

# Academic Freedom and Tenure: Brigham Young University<sup>1</sup>

## Prologue

When Assistant Professor Gail Turley Houston's tenure and promotion file went forward from the Department of English at Brigham Young University (BYU) in October 1995, it was supported by a strong favorable vote. Her book, *Consuming Fictions: Gender, Class, and Hunger in Dickens's Novels*, had received praise from the outside reviewers, and the letter from Department Chair C. Jay Fox commented, "This is an enviable scholarly record for an early career." Her teaching evaluations placed her "in the top fifth of teachers in our department" and averaged 6.35 (on a scale of 7) for the last three years. The chair noted that the "number of negative comments by students is small by percentage" and that "there is displeasure on the part of a few who feel her feminist focus is too narrow and disturbing." The evaluation of her "citizenship" was that she had "served with dedication and fervor" in a number of activities, including groups with "feminist attitudes." Some members of the faculty and administration had, however, felt "an uneasiness about some of her activities," and the chair wrote that "Gail's alternative voice has not always been as tactful as I would like." A November 27, 1995, letter from the College of Humanities Committee on Rank Advancement and Continuing Status to Dean Randall L. Jones advancing the recommendations for tenure and promotion reflected a similar appraisal of the record and a similar favorable vote. Dean Jones's letter of December 12, 1995, to the University Faculty Council on Rank and Status echoed the previous two assessments and concluded that, despite some "lingering concerns" from a few, "there is simply not compelling reason to deny her either Continuing Status or promotion to the rank of Associate Professor."

The final decision on Professor Houston's case, conveyed to her by letter of June 5, 1996, denied her tenure and promotion. It informed her that the president and the provost concurred with a

negative recommendation from the University Faculty Council (chaired by an associate academic vice president), which accepted the earlier assessments about her teaching, research, and citizenship but differed with the recommendations for granting tenure and promotion because of "the number and severity of occasions when your actions and words on and off campus, even following your third-year review, were perceived as harmful to the tenets held by the Church and the university. We feel that not only have these activities failed to strengthen the moral vigor of the university, they have enervated its very fiber." In the paragraphs which followed, the letter approved by the BYU administration included these three concerns: the quantity of low numerical scores on the teaching evaluations in the categories of "Gospel Insights" and "Spiritually Inspiring," Professor Houston's public statements supporting the practice of praying to "Heavenly Mother as well as Heavenly Father" which constituted "a pattern of publicly contradicting fundamental Church doctrine and deliberately attacking the Church," and her disagreement with the provision that "BYU faculty should be models of spirituality to their students." As support for its negative decision, the BYU administration referred to items which had been added to Professor Houston's file after it was sent forward from the college and to limitations described in BYU's *Statement on Academic Freedom*.

Professor Houston submitted an appeal, under BYU regulations, to a panel appointed by the academic vice president and chaired by an associate academic vice president. The appeal panel held a hearing on August 29, and by letter of September 9 informed the president that it had found no evidence of procedural violations or of "other factors" significantly affecting the decision that was made. President Merrill J. Bateman followed on September 11, 1996, with a brief letter to Professor Houston informing her that he was accepting the panel's recommendation to sustain the decision to deny her continuing status.

The BYU AAUP chapter and Professor Houston herself had asked the Association's staff for advice and assistance, and the chapter had submitted a statement to President Bateman on June 27, expressing concern that the June 5 decision rejecting Professor Houston's candidacy was based on considerations violative of her academic freedom. On August 15, the staff sent Professor Houston, as an aid in preparing her appeal, a preliminary assessment of the issues of academic freedom posed by her case. The staff wrote to President Bateman on October 1, questioning the adequacy of the appeal procedure and reiterating academic freedom concerns. In the absence of corrective action, the Association's general sec-

<sup>1</sup> The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty member at whose request the inquiry was conducted, to the administration of Brigham Young University, to the chapter officers, and to other persons concerned in the report. In light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared and has been authorized by Committee A for publication.

retary authorized an investigation, and by letter of October 17 President Bateman was so informed.

The undersigned *ad hoc* investigating committee received and examined voluminous documentation during the three ensuing months, including a sixty-two-page statement dated January 14, 1997, from the BYU central administration in defense of its action in the Houston case. The investigating committee also received information about other recent and current BYU cases in which issues of academic freedom have been posed. The committee visited Brigham Young University on January 23, 24, and 25, 1997, and held discussions with the responsible administrative officers, with many current and former members of the faculty, and with some students, over a hundred people in all. The committee is grateful for the cooperation and courtesies it received throughout its visit.<sup>2</sup>

## I. Brigham Young University

Brigham Young University has its origins in a frontier preparatory academy founded in 1875 by members of the Church of Jesus Christ of Latter-day Saints (Mormon; LDS). The institution became Brigham Young University in 1903 and grew rapidly after World War II until it is now the largest church-related institution of higher education in the United States. Its over 1,600 faculty members teach—on the main campus in Provo, Utah, and a branch in Hawaii—nearly 30,000 students, about equally divided between men and women, who come from all fifty states and one hundred foreign countries. The first doctoral program was inaugurated in 1957, and the student body now includes nearly 3,700 graduate students enrolled in seventy-four master's and thirty-one doctoral degree programs. Over 95 percent of the faculty and students are Mormons. Since BYU is the only Mormon university in the United States and thousands of Mormon families wish their children to be educated there, the university is highly selective in admitting students. The faculty includes scholars of national, indeed international, eminence. The Northwestern Association of Schools and Colleges first accredited the university in 1923.

The university is wholly owned by the Mormon Church, which not only names the trustees but also pays for a large portion of its operating expenses, enabling the university to keep tuition charges lower than most private colleges and universities. The twelve trustees are all high officials in the Mormon Church and as such exercise more influence in university affairs than is the case in many other church-related institutions of higher education. Church officials interview prospective faculty members as a condition of employment, and faculty members who are Mormons must meet "the standards of conduct consistent with qualifying

for temple privileges" (i.e., the privilege of entering one of the Church's temples). There are only about forty-five Mormon temples world-wide, and entrance to them is limited to those faithful Mormons who have met the specified standards. Within the temples, marriages and other especially sacred, and secret, ceremonies that are important to Mormons are performed. Before certifying that a member is temple worthy, bishops ask candidates a specified set of questions regarding their religious practices.

The religious homogeneity of the faculty and students provides a foundation for a strong sense of community at BYU. Visitors sense a campus-wide commitment to civil discourse and community concern for the well-being of others. As will be made abundantly clear in this report, however, this is not to say that the university is spared controversy, within the university and within the Mormon Church, about what the Mormon beliefs and way of life require of professors in their scholarship, teaching, and personal conduct. Since Mormon definitions of traditional church terminology differ from those of most other churches, a few words about vocabulary are in order. The local clergy of the Latter-day Saints are nonprofessional laymen who serve on a part-time basis. Nearly all adult male Mormons, and only males, are ordained to the priesthood of the Church. A bishop is the chief officer of a ward, i.e., congregation or parish, and thus does not hold as high a position in the Church hierarchy as the term implies in other denominations. A unit of several wards is known as a stake, and the ecclesiastical position above the bishop is that of the stake president, who presides over the bishops in his designated area. Above the stake presidents are the General Authorities, whose jurisdiction is worldwide; these include "Quorums of Seventy," elders who are called to supervise the Church, and the Quorum of the Twelve Apostles, from whom are drawn three members to constitute the First Presidency. At the apex of this organization is the most senior apostle, serving as President of the Church. Mormons regard all members of the First Presidency and the Quorum of the Twelve Apostles as "prophets, seers, and revelators." According to Church doctrine, the President may receive direct revelation from God and is not to be questioned on matters of belief. Thus Mormon doctrine is based not only on sacred historic texts but also on later truths revealed to Church leaders. Such revelations to Church leaders resulted, for example, in the adoption of polygamy in the 1840s, in its official abandonment in 1890, and in opening the priesthood to black men in 1978.

In the context of definitions, note should be taken that BYU uses the term "continuing status" to mean indefinite tenure. Further, in describing the criteria used in evaluating faculty members' performance, BYU policy documents add to the usual criteria of scholarship and teaching the criterion of "citizenship." "Citizenship" as defined at BYU encompasses more than is usually included in the criterion of "service" at other institutions. In addition to the usual factors of academic advising, committee membership, professional activities, and attendance at university functions, BYU includes in the concept of "citizenship" loyalty to

<sup>2</sup> A draft text of this report was sent on April 30 to the principal parties at Brigham Young University with an invitation for corrections and comments. By date of May 19, the central administration submitted a sixty-one-page reply that has been taken into account in preparing the text's final version.

the LDS Church and “service to the community and the Church as an extension of university performance where expertise is used to serve public or Church interests.”

The president of BYU, succeeding Rex E. Lee on January 1, 1996, is Dr. Merrill J. Bateman, who possesses a bachelor’s degree from the University of Utah and a Ph.D. degree from the Massachusetts Institute of Technology. He served as associate professor and professor of economics at BYU from 1967 to 1971 and as dean of its School of Management for four years in the 1970s. He has headed his own consulting and capital management companies. He has also held important offices in the LDS Church and indeed was the presiding bishop of the Church from 1994 until called to the presidency of the university. Thus, for the first time, an acting General Authority became the university president.

Dr. Bruce C. Hafen served as provost of the university until the summer of 1996, with the position having subsequently been left vacant. Dr. Alan L. Wilkins succeeded Dr. Todd A. Britsch as academic vice president during Professor Houston’s candidacy for continuing status, and Mr. James D. Gordon, III, was associate academic vice president. Dr. Randall L. Jones served as dean of the College of Humanities, and Professors Neal E. Lambert and Charles Jay Fox served successively as chair of the seventy-member Department of English.

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Before this report turns to the cases of concern, two key Brigham Young University documents warrant explanation and some discussion: the *Mission Statement* and the *Statement on Academic Freedom*.

The faculty and students of the university are enjoined to “seek learning by study and also by faith.” The university, according to its *Mission Statement* adopted in 1981, is to “assist individuals in their quest for perfection and eternal life. That assistance should provide a period of intensive learning in a stimulating setting where a commitment to excellence is expected and the full realization of human potential is pursued.” The university seeks to provide an environment “enlightened by living prophets and sustained by those moral virtues that characterize the life and teachings of the Son of God.” The *Mission Statement* identifies four major educational goals: (1) to teach “the truths of the gospel of Jesus Christ,” for “His is the only name given under heaven whereby mankind can be saved”; (2) to provide a broad university education in the arts, letters, and sciences; (3) to enable students to receive instruction in a major of their choice; and (4) to encourage scholarly research and creative endeavor among both students and faculty members. The *Mission Statement* concludes with the admonition that “faculty, staff, students, and administrators should be anxious to make their service and scholarship available to the Church of Jesus Christ of Latter-day Saints....”

