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PRINCIPLES AND CASES

THE MEDIATIVE WORK OF THE AAUP

By Bertram H. Davis

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It is an ironic consequence of the AAUP's work in academic freedom and tenure that the academic profession is more familiar with the Association's apparent failures than with its real successes. The Association, in fact, takes great pains to publicize its most significant failures. The publication in the *AAUP Bulletin* of an investigating committee's report is with rare exceptions a climactic moment in a drama of quiet but persistent confrontation during which the Association, without success, has sought the observance of its principles and the resolution of a difficulty which that observance implies. By and large the successes have been reported only briefly, without identification of the individuals or the institutions, and thus without the dramatic interest of a full-blown conflict.

The Association's procedures leading to publication have had another consequence, for inevitably the Association's initial objective is the settlement of a case, and negotiations looking toward a settlement can be time-consuming. Frequently letters must be exchanged with the complaining faculty member, the administration, and the AAUP chapter; a hopeful turn of events may suggest the need for a staff visit to the campus or a visit by consultants from another campus. If negotiations fail, and the apparent violation of academic freedom and tenure is serious, a special committee must be assembled. The committee must be briefed on the facts of the case and the issues into which it is to inquire. Arrangements must be made for its visit to the campus. It must have time to prepare its report, and the report must be reviewed by the staff (acting for the Association's Committee A on Academic Freedom and Tenure), submitted to Committee A for approval, and forwarded to the interested parties for their comments and their correction of factual errors. Finally the report must be sent to the printer to meet a *Bulletin* deadline usually six weeks in advance of publication.

The process is necessarily slow and exacting. It has been completed in as few as three months; it has taken as many as fifty-six. It may be held up by a faculty member's suit against the administration, by a difference of view between Committee A and the investigating committee which itself requires resolution, by the innumerable competing demands upon the time of committee and

staff members alike. In May, 1965, the Special Committee on Procedures for the Disposition of Complaints under the Principles of Academic Freedom and Tenure noted that the average time which elapsed between the receipt of complaints and the publication of reports in the *Bulletin* from March, 1958, to March, 1963, was twenty-nine months, exclusive of late notice reports.¹

So the reports on academic freedom and tenure, conspicuous as they are, have led many members of the profession to the conclusion that the Association is ponderous and slow-moving—that in delaying justice, as the old saw goes, it has denied justice. No doubt it is an impression which will die hard, because the false coin of appearance passes too often for reality, and by the nature of its work the Association cannot give the same currency to its successes that it gives to its apparent failures. But if this false impression cannot be assured a timely burial, perhaps it can at least be given a relatively peaceful retirement.

The critical period for the faculty member who feels seriously aggrieved is usually between the occurrence of the alleged grievance and the departure from the campus necessitated by the administrative—and sometimes faculty—action which he is protesting. He may, for example, be notified on May 1 that his appointment will terminate on the following June 30; and since most positions for the next academic year are commonly filled between December and April, he is obviously at a competitive disadvantage, and he may in fact face the possibility of having to abandon his professional career altogether. Because the Association prescribes, in its statement on *The Standards for Notice of Nonreappointment*, that faculty members in their first year of service should be given notice by March 1, in their second year by December 15, and thereafter a year in advance, the faculty member given notice which does not meet these standards may file a complaint with the Association and expect it to act in support of its standards.

¹ Since 1965 the average time has been shortened to twenty-three months. Approximately one third of the reports have been published within eighteen months, and approximately one fourth within a year. The time spent is still longer than we would like, however, and efforts continue to reduce it.

More comprehensively, the faculty member may file a complaint whenever he believes that an institutional action affecting him is in violation either of his institution's regulations or of the 1940 *Statement of Principles on Academic Freedom and Tenure*, that joint statement of the Association of American Colleges and the AAUP which has become a standard for the academic profession. Is the notice of nonreappointment given to him, however timely, in violation of his academic freedom? Has he been given notice after the maximum period of probation prescribed by the 1940 Statement? Has he been dismissed, either in the midst of a term appointment or at a time when he should be considered on tenure status, without procedural and substantive due process? Has the institution failed to honor a commitment it has made to him?

