

# Academic Freedom and Tenure: Tiffin University (Ohio)<sup>1</sup>

## I. Introduction

This report is concerned with the dismissal of Professor David A. Shevin from the faculty of Tiffin University, an independent, coeducational institution located in a small Ohio town of the same name, some ninety miles north of Columbus and sixty miles south of Toledo. The university was founded in 1888 as Heidelberg Commercial College on the Heidelberg College campus and incorporated separately as Tiffin Business University in 1918. During a reorganization in 1939, the institution's name was changed to its present one. In 1956 Tiffin University purchased a building, now on the National Register of Historic Places, and moved to its present location.

From 1918 until 1985 Tiffin was accredited by the Association of Independent Colleges and Schools and its predecessor organization. In 1985 it became accredited by the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools.

Tiffin University, governed by a seventeen-member board of trustees, awards the associate, bachelor's, and master's degrees, emphasizing programs in business and criminal justice. The institution enrolls some 1,500 undergraduate and graduate students (about one-third of them part time), who are served by a full-time faculty that numbers approximately thirty-five. Some graduate and undergraduate programs are offered at satellite campuses (known as "degree completion centers") in Lima and Elyria, Ohio.

George Kidd, Jr., became the president of Tiffin University in 1981, having previously served as vice president for finance at Mercyhurst College in Pennsylvania. Dr. Raj V. Pathi, who joined the Tiffin faculty in 1989 and later became director of graduate studies, was named acting vice president for academic affairs in November 1997, and was appointed to the permanent position the following February.

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1. 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, the report was subsequently sent to the faculty member at whose request the inquiry was conducted, to the administration of Tiffin University, and to other persons concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

## II. Factual Background

Since at least the 1996–97 academic year, there have been controversies at Tiffin University concerning the appropriate role of faculty in the governance of the institution. Conflicts between officers of the administration and members of the faculty erupted during spring 1997 over the faculty role in an ultimately unsuccessful search in the Department of Fine Arts and a dispute over grade changes for students enrolled in a computer-science course that were made without the knowledge or the permission of the course instructor. This latter incident led to a faculty request for advice and assistance from the American Association of University Professors.<sup>2</sup>

That May, a group of faculty members, joined by the executive director of the AAUP's statewide Ohio Conference, met off campus to discuss the possibility of forming an AAUP chapter for the purpose of addressing what one of them later described as the "disintegration of governance" at Tiffin. In the fall the chapter was organized, and its formation was acknowledged by President Kidd. Much of the conflict between the faculty and the administration (which included the then newly appointed vice president for academic affairs, Dr. Pathi) over the ensuing two years came to be focused on the chapter. Its officers publicly opposed administration policies on several occasions, thereby incurring the mounting displeasure of President Kidd and Vice President Pathi. One of the most outspoken critics of the administration's actions was Professor David Shevin, the chapter's secretary-treasurer.

### THE CASE OF PROFESSOR DAVID A. SHEVIN

David Shevin received his Ph.D. in English literature from the University of Cincinnati in 1986. In 1987, after serving a year

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2. Grades of B, C, and D that the instructor had assigned were changed to Pass. President Kidd, responding to a draft text of this report sent to him prior to publication, has stated that the decision to convert the grades was made by seven faculty members. Faculty members who communicated with the Association on the matter, however, have insisted that the change in the grades was an "unambiguous instance of administrative fiat." The only way it can be argued that it was a "faculty" decision, according to one faculty member, is to count as faculty the president and three other administrative officers whose appointments also carried faculty status. President Kidd was quoted in the local newspaper, the *Advertiser-Tribune*, on May 31, 1997, as stating that changing C's and D's to Pass is "just putting a slightly different value on the same grade. 'D's' and 'C's' are passing; 'P's' are passing. It's almost a no harm, no foul." Members of the faculty have stated in response, however, that letter grades figure into a student's grade point average, while P's do not.

as a visiting assistant professor at Miami University in Ohio, he took a position as assistant professor of English and communication arts at Tiffin University, where he remained for the next twelve years. In 1992 he was promoted to the rank of associate professor, and five years later, in 1997, he was promoted to full professor. (Tiffin University does not have a system of academic tenure; faculty members who have reached the rank of full professor serve on three-year contracts renewable at the administration's discretion.) From 1996 to 1999 Professor Shevin also served as humanities coordinator. During his service on the Tiffin faculty, Professor Shevin taught courses in literature, composition, creative writing, and speech communication. A widely published poet, David Shevin has long been actively involved in local, regional, and national literary circles.

