate student* membership because the member's work has become primarily administrative shall be transferred to *associate* membership.

d. *Emeritus Members.* Any *active* or *associate* member retiring for age may be transferred at the member's request to *emeritus* membership.

e. *Public Members.* Any person not eligible for one of the other four classes of membership may be admitted as a *public* member.

2. The admission of members shall require two steps:

a. *Application.* Application for *active*, *graduate student*, and *public* membership shall be made to the secretary-treasurer of the Association.

b. *Acceptance and Notification.* When an applicant's eligibility has been determined, it shall be the duty of the secretary-treasurer to inform the applicant promptly of acceptance to membership and to include the applicant's name in the list of new members sent to chapter officers. A person's membership may be protested, on grounds of eligibility, by an *active* member of the Association. If a majority of the members of the committee on membership and dues votes to sustain the protest, the person in question will be informed that his or her membership has ceased to be effective.

3. A member may resign by notifying the secretary-treasurer and may be expelled for cause by a two-thirds vote of the Council after opportunity for a hearing. Membership shall be forfeited by nonpayment of dues under conditions to be established by the Council.

<sup>1</sup>Last amended at the Seventieth Annual Meeting of the Association in Washington, D.C., June 15-16, 1984.

### ARTICLE III—OFFICERS

1. The officers of the Association shall be a president, a first vice-president, a second vice-president, and a secretary-treasurer.

2. The terms of office of the foregoing officers shall be two years, and shall expire at the close of the last session of the Annual Meeting following the election of their successors, or, if a meeting of the Council is held after and in connection with the Annual Meeting, at the close of the last session of the Council.

3. The foregoing officers shall have the duties usually associated with their respective offices. The president shall preside at meetings of the Association and the Council. The president shall appoint all committees of the Association and shall be *ex officio* a member of all except the Nominating Committee. The president shall also be a nonvoting *ex officio* member of the governing bodies of all conferences.

4. The secretary-treasurer shall be responsible for maintaining the records of the Association. The secretary-treasurer shall also receive all moneys and deposit them in the name of the Association. With the authorization of the Council the secretary-treasurer shall invest any funds not needed for current disbursements. The secretary-treasurer shall pay all bills approved in accordance with procedures determined by the Council, and shall make a report to the Association at the Annual Meeting and such other reports as the Council may direct. The secretary-treasurer may with the approval of the Council authorize one or more assistant secretary-treasurers to exercise the powers of the office. The financial records of the Association shall be audited annually by an external agency, and the report of the audit shall be published.

### ARTICLE IV—THE COUNCIL

1. The president, the vice-presidents, the secretary-treasurer, the chairperson and immediate past-chairperson of the Assembly of State Conferences, and the chairperson of the Collective Bargaining Congress, together with the three latest living ex-presidents shall, with thirty elective members, constitute the Council of the Association. Ten members of the Council shall be elected each year in the manner provided in this Constitution, to serve for three-year terms, according to the provision governing the terms of the officers.

2. The Council shall carry out the purposes of the Association and, subject to the authority of a meeting as defined in this Constitution, act for the Association. The Council shall (a) determine the annual dues and regulations governing their payment, subject to ratification at the Annual Meeting, and may authorize inclusion of conference and/or chapter dues with national dues, as a condition of membership in the Association, subject to ratification at the Annual Meeting, (b) manage the property and financial affairs of the Association, with power to accept gifts to the Association, (c) construe the provisions of this Constitution, (d) provide for the publications of the Association, (e) appoint and determine the salaries of a general secretary, general counsel, and assistant treasurer, members of the professional staff, and such other employees as shall be necessary to administer the affairs of the Association in accordance with the general supervision of the Council, (f) determine the time, place, and program of the Annual Meeting and convene special meetings of the Association at its discretion, (g) publish a record of its meetings to the membership, (h) authorize the establishment of committees of the Association, (i) authorize the establishment of regional offices of the Association, and (j) authorize reapportionment and redistricting of the membership not less than once each decade.

3. As a representative of both the Association and a district, each member of the Council shall promote the exchange of ideas between the Council and the membership. A Council member may receive and transmit to the Council the proposals of members, chapters, and state conferences within the member's district. A Council member shall be a nonvoting *ex officio* member of the governing committees of those conferences.

4. Meetings of the Council shall be held in connection with the Annual Meeting of the Association and at least at one other time each year, upon not less than two weeks' notice to the Council.

Ten members elected from districts shall constitute a quorum. The Council may also transact business by letter ballot. A special meeting of the Council shall be called by the president on the written request of at least eight members of the Council.

5 The president may, with the advice and consent of the Council, appoint an Executive Committee of not fewer than seven Council members, including the president, first vice-president, second vice president, secretary treasurer, immediate past-president, chairperson of the Assembly of State Conferences, and chairperson of the Collective Bargaining Congress. Between meetings of the Council, the Executive Committee may exercise such powers as the Council has delegated to it and, under unforeseen exigencies, exercise other powers subject to the subsequent approval of the Council. Meetings of the committee may be called by the president.

## ARTICLE V—ELECTION OF OFFICERS AND COUNCIL

1 Only *active* members are eligible for election as officers or members of the Council. Nominations for the elective offices to be filled and for membership on the Council shall be made by a Nominating Committee of five or more members, not officers or other members of the Council, appointed by the president with the advice and consent of the Council. Before submitting to the Council for approval the appointments to the Nominating Committee, the president shall invite suggestions in writing from the members of the Council as to the membership of the committee. The committee shall be chosen each year in time to seek and receive suggestions from the members, chapters, and conferences of the Association with regard to persons to be nominated, and to meet and submit its report to the secretary-treasurer, for publication to the members not later than a date to be determined by the Council and announced to the membership.