Of the numerous complaints which reach the Association's Washington or regional offices annually—in these times between 500 and 750—many must be rejected on the ground that the facts of the complaint do not support an allegation that the Association's principles or the institution's regulations have been violated. When the facts do seem to support such an allegation, then the Association's staff must consider the action most appropriate to the situation.

In spite of occasional expectations to the contrary, its first impulse is not to prepare a report for publication or to send a committee to the campus to conduct a formal investigation leading to possible censure by the Annual Meeting. The demand of the faculty member who writes in his initial letter, "I am being abominably mistreated; send a committee to the campus and censure the administration immediately," must be rejected out of hand. Any serious violation of academic freedom or tenure, to be sure, may result in investigation and censure. But obviously censure, if used indiscriminately, would lose its precision edge; and the Association has learned from long experience that even the most unpromising situation may yield to negotiation and thus preclude the need for formal action of a public nature. At least at the beginning, report, investigation, and censure remain in the background, unannounced though perhaps not unheeded, shadowy figures in a vigil to which they may give strength even when they do not actively participate.

What a situation requires depends upon a number of considerations. What does the staff know of the institution's administrative officers, or of its traditions? Is there an active AAUP chapter, and are its officers in a position successfully to negotiate with the administration? Are the chapter officers already aware of the case, and what have been their reactions? Is there an Association member at a nearby institution who may provide needed assistance? What are the needs of the complaining faculty member? Has he been dismissed summarily, for example, or suspended without salary, so that immediate action is required to restore him to his teaching duties, to provide him with due process, or to assure him a continuing income?

The answers to these questions will generally dictate whether the Association's initial step should be a tele-

phone call to the chapter president, or a call, telegram, or letter to an administrative officer—usually the chief administrator. If the chapter officers are in a position to resolve the difficulty—perhaps by securing an additional year's appointment for a faculty member given late notice of nonreappointment, or by making sure that a faculty member whose dismissal is contemplated is provided the safeguards of academic due process—the role of the Association's staff may be only to supply whatever advice is needed along the way.² If they are not in such a position, the staff will conduct the negotiations with whatever assistance it can draw from the chapter officers, or from faculty members at neighboring institutions.

These negotiations can be conducted with all the alacrity that is called for, and members who are not intimately acquainted with the Association's work may be surprised to learn how quickly a violation of the Association's principles can be corrected. On February 10, 1969, for example, the Washington Office received, almost simultaneously, a letter and a telephone call from a faculty member who had just been informed by the administration that he would be placed on half-time status during the next academic year, and who complained that this unexpected notice had burdened him with the immediate necessity of seeking other positions when the demands of his present position left him no time for anything else. Because the notice to the faculty member was late when measured against the Association's standards, a staff member placed a call to the institution's president, and, within fifteen minutes of the call from the faculty member, the president had agreed to a full-time appointment for the next academic year.³

Fifteen minutes, of course, are an agreeably short time in which to resolve a complaint, and I have to confess that my next example of prompt resolution occupied the best part of an afternoon, an evening, and the following morning. On September 30, 1968, a graduate student at one university informed the Washington Office that a department at another university—only a few days before the commencement of classes—had revoked an appointment it had given him the previous March. Following calls by the Washington Office to chapter and department leaders at the appointing university, the department chairman telegraphed the faculty member on October 1 to confirm the appointment.⁴

Fifteen minutes, twenty-four hours, ten days—perhaps the precise time is of no great importance, except insofar as there is a need for the aggrieved faculty member's anxieties to be alleviated. What is important is that faculty members have an agency to turn to which stands a good chance of bringing them effective relief when basic principles of sound academic practice are not observed by their institutions. I have chosen to begin with these two examples because the Association's role in them was

² Without "the principles and the procedures of the AAUP to guide us," wrote one chapter officer, "the case might have degenerated into a horrible miscarriage of justice or a nasty display of recriminations. . . ."