Given the close ties of BYU with the Church and the university’s clearly stated mission to teach students the truth as understood by that Church, questions about the limits of academic freedom for faculty members were likely to arise. In September 1992,

the board of trustees approved a *Statement on Academic Freedom at Brigham Young University*. The statement, drafted by faculty members appointed by the administration, was circulated to the faculty for comment but was not submitted for approval either to the faculty as a whole or to a representative body of the faculty. The document is grounded in a distinction between individual and institutional academic freedom; that is, between “the freedom of the individual scholar to teach and research without interference,” and the “freedom of the academic institution from outside control.” In the portion of the statement devoted to the individual freedom of scholars, academic freedom is defined in terms widely accepted today in academe. It proclaims that individual freedom “lies at the core of both religious and academic life”; that every Latter-day Saint is “enjoined to know truth for himself or herself”; and that the “freedom of the individual faculty member to teach and research without interference” is necessary. The statement goes on to say that this individual academic freedom is also based on the “gospel principle that humans are moral agents who should seek knowledge in the sacred as well as in the secular, by the heart and spirit as well as the mind, and in continuing revelation as well as in the written word of God.”

The *Statement on Academic Freedom’s* definition of institutional academic freedom emphasizes the right of a private, church-related university to pursue its distinctive mission and to insist that those who work and study there support its religious as well as its secular mission. All students and all who work for the university subscribe to an Honor Code “in order that the University may provide a university education in an atmosphere consistent with the ideals and principles of the Church.” BYU defines itself as “an intellectual community of faithful Latter-day Saints, and those sympathetic to their convictions, who pursue knowledge from the baseline of religious belief.” The statement continues: “While not expecting faculty members to agree on every point of doctrine, it is expected that a spirit of Christian charity and common faith in the gospel will unite even those with wide differences and that questions will be raised in ways that seek to strengthen rather than undermine faith. It is also expected that faculty members will be sensitive to the differences between matters that are appropriate for public discussion and those that are better discussed in private.”

The authors of the BYU statement recognize that a degree of tension between the claims of individual and institutional academic freedom is inevitable. Each, if carried to an extreme, may lead to abuses of the other, thus neither is unlimited. “Were there no constraints on individual academic freedom, religious universities could converge toward a secular model and lose their distinctive character.” On the other hand, “If institutional freedom were limitless, BYU could cease to be a genuine university, devoid of the exploratory environment vital to intellectual endeavor and with little room for disagreement and questioning.” The problem is to define the “reasonable limitations” that may appropriately be imposed, and the statement undertakes to formulate such definitions. Since the case of Professor Houston involves differing in-

terpretations of these limitations, the applicable portion of the *Statement on Academic Freedom* is quoted here at some length:

In general, at BYU a limitation is reasonable when the faculty behavior or expression *seriously and adversely affects* [emphasis in original] the University mission or the Church. Examples would include expression with students or in public that:

1. contradicts or opposes, rather than analyzes or discusses, fundamental Church doctrine or policy;
2. deliberately attacks or derides the Church or its general leaders; or
3. violates the Honor Code because the expression is dishonest, illegal, unchaste, profane, or unduly disrespectful of others....

A faculty member shall not be found in violation of the academic freedom standards unless the faculty member can fairly be considered aware that the expression violates the standards.

These principles shall be interpreted and applied with persuasion, gentleness, meekness, kindness, and love unfeigned...and through established procedures that include faculty review. The ultimate responsibility to determine harm to the University mission or the Church, however, remains vested in the University's governing bodies—including the University president and central administration and, finally, the Board of Trustees.

Reasonable limitations mediate the competing claims of institutional academic freedom. In practice, instances in which limitations are invoked against individual faculty conduct or expression are few and infrequent. This is because:

1. Individual academic freedom is presumptive, while institutional academic freedom is exceptional: Individual academic freedom of expression is broad, presumptive, and essentially unrestrained except for matters that seriously and adversely affect the University mission or the Church. By contrast, institutional intervention is exceptional and limited to cases the University's governing bodies deem to offer compelling threats to BYU's mission or the Church....

2. University posture is one of trust: The faculty is entrusted with broad individual academic freedom to pursue truth according to the methodologies and assumptions that characterize scholarship in various disciplines. This trust necessarily encompasses the freedom to discuss and advocate controversial and unpopular ideas. However, the Board and administration reserve the right to designate, in exceptional cases, restrictions upon expression and behavior that, in their judgment, seriously and adversely affect BYU's mission or the Church.

3. Faculty posture is one of loyalty: Faculty members, for their part, agree to be loyal university citizens according to the guidelines set forth in the BYU Handbook. This expectation, which aims at the fulfillment of University aspirations

rather than merely the absence of serious harm, properly figures in advancement and continuing status decisions.

4. Tone of the University Community is charitable: The faculty, administration, and the Board should work together in a spirit of love, trust, and goodwill. The faculty rightly assumes its work is presumptively free from restraint, but at the same time it assumes an obligation of dealing with sensitive issues sensitively and with a civility that becomes believers. BYU rightly expects LDS faculty to be faithful to, and other faculty to be respectful of, the Church and BYU's mission. Thus both the University's governing bodies and the faculty obligate themselves to use their special academic freedom responsibly, within the context of a commitment to the gospel....

## II. The Case of Professor Houston

In the fall of 1990, after receiving her Ph.D. degree in English from the University of California, Los Angeles, with a specialty in nineteenth-century British literature, Professor Gail Turley Houston joined the faculty of Brigham Young University. She had earned her bachelor's degree from BYU in 1973, a master's degree in humanities from Arizona State University in 1978, and a second master's degree, this time in English, from BYU, before she went to UCLA as a candidate for the doctorate. She was at the time of her appointment, and continues to be, a member in good standing of the LDS Church.

BYU's "University Policy on Faculty Rank and Status" calls for an initial third-year review for reappointment and for a final sixth-year review for continuing status and promotion. The third-year review is similar to the final review for tenure except for certain procedural differences and the omission of a requirement for letters of external evaluation. Three areas of performance—scholarship, teaching, and citizenship—are assessed.

The first step in Professor Houston's third-year review was evaluation by the English Department Review Committee. In a February 20, 1993, letter to Chair Neal Lambert, the committee's three voting members recommended continuing status for a candidate who "has established a healthy and dynamic pattern of citizenship, scholarship, and teaching." Among its comments on "citizenship," the review committee wrote: "Professor Houston holds firm feminist views, and her defenses of those views have upset some faculty and students in the English Department and throughout the university. Taking carefully into account that distress in the university community, we feel that on balance the candidate has made demonstrable and courageous, if sometimes controversial, citizenship contributions to the university." As to teaching, the committee called it her "strong suit"; according to student evaluations, "not only did she start strong as a teacher with us, but she's getting better." The committee wrote: "Some find her perspective in the classroom partisan; there have been objections to her feminist agenda. But there is clear evidence that she is as fair about competing points of view as she is honest about her

own. She clearly cares about her students, preparing well for them, sharing deeply with them, listening carefully to them, both in and out of class." The committee's evaluation of Professor Houston's scholarship was entirely affirmative.

In the English Department as a whole, six of the approximately seventy voting members recommended the termination of Professor Houston's candidacy for continuing status. The matter then went to the College (of Humanities) Committee on Rank, Advancement, and Continuing Status: of its five voting members, one voted that she be considered on track for continuing status, three voted that she be considered provisionally on track, and the fifth voted for the termination of her candidacy. In its report of March 18 to Dean Jones, the college committee commended Professor Houston on the quality and promise of her scholarship. The committee stated that its primary concern, with corrective action required by the time of her sixth-year evaluation, was with "Dr. Houston's teaching and with that teaching as a reflection of her citizenship at Brigham Young University, and of her loyalty to the teachings, doctrines, and leadership of the Church of Jesus Christ of Latter-day Saints." The committee asserted that its members had read frequent statements from students complaining about things said by Professor Houston in the classroom.

A second concern of the college committee was that Professor Houston "overwhelm[s]" her English courses with feminist views. The issue is not, the committee argued, "one of academic freedom," but "whether Dr. Houston should be permitted to substitute, then teach and promote, her feminist views, for and in lieu of the literature and language courses as organized by the English Department and as outlined in the university catalog." The committee concluded by saying that it agreed to the provisional approval "because we trust that she wishes to continue to teach the Latter-day Saints and because we trust that she will catch the vision of Brigham Young University's mission.... In his March 31 letter concurring with the provisional status, Dean Jones noted that "the opinions about her value to the Department of English are mixed." He wrote affirmatively about her scholarship and teaching but conveyed concerns "that she uses the classroom as a platform for her strong feminist beliefs" and that she wrote an essay for the off-campus *Student Review* that "advocates praying to a Mother in Heaven," which "is sufficiently troubling as to suggest that she needs to re-evaluate her position." The problems identified in Professor Houston's third-year review were not, he stated, "the same as dealing with deficiencies in teaching, scholarship, and general citizenship (service)." The University Faculty Council on Rank and Status also approved the "provisional" status for Professor Houston's reappointment.

Feeling that her professional reputation was damaged by the provisional reappointment and questioning the nature of the evidence cited against her, Professor Houston attempted to file a formal appeal. Told there was no procedure for an appeal of the provisional status, she pursued questions about unsubstantiated student comments and other materials that she had not seen or

placed in her file. From March 18, 1993, when the college committee sent its report to Dean Jones, until April 4, 1994, a series of memoranda and letters document the ongoing efforts by Professor Houston and BYU administrative officers to clarify the nature of the evidence in the file and specify what would remain in the file to go forward in the sixth year's final review. The April 4 memorandum from Chair Lambert stated that "I anticipate that the Dean's response to you would be the only 'official' letter from that earlier review that would go forward from the department as part of the final review file, and that the other letters from the College or University Rank and Status Committee would not be a part of that file." An October 20, 1994, memorandum from Vice President Wilkins noted a "new policy on rank and status" that dropped the category of "provisional status." The new policy applied retroactively to candidates who would come up in the two-year period in which Professor Houston's file went forward. For these candidates, "rather than including the third-year review letter," they were asked to "merely summarize and address the concerns, if any, expressed in their third-year letter." The evidence against Professor Houston in the third-year review would surface again in the final review, however, and it thus warrants recounting.

According to its memorandum of March 18, 1993, the college committee had "read with concern the statements of a number of her students...that they feel distressed—'betrayed,' or 'deeply pained,' or 'troubled'—by at least some of Dr. Houston's statements in her classes." Professor Houston asked for the source of these comments, but no letters or record of complaints containing them were identified or produced. In a letter of October 6, 1993, in which Dean Jones responded to her request for clarification of the reasons for the provisional status, a different set of "criticisms and comments" was cited. These were from the student evaluations and focused on the objections of a few to the "feminist orientation" of the course that, according to one, had too much "feminist doctrine and the Other." The dean commented that "when more than one or two students express concern over the ideology of a course, that is a concern for us, too." In response to the charge that "a significant number of students" in their evaluation of her teaching had given her "disquieting low marks on 'Gospel Insights' and 'Spiritually Inspiring,'" Professor Houston prepared a tabulation from her thirteen classes between 1990–1993 comparing her scores on these two questions with the department's score and the university's score. Overall, the scores were very good to excellent. About half of Professor Houston's scores ran slightly above the marks for the department and university and about half of them ran slightly below.