2 One member of the Council shall be elected each year from each of ten geographical districts formed with regard to the distribution of the Association's membership and to geographical contiguity. Council members shall be elected by vote of *active* members resident in their respective districts. In preparation for an election, the Nominating Committee shall nominate two *active* members of the Association from each district for the position on the Council to be filled from the district.

3 Nominations for members of the Council may also be made by petitions signed by at least fifty *active* members of the Association resident within the district from which the Council member is to be chosen, provided that in determining the required number of signatures not more than ten shall be members at a single institution. Nominations for the presidency, the vice-presidencies, and the secretary-treasurership may also be made by petition, signed by at least 150 *active* members of the Association, provided that in determining the required number of signatures not more than fifteen of those signing a petition shall be members at a single institution and not more than ninety shall be members in a single district. No member shall sign more than one petition for the same office. Petitions presenting nominations shall be filed with the secretary-treasurer not later than a date to be determined by the Council and announced to the membership.

4 The secretary treasurer shall prepare ballots containing the names of all nominees to office and to Council membership, with relevant biographical data and a statement of the method of nomination. Ballots shall be mailed to all *active* members of the Association at a time to be determined by the Council and announced to the membership, and the polls shall be closed two months after the mailing. The nominee receiving a plurality of votes shall be declared elected. The president, the vice presidents, and the retiring elective members of the Council who have served full terms shall not be eligible for immediate reelection to their respective offices.

5 A vacancy occurring on the Council, in the second vice-presidency, or in the secretary-treasurership shall be filled by a majority vote of the Council for the unexpired term.

## ARTICLE VI—MEETINGS OF THE ASSOCIATION

1 The Association shall meet annually except when prevented by war or other national emergency. The secretary treasurer shall give notice to the membership of a meeting at least thirty days in advance. A quorum shall be a majority of the delegates registered for a meeting.

A meeting of the Association shall have authority (a) to amend the Constitution in the manner herein provided, (b) to express its views on professional matters, (c) to act on recommendations presented to it by the Council, (d) to require the Council to report to the ensuing meeting on subjects within the province of the Association, (e) to propose action which, upon concurrence by the Council, shall become the action of the Association, and (f) in the event of disagreement between the Council and a meeting of the Association, to take final action as provided in the following section.

2. If the Council declines to concur in a proposal of a meeting of the Association, it shall report its reasons to the ensuing meeting. If that meeting concurs in the action of the previous meeting, the action shall become that of the Association. An action of the Association reached (a) by concurrence of the Council in an action of a meeting of the Association or (b) in two successive meetings shall not be changed except by the joint action of the Council and a meeting of the Association or by two successive meetings of the Association.

3. The *active* members of the Association in each chapter may elect not more than one delegate from that chapter for each twenty-five *active* members or fraction thereof at the institution, to each meeting of the Association. Each of the state conferences may elect two delegates to each meeting of the Association. All members of the Association shall be entitled to the privileges of the floor, but only *active* members may vote. On request of one fifth of the delegates present, a proportional vote shall be taken. In a proportional vote, the accredited delegates from each chapter shall be entitled to a number of votes equal to the number of *active* members at the institution, but any other *active* member not at an institution thus represented shall be entitled to an individual vote. In case a chapter has more than one delegate, each delegate may cast an equal portion of the votes to which the chapter is entitled.

4. Except as provided in this Constitution or in rules adopted pursuant to it, the meetings of the Association shall be governed by *Robert's Rules of Order Revised*.

## ARTICLE VII—CHAPTERS

1. Whenever the *active* members in a given institution number seven or more, they may constitute a chapter of the Association and receive a charter from the Association. More than one chapter may be established in an institution when its parts are geographically separate. Each chapter shall elect, from its *active* members, at least biennially, a president, a secretary, and a treasurer (or secretary-treasurer), and such other officers as the chapter may determine. It shall be the duty of the secretary of the chapter to report to the secretary-treasurer of the Association the names of the officers of the chapter and to conduct the correspondence of the chapter with the secretary-treasurer.

2. The charter of a chapter may be revoked for financial malpractice, improper performance as a collective bargaining representative, disregard of democratic procedures, or disregard of other principles, policies, or procedures of the Association, in accordance with due process procedures established by the Council, when two-thirds of the Council members present vote in support of the revocation. A chapter whose charter has been revoked by the Council may appeal the Council decision at an Annual meeting of the Association. The charter revocation shall remain in effect pending such an appeal. If the meeting sustains the appeal the chapter shall have its charter restored.

3. All *active*, *graduate student*, and *emeritus* members in the institution, but not other members of the faculty, shall be eligible for membership in the chapter. *Graduate student* and *emeritus* members may vote in chapter meetings at the discretion of the chapter. *Associate* members may attend meetings by invitation of the chapter.

4. A chapter may establish local membership dues. It may meet with other chapters and with other local organizations. Its actions shall be in harmony with the principles and procedures of the Association.

## ARTICLE VIII—STATE CONFERENCES

1. Upon approval by the Council, several chapters may organize a conference of the American Association of University Professors which shall be open to all members within the state. The

members may be represented through their chapter affiliation. A conference may establish conference dues and may consider and act upon professional matters which are of concern to the members and chapters, but its action shall not bind the members or chapters without their authorization and shall be in harmony with the principles and procedures of the Association. All conferences are entitled to participate in the activities of the Assembly of State Conferences. Formal recommendations on the purposes, structure, and work of the Association from conferences and the Assembly of State Conferences shall go to the Council for consideration and possible transmission to meetings of the Association.

#### ARTICLE IX—COLLECTIVE BARGAINING CONGRESS

1 Several chapters which are collective bargaining representatives, or otherwise participate in collective bargaining, may form the Collective Bargaining Congress of the American Association of University Professors. Subject to approval by the Council, the Congress (i) shall adopt bylaws and (ii) may establish dues to be paid to the Association by chapters which are members of the Congress.