³ *AAUP Bulletin*, Summer, 1969, p. 167.

⁴ *Ibid.*, p. 166.

immediately decisive, and because the extraordinary dispatch in which the resolution of the two complaints was effected should help to dispel the myth that the Association moves laboriously its wonders to perform.

Yet these two cases go back some time—one about a year and the other about a year and a half—and it may be charged that they have been artfully selected to draw attention away from the Association's singular lack of success in other instances. Let it be admitted—as I have already done—that the Association is not always successful in its negotiations. Let it be admitted also that, even in success, neither fifteen minutes nor a single day can be looked upon as par for the Association's course, strewn as it is with patches of heavy rough, if not with rocks in the very center of the fairway.

But the two examples I have given, extraordinary though they may be in time, are by no means extraordinary in their success. Those members of the Association who have read the annual reports of Committee A, published in each summer issue of the *AAUP Bulletin*, will recall that three years ago Committee A began a practice of describing, in anonymous terms, some of the successful negotiations conducted by the Association's staff. These fifty-eight accounts, which by no means exhausted the Association's files, are all available for study, and I will not therefore deal with them at length. But I do wish to put them together with some of our more recent successes in order to convey some idea of the range both of the Association's activities in academic freedom and tenure and of their impact on higher education.

Noticing in the weeks following the 1969 Annual Meeting that a successful conclusion to staff negotiations was becoming almost a daily occurrence, I asked a staff member to compile a report on these recent successes, in the manner of the annual Committee A reports. By early August he had given me accounts of thirty successfully concluded cases, with a notation that there were about a dozen additional cases for which accounts had yet to be written.

It is sometimes difficult to categorize a specific case, but of the fifty-eight cases described in the Committee A reports from 1967-1969 and the thirty cases resolved in the late spring or summer of 1969, I estimate that about 30 per cent were late notice cases, nearly 20 per cent were cases in which the faculty member was given notice of nonreappointment after he was entitled to be considered on tenure status under either his institution's regulations or the 1940 Statement of Principles, nearly 20 per cent involved failures of the institution to observe important commitments of one kind or another, about 10 per cent involved summary dismissals or suspensions, and the remainder were of various kinds. An individual case, I should point out, sometimes involved more than one faculty member; in one case the Association assisted in the reinstatement of eight faculty members whose appointments had been terminated. It should be noted also that represented in these eighty-eight cases is almost every type of institution which comprises the community known as higher education. The largest number of cases, nine-

teen, occurred at public universities; the next largest, eighteen, at church-related colleges. Thirteen occurred at private universities, twelve at junior or community colleges, eight at public colleges, six each at private independent colleges and church-related universities, three at technical schools, two at medical schools, and one at a theological seminary.

Settlements in individual cases may take a variety of forms. A faculty member may wish merely to have his record cleared of charges and allegations which were unproved but remain a threat to his professional career. In one case the institution honored a commitment to summer school teaching, as it apparently would not have done without the Association's prodding. In late notice cases the most desirable outcome is the extension of the faculty member's appointment for an additional year, and it is gratifying to note that in three fifths of the late notice cases this was in fact the outcome. In cases where the faculty member has a valid claim to tenure which has not been recognized by the institution, the appropriate resolution is for the institution to accord him tenure status; in thirteen of the sixteen such cases the faculty member's tenure was recognized.

For a number of reasons some cases cannot be resolved in these ways, and the only alternative may be a financial settlement acceptable to both the faculty member and the administration. In some late notice cases the faculty member, in order to safeguard his professional career, may have felt compelled to make quick arrangements with another institution, perhaps at a lower salary than he would have accepted if a more leisurely period to survey the academic market had been available to him, and it is appropriate that the institution compensate him for placing him in this disadvantageous position. If a dispute has been heated between an administration and a faculty member with a valid claim to tenure or to another year's appointment, both sides to the dispute may be pleased to enter into an agreement which will assist the faculty member in continuing his professional career elsewhere without serious loss of income. Academic disputes, it may be noted, are not totally different from legal disputes, which are often quietly settled in this way.