In an account of his appointment history at Tiffin that he wrote in May 1999, Professor Shevin observed that during the first decade of his employment with Tiffin University there were occasional faculty-administration disagreements, but the issues were resolved by and large "in a spirit of collegial enterprise." During the spring 1997 semester, however, according to Professor Shevin, the "real unpleasantness" began, with a conflict over the appropriate qualifications of candidates for a faculty position in the fine arts department, as mentioned above. (Professor Shevin served on the search committee and took sharp issue with the decision of the administration not to consider the candidacy of the incumbent, who was then serving in a one-year position.<sup>3</sup>) He reported a growing antagonism between himself and the Tiffin administration, which in his view escalated after Dr. Pathi became vice president in fall 1997. From that point on, according to Professor Shevin, the two clashed repeatedly over a series of issues, mostly relating to curricular matters and the proper role of faculty in academic decision making generally.

For Professor Shevin, perhaps the most contentious of the disputes between himself and Vice President Pathi concerned the issue of enrollment limits, termed "caps," on particular courses in English and mathematics. Professor Shevin spearheaded the opposition to the administration's decision to remove the limits that had been established by a vote of Tiffin's faculty. When in his judgment intramural efforts to secure a reversal of that decision proved unavailing, Professor Shevin wrote to the chair of the Committee on Governance of the AAUP's Ohio Conference, seeking her assistance in the matter. He was especially interested in clarifying the respective roles of the faculty and the administration in creating and

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3. On the surface, the conflict over the appointment in art was little more than whether all candidates had to hold a Ph.D., as Dr. Pathi's predecessor as vice president for academic affairs, Dr. Debra Israel, argued, or whether an M.F.A. would suffice, as Professor Shevin contended. The latter view would have permitted the person then holding the position as a visitor, who was a friend of Dr. Shevin, to become a viable candidate.

structuring the curriculum, including any educational standards set by particular professional disciplines. The chair of the conference's governance committee responded by writing a series of (unanswered) letters to the Tiffin administration during summer 1998 about perceived infringements of the faculty's role in institutional government. In reaction, President Kidd and Vice President Pathi criticized Professor Shevin, not only for involving the Ohio Conference in an internal dispute, but also for using university letterhead in doing so.

During this time, the administration does not seem to have raised any concerns about Professor Shevin's performance of his academic duties. As noted above, he had been promoted to full professor in 1997. In fall 1998 he began the second year of his first three-year contract. In mid-November 1998, Vice President Pathi, in his capacity as acting dean of the School of Arts and Science, visited one of Professor Shevin's English classes, after which he wrote a generally negative evaluation, focusing on the "low attendance" and the "indifference and rudeness" the students showed toward their instructor. He forwarded a copy to Professor Shevin, who responded by taking sharp issue with the vice president's evaluation. With regard to what he termed Dr. Pathi's "dismay with student attitudes in some of our lower-level classes," Professor Shevin asserted that "this is an issue that you may well wish to take up with admissions. . . . I share some of your concerns about our recruitment standards—in the meantime, we do the best we can with what we have."

In early January 1999, Professor Shevin wrote a letter to the vice president for finance, David Boyd, thanking him for underwriting student submissions for a college poetry competition. In the course of the letter, Professor Shevin expressed regret that he himself was "in a less advantageous position this year than in previous years to attract poems," owing to the administration's decision to cancel an upper-level poetry course he periodically taught. He continued: "The reason for the course cancellation, Dr. Pathi explained to our November School meeting, is that he sees no need for senior-level classes in the School of Arts and Science."

In a handwritten note to Professor Shevin soon thereafter, Vice President Pathi challenged Professor Shevin's last statement, calling it a "complete fabrication." He went on to add: "I won't even go in[to] . . . some of your other mischaracterizations in this memo copied to me, but never received by me." He ended by asking Professor Shevin to "stop by some time and explain what happened here."

On February 25 Professor Shevin met with Vice President Pathi in the latter's office and was informed that the administration did not intend to renew his three-year contract after its expiration in spring 2000. Professor Shevin reports that Dr. Pathi offered no reasons for this decision. Although he subsequently asked for a written statement of reasons for the administration's action, setting forth "any deficiencies in my perfor-

mance of my contractual and professional responsibilities," he never received such a statement.

On March 1 Professor Shevin delivered a letter to Vice President Pathi (with copies to President Kidd, to Professor Miriam Fankhauser, his department chair, and to the members of the Faculty Welfare Committee, challenging the action taken against him). Responding in a memorandum of that same date, Dr. Pathi confirmed that the administration "has no plans to renew your current contract with the university." On March 5 Professor Shevin wrote directly to the members of the Faculty Welfare Committee, conveying concerns about the action against him and asking for the committee's assistance in appealing the matter.