2 The Congress may consider and act upon professional matters which are of concern to the member chapters, but its action shall not bind the member chapters without their authorization and shall be in harmony with the principles and procedures of the Association. Recommendations adopted by the Congress concerning the purposes, structure, and work of the Association may be submitted by it to the appropriate body of the Association.

#### ARTICLE X—AMENDMENTS

This Constitution may be amended by a two-thirds vote of a meeting of the Association. The secretary-treasurer shall transmit a proposed amendment to each member of the Association at least one month before the meeting at which it will be proposed.

The Council may initiate and propose an amendment to a meeting of the Association. Also, ten or more *active* members may initiate an amendment by submitting it in writing to the Council. At the next Council meeting which takes place more than one month after the date of submission, the Council shall approve, modify, or disapprove the submitted amendment and promptly report its action to the proponents. If the Council approves, it will propose the amendment to a meeting of the Association. Upon failure of agreement between the Council and the proponents, the proponents may, with the support of at least five chapters, submit their proposed amendment to a meeting of the Association by communicating it, together with proof of submission to and action by the Council and of support of at least five chapters, to the secretary-treasurer at least three months in advance of the Association meeting at which the amendment is to be proposed.

# APPENDIX

## Selected Judicial Decisions Referring to AAUP Standards

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**T**he federal and state courts have, on many occasions, relied on Association policy statements for assistance in resolving academic disputes.<sup>1</sup> Listed below are some examples of judicial decisions referring to AAUP statements in this volume, and a few selected articles discussing AAUP policies as a source of "common law" for higher education. Note that this list is merely illustrative and not exhaustive. It is designed only to serve as a useful starting point for further research on the subject.

### I. 1940 Statement of Principles on Academic Freedom and Tenure (Page 3)

*Tilton v. Richardson*, 403 U.S. 672, 681-2 (1971)—Adoption of 1940 *Statement* by church-related institution supports conclusion that "the schools were characterized by an atmosphere of academic freedom rather than religious indoctrination."

*Jiminez v. Almodovar*, 650 F.2d 363, 369 (1st Cir. 1981)—When the Puerto Rico legislature enacted a statute concerning dismissal of university personnel with permanent appointments, it presumably was aware of, and intended to preserve, the distinction made in the 1940 *Statement* between a dismissal for cause or for other personal grounds and a dismissal for impersonal institutional reasons such as a change in academic program.

*Krotkoff v. Goucher College*, 585 F.2d 675, 679 (4th Cir. 1978)—"Probably because it was formulated by both administrators and professors, all of the secondary authorities seem to agree it [1940 *Statement*] is the 'most widely-accepted academic definition' of tenure."

*Adamian v. Jacobsen*, 523 F.2d 929, 934-5 (9th Cir. 1975)—University regulation on adequate cause for dismissal of tenured faculty member may not be unconstitutionally overbroad if construed by the regents in the same manner as the AAUP interprets the 1940 *Statement*.

*Bignall v. North Idaho College*, 538 F.2d 243, 249 (9th Cir. 1976)—Court of Appeals adopts 1940 *Statement* definition of tenure, in financial exigency situation.

### II. 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings (Page 10)

*Lehmann v. Board of Trustees of Whitman College*, 89 Wash. 2d 874, 877, 576 P.2d 379, 399 (1978)—Tenured faculty member's dismissal for misconduct comported with 1958 *Statement on Procedural Standards*.

<sup>1</sup>A precursor of this trend is *Cobb v. Howard University*, 106 F.2d 860, 865-6, n.21 (D.C. Cir. 1939), in which the court noted an increasing emphasis on tenure rights, and observed that the AAUP devoted much of its effort toward the protection of tenure.

### III. 1971 Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments (Page 14)

*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 579 n.17 (1972)—While concluding that no hearing was constitutionally required on facts of case, Court expressly leaves open the possibility that a hearing or statement of reasons for nonretention may be appropriate or wise in public colleges and universities, citing AAUP's Committee A report on *Procedural Standards*.

*Kunda v. Muhlenberg College*, 621 F.2d 532, 545 n.5 (3rd Cir. 1980)—Decision cites 1971 *Statement* on notification to faculty of standards for renewal and tenure.

*Gray v. Board of Higher Education, City of New York*, 692 F.2d 901, 907 (2d Cir. 1982)—In race discrimination case involving the confidentiality of tenure votes, the court speaks approvingly of AAUP's *Procedural Standards* and observes that "the position of the AAUP on the precise matter before us [is] carefully designed to protect confidentiality and encourage a candid peer review process. It strikes an appropriate balance between academic freedom and educational excellence on the one hand and individual rights to fair consideration on the other...."

*Blair v. Board of Regents of State University and Community College System of Tennessee*, 496 F.2d 322, 324 (6th Cir. 1974)—Court notes that university followed AAUP standards in nonrenewal decision.

### IV. Recommended Institutional Regulations on Academic Freedom and Tenure (Page 21)

*Beitzell v. Jeffrey*, 643 F.2d 870, 872 n.1 (1st Cir. 1978)—Court notes that University of Massachusetts procedures for awarding tenure generally followed AAUP's procedures, citing, *inter alia*, *Recommended Institutional Regulations*.

*Mabey v. Reagan*, 537 F.2d 1036, 1043 (9th Cir. 1976)—Court uses the AAUP's definition of financial exigency, which appears in section 4(c)(1) of the *Recommended Institutional Regulations*.

*Browzin v. Catholic University of America*, 527 F.2d 843 (D.C. Cir. 1976)—In dismissal of tenured faculty member for reasons of financial exigency, court uses *Recommended Institutional Regulations* as a guide in resolving whether other suitable positions were available, whether replacement was hired soon after dismissal, and upon which party burden of proof lay.

### V. 1964 Standards for Notice of Nonreappointment (Page 31)

*Greene v. Howard University*, 412 F.2d 1128, 1133, n.7 (D.C. Cir. 1969)—Decision takes judicial notice that university handbook incorporates AAUP policy, and quotes *Standards for Notice*.

