

REPORT OF COMMITTEE A ON ACADEMIC FREEDOM AND TENURE, 2011–12

Introduction

The 2011–12 Committee A report includes a typical combination of judicial and legislative activities. The judicial work of Committee A involves the imposition and removal of censure. While the balance between impositions and removals varies from year to year, the contrast between 2010–11 and 2011–12 is striking. In 2010–11, only one administration was censured, and two institutions were removed from the list of censured administrations. In 2011–12, three administrations were censured, and there were no removals. As I emphasized in my 2010–11 report, the two removals occurred at institutions in New Orleans and completed the removals of all four of the administrations that had been censured in the aftermath of Hurricane Katrina. The three censures imposed this year were of administrations elsewhere in Louisiana.

The work of Committee A in 2011–12 illustrates the extent to which the judicial and legislative activities of Committee A reinforce each other. The reports of Committee A investigating committees that may lead to censure identify departures from AAUP procedural standards, which are often derived from the prior legislative projects of Committee A. Correspondingly, the facts and issues that arise in the course of Committee A investigations may identify matters that prompt additional legislative activity. A large number of recent Committee A investigations involving program closings prompted Committee A to establish a subcommittee on this subject at its June 2011 meeting. Information from ongoing Committee A investigations during 2011–12 was extremely valuable in the preparation, discussion, and revision of the subcommittee’s draft report.

I now turn to the specific judicial and legislative business of Committee A during 2011–12.

Judicial Business

IMPOSITIONS OF CENSURE

At its June meeting, Committee A considered three cases that had been subjects of ad hoc investigating commit-

tee reports published since the 2011 annual meeting. The committee adopted the following statements concerning these cases, in which the Council concurred. Censure was voted by the 2012 annual meeting.

Louisiana State University, Baton Rouge. The report of the investigating committee concerns two cases at Louisiana’s flagship public institution, Louisiana State University in Baton Rouge, that are different in the administrative officers involved and in the matters under dispute but alike in putting core issues of academic freedom to the test. The first case, affecting a nontenured associate professor in the Department of Civil and Environmental Engineering in his seventeenth year of full-time service on the faculty, tested the relationship between freedom of research and publication and freedom of extramural utterance in a politically charged atmosphere. The second case, affecting a tenured full professor in the Department of Biological Sciences in her thirty-first year on the faculty, tested the freedom of a classroom teacher to assign student grades. The subject of the first case was a researcher serving since 1992 on renewable term appointments. For years, his work in coastal erosion and in hurricane- and flood-related issues brought him public prominence

Status of Committee A Cases and Complaints as of May 31, 2012

All current open complaints, not opened as cases	382
All current open cases	161
Total complaints and cases currently open	543
All complaints closed since June 1, 2011	180
All cases closed since June 1, 2011	49
Total complaints and cases closed since June 1, 2011	229
Total complaints and cases handled	772

and consistently favorable evaluations. The August 2005 onslaught of Hurricane Katrina with its flooding of New Orleans placed the faculty member in a national spotlight that the LSU authorities were initially happy to share. The view of him by LSU administrators changed, however, after he found that a main cause of flooding was structural failure of the levees overseen by the US Army Corps of Engineers. The administrators, anticipating cooperation and support from the corps in coastal restoration projects, expressed resentment over being linked in the press with these findings. They took steps to restrain the faculty member's public activities, to distance LSU from those activities, and subsequently to deny him further appointment.

The Association's investigating committee concluded that the administration denied the faculty member the academic due process to which he was entitled through length of service and violated his academic freedom in a number of ways: by denying him reappointment largely in retaliation for his dissent from the prevailing LSU position on the levees and the New Orleans flooding, by restricting the nature of his research, and by punishing him for exercising his extramural speech rights as a citizen.

The tenured professor of biology, the subject of the second case, had been repeatedly commended for teaching excellence and praised particularly for her "rigorous approach" and "demanding coursework" in teaching upper-level courses. In spring 2010, in order to "pitch in," she agreed to teach a section of an introductory course for the first time in fifteen years. The grades she assigned for the first test struck the course's coordinator as too low, and he suggested more leniency. Her midterm grades, however, were strongly skewed to grades of D and F. The matter was referred to the college dean, who, without having consulted with the professor, removed her from teaching the course. The coordinator then raised each student's grade on the first examination before allowing the professor to enter her grades for a second. When she asked the dean to hear her explanation for the grades and reconsider, he replied that he was receptive to discussion but that his decision stood.

She filed a complaint with LSU's Faculty Grievance Committee, which found unanimously in her favor. In response, the administrators assured the grievance committee that the senate was "developing an improved policy" on issues relating to student grading. The college dean apologized to the professor for not having met with her in person to tell her she was being removed from the course—but he did not apologize, as the

grievance committee had recommended, for not having consulted with her before deciding to act.