A second item cited against Professor Houston was her November 4, 1992, article in *Student Review*. The *Statement on Academic Freedom at Brigham Young University* had been adopted a few weeks before the article appeared. In her *Student Review* essay, Professor Houston expressed concern about the manner in which the document had been prepared and complained that "the machinations going on behind the scenes spell the end of academic free-

dom on this campus." She continued that "at BYU it seems that those who do not agree with a majoritarian agenda are increasingly endangered." She also questioned recent statements from Church elders that "faculty should be models of spirituality," arguing instead that testimony of religious faith came out of deeper sources than a professorial model could evoke in students, and that "deep and abiding faith in the gospel is partially a result of always having the option to fluctuate between other positions, such as doubt, disbelief, or even angry skepticism." The article closed with a suggestion that "it might be healthier to acknowledge that the board and administration will not always agree with many of the positions of BYU faculty members," and that "the latitude" brought by "free agency and free inquiry" was more appropriate for a university.

In 1995, when Professor Houston came up for her sixth-year review for tenure and promotion, the issues from the 1993 review were augmented with new concerns. In addition to the 1992 *Student Review* column, two other occasions in which she spoke out were cited during the final evaluation of Professor Houston for continuing status as grounds for concern. One was an incident in the fall of 1993, known as the "1000 White Roses," in which a presentation of flowers was made to the General Authorities and accepted on their behalf by the presiding bishop in peaceful and reconciling support, according to the presenters, of both the Church and several Mormon intellectuals and feminists who had been excommunicated. (The BYU administration has characterized the presentation as a protest against the Church's actions in the form of a highly publicized media event.) Professor Houston had sent a note to the faculty soliciting money for the roses. The other occasion involved her remarks about a Mother in Heaven at a symposium sponsored by Sunstone, an independent foundation based in Salt Lake City dedicated to the study of Mormonism.

In accord with the university's policy on promotion and tenure, Professor Houston prepared her file for her final, sixth-year, review, and her candidacy was evaluated first by a five-person departmental rank and status committee, which voted unanimously to support it. The department as a whole then voted 34 to 9 in favor of continuing status and 36 to 6 in favor of promotion. Department Chair Fox, Chair Lambert's successor, writing on November 1, called Professor Houston's book "a significant achievement for a young scholar" and found overall that hers was "an enviable scholarly record for an early career." He noted that "some in the department have disparaged her 'cultural studies' approach in her research," but he explained that "she is doing a kind of work with new historicism and gender studies within the Victorian milieu that is becoming established in many English departments." Professor Fox's letter attempted to explain cultural studies by referring to a definition from Dr. David Laurence, Director of English Programs for the Modern Language Association, and by quoting Professor Houston's explanation of gender study on Queen Victoria in the introduction to her book. His letter observed, "That Gail is working to draw conclusions from these kinds of texts using a new and feminist approach explains why

those who see 'literature' in more restricted terms may criticize or misunderstand her work." In the area of teaching, the letter noted that she had improved from an average of 6.0 on evaluations in the first three years to an average of 6.35 in the past three years (seven continued to be the top of the scale). Professor Fox noted some negative student comments and added, "I wonder if some students are being provoked unnecessarily," and "I identify more negative student comments than the department committee noted...." In the area of citizenship he praised her work as advisor to Rhizobia and VOICE, women student groups, and her service on President Lee's task force to create the Women's Services and Resources Office. Commenting on conflicting views on her citizenship, he mentioned as an example her participation in a demonstration against a recent campus visit by Supreme Court Justice Clarence Thomas, which he said was an action that President Lee felt "violated university policy by deliberately trying to embarrass a visitor." In conclusion the chair's letter stated, "I feel that her case for both promotion and continuing status is one that I can support for the most part, although, as I indicate in this letter, some concerns remain unresolved."

In late November, the College Committee on Rank Advancement and Continuing Status, voting 4 to 1 for continuing status and 5 to 0 for promotion, observed that Professor Houston's teaching evaluations on "Instructor Rating" ranged from one section at 5.6 to several at 6.5 or higher, and that "the University mean for instructors is 5.5, the college mean is 5.6, the department mean is 5.7." The committee said, "These statistics are notable both because the averages are so high and because they are consistent for such a large number of courses." The college committee responded to Professor Fox's remarks about the negative comments by noting, "Every critical approach to texts has been shown to be political and even inflammatory in some sense, whether formalist, structuralist, reader-response, or deconstructive. The fact of the matter is that every approach is to some degree exclusive of other approaches, and hence unavoidably political.... Professor Houston's particular approach has long since been accepted and validated in the academic community, and indeed we would do our students a grave disservice if we did not give them rigorous training. Those going off for graduate education would rightly be angry with a department that did not give them a thorough background in feminist criticism." With fewer than 10 percent of comments that were critical in the evaluations, the committee concluded that "the numerous favorable reviews...all but overwhelm the few unhappy ones," and that Professor Houston "has acted in good faith and in good conscience as a committed teacher." On the crucial area of citizenship, the committee stated that it had considered the matter carefully and that a "disparity of views in the discussion arose, nonetheless, over the documentation of citizenship—not citizenship *per se*. The conflict was between accepting the file as it is now constituted and asking that it be perhaps more complete." The majority was, however, "satisfied, from the file," that Professor Houston qualified

for promotion and tenure in all three categories and was “persuaded that this is a person concerned with Christian principles and asserting them—while occasionally missing the right tone.” Dean Jones, in his letter of December 12, 1995, forwarding the file to the University Faculty Council on Rank and Status, concurred with the departmental and college committee recommendations. He wrote positively about her performance in the three areas of research, teaching, and citizenship. The dean noted that the vote was not unanimous and that a few continued to have “lingering concerns.” He concluded, “I personally feel, however, that even though some risk exists, there is simply not compelling reason to deny her either Continuing Status or promotion to the rank of Associate Professor.”

The university-level council is, according to the University Policy on Faculty Rank and Status, “composed of eight faculty members appointed by the academic vice president,” and is chaired by an associate academic vice president. The procedures called for one member of the council to have primary responsibility for maintaining the file and for presenting it to the body. Professor Lila Stuart Bachelder was so designated in the Houston case. In a March 19, 1996, letter from Associate Academic Vice President Gordon, Professor Houston was informed that several items had been added to her file and that she could submit a response to these items within the next ten days. Added were Dean Jones’s third-year review letter and five other items, including the tape of an August 1994 presentation at a symposium sponsored by Sunstone, a handout for two of her English courses, and her memorandum soliciting contributions from interested faculty for the “1000 White Roses” event. Mr. Gordon asked that she also provide “the text and tape recording of any other presentations that you have made at Sunstone, Mormon Women’s Forum, or similar symposia.” Referring to the “disparity of views on the documentation” in her file noted by the college committee, he pointed out that she had given permission for that committee to see Dean Jones’s letter of October 6, 1993, and her response. He stated it to be his understanding “that your department chair also asked you about your 1994 Sunstone symposium presentation, and that you declined to provide him the text of that presentation.” He justified the insertion of the additional items by saying, “The rank and status policy provides that at this stage in the review process, information of this kind may be used in making status and rank decisions but reviewers and/or the candidate may feel that it should not be shared broadly because of its sensitivity.”

In addition to reviving the questions about teaching evaluations and the opinions in the *Student Review* essay, new questions were raised about Professor Houston’s research on the construction of gender in the Victorian period, her involvement in the “1000 White Roses” episode, and her remarks at the Sunstone panel. In a letter dated April 18, 1996, Academic Vice President Wilkins questioned whether the concept of gender in her book project, tentatively titled *Queen Victoria and the Making and Unmaking of Sex, Law, and Genre*, contradicted “fundamental Church doctrine that

men and women have different roles and that ‘gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose,’” a doctrine that had been officially proclaimed on September 23, 1995, in “The Family: A Proclamation to the World.” As stated earlier, the “1000 White Roses” matter concerned Professor Houston’s effort to raise money for white roses to be presented to the Church’s General Authorities. Sunstone, with no official connection to the LDS Church but dedicated to the study of Mormonism from a variety of perspectives, has been a subject of continuing controversy for BYU. Sunstone publishes a journal by the same name and periodically holds symposia. Numerous BYU faculty members have published in the journal and spoken at Sunstone-sponsored symposia. The university administration is seen by faculty members who met with the investigating committee as discouraging faculty participation in Sunstone events but unwilling to issue a written policy forbidding it. Dean Jones stated in his April 11 letter to the University Faculty Council that “Professor Houston was apparently one of several BYU faculty members who participated in the 1994 Sunstone Symposium.”

In an April 15, 1996, memorandum to Provost Hafen and Vice President Wilkins, sent after the University Faculty Council had forwarded its negative recommendation, Associate Academic Vice President and Council Chair Gordon set forth these concerns, and Vice President Wilkins in turn wrote to Professor Houston for a final response before he made his recommendation to the president and provost. In response to the criticism of her rejection of the model of faith BYU faculty were to uphold for students, Houston discussed the nature of faith and doubt as seen in Alfred, Lord Tennyson’s *In Memoriam* and the writings of Mormon founder Joseph Smith about his spiritual life. On the subject of the White Roses campaign, she noted that Church President Gordon B. Hinckley had also urged those excommunicated to come back to the Church but that these sentiments had not been taken to mean that he “‘sympathized’ with the ‘views’ of the excommunicants.” She argued that “the Christian thing to do is to love those people and hope that they will return,” and that the Presiding Bishop of the Church had accepted the white roses. On the issue of gender construction in the Victorian period, Professor Houston wrote that her handout was about ideologies of gender in the Victorian period and not about Mormon ideas of gender. In a discussion of the difference between biological sex and gender construction, Professor Houston cited several examples from other cultures and historical eras to illustrate the ways in which different societies constructed the nature and culture of male and female identity, and she questioned whether the committee was trying to “construct” her as “an apostate” by concentrating on matters of her spirituality instead of her academic performance.

In the letter of June 5, 1996, notifying Professor Houston of denial of continuing status and promotion, the central charge in the case made against her was that she had “engaged in a pattern of publicly contradicting fundamental Church doctrine and deliberately attacking the Church.” In its detailed response of Janu-



ary 14, 1997, submitted to the American Association of University Professors, the administrative officers of Brigham Young University wrote extensively about the basis for their decision. They first cited her comments in the *Student Review* essay in which Professor Houston had written, "My own experience of faith is that I can go to my *heavenly parents* and say anything to *them* and ask *them* anything.... My own testimony is based on *continual communication with my heavenly parents...*" [emphasis added by BYU administration]. From the panel presentation taped at the 1994 Sunstone symposium, at which she spoke informally for about six minutes, they cited offending comments:

In one of my recent meditations—which are prayer for me—I visualized once again, as I have many times in the past, sitting on my Father-in-Heaven’s lap and laying my head on his shoulders for comfort, and I saw myself being held in my Heavenly Mother’s arms and holding her hand tightly for strength.

When I meditate, I often visualize a scene in which I am treading my legs in an ocean and I am looking up at Heavenly Father and Heavenly Mother, who are dancing on the waters.

The LDS church seeks to silence its members who are having visions of Mother in Heaven. In effect, women are being told by their Mormon pastors to deny their own visions of God.... *I did not know my Mother in Heaven until just a few years ago* and I ask why would my church want me to forget her or deny her—I cannot and I will not.