*Mosby v. Webster College*, 423 F.Supp. 615 (E.D. Mo. 1976)—Court describes AAUP notice standards and observes that defendant strictly adheres to them.

*Dyson v. Lavery*, 417 F. Supp. 103, 105 (E.D. Va. 1976)—Faculty member persuaded VPI administration that notice of nonrenewal was untimely "under the appropriate regulations promulgated by the American Association of University Professors."

*Ducorbier v. Board of Supervisors of Louisiana State University*, 386 F. Supp. 202, 203 (E.D. La. 1974)—Notification of terminal appointment was "well within that recommended in the University Regulations and by the American Association of University Professors."

### VI. 1966 Statement on Government of Colleges and Universities (Page 105)

*Barnes v. Washington State Community College Dist. No. 22*, 85 Wash. 2d 90, 529 P.2d 1102, 1104 (1975) (en banc).

*Zumwalt v. Trustees of California State Colleges*, 33 Cal. App.3d 665, 671, n.3, 1019 Cal. Repr. 344 (1973)—Both cases quote and follow the *Statement's* provision that a department chairperson does not have tenure in that office, in contrast to tenure as a faculty member.

#### VII. On Institutional Problems Resulting From Financial Exigency: Some Operating Guidelines (Page 113)

*Levitt v. Board of Trustees of Nebraska State Colleges*, 376 F. Supp. 945, 950 (D. Neb. 1974)—Decision quotes *Operating Guidelines* on retention of viable academic programs in reduction decisions.

#### VIII. 1966 Statement on Professional Ethics (Page 133)

*Korf v. Ball State University*, 726 F.2d 1222, 1227 (7th Cir. 1984)—*Statement on Professional Ethics*, which was incorporated into university faculty handbook, prohibits the "exploitation of students for private advantage." The court endorses the Board of Trustees' interpretation of the provision as prohibiting sexual exploitation.

#### IX. 1967 Joint Statement on Rights and Freedom of Students (Page 141)

*Stricklin v. Regents of University of Wisconsin*, 297 F. Supp. 416, 420 (W.D. Wisc. 1969)—*Joint Statement's* standard for suspension pending action on disciplinary charges against student is "a fair and reasonable standard, entitled to recognition as an essential ingredient of the procedural due process...."

*Soglin v. Kauffman*, 295 F. Supp. 978, 990 (W.D. Wisc. 1968)—Court quotes with approval predecessor 1965 *Statement on the Academic Freedom of Students* for proposition that standards for student misconduct should be clear and explicit.

*Marzette v. McPhee*, 294 F. Supp. 562 (W.D. Wisc. 1968)—Decision quotes *Joint Statement* standard for student's suspension pending action on disciplinary charges.

#### X. Selected Articles on Legal Enforcement of AAUP Policy

Benson, *Tenure Rights in Higher Education in the Face of Financial Exigency. The Impact of Private Agreement, Collective Bargaining, and AAUP and the Courts*, 1983 DETROIT COLL. OF LAW REV. 679-707 (1983).

Brown, *Tenure Rights in Contractual and Constitutional Context*, 6 J. OF LAW AND EDUCATION 279-318 (1977).

Brown and Finkin, *The Usefulness of AAUP Policy Statements*, 59 EDUCATIONAL RECORD 30-44 (1978).

*Developments in the Law, Academic Freedom*, 81 HARV. L. REV. 1045, 1105-1112 (1968).

Finkin, *Regulation by Agreement. The Case of Private Higher Education*, 65 IOWA L. REV. 1119-1200 (1980).

Furniss, *The Status of "AAUP Policy,"* 59 EDUCATIONAL RECORD 7-29 (1978).

Matheson, *Judicial Enforcement of Academic Tenure. An Examination*, 50 WASHINGTON L. REV. 597-622 (1975).

Note, *Financial Exigency as Cause for Termination of Tenured Faculty Members in Private Post-Secondary Educational Institutions*, 62 IOWA L. REV. 481-521 (1976).

Note, *The Role of Academic Freedom in Defining the Faculty Employment Contract*, 31 CAS. W. RES. L. REV. 608-655 (1981).



# INDEX

## A

AAC. *See* Association of American Colleges

AAUP. *See* American Association of University Professors

Academic due process

- in dismissal for strike participation, 126
- different from due process, xii
- regulations for protection of, 21-30
- right to, of librarians, 122
- suspension as violation of, 7
- violation of and loss of accreditation, 148

Academic freedom

- of academic staff, 29
- and contract research appointments, 45
- defined, 3

- First Amendment protection of, 5
- and government restrictions on foreign scholars, 62

*Keyishian v. Board of Regents*, 5

- of librarians, 121
- and national security, 62-65
- 1940 statement of principles on, 3-9
- and part-time teachers, 43
- retirement and, 70-71
- Starsky v. Williams*, xiii
- and tenure quotas, 33
- violation of and accreditation, 148

Academic Personnel Ineligible for Tenure categories of, 43

- Report of Special Committee on, text, 43-46

Academic staff, nonreappointment of, 29

Accreditation

- role of faculty in, 147-48
- standards for, 147-48

Accrediting commissions

- composition of, 147
- recommended standards for, 148

Administration

- charges against faculty for extramural utterances, 4
- response to discrimination charges, 80
- responsibility in determination of financial exigency, 24

Administrative personnel, complaint procedures, 28

Administrators

- evaluation of, 112
- faculty role in selection of, 112
- retention review of, 112
- selection of, 111-12