The investigating committee, citing a series of departures from AAUP-recommended standards, concluded that the LSU administration violated the professor's right to assign student grades and, in peremptorily removing her from a course that was in progress, violated the provision in the 1940 *Statement of Principles on Academic Freedom and Tenure* ensuring a faculty member's academic freedom to teach. The committee concluded further that the administration's imposing the severe sanction of suspension on her, without opportunity for a faculty hearing, denied her basic protections of academic due process, as called for under Regulation 7a of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

Committee A recommends to the Ninety-eighth Annual Meeting that Louisiana State University, Baton Rouge, be placed on the Association's list of censured administrations.

Northwestern State University (Louisiana).

Northwestern State is a component of the University of Louisiana System, consisting of the state's public four-year institutions other than those in the flagship Louisiana State University System or the historically black Southern University System. An investigation of Association concerns in the University of Louisiana System was authorized as a result of actions taken on financial grounds by its board of supervisors and the administrations of several of its institutions to discontinue or consolidate academic programs that had few students completing them, thus potentially leading to termination of tenured faculty appointments in the affected programs. The investigation focused on the two institutions, one of them Northwestern State University, at which tenure terminations occurred.

Without declaring financial exigency, the Northwestern State administration discontinued a total of twenty-five programs, minors, and concentrations spanning three colleges. The investigating committee identified sixteen tenured professors who as a consequence suffered termination of appointment with a year's notice. Their academic fields included chemistry, economics, German, journalism, physics, political science, and sociology.

The investigating committee concluded that the administration acted in violation of the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulation 4c (termination of faculty

appointments on financial grounds) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, and in some respects violated the University of Louisiana System's own stated policy, by disregarding the judgment of the faculty in virtually every aspect of the program discontinuance process. Decisions central to the educational mission of the institution were made behind the scenes by chief administrative officers, and determinations of program discontinuance were formulated by an administration-appointed committee with minimal faculty representation.

Moreover, the investigating committee concluded that the administration showed utter disregard for tenure in virtually every aspect of the discontinuance process. Not only did it place no priority on the protection of tenure rights; in certain cases it chose to avoid honoring a tenure commitment, even where the quality of education was likely to suffer. The administration did not afford opportunity for a faculty hearing for affected professors, it terminated appointments of tenured faculty members before those of untenured faculty, it did not make reasonable efforts to relocate affected professors in other suitable positions, and it left some tenured professors with no alternative to taking contingent untenured positions with increased teaching loads and at drastically reduced salaries.

Meaningful faculty tenure currently does not exist at Northwestern State University, the investigating committee stated in its final conclusion. Without a strong tenure system and chief administrative officers who respect it, academic freedom at the institution remains insecure.

Committee A recommends to the Ninety-eighth Annual Meeting that Northwestern State University be placed on the Association's list of censured administrations.

Southeastern Louisiana University. Southeastern Louisiana University is a component of the University of Louisiana System, consisting of the state's public four-year institutions other than those in the flagship Louisiana State University System or the historically black Southern University System. An investigation of Association concerns in the University of Louisiana System was authorized as a result of actions on financial grounds taken by its board of supervisors and the administrations of several of its institutions to discontinue or consolidate academic programs that had few students completing them, thus potentially leading to termination of tenured faculty appointments in the affected programs. The investigation focused on the two institutions, one of them Southeastern Louisiana University, at which tenure terminations have occurred.

The Southeastern Louisiana University administration, informed that seven academic majors had been categorized as weak in student enrollment, selected for discontinuance only the majors in French and French education and proceeded to terminate the appointments of the three tenured French professors in the Department of Foreign Languages and Literatures. These were the only cases at Southeastern Louisiana University that involved the termination of tenured faculty appointments on grounds of program discontinuance. They occurred in a state and in a parish where French is the first language of many residents.

The investigating committee concluded that the Southeastern Louisiana University administration acted in disregard of the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* by defining what constitutes an academic program for the purposes of tenure and insisting on terminating the tenured appointments of the three professors without consulting with the appropriate faculty bodies. One of the professors promptly retired, not wanting to remain for a terminal year that she could have had. The other two sought reversal of the actions and were afforded hearings by representative bodies of the elected faculty senate, which unanimously called for their continuance in their department, where an abundance of French courses continued in the curriculum, with their tenure recognized and with no reduction in rank or salary. The administration, which had resisted requests by the professors for the reasons why they had been singled out for termination, rejected the senate committee's recommendation without rebuttal. It offered them only contingent untenured positions with increased teaching loads at drastically reduced salaries. The investigating committee concluded that the administration, having dismissed the professors without providing any explanation to them or to their elected faculty peers who found the actions against them unwarranted, denied the professors the basic elements of academic due process.