Among these eighty-eight cases, thirty-two were resolved by means of a financial settlement. The amounts ranged from a few hundred dollars to a good many thousand dollars—although none, it may be said, was quite as substantial as that in a case resolved in the summer of 1969, when the Association was instrumental in arranging a settlement in the amount of \$60,000. But that appears to have been the largest such settlement in the Association's history and may be considered a rarity.

These cases, part and parcel as they are of the Association's work, should serve to allay the myth that the Association does not act promptly and decisively when a faculty member seeks its assistance. An extension of an appointment terminated by late notice cannot normally be secured, or a valid claim to tenure successfully asserted, unless the Association undertakes its negotiations while the faculty member is still on the campus, and before the

institution and the faculty member have made unalterable other arrangements. Some fifteen extensions of probationary appointments and thirteen decisions to accord tenure status alone attest to the timeliness of the Association's assistance.

There is still another myth about the Association's work which these eighty-eight cases should be sufficient to dispel. It has on occasion been asserted that, while the Association may do a great deal for the tenured member of the faculty, it does very little for the probationary faculty member. Indeed, the facts of these cases might be used to support exactly the opposite assertion. Of the eighty-eight successfully concluded cases, fifty-four of them involved faculty members on probationary status. Another sixteen involved faculty members who, although looked upon by the Association as having a valid claim to tenure, were, in the eyes of their administrators, on probationary status. In one case half the faculty members were tenured and half were not, and in eight cases the status of the faculty members is not apparent in the published accounts. In only nine of the eighty-eight cases had the faculty members achieved tenure status at their institutions. Discounting the eight published cases in which the faculty members' status is not recorded, 69 per cent of the cases thus involved faculty members whom the Association considered probationary; 91 per cent involved faculty members whom their administrations considered probationary.

II

In my opening comments I described the cases leading to investigation and published reports as the Association's "apparent failures." Failures they are at the moment a report is published, because the report itself is evidence of the Association's inability to negotiate a satisfactory resolution of the case. But the Association has long since learned how to put its failures to good account.

A published report is generally itself a sanction against an administration in violation of the principles of academic freedom and tenure, and it carries added weight because it will shortly be presented to the Annual Meeting for a possible vote of formal censure. Thus in the weeks before an Annual Meeting the Association is often in a favorable position to resolve a difficulty which has long defied resolution. One need only recall the reports on Dean Junior College, Adelphi University, and the University of Hawaii to give credence to this statement. "Subsequent to the publication of the committee's report," Committee A announced to the 1968 Annual Meeting, in withholding a recommendation of censure.

Adelphi University arrived at a settlement with the faculty member which he has described as thoroughly satisfactory. The University's faculty, administration, and governing board have joined in the formulation of new regulations . . . that meet Association standards . . . in all significant respects. Administrative officers of Adelphi University

have cooperated closely and effectively with the Association in satisfactorily resolving two recent problems.⁵

Committee A's recommendations with respect to Dean Junior College and the University of Hawaii were very similar.

And what of censure itself? It is, to put it in the simplest, most up-to-date terms, our nonnegotiable demand; for it will stand as a signpost to the profession until the conditions which led to its erection have been corrected. The end-product of a long and unsuccessful negotiation, it is ironically a prelude to a new negotiation which sooner or later will be successful. The history of censure actions is a history of ultimate success in every case.

III

I want, in this final section of my comments, to call attention to what I believe to have been the impact of the Association's work in academic freedom and tenure and to the relationship of that impact to the procedures and policies which characterize the Association. It is not an impact which can be measured in successfully negotiated cases alone, even though for a special purpose I have focused much of my own attention upon them. The eighty-eight cases may suggest the Association's influence, but they fall very short of defining it.