While the Mormon hymn "O My Father" and other texts refer frequently to a Mother in Heaven and parents in heaven, the BYU administration concluded that Professor Houston’s comments constituted "public affirmations of the practice of praying to Heavenly Mother that contradict fundamental Church doctrine that we should pray only to Heavenly Father." The admonition that it is "inappropriate for anyone in the Church to pray to our Mother in Heaven" was proclaimed in a September 28, 1991, address given by Church President Hinckley, then the First Counselor in the Church’s First Presidency, to the General Women’s Meeting of the Church. The administrative officers reached the conclusion that "Professor Houston had an agenda to contradict and oppose Church doctrine on this issue and that her behavior would likely continue in the future." Referring to the limitations provided in BYU’s *Statement on Academic Freedom* and to the "limitations" clause in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the administration asserted that, "If a religious university cannot limit a professor from publicly endorsing prayer to a God other than the God to whom we are commanded to pray, then it cannot limit anything, and the limitations clause of the 1940 Statement is an outright deception." In addition to what she had said about her Mother in Heaven, which the administration interpreted as advocacy of prayer to a Mother in Heaven, Professor Houston also "made public statements that are interpreted to contradict and oppose fundamental Church

doctrine about not extending the priesthood to women." In the Sunstone speech Professor Houston had said "that there is a *double standard* for men and women in the way *this church* interprets free agency and access to *spiritual blessings as well as to the power to bless others. And this double standard absolutely affects women’s ability to achieve godhood*" (emphasis by BYU administration). "Her speech was coded to avoid saying candidly that women should be ordained to the priesthood, but her meaning was clear." Her objections to the double standard extended to the men of the Church telling "us what our purpose is," and she complained that "*women are being told by their Mormon pastors to deny their own visions of God ...*" (emphasis by BYU administration).

By the time she received the June 5 decision, Professor Houston had accepted a faculty appointment at the University of New Mexico beginning with the 1996–97 academic year, but she chose to appeal. The appeal panel, appointed by Academic Vice President Wilkins, was chaired by Associate Academic Vice President for Research Gary R. Hooper. Two of its other four members were an associate academic vice president and an associate dean of a college. Professor Houston was represented by a faculty colleague. A member of the law school faculty, Professor Kevin J. Worthen, represented the administration. He argued that the panel should focus only on "the appropriateness of the decision of the President and Provost to deny Dr. Houston’s application" for tenure and that, since the panel’s "sole task" was to recommend that the president’s decision be sustained or reversed, "many of the 'issues' and alleged 'procedural and ethical errors' raised by Dr. Houston’s Statement of Appeal are beyond the scope of this proceeding and need not be considered by the panel." The panel’s task was, then, to determine whether "a reasonable person could have decided to deny Dr. Houston’s application." Professor Houston submitted voluminous material to the panel, and it held a hearing, at which she was permitted to make whatever arguments she desired, on the afternoon and evening of August 29.

Reporting to President Bateman on September 9, 1996, the panel stated that it had considered alleged errors in procedure "as well as more general concerns about the environment for women faculty on campus," that it had reviewed and discussed Professor Houston’s academic credentials and was "impressed with her work and with the support she has received from colleagues in her field," but that it found no evidence of violation of university procedure and it did not "feel that other factors negatively affected, to any significant degree, the decision made in this matter." It recommended, accordingly, that the decision be upheld. By letter of September 11, President Bateman notified Professor Houston of his acceptance of the appeal panel’s recommendation that the decision to deny her continuing status be sustained.

### III. Other Cases

Professor Houston is not the only BYU faculty member to have suffered adverse action for reasons that pose issues of academic



freedom. The investigation of these other cases did not attain the scale afforded the Houston case, but they merit mention as further illustrations of the climate for academic freedom at the university.

A. *Cecilia Konchar Farr* joined the faculty of the English Department as an assistant professor in 1990, after graduate work at BYU and Michigan State University, which granted her the Ph.D. degree in 1990. During her first two years on the faculty, Professor Farr became a controversial figure because of public statements she made on the subject of abortion, most notably in the off-campus newspaper, *Student Review*, and at a "pro-choice" rally at the state capitol in Salt Lake City in January 1992. In these statements she made clear that, although a faculty member at BYU and a "faithful and believing Mormon," she did not speak as a representative of BYU. She stated that she agrees with the LDS Church's moral opposition to abortion, but at the same time is "pro-choice" in the sense that she believes women have the political right to choose abortion. She emphasized that being "pro-choice" did not mean one was pro-abortion.

Her statements on the subject brought reactions from the BYU administration. The first of these was a meeting with Academic Vice President Stan Albrecht. No written communication or file memorandum came from this meeting. Dr. Albrecht later stated that he had initiated the meeting "to share with her my perceptions of the developing climate at the levels of the BYU administration and our Board of Trustees relative to faculty involvement in the public debate on the issue of abortion." He read her the content of a recently prepared board resolution stating that BYU faculty "should not be involved in public, pro-choice activities." When Professor Farr asked him for a copy of the resolution, he said he could not give it to her because it had not been officially released. Vice President Albrecht and Professor Farr differ as to what her reaction was at the time to this information. He recalled later that she had agreed to abide by the directive to the extent of making no future public statements on the subject. She said she made no such promise. In any event, she continued to make public statements of her position.

After one of those public statements, Academic Vice President Todd Britsch, who had succeeded Dr. Albrecht in the office, wrote on December 7, 1992, to Professor Farr's department chair, Professor Neal Lambert, charging that her statements were "in direct contradiction to the instructions of the Board of Trustees and to an understanding arrived at" by her and former Vice President Albrecht. Vice President Britsch described Dr. Albrecht as having told her that her position was in conflict with "fundamental Church policies" and a violation of board policy. The vice president asked Professor Lambert to notify Professor Farr "of this violation of her University citizenship obligation" and to place a copy of his letter in her file. In response to Dr. Britsch's letter, Professor Farr assured him that she had not promised to cease making public statements on the abortion issue; that she supported the First Presidency's statement that abortion is morally

wrong, but that she takes a political position that women should have a choice; and that her bishop had read her statement and found in it no cause for concern. She stated further that she had requested a copy of the statement of board policy to which Dr. Albrecht had referred, but had been told by him that it had not been released. She expressed puzzlement that the text of a board policy supposed to be official and to apply to all faculty members was not available to the faculty. She concluded, she said, that the board was continuing its discussion of the matter.

As Professor Farr's third-year review approached in 1993, Provost Hafen sent Chair Lambert a memorandum about Professor Farr, enclosing a file copy of a communiqué he had sent to her directly. He noted that "it is important that the departmental and college committees are aware of background issues and material that have come to our attention prior to the review process." He alluded to a letter of complaint about Professor Farr by an unnamed student, and he revisited the issue of Professor Farr's pro-choice utterances. While professing to be "reluctant to interject the views of a University administrator into a departmental deliberation," he reported that he had asked a student "to put [her] concerns [about Professor Farr's teaching] in writing so they could be addressed by those in a position to do so." Professor Lambert prepared a summary of procedural and substantive issues surrounding Professor Farr's third-year review for Dean Jones and the College Committee on Rank Advancement and Continuing Status "in order to complete the picture." Dated June 10, 1993 (the day *after* Professor Farr was officially notified of the decision not to renew her appointment), his summary asserted that "the case comes to rest" in Professor Farr's activist and pro-choice positions. Professor Lambert cited her Women's Caucus activities as an example of what he meant by "behaviors that move from difference to contention."

In this setting Professor Farr came up for her third-year review. The three-member departmental review committee voted unanimously for her reappointment, although two of the three voted for "provisional candidacy," i.e., placing her on notice that improvements in her performance would be required if she were to be granted continuing status at her sixth-year review. The committee's report referred to her two book projects; praised her scholarship as "theoretically sophisticated"; and characterized her as a teacher of "disturbing honesty which forces students to rethink their own position and invites their refutation as readily as their affirmative responses." The English Department then voted, 14 to recommend her candidacy, 13 for provisional candidacy, and 13 for nonreappointment.

By letter of June 9, 1993, Associate Academic Vice President Clayne Pope notified Professor Farr that the administration, following the recommendations of the college committee and the University Faculty Council on Rank and Status, would not reappoint her. In summarizing the reasons for the decision, he quoted extensively from the report of the University Faculty Council, which had found grounds for its recommendation of nonreap-

pointment in all three of the areas considered: scholarship, teaching, and citizenship. The council's criticism was unqualified and in places even dismissive of her accomplishments, employing adjectives like "sloppy" and "careless" to describe her scholarship. She was faulted for publishing "essays that do not have scholarly standing" and are "inadequate in number and quality"; and for teaching courses "directed toward a single point of view" instead of adhering to "the balanced view that the prescribed readings and course descriptions call for." (According to a former English Department chair, Professor Farr was under attack by a highly traditional scholar in the department for "canon expansion" by inclusion of some recent postmodernist/feminist texts in her syllabi.) She was also charged with "using the classroom as a forum [for her] political agenda."

According to information received by the Association's staff, after Professor Farr appealed the nonreappointment decision she and the university reached a settlement whereby she received an additional year's salary, withdrew her appeal, and left the university, while the university officials gave her a statement to the effect that they "respected her scholarship and teaching and had made no decision."

B. *David Knowlton* joined the BYU faculty in 1990 as an assistant professor of anthropology after receiving B.A., M.A., and Ph.D. degrees from the University of Texas at Austin and teaching for two years as a visiting professor at Washington University in St. Louis. He is a cultural anthropologist whose special field of research is Mormonism in Latin America. When Professor Knowlton came up for his third-year review, the University Faculty Council on Rank and Status recommended that he not be reappointed, a recommendation the administration accepted. Professor Knowlton's appeal of the decision was denied.

Professor Knowlton was characterized by nearly all participants at all levels of the review process as a "good to exceptional" teacher. It was his scholarship that generated the most diverse appraisals, although his citizenship also appears to have been a consideration to some. He espoused current phenomenological trends within the discipline of cultural anthropology, as noted by Professor John Hawkins, chair of the department. Professor Knowlton's particular approach, characterized as "I-centered" by Chair Hawkins, employed field work, participant observation, and "individual reflexive description" rather than traditional empirical methods. Moreover, the subject matter Professor Knowlton addressed in his research ("Mormon sexuality," "a critique of problems within the Mormon cultural system," Latin American perceptions of Mormon missionary efforts outside the United States as "imperialistic") appears to have incurred the hostility of significant segments of the faculty, administration, and board at BYU.

Professor Knowlton was faulted for the nature of the publications in which his work appeared. These included numerous articles in *Sunstone* and *Dialogue*, both unofficial Mormon journals not approved by the Church, and articles in local and regional news media. This was a basis for the charge that he is an "essayist" rather

than a research scholar. His critics also charged that too few of his scholarly articles appeared in refereed anthropological journals published in the United States, although he published an article in *International Journal of Moral and Social Studies*, a chapter in a book published by the University of Illinois Press, and articles in a number of Latin American anthropological journals. The chair of his department, Professor Hawkins, told the University Faculty Council that "this university flirts with ridicule to contend that this professor has not shown sufficient promise." Professor Knowlton contends that stated claims of his deficiencies in scholarship and citizenship were a pretext, and that the real reason for not reappointing him was tantamount to an attempt at "prior restraint" of a scholar (perceived as adversarial by academic as well as ecclesiastical authorities) whose work was seen to be potentially threatening to "the mission of the university" as well as to the Church.