Affirmative action

- AAUP policies on, 91-93
- and AAUP standards, 82
- appointments and, 95

defining criteria of merit, 83-84

design of plans, 93-96

and faculty diversity, 85-86, 92

and financial exigency, 96

grievance procedures, 96

and professional advancement, 95-96

and recruitment

policies, 87-88

procedures, 94-95

and screening of candidates, 95

and search committees, 94

use of statistical forecasts, 88-89

Affirmative Action in Higher Education, A Report

by the Council Committee on Discrimination, text; 82-89

Affirmative action officer

responsibilities and duties, 94

role of, 94, 95

Affirmative Action Plans, Recommended Procedures for Increasing the Number of Minority Persons and Women on College and University Faculties, text, 90-97

Age Discrimination in Employment Act Amendment, 164n1

Agency shop, and conscientious objection, 125

American Association of University Professors

and affirmative action, 82-83

Annual Meetings of, 177-78

assistance in arbitration, 129

case status defined, 79

chapters, 178

Collective Bargaining Congress, 179

concern with government restraints on research, 62n1

Council, 177-78

counsel in questions of professional ethics, 133

membership, classes of, ix, 175

officers, 176

policies and affirmative action, 91-93

position on equal retirement payments, 165n3

procedures in investigations, 80-81

processing of complaints, 78-81

purpose, 175

selected articles on legal enforcement of policy, 183

standards and judicial decisions, 181-83

state conferences, 178

American Council on Education, joint statements with AAUP, 105-110, 158-60

Annual Meetings

constitutional provision for, 177-78

authority of, 177-78

Annuity

equal monthly benefits, 165n3

plan for, 164-65  
vesting of contributions, 165

Antinepotism rules  
disadvantages of, 101  
exclusionary effect of, 84

Appendix, Selected Judicial Decisions Referring to AAUP Standards, 181-83

Appointment  
and affirmative action, 95  
contract research, and AAUP policies, 44-45  
faculty responsibility for, 109  
of graduate student staff, 29  
hearings on termination of, 4  
procedural standards in renewal or nonrenewal of, 14-20  
and religious affiliation, 91n4  
review of standards for, 84-86  
timing of notice of, 138  
written agreement, 4, 6, 21-22  
*See also* Non-tenure-track Appointment; Probationary appointments; Nonreappointments; Termination of appointment

Arbitral standards, establishment, 129

Arbitration  
advantages of over judicial proceedings, 128  
alternative procedures, 68-69  
assessing costs of, 129  
definition of, 127n1  
factors for effective use of, 67, 128  
and the law, 127  
in non-collective-bargaining situations, 127  
right of access to by individuals, 129

Arbitration of Faculty Grievances, A Report of a Joint Subcommittee of Committees A and N, text, 127-130

Arbitration in Cases of Dismissal: A Report of a Joint Subcommittee of Committees A and N, text, 66-69

Arbitrator  
qualifications of, 67, 128  
and recommendations of faculty hearing committee, 68  
role of, 68  
selection and education of, 129

Assembly of State Conferences, membership of, 179

Association of American Colleges, joint statements with AAUP, 3-9, 10-13, 58, 163-66

Association of College and Research Libraries, joint statement with AAUP, 121-22

Association of Governing Boards of Universities and Colleges, joint statement with AAUP, 105-10

## B

Brown, Ralph S., and Matthew W. Finkin, "The Usefulness of AAUP Policy Statements," x-xii

Budget  
division of responsibility for, 107  
role of faculty in, 115-17

## C

Case, AAUP, status defined, 79

Censure  
of individuals, 140  
as measure against discrimination, 75

Chapters, AAUP  
and collective bargaining, 125-26  
membership and function, 178

Charges  
by administration, on faculty extramural utterances, 58  
written, 4

Child-bearing and short-term leaves, 171

Child-rearing, leaves for, 171

Church-related institutions  
admissions to, 141  
departure from academic freedom, 5

Classified information  
government restraint of, 62  
Executive Order 12356, 63

Collective bargaining  
AAUP history of, 123  
AAUP policy on strikes, 126  
and academic government, 110n5  
agency shop and conscientious objection, 125  
agent's participation in arbitration, 68  
contracts and arbitration, 67  
dues check-off and conscientious objection, 125  
role of part-time faculty in, 53  
role of representative, 68  
statement on, 125-26

Collective Bargaining Congress, 179

Committee A on Academic Freedom and Tenure  
investigating committee reports, x  
position on statement of reasons for nonreappointment, 16-17  
reports on federal threats to freedom of research, 62n1

Committee A Statement on Extramural Utterances, text, 58

Committee B, Report from: Late Registration and Professional Ethics, 139-40

Compensation  
of librarians, 122  
of part-time faculty, 54-55  
in terminations for financial exigency, 114  
*See also* Salary; Fringe benefits

Compensatory treatment, and affirmative action, 82, 88

Complaint  
procedures in sexual harassment case, 99-100  
processing of by AAUP, 78-81

Conference Statement on Academic Freedom and Tenure, 1925, origins of, 1

Conferences, AAUP, organization and function, 178-79

Conflict of interest  
in government-sponsored research, 158-60  
situations listed, 158-59

Constitution  
amendment procedures, 179

text, 175-77  
 Consulting and conflict of interest statutes, 158-59  
 Contact hours, as workload measurement, 153  
 Contract  
   and arbitration, 67  
   research, AAUP policy on, 44-45  
   term, 33  
 Council, AAUP  
   statement on freedom and responsibility, 135  
   election of, 177  
   terms and duties, 176  
 Counsel, in dismissal proceedings, 4, 12, 26  
 Courts  
   academic disputes in, xi  
   *see also* Litigation