We have as an association tried to live by principle rather than by *ad hoc* decisions suited to a moment's convenience, and we have posted our principles in plain view so that all concerned may take note of them. In short, we wear our hearts upon our sleeves, and if the daws now and then peck at them they do so in full awareness of the consequences and at their own risk.

Our efforts, moreover, have been directed not merely to the advancement of that part of the profession which constitutes the AAUP membership but to the advancement of the entire academic profession. "Our Board of Trustees has never endorsed the 1940 Statement of Principles," writes a college president, "and thus the Statement has no application on our campus." But the fact is that it has the same application on his campus that it has on every other campus, and that even a non-AAUP member of his faculty may expect the AAUP to review his complaint of an academic freedom violation with the same care that it would review the complaint of an AAUP member.

For the Association and the profession this has been a great advantage. It has given every member of the profession an organization to turn to for advice and assistance; it accounts for the extraordinary range of institutions represented in the eighty-eight examples of successfully concluded cases. I do not know how many of the faculty members in those eighty-eight cases were AAUP members. Many of them doubtless were not. I do know that the availability of the Association's services to members and nonmembers alike has extended the Association's influence to institutions not only without AAUP chapters

⁵ *Bulletin*, Summer, 1968, p. 177.

but, on occasion, without a single AAUP member.

As an association we are aware of the strength of numbers and make indispensable use of it. But we are aware also that we are dealing always with human beings—and at times with men almost as reasonable as ourselves!—and that it is better to win a point because the principle and logic are right than because our numbers are overpowering and victory is sweet. A respect for human dignity, a reasoned approach to principle, and a dogged persistence have served us well. In the long run they have meant that our influence is not merely extended by our own efforts: it is constantly sought by others. Inquiries from administrators and faculty members on the proper resolution of faculty problems are a daily occurrence. Proposed revisions in institutional regulations are regularly submitted for the review of the Association's staff. The faith which some members of the profession place in the Association's arbitration may surprise even us: consider, for example, the following excerpt from a news report in an issue of last summer's *New York Times*:

The college spokesman said that . . . [the President of the college] had previously agreed to support whatever the . . . [American Association of University Professors] recommended in the . . . case and would resign if the board of trustees also did not go along with the recommendation.⁶

Consider also, through the following account of a successfully concluded case, how an entry into an institution by means of a comparatively simple problem may lead to the resolution of a problem enormously complex:

An assistant professor in his twelfth year as a full-time faculty member at a church-related college in the East sought the assistance of the Association after having been notified that his services at the college would be terminated after one additional year. The institutional regulations at the time called for tenure for those holding the ranks of professor and associate professor,

⁶ *The New York Times*, July 17, 1969.

with the possibility of faculty members at other ranks remaining on term appointment indefinitely.

Members of the Association's staff entered into discussion with administrative officers of the college. They were informed that the faculty and administration were currently revising the regulations and that the revisions would include adoption of the 1940 Statement of Principles—with tenure for faculty members, regardless of rank, after a maximum probationary period of seven years—as college policy. The Association staff members offered advice regarding the content and implementation of the proposed new regulations. After reviewing the cases of the faculty members at the college who were serving on term appointments but who had completed the maximum period of probation under the 1940 Statement, they recommended that these faculty members be granted tenure upon the adoption of the revised regulations.

The governing board of the college, at its next regular meeting, approved the new regulations. Immediately thereafter, the president of the college notified the faculty member who had brought his case to the Association and the other faculty members on term appointment who had served beyond seven years—fifty-seven faculty members in all—that tenure was being extended to them.

So in the end as in the beginning we cannot avoid coming down to cases. Out of its first cases evolved the Association's first principles of academic freedom and tenure, and on these principles its subsequent case work has been built. Through a persistent vigilance—through the constant application of its principles to cases—the Association has made academic freedom a byword in higher education, and in institution after institution it has been instrumental in the adoption of policies and procedures which lend support to academic freedom. To individual faculty members it has given a resource in their hour of need, and to faculties as a whole it has steadily helped to bring the dignity of professional status.