Like the Farr case summarized above, Professor Knowlton's case resulted in a monetary settlement in the amount of one year's salary and a release of further claims, effected some time after he left Brigham Young University. (Since his departure from BYU he has had articles accepted for publication in two books published in the United States and one published in London.)

C. *Brian Evenson* joined the Creative Writing Section of the BYU English Department in January 1994. Professor Evenson had done his undergraduate work at BYU and had completed M.A. and Ph.D. degrees at the University of Washington. During his first year at BYU his book of short stories, *Altmann's Tongue*, was published by Alfred Knopf. He reports having been told that his contract for publication of the book was a significant factor in the decision to offer him the position. During the interview process he had read sections from the book to faculty groups, included copies of several of the stories in his application materials, and offered to provide to his interviewers a copy of the entire manuscript. Reviews of *Altmann's Tongue* were on the whole extremely favorable; both the book and Professor Evenson himself, who was featured in several print and broadcast interviews, received considerable national attention. On the book jacket, Professor Evenson was identified as a member of the Mormon Church—an editorial decision on which he was not consulted. As a consequence, his Mormonism and his affiliation with BYU became a focal point of many of the media accounts. At BYU he was invited to read his stories in many settings, including classes of colleagues. He did not require students in his own classes to read or purchase the book.

On October 4, 1994, an anonymous letter was sent by a student (later identified as a woman graduate student who had heard Professor Evenson read in another professor's class and was not in any of Professor Evenson's classes) to an LDS Church leader. The student complained about the violent images in the book and their incompatibility, in her view, with the teachings of the LDS Church because they encouraged the "enjoyment" of violence. More than a month later, English Department Chair C. Jay Fox and Creative Writing Section Head Douglas H. Thayer notified

Professor Evenson of the letter and asked him to respond within a week to the accusation that it contained. This was the first time anyone in the English Department had suggested to Professor Evenson that there could be a problem with his stories. It later became known that this discussion was initiated as a result of a meeting with the LDS Church Commissioner of Education and LDS Church General Authority, Elder Henry B. Eyring, and that it was through this channel that the anonymous letter had been delivered to Professor Fox. The BYU administration has stated that it was first informed about a problem with the book by a story in the Church-owned *Deseret News*. In his response to the student and in discussions with Professors Fox and Thayer and university administrators, Professor Evenson asserted that his stories have a profoundly moral base and that the purpose of this work of fiction was to "show violence for the horror that it [is] and thus allow it to be condemned." He stated that the ultimate intention of the violent parable was to "jar" his readers "into a moral reevaluation" of those actually existing acts of atrocity he believed to be too often taken for granted in modern society. He urged the anonymous letter writer to talk to him directly, reassuring her that her confidentiality would be respected.

Professor Evenson heard nothing further until he inquired of Professor Fox in early January 1995 what had become of his response to the anonymous letter and asked for a copy of Professor Fox's report to the academic vice president. Professor Evenson was anxious that the several university and Church administrators who had seen the anonymous letter also see his response, and he wanted to know whether it satisfied the concerns Professors Fox and Thayer had conveyed. He said he was taken aback to learn that Professor Fox had not yet prepared a report and had not sent on the response. Professor Fox asked Professor Evenson to prepare a summary of their earlier discussion, which he would then send to Academic Vice President Todd Britsch. Professor Evenson did so. He and Professor Fox then went over the document together, resulting in Professor Evenson's accepting Professor Fox's suggestions for revision and assuming that the document had become jointly authored by the two of them.

When Professor Evenson later asked Professor Fox for a copy of the cover memorandum Professor Fox had sent to Vice President Britsch, he found that the memorandum contained the statement: "The bottom line is that he knows that this book is unacceptable coming from a BYU faculty member and that further publications like it will bring repercussions." Professor Evenson states that he knew no such thing at that point and had no reason to assume such, since he had conscientiously responded to the various concerns and had received no reply to his arguments from Professor Fox or anyone else. A judgment had been rendered even though his reply had not even been passed on to those who were concerned.

Also that January, Professor Evenson was called in first by his bishop and then by his stake president and asked about the book. He found both meetings cordial and supportive, but surprising to

him because Professor Fox had told him that the book was a university matter, not an ecclesiastical one. As Professor Evenson pressed the administrators for clarification as to his standing, for details as to their concerns, and for answers to his argument that his book did not violate Church doctrine, Professor Fox withdrew his statement in the memorandum to Vice President Britsch. He refused, however, to discuss what he might have meant by the original statement or what implications the controversy had for his eventual evaluation of Professor Evenson's performance.

On March 6, 1995, Professor Evenson, accompanied by his father, Dr. William E. Evenson, professor of physics and former associate academic vice president, met with President Lee, Provost Hafen, Dean Jones, and Chair Fox. In that meeting, according to Professor William Evenson, Provost Hafen first denied that academic freedom was at issue in the case or that untenured faculty members even have the protection of academic freedom. (Later he was to drop the latter claim.) Provost Hafen and other administrators at the meeting denied that the anonymous letter was the source of the problem; the issue, rather, was appropriateness. They also denied that concerns had been raised by Church leaders, insisting that all concerns had arisen within the university. This last denial was made in the face of Professor Fox's earlier statement that the initial meeting to discuss the anonymous letter had been a response to a meeting with Elder Eyring and of Professor Evenson's having been called in to discuss the issue with his stake president. Provost Hafen put Professor Brian Evenson "on notice" that fiction like *Altmann's Tongue* was not appropriate for a Church university, even though he would not explain in what way Church policies were violated. He further said that speaking to the press can call a faculty member's loyalty into question.

As a result of these developments, Professor Brian Evenson left BYU in August 1995 to accept an appointment at Oklahoma State University, stating in a letter of resignation that the university "is imposing restrictions which severely stifle academic freedom" and create a "hostile working environment for women." He concluded, "I am not willing to participate, even passively, in the maintenance of such an environment."

D. The case of *Steven Epperson* is quite different from those thus far discussed, in that a primary finding of unsuitability was reached not by the university administration but by his LDS bishop. He appears to have been the first faculty member to suffer from a new policy at BYU announced by President Bateman in February 1996, under which the bishop "of each Church member employed at BYU" would be asked to certify annually "whether the person is currently eligible for a [temple] recommend." (The administration has stated to the Association that the bishops are indeed asked but that decisions about BYU appointments are made by the university.) Professor Epperson received his B.A. degree from Brown University, a master's degree from the University of Chicago Divinity School, and a Ph.D. in the program for religious studies at Temple University. In 1993 he began teaching as an assistant professor in the History Department at BYU. On

October 22, 1996, Professor Epperson was handed a letter by Associate Academic Vice President Gordon informing him that the administration had decided to terminate his services as of August 1997. The reason given was that his bishop had refused to certify his temple worthiness on grounds that he was not attending Sunday School or priesthood meetings and was not paying a tithe.

Professor Epperson's situation needs to be placed in perspective. His wife Diana is a disaffected Mormon, and she and their daughter were not attending Sunday services with him. They were unhappy with the lack of a joint Sunday activity and decided they should do something as a family that would be in the spirit of service. They agreed to join other Salt Lake City residents in a charitable feeding program for the homeless on Sundays. At this same time, Diana Epperson was starting a children's music conservatory, which was a drain on the family finances and would continue as such until it became well enough established to begin to pay back what they were putting into it. Professor Epperson assured his bishop that at that time he would resume tithing to the Church. He estimated that it would take until June 1997. This did not satisfy his bishop, who also refused to accept Professor Epperson's offer to attend another ward meeting at a time more compatible with their family activity. When Professor Epperson explained his dilemma to Associate Academic Vice President Gordon and asked him to speak with the bishop on his behalf, Mr. Gordon said he could do nothing. The notification of nonreappointment followed.

The notification gave Professor Epperson no suggestion that his academic performance at the university presented any problem. The university policy of soliciting judgments on its employees' temple worthiness places in the hands of hundreds of Church officials who have no university office, acting individually and applying their own particular interpretation of the worthiness standard, significant influence on the reappointment of faculty members, who are afforded no procedure for appeal.

E. During its visit to Brigham Young University the investigating committee met with other faculty members and a few graduate students who provided accounts of numerous instances of alleged censorship at the university. What follows is brief mention of some of these cases. Works involving Mormonism and the status of women are especially prominent among the examples.

— During the review process for continuing status in 1995, Dr. Alan Wilkins, then associate academic vice president, questioned Professor Lawrence Young, Department of Sociology, about a "pattern of behavior" that concerned the administration. He identified three concerns: (a) Professor Young had spoken at Sunstone symposia, although, according to Professor Young, members of his department had been given permission to do so by the president of the university; (b) there was a rumor that Professor Young wore an earring; and (c) his scholarship in the sociology of religion made it impossible to determine where his "heart was at" with respect to the LDS Church. As an example of the lat-

ter, Dr. Wilkins cited Professor Young's book, *Contemporary Mormonism*, in which he makes reference to the "hegemonic" nature of Mormon authority. The reference might be factually correct, Dr. Wilkins reportedly said, but it placed the Mormon Church in a negative light. In the pursuit of these and other similar issues, the administration took four months to evaluate Professor Young's candidacy. He was asked at one point to write a memorandum justifying everything he had written for *Sunstone* and *Dialogue*. Professor Young states that in one interview Provost Hafen repeatedly asked him if, "knowing what you know now, do you feel like you still belong at BYU?" Eventually he was promoted and granted continuing status.

- In 1992 the organizing committee of the BYU Women's Conference, sponsored jointly with the Relief Society of the LDS Church, chose as keynote speaker for the 1993 conference Laurel Thatcher Ulrich, a Mormon woman who is the recipient of a MacArthur grant and the Pulitzer Prize-winning author of *A Midwife's Tale: The Life of Martha Ballard*. The book is about the role of women in late eighteenth-century New England. The board of trustees refused to approve her as speaker and also refused to explain its reasons for doing so.
- When the LDS Church celebrated the sesquicentennial of the Relief Society (the Church's organization for adult women), the Women's Research Institute organized a scholarly conference on the society. Speakers at the conference criticized as well as praised aspects of the society's past. Professor Marie Cornwall, the head of the institute, was reprimanded by Provost Hafen for planning and carrying out the conference.
- In 1995 Professor Karen E. Gerde, who has since left BYU, was "counseled about the...unsoundness" of the article she had coauthored on the experiences of Mormon women survivors of childhood sexual abuse who requested assistance from their ecclesiastical leaders. The article was later published in *Affilia: Journal of Women and Social Work*, Vol. II, No. 1 (Spring 1996).
- Candidate Marian Bishop was selected with the approval of the English Department chair and the dean of the College of Humanities for appointment to the English Department. Acting under the instructions of Provost Hafen, English Chair Lambert offered Ms. Bishop the position on condition that she never "write anything like her Anne Frank essay again." She refused to promise and was not appointed. In the Anne Frank essay, Ms. Bishop examines the ways Anne Frank "writes about her body. Living under conditions (in hiding from the Nazis) that required complete renunciation of bodily sensation and experience, writing about her body in her diary became a way for Frank to own her body and humanity." (The quotations are from Ms. Bishop's letter to the investigating committee. According to

the administration, some of her writing "was sexually inappropriate," and the university "owes no academic freedom obligations to people who are not faculty members.")