## D

Dean, function of in teaching evaluation, 157  
 Department  
   authority of in reappointment decisions, 19  
   discontinuance of in financial exigency, 24-25  
   head  
     and salary recommendations, 117  
     selection and tenure of, 110  
 Disciplinary proceedings against students, procedural standards in, 144  
 Discontinuance of program or department, procedures for termination of appointment in, 24-25  
 Discrimination  
   complaints of on basis of sex, 74  
   protection against, 28  
   report on affirmative action, 82-89  
   statement on, 73  
   against women on maternity leave, 170  
 Dismissal  
   and adequate cause, 25  
   and arbitration, 66  
   burden of proof, 26  
   faculty participation in proceedings on, 67  
   hearings on, 4, 11-13, 24, 26, 58  
   proceedings for graduate student staff, 29  
   recommended procedures, 11-13, 25-27  
   statement on procedural standards in proceedings, 10-13  
   strike as grounds for, 126  
   suspension during proceedings, 26  
 Doctorate and tenure decision, 43-44  
 Due process. *See* Academic due process  
 Dues check-off arrangement and conscientious objection, 125

## E

Equal Employment Opportunity Commission, *Guidelines on Discrimination because of Sex*, 98n1  
 Ethics, professional  
   AAUP support of, 131  
   enforcement of standards of, 133  
   and late resignation, 139-40  
   statement on, 133-34

Evaluation  
   of administrators, 112  
   of probationary faculty, 16  
   procedures for, 156-57  
   statement on teaching, 154-57  
 Extramural utterances  
   and academic freedom, 3-4  
   Committee A statement on, 58  
   as grounds for dismissal, 4-5, 58

## F

Faculty  
   and affirmative action plans, 93  
   appointment and family relationships, 101  
   committee in nonreappointment review procedures, 19, 20  
   evaluation of nontenured, 16  
   grievance committee procedures, 29-30  
   hearing committee on dismissal, 4, 11-13, 24, 26, 58  
   history and role of, 10  
   judgment in arbitration proceedings, 128  
   and leave policies, 167  
   liability, institutional responsibility for, 72  
   participation in determination of financial exigency, 23-24  
   participation in selecting, evaluating, and retaining administrators, 111-12  
   and political activities, 28, 59-61  
   probationary, rights of, 15  
   and program reduction, 123  
   prompt notice of resignation by, 138  
   and research, 153  
   responsibilities of, 109-110  
   role in  
     accrediting, 147-48  
     budgeting and salary matters, 115-118  
     determining workload policy, 152  
     mergers, 119  
     selection of administrators, 112  
     teaching evaluation, 157  
     and selecting fringe benefits, 118  
     workload, 151-53  
   *See also* Part-time faculty  
 Family responsibilities, leave for, 170-71  
 Federal government  
   academic community response to restraints by, 63  
   grants, allocation of, 116n3  
   position on academic freedom and national security, 64  
   research sponsored by and conflict of interest, 158-60  
   restrictions on scholars and information, 63  
 Federal Restrictions on Research, Academic Freedom and National Security, text, 62-65  
 Financial exigency  
   and affirmative action, 96  
   defined, 23  
   and faculty responsibility, 113, 116-18  
   faculty role in determination of, 23  
   and institutional mergers, 114, 119-20  
   operating guidelines in, 113-14

reinstatement after termination of appointment, 24  
salary reductions in, 118  
termination of appointments in, 4, 23  
Finkin, Matthew W., and Ralph S. Brown, The  
Usefulness of AAUP Policy Statements,  
ix-xii  
Folding chairs, defined, 36  
Foreign scholars, government restrictions on, 62  
Fringe benefits  
  faculty participation in selection of, 118  
  for part-time faculty, 56-57  
Full-time, Non-tenure-track Appointments, On,  
35-42

## G

Governance Standards in Institutional Mergers  
and Acquisitions, text, 119-20  
Governing Board  
  duties and powers, 108  
  faculty representation on, 116  
  legal authority of, 107  
  review by in terminations, 25  
  role in budgeting, 115  
  role in dismissal proceedings, 4, 12-13, 68  
  salary responsibilities in financial exigency, 118  
  students' right of appeal to, 146  
Government, academic  
  role of part-time faculty in, 52  
  standards in mergers and acquisitions, 119-20  
  statement on, 105-10  
  student status in, 110  
Government, federal. *See* Federal government  
Graduate student staff, appointment and rights,  
29  
Grievance procedures  
  and affirmative action, 96  
  recommendations for, 29-30  
  in sexual harassment cases, 99-100

## H

Hatch Act, exemption for professors, 60  
Hearing  
  arbitration following, 67  
  committee, membership and procedures, 11-12  
  committee, procedures in student disciplinary  
  action, 145  
  on extramural utterances charges, 58  
  by faculty committee in dismissal proceedings,  
  4, 11-13, 24, 26, 58  
  on nonreappointment because of age, 70  
  record of, 4, 26-27  
  on termination or relocation for financial exig-  
  ency, 24

## I

Imposition of Tenure Quotas, On the, text, 32-34  
Incompetence, hearing on charges of, 4, 27  
Inman, B.R., statement on publication and national  
security, 63, 64  
Institutional Problems Resulting from Financial  
Exigency, On

selected judicial decisions referring to, 183  
text, 32-34  
Institutional Responsibility for Faculty Liability,  
text, 72  
Institutions, academic  
  and arrangements for faculty political activity,  
  60-61  
  budgeting responsibility, 107  
  church-related, appointment to, 91n4  
  external relations of, 107  
  and government-sponsored research, 159-60  
  and incentives for professional development, 96  
  merger of in financial exigency, 114  
  and problems resulting from financial exigency,  
  113-114  
  and proposal for policy statement on sexual  
  harassment, 99  
  recommended regulations on academic freedom  
  and tenure for, 21-30  
  regulations on faculty political activities, exam-  
  ples, 59  
  and responsibility for faculty liability, 72  
  and responsibility in sexual harassment com-  
  plaints, 99n2  
  role in enforcement of ethical standards, 133  
  student participation in governance of, 143  
  and teaching evaluation, 157  
  and timing of offers of appointment, 138  
Insurance  
  coverage and leaves of absence, 169  
  programs for faculty, 165-66  
  statement of principles on plans, 163-66  
Interpretations of 1940 Statement of Principles, 4-5  
Investigations  
  by AAUP committee, 80-81  
  reports of committees, 1