The investigating committee found ample uncontested evidence that the professors had outstanding records as teachers and scholars and found nothing at all to suggest misconduct. In meeting with the Southeastern president, the committee pressed him for an explanation of the terminations, for which he had taken full responsibility, and he tersely replied with a single word: "cost." The committee proceeded to analyze cost savings to the institution in no longer compensating the three,

and compared those savings to cost expenditures in resulting litigation, the cost in damage to French-American relations in Louisiana and to Southeastern's public reputation, and the cost of faculty lack of confidence in the president's administration and of the accompanying chill in the climate for academic freedom. The investigating committee concluded that any financial savings achieved through the terminations were grossly offset by the cost to Southeastern Louisiana University in these other respects.

Finally, the investigating committee expressed its grave concern that an increasing number of faculty members had indicated fear of retaliation for speaking or writing candidly in opposition to the current administration's leadership. As with the other University of Louisiana System institution that was the focus of the committee's investigation, the committee stated that, without a strong tenure system and a chief administrative officer who respects it, academic freedom remains insecure at Southeastern Louisiana University.

Committee A recommends to the Ninety-eighth Annual Meeting that Southeastern Louisiana University be placed on the Association's list of censured administrations.

DEVELOPMENTS RELATING TO AN ASSOCIATION CENSURE

Committee A this past year also approved publication of a supplementary report on the existing censure involving Savannah College of Art and Design, which is included in this issue of the *Bulletin* and was also published online and in the November–December 2011 issue of *Academe*.

Legislative Business

At its November meeting, Committee A approved for publication online a newly revised executive summary of its subcommittee report *Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions* (the full report was published online in August 2011 and in the 2011 issue of the *Bulletin*). The committee also approved the publication, both on the AAUP's website and in this issue of the *Bulletin*, of its subcommittee's report on *Accommodating Faculty Members Who Have Disabilities*, which addresses practical and legal issues involving these faculty members and reaffirms their entitlement to due process. In a related action, the committee voted to replace the current text of Regulation 4e of the *Recommended Institutional Regulations on Academic Freedom and Tenure* with "withdrawn" and add parenthetical references to the report in two locations within the *Recommended Institutional Regulations*.

At both the November and June meetings, Committee A discussed the report of its subcommittee on institutional review boards, whose formation was occasioned by a reconsideration by the Department of Health and Human Services of its rules for conducting research on human subjects. In June, the committee approved the subcommittee's draft report, titled *Regulation of Research on Human Subjects: Academic Freedom and the Institutional Review Board*, for online publication for comment and for eventual adoption as an official AAUP policy document. Building on the subcommittee's 2006 report, this report takes issue with certain federal government regulations for research on human subjects, enforced on individual campuses by institutional review boards, as potential threats to academic freedom. Both meetings also saw further discussion of the major report on corporate funding of academic research authored by journalist Jennifer Washburn and President Cary Nelson in cooperation with the Canadian Association of University Teachers and in consultation with Committee A, the Committee on Professional Ethics, and the Committee on College and University Governance. Now titled *Recommended Principles and Practices to Guide Academy-Industry Relationships*, the nearly one-hundred-thousand-word report was published online for comment in June. In fifty-six recommendations supported by case studies, the report provides principled guidance to faculty members and administrators in handling the ethical and professional questions surrounding academy-industry research partnerships.

Growing out of the report of the legal department was the agreement at the June meeting that a group of AAUP legal experts headed by Committee A member Risa Lieberwitz would respond to the National Labor Relations Board request for amicus briefs in the *Point Park University* case, which involves reconsideration of the key issues in the Supreme Court's decision in *NLRB v. Yeshiva University*.

At its November meeting, the committee discussed possible revisions to Regulations 4c ("Financial Exigency") and 4d ("Discontinuance of Program or Department Not Mandated by Financial Exigency") of the *Recommended Institutional Regulations on Academic Freedom and Tenure* being proposed by the subcommittee on program closings. At its June meeting, Committee A held a lengthy discussion of the subcommittee's draft report on "program discontinuance and severe financial distress." The subcommittee will bring a revised version of that report, as well as proposed revisions of Regulations 4c and 4d, to Committee A's fall meeting.