- University administrators frequently insist on alterations of productions by the Theater Department before permission is granted for their staging. The control extends to the campus film theater. *Schindler's List* was not shown when Amblin Entertainment refused to edit it to suit BYU authorities. (According to the administration, the *Statement on Academic Freedom* limits expression that is "unchaste or profane," and the university accordingly "removes explicit sex and profanity from movies and plays before showing them on campus.")

#### IV. Issues in Professor Houston's Case

*A. Invoking the University's Stated Limitations on Academic Freedom*  
In advance of the investigating committee's visit, the BYU administration provided a sixty-two-page document defending its action in the Houston case, justifying that action largely on the basis of the limitations that are set forth in the university's *Statement on Academic Freedom*.

The often-discussed "limitations" clause in the 1940 *Statement of Principles on Academic Freedom and Tenure*, "Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of appointment," has generally been interpreted to mean that some specified limitations may be tolerable at a church-related institution of higher learning. The length and complexity of the 1992 *Statement on Academic Freedom at Brigham Young University* indicates the desire of its authors to insist on limiting a professor's academic freedom and at the same time to be within the scope of the 1940 *Statement of Principles* as well as the *Accreditation Handbook* statement of the Northwest Association of Schools and Colleges (NASC), both footnoted in BYU's *Statement*. "The 'Limitations' Clause in the 1940 Statement of Principles: Some Operating Guidelines," published in the January-February 1997 issue of *Academe* for information and with an invitation for comments, discusses the difficulty inherent in limitations clauses and draws on the Association's experience in formulating guidelines. A primary consideration to be used in determining whether a statement of limitations is sufficiently explicit is whether it provides fair warning to the faculty about impermissible acts. The report cautions that a limitations clause should not be "drafted so broadly as to include any teaching, doctrine, or constraint subsequently promulgated...." The report goes on to emphasize the importance of affording academic due process if a limitations clause is invoked, so as to allow consideration of "the scope of the institution's limitations and the reasonable expectations of faculty members subject to it, the application of the limitation in the past, and the question of whether it is being selectively applied for ulterior purposes...." An investigating committee should consider not only "the degree of specificity of the limitation" but also "whether or not the insti-

tution afforded sufficient procedural safeguards to ensure that the application of its rules was adequately cabined."

The *Statement on Academic Freedom at Brigham Young University* with its limitations clause was adopted in 1992 and was therefore not in place when Professor Houston joined the faculty in 1990. Brigham Young University's *Mission Statement*, however, approved in 1981 by the board of trustees, was in place. It focuses on the kind of education BYU seeks to provide for students. It speaks only briefly about expectations of faculty: "...BYU's faculty, staff, students, and administrators should also be anxious to make their service and scholarship available to The Church of Jesus Christ of Latter-day Saints in furthering its work worldwide." (According to the administration, "BYU faculty have always understood that they may not publicly contradict fundamental Church doctrine or deliberately attack the Church.") Professor Houston's offending comments in the *Student Review*, cited in the third- and sixth-year reviews, were part of the analysis she wrote of the recently issued *Statement on Academic Freedom*. In the investigating committee's judgment she did not receive fair warning, at the time she was appointed, of any more specific limitations on her academic freedom, nor was she warned that her feminist scholarship and teaching would receive intense scrutiny beyond that normally expected in the academic review process. Participation by BYU faculty in symposia at Sunstone has not to date been prohibited in writing. A request from the AAUP chapter for a written statement about participation in Sunstone went unanswered by the administration, yet several members of the university community told the investigating committee that Professor Houston should have "known better" than to go to Sunstone. On the other hand, the committee was informed that some faculty members participate in Sunstone without being subject to reprimand. (According to the administration, the issue in Professor Houston's case was not her speaking at Sunstone; "the issue was the content of her speech.")

Brigham Young University's policy states that a limitation on academic freedom, "invoked against individual faculty conduct or expression," is "reasonable when the faculty behavior or expression *seriously and adversely affects* the University mission or the Church." Even if the audience or circulation of the 1994 Sunstone comments (which made up the body of evidence to support the charge that she violated fundamental doctrines and attacked the Church) had not been as limited as it was, the investigating committee questions whether it was "reasonable" to determine that her extramural utterances had "seriously and adversely affected the University mission or the Church." The BYU central administration based its concurrence in the assertion that Professor Houston's comments had "enervated" the moral fiber of the university on her 1991 essay in a student publication, her 1993 memorandum soliciting money for the white roses, and her unpublished comments at a 1994 Sunstone panel. The language about there being a "problem when someone *openly advocates praying* to a Mother in Heaven" originated in a comment by Dean

Jones in his 1993 letter during her third-year review supporting her retention, and it was repeated thereafter by the administration as though it were documented evidence. The investigating committee views Professor Houston's occasional statements about her visions of a Mother in Heaven as a description of a personal vision and not as constituting "public advocacy" of belief as the administration charged.

The investigating committee finds Brigham Young University's stated limitations, precluding expression that "contradicts or opposes, rather than analyzes or discusses, fundamental Church doctrine or policy" or "deliberately attacks or derides the Church or its general leaders," to be inadequately specific.<sup>3</sup> These limitations provide no guidelines for judging when a faculty member is contradicting or opposing Church doctrine rather than analyzing or discussing it, nor when such comments exceed reasonable disagreement or discussion and become advocacy that "seriously and adversely affects" the university's mission or the Church. (According to the administration, contradicting or opposing fundamental Church doctrine *does* "seriously and adversely affect" the university or the Church and is thus a *per se* violation of the *Statement on Academic Freedom*.) The limitations insist on a judgment of motive by introducing the issue of "deliberately" attacking the Church or its leaders, but they provide no guidance or means whereby issues of motive can be ascertained as part of an academic review. The investigating committee believes that decisions on retention and advancement should be based on assessment of academic performance rather than on perception of motive.

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<sup>3</sup> In its response to a draft text of this report, the BYU administration commented at length on the finding that the university's stated limitation is inadequately specific. The administration defended BYU's limitation by referring to a stated limitation at another church-related university that had been called "adequately explicit" in the report, "The 'Limitations Clause' in the 1940 Statement of Principles: Some Operating Guidelines," published earlier this year with Committee A's approval. The limitation at this other university is on "open *espousal of viewpoints* which contradict *explicit principles* of [the church's] faith and morals." The BYU limitation more generally refers to "*expression...in public that...contradicts or opposes, rather than analyzes or discusses, fundamental Church doctrine or policy*" (emphasis added).

The investigating committee disagrees with the administration's assertion that the two limitations are "strikingly similar." The committee sees the other university's "espousal of viewpoints" as necessarily indicating advocacy while BYU's "expression" does not. It sees the other university's reference to "explicit principles" as much more directed to the text of Church documents and thus much less open to differing interpretations than is BYU's use of "fundamental."

Moreover, BYU's limitation on academic freedom does not consist merely in a limitation on expression that "contradicts or opposes" Church doctrine or policy. BYU's *Statement on Academic Freedom* cites that as one example of the kind of conduct from which faculty members are to refrain. According to the *Statement*, the test for the reasonableness of a limitation on behavior or expression is whether the behavior or expression "*seriously and adversely affects* the University or the Church." That open-ended test gives faculty members insufficient guidance about what additional limits may be imposed on them.

### B. *Feminism and the Construction of Gender*

The extent to which the BYU administration may have acted against Professor Houston because of displeasure with her feminist approach, her forthright style, and her teaching and research on the construction of gender, all of which would be expected to fall within the ambit of academic freedom, is an additional issue of concern to the investigating committee. Although her student evaluations produced an overwhelming number of positive remarks over the negative ones, and exceeded the averages of the department, college, and university, Professor Houston's teaching was considered a problem by some of those who evaluated her. A central purpose of academic freedom is to protect faculty members whose ideas and subject matter may be "disquieting" to students and to the wider community who are not professionally familiar with these teachings. Although Professor Houston's interest in feminist theory and cultural studies is in the mainstream of contemporary scholarship on nineteenth-century British literature, for most of her undergraduate students it was bound to be a new and different way to study literature. Instead of protecting her against a few students who objected to "feminist views" and "certain theories and ideas" such as cultural studies, the administration seems to the investigating committee to have singled out these comments to support a picture of her as a radical feminist who used the classroom to attack fundamental Church doctrine and the male officials of the Church.

Although the letter sent to Professor Houston at the end of the evaluation process dropped the earlier questioning of her research, it retained the charge that she had "publicly attacked the Church for its view of gender roles." Previous criticisms of her research were based solely on its concept of gender. The University Faculty Council and the administration used her scholarly arguments to sustain their interpretation of her Sunstone comments about the Church's double standard for men and women that "disfigured" and "fragmented" their roles so that men "so easily become tyrants, women so easily become slaves." Distorting her teaching and research record to bolster suspicions about the orthodoxy of her statements about Mother in Heaven or the Church's male hierarchy seems to the investigating committee to be precisely the kind of pernicious appropriation of academic work to serve non-academic concerns that academic freedom is designed to prevent.

The investigating committee finds that the positions on feminism and on gender construction taken by Professor Houston in her teaching and scholarly work, while they may have displeased a few students and some faculty colleagues and persons holding high administrative office, warranted protection under generally accepted principles of academic freedom.<sup>4</sup>

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<sup>4</sup> Regarding its action in Professor Houston's case, the BYU administration has stated that "universities traditionally exercise some latitude in tenure decisions, and religious universities must be able to make reasoned judgments about whether a faculty member is likely to contribute to or injure the university's religious mission during her future career."

### C. Procedure

The items most cited in denying Professor Houston's continuing status and promotion were those added to her file at the level of the University Faculty Council. The University Policy on Faculty Rank and Status calls for the candidate to prepare the file. Candidates are advised of their responsibility "to develop a file that is professional and complete" as defined in the policy. The checklist for "citizenship" indicates that a faculty member should list all committees, all awards or special commendations, results of any professional development activities, and results of any specific service activities. Under "scholarship," candidates are instructed to submit "no more than three publications or creative works which the candidate considers to be [her] most significant contribution to scholarship." Nothing in the guidelines or in the advice she received from her assigned mentor suggested that Professor Houston should have included an account of her remarks on the Sunstone panel, or a copy of her memorandum soliciting funds for the white roses. Associate Academic Vice President Gordon, writing to Professor Houston about the items added to her file, asked her to explain "why you declined to provide your department chair with the text of this presentation" and invited her "to address that issue as part of your response to this item." The investigating committee believes that this item, like others inserted by the administration, should not, by BYU's own policy, have reasonably been part of the file. The tone of Vice President Gordon's letter suggests, however, that Professor Houston had made a deliberate effort to withhold the text of the presentation. Professor Houston did not have a full copy of her remarks to offer, and the text was produced from audiotapes of the Sunstone panel. In explaining that additional material had been inserted in her file, the Gordon letter refers to a section in the policy which addresses the nature of information that "at any level of review... may be available to reviewers... but is sensitive and confidential." The investigating committee reads this section as addressing the use of sensitive material which may be seen at any level, not the right of the administration to insert information into the file "at any level of review..." The policy further specifies that "The department review committee can request or accept any additional information or documents to be included in the review so long as the faculty member is apprised of the additional information or documents and allowed to respond in writing to any matters they may raise." No comparable language appears regarding the review process above the level of the department review committee. In the investigating committee's judgment, the University Faculty Council's actions in adding material to the file were not an authorized part of the procedures for review, and the associate academic vice president's citation to justify doing so is unconvincing.