## J

Judicial Decisions Referring to AAUP Standards,  
181-83

## K

*Keyishian v. Board of Regents*, Supreme Court  
ruling in, 5

## L

Leaves of absence  
  and annuity contributions, 164-65  
  in conflict of interest situations, 136  
  eligibility and procedures for, 167-68  
  faculty obligation following, 168  
  for family responsibility, 170-71  
  financial arrangements for, 168-69  
  frequency and duration of, 168  
  institutional invitation during, 168  
  insurance coverage during, 165  
  for librarians, 122  
  for political activity, 28, 60-61  
  statement of principles on, 167-69  
Leaves of Absence for Child bearing, Child-rearing,  
and Family Emergencies. text, 170-71

Liability, faculty, statement on, 72  
Librarian  
  role of, 121  
  statement on faculty status of, 121-22  
Library, responsibility for policy of, 122  
Litigation  
  AAUP investigation during, 80  
  and AAUP standards, xi  
  against professors, 72  
  selected articles on legal enforcement of AAUP  
  policy, 183  
  selected judicial decisions referring to AAUP  
  standards, 181-83  
*Los Angeles Department of Water and Power v.  
Manhart*, 91n4

## M

Membership, AAUP, categories described, ix, 175  
Mergers  
  in financial exigency, 114, 119-20  
  governance standards in, 119-20  
Minorities  
  percentage of, 90n2  
  procedures for increasing the number of on  
  faculties, 90-97  
  *See also*, Affirmative Action; Discrimination  
Moral turpitude  
  as ground for dismissal, defined, 7  
  and terminal notice or salary, 28

## N

National Security Agency, and Public Cryptography  
  Study Group, 63  
Nepotism. *See* antinepotism rules  
Nonreappointment  
  function of review committee on, 23  
  procedures for complaints, 28  
  reasons for, 16-18  
  request for reconsideration of, 22  
  review procedures, 18-20  
  standards for notice of, 31  
  written notice, schedule for, 22  
Non-tenure-track appointments  
  Committee A survey on, 35-39  
  disadvantages of, 38  
  indefinitely renewable, 36, 37  
  folding chairs, 36  
  limited renewable, 36  
  research, 38-39, 44  
Notice  
  of nonreappointment, schedule for, 22  
  during probationary period, 4  
  request by faculty member for waiver of, 23  
  standards for, 31  
  in termination for financial exigency, 114

## O

Officers, AAUP, election, term, and duties, 176-77

## P

Part-time faculty

academic freedom and responsibility of, 6  
categories of, 49-51  
change to status of in financial exigency, 114  
compensation of, 52, 53-54  
fringe benefits of, 56-57  
grievance procedures for, 43, 52  
growth of, 48  
recommended notice periods, 52  
representation on hearing committees, 53  
right to due process, 52  
role in  
  collective bargaining, 53  
  curriculum planning, 53  
  institutional governance, 52  
  security of employment for, 51-52  
  status of, 47-53  
  and tenure, 43, 51  
  as women's issue, 50

Pension benefits

  AAUP position on, 91n4, 165n3  
  *See also* Retirement

Policy documents

  adoption of, by institutions, xi  
  formation of, x  
  levels of endorsement, x  
  uses of, x

Political activities

  institutional regulations on, 59  
  leaves of absence for, 28, 60-61  
  professors and the Hatch Act, 60  
  state laws on, 60  
  statement on, 59-61

Preferential treatment and affirmative action, 82, 88

President, academic

  duties and powers of, 108-09  
  role in budgeting, 115  
  role in dismissal proceedings, 11, 12, 27, 67-68  
  selection of, 107, 111, 111n1,  
  students' right of appeal to, 146

Preventing Conflicts of Interest in Government-  
  Sponsored Research at Universities, On,  
  text, 158-60

Prior review, voluntary system of, 63

Probationary appointments

  and automatic termination, 33  
  evaluation during, 7, 16  
  leaves of absence during, 168  
  length of, 4, 22  
  nullified by tenure quotas, 33  
  prolonging of, 33  
  regulations governing, 22-23  
  standards and criteria for, 15-16  
  standards for notice of nonreappointment, 31

Processing Complaints of Discrimination on the  
  Basis of Sex, On, text, 74-81

Publications

  requirement for, 153  
  of students, 143-44

## Q

Quotas

  and affirmative action, 82, 92, 92n10

and prolonging of probation, 33  
statement on imposition of, 32-34  
and "tenuring in," 37

## R

- Recommended Institutional Regulations on Academic Freedom and Tenure  
selected judicial decisions referring to, 182  
text, 21-30
- Recruitment  
and affirmative action, 87-88, 94-95  
statement on, 137-38
- Regents of the University of California v. Bakke*,  
AAUP brief in, 91, 91n6
- Reinstatement in termination for financial exigency, 24
- Religious affiliation, and academic appointment, 91n4
- Relocation of faculty in program discontinuance, 25
- Report from Committee B, A: Late Resignation and Professional Ethics, text, 139-40
- Report of the Special Committee on Academic Personnel Ineligible for Tenure, text, 43-46
- Report on Retirement and Academic Freedom, text, 70-71
- Research  
appointments  
and faculty status, 45  
nonteaching, 44  
faculty responsibility for, 153  
federal restrictions on, 62-65  
funds for librarians, 122  
on preventing conflicts of interest in government-sponsored, 158-60
- Resignation  
in conflicts of interest, 136  
late, and professional ethics, 139-40  
statement on, 137-38  
timely notice of, 138
- Retirement  
AAUP position on equal benefits, 165n3  
and academic freedom, 70-71  
accelerated, as alternative to quotas, 34  
annuities plan, 164-65  
and campus privileges, 165  
contribution to during leaves, 164-65  
early, 114, 164  
federal and state laws on, 163  
involuntary, 164  
mandatory, 164n1  
and part-time teachers, 50  
phased, 164  
protection against premature, 71  
recommended practices, 163-64  
statement of principles on plans, 163-66
- Retrenchment and affirmative action, 96
- Role of the Faculty in Budgetary and Salary Matters, The, text, 115-18
- Role of the Faculty in the Accrediting of Colleges and Universities, The, text, 147-48