Conclusion

I am grateful for the continued hard work of volunteers and staff. This year I want to highlight the work of several people who have made extraordinary contributions. Ann Franke, former staff counsel of the AAUP, initially brought to the attention of Committee A concerns about the current applicability of former Regulation 4e, “Termination Because of Physical or Mental Disability,” of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. She agreed to chair a subcommittee to address these concerns. Under her leadership, the subcommittee worked quickly and effectively, making recommendations that led Committee A to withdraw Regulation 4e and to approve publication of the subcommittee’s valuable report on *Accommodating Faculty Members Who Have Disabilities*. Judith Thomson, a former member of Committee A, has continued to serve the AAUP by chairing the Committee A subcommittee on institutional review boards. She took the primary role in preparing the subcommittee’s most recent report, which Committee A approved for publication and comment at its June 2012 meeting. Michael

Bérubé, a current member of Committee A, has chaired its subcommittee on program closings, established at the June 2011 meeting. Over the past year, Michael has written and revised the draft report of the subcommittee. The quality of his drafts has prompted excellent discussion at Committee A meetings, and I am confident that the final report and recommendations will be a major contribution to developing Association policy on this extremely important subject. Finally, among Cary Nelson’s many achievements as AAUP president, he took the lead in urging the Association to investigate and address academy-industry relationships and chaired the committee that undertook this project. In consultation with Committee A, other AAUP committees, and outside consultants with relevant expertise, he played a major role in writing and revising the comprehensive and timely report that has now been published online for comment. This project was a fitting capstone to Cary’s six years as president of the AAUP.

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Cases Settled through Staff Mediation

The three representative accounts that follow illustrate the nature and effectiveness of the mediative work of Committee A’s staff in successfully resolving cases during the 2011–12 academic year.

A senior tenured professor at a small private college in the Upper South became embroiled in an increasingly contentious dispute with the academic vice president over assignments and scheduling. The vice president assigned an undesirable task to the professor, who refused to do it. The vice president wrote back, saying that he was charging the professor with insubordination and recommending to the president that, effective immediately, he be dismissed for cause.

The professor promptly telephoned the Association in quest of assistance, and a member of the staff promptly telephoned the president, who when he took office had supported adoption of AAUP-recommended standards. The staff member referred the president to the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* with its provisions that there first be personal discussion with the subject faculty member

and then review and a recommendation by a faculty committee on whether to issue charges and hold an adjudicative hearing. The president, attributing the matter at hand to hot tempers, indicated that he was in no rush to impose a severe penalty but that he was reluctant simply to reject his vice president’s recommendation. He agreed, at the staff member’s suggestion, to the following approach.

He will inform the vice president that it is necessary for him to hold personal discussions with the professor in an effort to work out differences. If the discussion does not succeed, the president will then seek the advice of a faculty committee on whether to initiate formal proceedings. Because it was then late in April and it would be difficult to have a committee engaged during the summer, the vice president can take until September to report back to him on whether he believes that the prospect of dismissal still warrants pursuit.

The president acted accordingly, and courses for the professor were scheduled for the next academic year. Apparently hot tempers were cooled over the summer,

because September came and went without, to the staff's and the professor's knowledge, any further word from the vice president about seeking the professor's dismissal.

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A senior lecturer in computer science at a public regional university in a prairie state in her twentieth year of full-time faculty service received notification that for financial reasons her position was being eliminated and her services terminated as of the end of the academic year. The institution did not assert that it was financially exigent, its faculty played no role in the decisions to single out the lecturer for release, the lecturer was being denied adequate notice or severance salary, and institutional regulations did not provide those ranked as lecturers with opportunity for a hearing on the matter.

The lecturer sought the Association's assistance, and a staff member wrote to the institution's chief administrative officer about her case and then held discussions with him. The officer stated that it would be difficult for him to rescind the decision eliminating her position in computer science but that he would endeavor to find a suitable alternative position for her elsewhere in the university. Before her terminal semester in computer science ended, the administration offered her, and she gladly accepted, an appointment as an instructional designer in the Office of Information Technology Services. The chief officer confirmed, in a letter to the appreciative staff member, that he had "gone the extra mile to help [the lecturer] make a successful transition to a new role."

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An assistant professor of business with twenty-five years of full-time service at a small religiously affiliated college in the Northeast was notified in March of his nonreappointment effective June 30. A staff member wrote urging the administration to rescind the notice of nonreappointment or, if the professor's separation from service was still being sought, to afford him a dismissal hearing that accorded with the Association's recommended standards for faculty members who have achieved the protections of tenure through length of full-time service. The staff member also urged the administration to make an effort to offer the professor a resolution that he could accept. In July the professor wrote to inform the staff as follows:

Yes, after a few weeks of "back-and-forth," I have reached an agreement with the administration, and I thank you and my attorney as the "center-

piece" of my success. I am retiring next June—on my terms—and I am satisfied with it. Your very well-written letter and some "cagey" words suggested by my attorney in my counteroffer did the trick, I believe. . . . I am very pleased. I would like to thank the AAUP for assisting me, and I am grateful for your work. ■