(The investigating committee would add that the administration did not, in fact, have to justify inserting material in Professor Houston's file because an earlier section of the policy states that, "Notwithstanding any other provision of this policy, the aca-

demie vice president may approve whatever exceptions to this policy are advisable to accommodate the peculiar needs of a department or college." Such latitude nullifies the protections described elsewhere in the policy whenever the academic vice president chooses to make an exception.)

A procedural issue of perhaps greater concern in the Houston case is the method of selection and the composition of the members of the University Faculty Council and the appeal panel. The University Faculty Council is appointed from the faculty by the academic vice president and chaired by an associate academic vice president. It can hardly be construed as a representative faculty body. The appeal panel is also appointed by the academic vice president, who "will appoint an associate academic vice president of the university to chair" the panel. Two of the other four members of the Houston appeal panel were also administrators. The investigating committee notes that at the levels of the department and college, where members of the faculty were the main participants in the review, Professor Houston's case went forward with strong votes of support; at the level of the appointed committees chaired and populated by administrators, however, the evidence considered relevant to the case was altered and the positive recommendations rejected. Writing to President Bateman on October 1, 1996, the Association's staff addressed concerns regarding procedures for appeal as follows:

In moving to contest the decision, Professor Houston alleged that it resulted from considerations violative of her academic freedom and that it constituted discrimination against her on the basis of sex. Under [applicable] AAUP-supported standards, she should have been afforded opportunity to have these allegations heard by an elected faculty body and potentially in an adjudicative hearing of record. By contrast, Professor Houston's appeal was directed to an administration-appointed panel of five persons, three of them administrators including the panel's chair. In his pre-hearing response to Professor Houston's appeal, the administration's representative did not squarely address her complaints regarding academic freedom and discrimination, asserting that "the only issue before this panel is the reasonableness of the President's decision." In its recommendation that the decision be upheld, the panel, except for stating that its considerations included "more general concerns about the environment for women faculty on campus," also did not address the issues of academic freedom and discrimination. Professor Houston's allegations thus seem to have gone un rebutted and untested at the university.

In its lengthy January 14, 1997, defense of its action against Professor Houston, the administration stated that "in general" academic freedom issues go to a hearing before an elected faculty committee but not issues "that arise in a rank and status proceeding." The administration added that "The AAUP guidelines recommend but do not require an elected faculty committee



when academic freedom issues arise in rank and status appeals.” The investigating committee readily concedes the accuracy of the just-quoted sentence because all AAUP-supported standards are necessarily recommendations to institutions rather than requirements. The investigating committee emphasizes, however, that for over four decades AAUP has held strongly to the position, set forth in its *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* among other documents, that allegations of academic freedom violation in nonreappointment call for a hearing before an elected faculty body. Although the BYU administration maintains that “the appeal panel considered all of Professor Houston’s arguments,” the investigating committee finds that the existing BYU procedures fail to ensure that allegations of academic freedom violation or improper discrimination in tenure and promotion decisions will be given a fair hearing.

## V. Academic Freedom at Brigham Young University

As previously noted, the investigating committee was able to talk with and hear from a large number of university people—administrators, faculty members, and students—during its visit to the Brigham Young campus. The committee should say at the outset that the large number with whom it could speak was necessarily only a small percentage of the total university population and that not everyone whom it met came with complaints. A few faculty members spoke to the committee about the strength of academic freedom at BYU. Some told of bias they had encountered at other institutions, many of them public, in contrast to supportive attitudes in the BYU Christian community. Two women faculty members spoke at length about their love for the men of the Church and pleasure in receiving their guidance. The overwhelming majority, however, spoke negatively about current conditions at the university.

Many faculty members shared in some detail the narratives of their problems with academic freedom, reappointment, promotion, and tenure, frequently producing documents but asking that their names and identifying circumstances not be included in this report. At least two cases are in litigation against the university. Some cases involve issues of personal conduct that are under investigation and others focus on academic research that raises concern with the administration. Several creative artists in different fields told of pressures to alter works to meet unclear administrative agendas. The ability of faculty members to leave BYU after many years of service is impeded by a non-portable retirement plan. Numerous women, some in groups and some alone, spoke to the investigating committee about the hostile climate for women on campus. Many expressed the view that single women and women who want professional careers are under suspicion by the administration and the LDS Church because the Mormon Church considers marriage and family the first duty of

a woman.<sup>5</sup> Overall, faculty members described an intensified pressure in recent years for a rigid orthodoxy and active interference by Church officials in university business to the detriment of faculty morale.

The number of cases involving women faculty that have been brought to the Association’s attention lends support to the assertion that women with feminist views are a special concern to BYU. The pattern of cases not involving female faculty, however, suggests that activities and research that are assumed to have cast the Church in a negative light are at least an equal concern. Faculty members spoke of interference in academic matters at the university from “Salt Lake,” a campus code word for the Church authorities in Salt Lake City. They expressed concern with the numerous ways, such as anonymous student complaints, one might unknowingly “get on the radar screen in Salt Lake” and be targeted for investigation. Indeed, in the week before the investigating committee was to arrive, Professor Susan Howe of the Department of English, a member of the AAUP chapter, was seen talking to an unidentified man with a ponytail. Academic Vice President Alan Wilkins inquired of Chapter President Scott Abbott about the man’s identity and whether the AAUP committee was secretly on campus. Professor Howe wrote to Vice President Wilkins objecting to the inquiry, and he responded by letter of January 29, defending his action but assuring her that “I do not intend to punish you for what seems to be a misunderstanding.” This incident, perhaps insignificant by itself, suggests the kinds of suspicions on both sides that adversely affect the climate for academic freedom at BYU.

The case of Professor Houston, along with those of Professors Farr, Knowlton, Evenson, and Epperson, persuades the investigating committee that BYU’s *Statement on Academic Freedom* provides little guidance to the faculty about specific limitations to academic freedom. Numerous other reports of interference with the work of creative artists on campus, constraints placed on academic research (particularly on the subject of Mormonism itself), hostile

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<sup>5</sup> Brigham Young University appears to have a contradictory practice with respect to affirmative action. It distributes to departments a list of “permissible inquiries” and “inquiries that must be avoided” as part of the effort to comply with legal requirements in hiring. These guidelines, conventional in universities seeking to comply with federal guidelines and EEOC requirements, forbid inquiries about age, race, sex, or marital status unless necessary requirements for the job to be performed. Another document, however, to be filed by department chairs with the dean, requires information about age, sex, and marital status. A January 10, 1994, memorandum entitled “Name Clearance” explains that information on the form is necessary “to receive preliminary clearance by the Board of Trustees” before authorizing hiring visits. The memorandum further says that “The office of the Associate Academic Vice President-Faculty will also obtain an assessment by the person’s church leaders of their worthiness for temple privileges.” During its campus visit, the investigating committee asked several chairs about this form. Some denied its existence, and others confirmed that they had to fill it out. Later, one of the chairs provided the committee with copies of the form and the explanatory memorandum.

ity to feminism and postmodern theory, and control of professors' participation in symposia devoted to an independent study of Mormonism sustain the pattern seen in the cases that have been reviewed. The number of cases in itself indicates that the limitations on academic freedom at Brigham Young University are not adequately stated to guide faculty members away from areas of conflict. Instead of being based on principles of intellectual freedom or doctrinal policies of the Church, academic freedom at BYU strikes the investigating committee as often subject to the political concerns of Church officials who worry about new philosophical perspectives that seem to challenge tenets of Mormonism and about outspoken faculty members whose extramural utterances might embarrass the Church. Vice President Wilkins, in conversations with Professor Houston shortly before the final decision not to retain her, referred to the problem of press coverage of her case and stated that the university lived in "a glass house" where, presumably, the rocks of criticism could shatter the image.

The issues in these cases extend beyond the damage to individual careers or the failure of policies designed to state limitations and protect academic freedom. The administration's efforts to protect the orthodoxy of the institution hinder faculty members from scholarship and teaching that is current within their disciplines. The humanities and social sciences have been under particular fire because the influence of postmodernist theory, feminism, and revisions of the canon have most directly affected scholarly work in these fields. Ironically, Brigham Young University is also a dangerous place in which to be a scholar of Mormonism, since findings that are perceived to disturb the Church may result in efforts to stop the research. Faculty members who resist the pressure to alter or stop their research are at risk of losing their positions, as in the case of Professor Knowlton. Beyond Mormon specialists, women who defend the civil rights of pro-choice advocates in extramural remarks are subject to nonretention, as in the case of Professor Farr. Artists who resist "correction" are also at risk, as in the case of Professor Evenson. Faculty members who encounter problems with their bishop may suffer nonreappointment, as in the case of Professor Epperson. Feminist faculty members who question the soundness of gender roles in the Church may be denied continuing status, even when they have a "temple recommend" from their bishop, as in the case of Professor Houston.

Much more than an isolated violation of academic freedom, the investigating committee's inquiries into complaints at BYU have revealed a widespread pattern of infringements on academic freedom in a climate of oppression and fear of reprisals.

## VI. Conclusions

1. Brigham Young University, in establishing limitations upon academic freedom, fails to give adequate guidance to the faculty. The university administration cannot validly invoke the limitations to justify denying continuing status to Professor Gail Turley

Houston on the stated grounds of publicly contradicting Church doctrine and deliberately attacking the Church leadership.

2. To the extent that the Brigham Young University administration acted against Professor Houston because of displeasure with the positions on feminism and gender construction that she took in her teaching and scholarly work, the administration violated the academic freedom assured her by the 1940 *Statement of Principles on Academic Freedom and Tenure*.

3. The available procedures for appeal at Brigham Young University did not provide Professor Houston an adequate hearing on her allegations that her academic freedom had been violated and that she had been subjected to discrimination because of her sex.

4. Numerous additional cases and complaints at Brigham Young University indicate that infringements on academic freedom are distressingly common and that the climate for academic freedom is distressingly poor.

LINDA RAY PRATT (English)  
University of Nebraska-Lincoln, *Chair*

C. WILLIAM HEYWOOD (History)  
Cornell College

### *Investigating committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

ROBERT M. O'NEIL (Law), University of Virginia, *Chair*

*Members:* ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; THOMAS C. HOLT (History), University of Chicago; JANE DINEEN PANEK (Education), Molloy College; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, CUNY; WENDY W. ROWORTH (Art), University of Rhode Island; JOAN WALLACH SCOTT (History), Institute for Advanced Study; DENISE MARIE TANGUAY (Management), Eastern Michigan University; GERALD TORRES (Law), University of Texas at Austin; LELAND WARE (Law), Saint Louis University; MARY A. BURGAN (English), AAUP Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), AAUP Washington Office, *ex officio*; JAMES E. PERLEY (Biology), College of Wooster, *ex officio*; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; JUDITH JARVIS THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*; BEULAH WOODFIN (Biochemistry), University of New Mexico, *liaison from Assembly of State Conferences*.