## S

- Salary  
after dismissal, 4  
faculty participation in decisions on, 117-18  
for non-tenure-track appointments, 37-38  
recommendations by department head, 117  
during suspension, 26  
terminal, schedule of receipt, 27-28  
of women faculty, 90n2  
*See also*: Compensation; Severance Salary
- Sanctions  
and arbitration, 66n2  
imposed in sexual harassment cases, 100  
other than dismissal, 27, 136  
strikes as grounds for, 126  
suspension proceedings, 27
- Severance salary  
in financial exigency, 24  
in institutional mergers, 114  
in terminations for medical reasons, 25
- Sex discrimination  
AAUP investigation procedures, 80-81  
AAUP processing of complaints of, 78-81  
antinepotism rules and, 84  
general patterns of, 81  
nature of claims, 76-78  
processing complaints of, 74-81  
statistics as evidence of, 77-78  
types of evidence of, 77-78
- Sexual harassment  
discussed in EEOC Guidelines on Discrimination because of Sex, 98n1  
suggested complaint procedures, 98-100
- Sexual Harassment. Suggested Policy and Procedures for Handling Complaints, text, 98-100
- Speakers, student choice of, 143
- Standards for Notice of Nonreappointment, The selected judicial decisions referring to, 182  
text, 31
- Starksy v. Williams*, xin1
- Statement of Principles on Academic Freedom and Tenure, 1940  
cited in *Starksy v. Williams*, xin1  
endorsers, 7  
interpretation of on extramural utterances, 58  
judicial decisions referring to, 181  
origin of, 1  
text, 3-9
- Statement of Principles on Academic Retirement and Insurance Plans, text, 163-66
- Statement of Principles on Leaves of Absence, text, 167-69
- Statement of the Association's Council, A: Freedom and Responsibility, 135-36
- Statement on Collective Bargaining, text, 125-26
- Statement on Extramural Utterances, text, 58
- Statement on Faculty Status of College and University Librarians, Joint, text, 121-22
- Statement on Faculty Workload, text, 151-53
- Statement on Government of Colleges and Universities, Joint

judicial decisions referring to, 182-83  
text, 105-10  
Statement on Procedural Standards in Faculty  
Dismissal Proceedings  
judicial decisions referring to, 181  
text, 10-13  
Statement on Procedural Standards in Renewal or  
Nonrenewal of Faculty Appointments  
judicial decisions referring to, 182  
text, 14-20  
Statement on Professional Ethics  
judicial decisions referring to, 183  
text, 133-34  
Statement on Professors and Political Activity,  
text, 59-61  
Statement on Recruitment and Resignation of  
Faculty Members, text, 137-38  
Statement on Rights and Freedoms of Students,  
Joint  
judicial decisions referring to, 183  
text, 141-46  
Statement on Teaching Evaluation, text, 154-57  
Statistics  
forecasts and affirmative action, 88-89  
in sex discrimination determination, 77-78, 81  
Status of Part-Time Faculty, text, 47-57  
Strikes  
AAUP policy on, 126  
participation in as ground for dismissal, 126  
Students  
choice of guest speakers by, 143  
at church-related institutions, 142  
confidential relationship with professors, 133, 142  
faculty responsibility for, 135  
government, role of, 143  
institutional authority and civil penalties, 144  
organizations, 142-43  
participation in institutional government, 110, 143  
procedural standards in disciplinary proceedings,  
144-45  
publications  
and editorial freedom, 143-44  
suspension of editors, 144  
records and disclosure of, 142  
statement on rights and freedom of, 141-46  
and teaching evaluation, 155, 156  
Suspension  
and academic due process, 7  
during dismissal proceedings, 11  
proceedings to impose, 27  
of student editors, 144

## T

Teaching Evaluation, Statement on, 154-57  
Teaching assistants, academic freedom and  
responsibilities of, 6  
Tenure  
and contract research appointments, 45  
defined and interpreted, 4  
and department heads, 110  
doctorate and, 43-44

faculty responsibility in granting, 109  
imposition of quotas, 32-34  
and institutional mergers, 114, 120  
and librarians, 122  
1940 Statement on, 3-9  
for part-time faculty, 43, 51  
protection of in financial exigency, 24-25, 113  
ratio of tenured to nontenured faculty, 34  
of researchers, 46  
timing of decision on, 6  
violation of and accreditation, 148  
written notice of eligibility for, 22  
*See also* Non-tenure-track appointments  
Tenuring-in, 37  
Term contracts, 33  
Termination of appointments  
criteria for, in financial exigency, 24  
in discontinuance of program or department,  
24-25  
by faculty member, 23  
for financial exigency, 4, 114  
by institution, 23  
for medical reasons, procedures for, 25

## U

United States National Student Association, joint  
statement with AAUP, 141-46  
Usefulness of AAUP Policy Statements, by Ralph  
S. Brown and Matthew W. Finkin, x-xii

## V

Vesting of retirement contributions, 165  
Voluntary Labor Arbitration Rules of the American  
Arbitration Association, use of in agree-  
ments, 68

## W

Women faculty  
discrimination in leave policy for, 170  
and part-time teaching, 50  
salary in relation to that of men, 90n2  
*See also* Affirmative Action; Sex Discrimination  
Workload  
maximum, 151  
measurement of, 151-52  
reduction for family responsibility, 170, 171  
sources of inequity in, 152-53  
statement on, 151-53