## ADDENDUM

### Comments from the Brigham Young University Administration

Brigham Young University has always been open about its mission to provide a university education in an environment consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. The university provides an education that is spiritually strengthening, intellectually enlarging, and character building, and that leads to lifelong learning and service. The record of students and faculty attests to BYU's success in pursuing its mission.

The 1940 *Statement* permits religious institutions to place limitations on academic freedom to preserve their religious mission and identity. The "limitations" clause of the 1940 *Statement* recognizes the well-established practice of religious colleges and universities of placing some limitations on individual academic freedom in light of their religious character.

BYU's *Statement on Academic Freedom* protects both individual and institutional academic freedom. Institutional academic freedom is the long-recognized freedom of universities to pursue their distinctive missions and to be free from outside control.<sup>1</sup> All universities exercise institutional academic freedom and place reasonable limitations on individual academic freedom. For example, state universities typically prohibit the advocacy of religious viewpoints by faculty in class to preserve a separation between church and state.<sup>2</sup>

BYU's major accrediting body, the Northwest Association of Schools and Colleges, has found that BYU's *Statement on Academic Freedom* meets its accreditation standards. Those standards include a limitations clause that parallels the limitations clause of the 1940 *Statement*.

AAUP's draft guidelines give an example of a limitation that is adequately explicit: "[A] restriction on any teaching or utterance that 'contradicts explicit principles of the [Church's] faith or morals,' for example, is adequately explicit."<sup>3</sup> This example is excerpted from Gonzaga University's limitation, to which the AAUP made no objection in its investigation of Gonzaga University. Gonzaga's limitation stated:

Intelligent *analysis* and *discussion* of Catholic dogma and official pronouncements of the Holy See on issues of faith and

morals is encouraged. However, open espousal of viewpoints which *contradict* explicit principles of Catholic faith and morals is opposed to the specified aims of this University.<sup>4</sup>

BYU's limitation is strikingly similar to Gonzaga's; both recognize the right of faculty to "analyze" and "discuss" Church doctrine, and both limit expression that "contradicts" doctrine.

The AAUP argues that Gonzaga's statement limits "espousal of viewpoints," while BYU's statement limits expression. However, the AAUP's draft guidelines *do not mention this phrase*. Rather, they state: "[A] restriction on *any teaching or utterance* that 'contradicts explicit principles of the [Church's] faith or morals,' for example, is adequately explicit" (emphasis added). The AAUP is presenting a moving target, inventing a new requirement not in the guidelines. Moreover, the BYU standard limits only advocacy: expression that contradicts (literally, that "speaks against") or opposes fundamental Church doctrine or policy.

The AAUP argues that BYU's statement provides no guidelines for judging when a faculty member is contradicting or opposing Church doctrine rather than analyzing or discussing it. If this is a fatal flaw, it is also fatal to the Gonzaga limitation. The AAUP argues that Gonzaga's limitation refers to explicit principles, while BYU's refers to fundamental doctrine. However, all fundamental doctrine in the Church is explicit. In addition, BYU's statement includes a notice clause, which provides: "A faculty member shall not be found in violation of the academic freedom standards unless the faculty member can fairly be considered aware that the expression violates the standards." BYU's statement thus provides even more notice than Gonzaga's statement. The report also faults BYU's statement because it refers to deliberateness. However, the requirement of deliberateness *increases* fair warning because it reaches only intentional behavior. The concept of intent permeates the law in issues of culpability. Therefore, BYU's statement fully satisfies the limitations clause and the proposed guidelines.

The university's denial of continuing status to Professor Houston was consistent with BYU's *Statement on Academic Freedom*. Professor Houston engaged in an extensive pattern of publicly contradicting and opposing fundamental Church doctrine and deliberately attacking the Church. Professor Houston had ample notice that her public statements endorsing prayer to Heavenly Mother were inappropriate. President Hinckley made the matter crystal clear in 1991, and the Church's scriptures clearly set forth the manner in which we are commanded to pray. In addition,

<sup>1</sup> See, e.g., Michael W. McConnell, "Academic Freedom in Religious Colleges and Universities," *Law and Contemporary Problems*, Vol. 53 (1990), pp. 303, 305-6.

<sup>2</sup> See, e.g., *Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991) (upholding University of Alabama's prohibition on faculty member's expression of religious viewpoints in class). *cert. denied*, 505 U.S. 1218 (1992).

<sup>3</sup> "The 'Limitations' Clause in the 1940 Statement of Principles: Some Operating Guidelines," *Academe*, January-February 1997, pp. 49, 51.

<sup>4</sup> "Academic Freedom and Tenure: Gonzaga University," *AAUP Bulletin*, Spring 1965, pp. 8, 17 n.11 (emphasis added).

Professor Houston received *specific personal notice* that her statements were inappropriate. In her third-year review, Dean Randall L. Jones wrote:

Also of concern is the apparent *conflict* between some of Professor Houston's stated views and certain *basic principles of the gospel*. I strongly defend the right of feminist criticism to be taught at BYU, but I am concerned when *it violates the principles of the gospel and church*. I find it a problem when *someone openly advocates praying to a Mother in Heaven, especially when specific instructions have been given to us from the First Presidency not to*. Her article in the *Student Review* is sufficiently troubling as to suggest that she needs to re-evaluate her position as a member of the BYU English Department (Emphasis added.)

Professor Houston received a copy of this letter in the summer of 1993. Dean Jones again cited the *Student Review* essay in his October 6, 1993, letter to Professor Houston. Despite this specific personal notice, in her 1994 Sunstone speech she again publicly endorsed the practice of praying to Heavenly Mother. It is simply untenable to argue that Professor Houston was unaware that her expression was inappropriate.

The AAUP's argument that Professor Houston did not "advocate" praying to Heavenly Mother is specious. She publicly announced that she engages in the practice of praying to Heavenly Mother and described what a wonderful experience it is. She even described what Heavenly Father and Heavenly Mother say to her in such prayers (the AAUP report fails to mention these statements). The clear message of her public statements was that it is appropriate to pray to Heavenly Mother, that it is a wonderful experience, and that Heavenly Father and Heavenly Mother accept and respond to such prayers. These public statements endorsing praying to Heavenly Mother contradict fundamental Church doctrine.

Moreover, Professor Houston publicly opposed and deliberately attacked the Church on the issue of praying to Heavenly Mother. In her Sunstone speech she said:

*[T]he LDS church seeks to silence its members who are having visions of Mother in Heaven. In effect, women are being told by their Mormon pastors to deny their own visions of God.... I did not know my Mother-in-Heaven until just a few years ago—and I ask why would my church want me to forget her or deny her—I cannot and I will not.* (Emphasis added.)

Professor Houston was saying that the Church is wrong on the issue of praying to Heavenly Mother. To assert that this was not advocacy is simply implausible.

In addition, the denial of continuing status was based on an extensive pattern of behavior. She received an unusually high number of negative marks and comments (more than the report indi-

cates after her third-year review) from students in areas that are critically important to the university mission. She publicly attacked the Church for its view of gender roles. She publicly contradicted and opposed fundamental Church doctrine about not extending the priesthood to women. She made public statements that seem to reject the right of prophets to proclaim doctrine and priesthood leaders to teach about the role of women. She publicly expressed gratitude for and agreement with individuals who had been excommunicated or disciplined by the Church for apostasy. She deliberately attacked the Church for conducting certain disciplinary actions (calling them a "purge") and solicited others to participate in a public protest against those disciplinary actions. She publicly announced that she disagreed with the fundamental spiritual expectations of BYU faculty set forth in university policy. The AAUP report fails to mention many of her public statements on these issues, and they are too numerous to set forth in this brief response. Her violations of the *Statement on Academic Freedom* occurred after it was adopted, and she was fully aware of its provisions. Because of her extensive pattern of behavior, the Faculty Council on Rank and Status, a committee of faculty members from across the university, reasonably recommended against granting her a lifetime appointment at the university.

The report erroneously alleges that university policy did not authorize the addition of information to the file. Section 7.10 of the rank and status policy provides:

*At any level of review [not just the department level] information may be available to reviewers that is relevant to the faculty retention decision but is sensitive and confidential. Such information may be used in making status and rank decisions but reviewers and/or the candidate may feel that it should not be shared broadly because of its sensitivity. The information should be shared with the candidate who may respond to it in writing. The response should also be included in the file. In general, the decision of what to include in the file would allow as many of the reviewers to see the information as possible while still maintaining confidentiality.* (Emphasis added.)

Members of the Faculty Council requested information about Professor Houston, and the items were provided in response to those requests. Professor Houston was allowed to respond. The entire process was completely consistent with university policy.

AAUP policies recommend but do not require an elected faculty hearing committee. The provisions appear in sections 5 and 10 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. Similarly, the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* explicitly states that this provision is merely recommended. It states: "The Association accordingly recommends:..." (emphasis added). The AAUP's argument that all AAUP standards are merely recommendations misses the point. A few AAUP policies are *explicitly identified* as being merely recommendations by the AAUP. If a uni-

versity dismissed a faculty member for violating an academic freedom limitation that was explicitly described as "recommended," the AAUP would surely censure the university for failing to give fair warning. The AAUP is violating its own standards of fair notice.

Professor Houston presented no evidence of gender discrimination in her case. The data show that women are more successful than men in the rank and status process.

While the university asks bishops annually whether a person is eligible for a temple recommend, the university makes its own decision whether the person meets the temple conduct standard. No AAUP policy prohibits the temple conduct standard. Contrary to what the report says, university policy provides that faculty with continuing faculty status or whose contract is terminated before expiration have a right to a hearing before an elected faculty committee.

The report contains so many serious misstatements and omissions that it is impossible to address them in this brief response. It is ironic that the AAUP accuses BYU of using anonymous sources, and then itself relies on anonymous witnesses and unidentified cases for some of its conclusions.

BYU's *Statement on Academic Freedom* satisfies the limitations clause of the 1940 *Statement*. It closely parallels Gonzaga's standard, which the AAUP says is adequately explicit. BYU's state-

ment is even clearer than Gonzaga's standard, because BYU's statement also includes a notice clause to ensure fair notice to faculty. The Northwest Association of Schools and Colleges has found that the statement fully meets its accreditation standards.

Professor Houston publicly endorsed praying to Heavenly Mother, as well as committing other violations of the *Statement on Academic Freedom*. The issue is not whether the AAUP agrees with our doctrine or considers it important. Rather, the issue is whether Professor Houston had notice that she was violating the academic freedom statement. On that issue the record is clear and undisputed. Professor Houston had *both general and specific personal notice* that her statements endorsing praying to Heavenly Mother were inappropriate. Nevertheless, she again publicly endorsed praying to Heavenly Mother and opposed and deliberately attacked the Church on that very issue. Professor Houston had ample notice that she was violating the academic freedom standards.

If a religious university cannot limit a professor from publicly endorsing prayer to a God other than the God to whom we are commanded to pray, then it cannot limit anything, and the "limitations" clause of the 1940 *Statement* is an outright deception. The "limitations" clause was designed to respect the mission and institutional academic freedom of religious colleges and universities. It is regrettable that the AAUP has elected not to follow the 1940 *Statement*, which honors that religious freedom. ☞