On March 6, citing his "substantial accomplishments" in teaching, campus and community service, publications, lectures, and public education, Professor Shevin asked President Kidd to reconsider the decision, conveyed to him that day, not to award him a salary increase for the 1999–2000 academic year. The president subsequently wrote that, "when one is notified that he will not be offered a new contract, one cannot expect a raise."

Faculty colleagues and members of the student body soon learned of the administration's decision. On March 23 a student in one of Professor Shevin's classes asked for, and received, the professor's permission to address the class about his situation. Professor Shevin reports that he did not participate in the brief class discussion that ensued. The following day, students began to exchange e-mail messages with Professor Shevin and with one another about the situation. That same day, students held a campus rally and circulated a petition in support of Professor Shevin. A reporter and photographer from the local newspaper were present at the rally, and the appearance of the resulting story and photograph added to the campus controversy.

On April 2 Professor Shevin attempted to invoke the university's "problem resolution procedure" to address his situation. He wrote to his "immediate supervisor," Professor Fankhauser, to initiate the process. She then wrote to President Kidd on April 6 to request that he "appoint an impartial intermediary in the matter of Dr. Shevin's contract renewal . . . in accordance with the [problem resolution procedure]." Two days later, however, President Kidd denied her request on the ground that a nonrenewal of contract does not fall under the problem resolution procedure. Further, he wrote, "it is not the university's intent to give employment decisions to a third party."

On April 6 the Faculty Welfare Committee convened in an open meeting with Professor Shevin in attendance. It agreed to Professor Shevin's request to "examine his current situation with the university" and to consider whether it "may be able to intervene on his behalf." The committee charged two of its members with drafting a policy governing contract termination procedures, and agreed to meet the following week.

When the committee reconvened on April 13, Vice President Pathi questioned the meeting's timing on the ground that, since he was an ex-officio member, he should have been consulted on its scheduling. After he left the meeting, the committee agreed to call a "special" faculty meeting to present a proposal for changing the procedure for dealing with the dismissal of a faculty member for cause.

The special faculty meeting was held on April 27 to consider an amended version of the committee's proposal. In pertinent part the proposal read: "If there is a weakness or problem with the performance of an employee, then this weakness or problem must be addressed. . . . The university will not terminate an appointment or administer a sanction less severe than termination without adequate cause." President Kidd declared his strong opposition to the proposal, stating, as Professor Shevin recalls, "The university must maintain its right to terminate anyone for any reason." The proposal was defeated by a vote of 9 to 14 to 1.

On May 5 Professor Shevin was summoned to Vice President Pathi's office. Expecting problems, he asked a colleague to accompany him. Once there, Dr. Pathi demanded that Professor Shevin turn over his office key and then handed him a letter, which Professor Shevin proceeded to read. The letter stated that "Tiffin University is dispensing with your services effective immediately. You shall not have any service obligations to the university." It went on to state that Professor Shevin was being denied further unsupervised access to his own office or to any other part of the campus. Arrangements were to be made for his salary and other benefits to be paid until August 31, 2000, when his three-year contract was due to expire, subject to three conditions: "(1) You will not come to campus without prior permission from the president or me. (2) You will not attend any university-sponsored event. (3) You will not do anything or communicate anything to anybody that will cause harm or injury to the university."

After reading the letter, Professor Shevin left the vice president's office along with his colleague to try to schedule a meeting with President Kidd, but he was away from campus that day. An appointment was arranged for the following day. In the meantime, Vice President Pathi had Professor Shevin's campus computer removed and then escorted him to his car.

The next morning Professor Shevin returned to campus to meet with President Kidd in an effort to learn the reasons for his preemptory dismissal and to seek reinstatement. The president provided Professor Shevin with an oral statement of reasons. According to Professor Shevin, President Kidd charged him with having leaked the grade-change story to the local press, taken the issue of class size and "caps" to the AAUP, politicized his classroom to discuss his own termination with students, told the local press of the administration's threats to his teaching contract, and "badmouthed the university all over town." The president emphasized that the decision to dismiss him was final.

Professor Shevin subsequently consulted with a Toledo attorney. In late August 2000, after he had received the last of his severance salary payments, his attorney initiated what turned out to be an unproductive exchange of correspondence with university counsel, in which she argued, unsuccessfully, for Professor Shevin's reinstatement to the Tiffin faculty or for the trustees to agree to investigate his treatment by the administration. In February 2001, the attorney filed suit in county court, alleging that the president and the vice president had engaged in retaliation and harassment against Professor Shevin.

### **THE ASSOCIATION'S INVOLVEMENT**

Members of the Tiffin University faculty initially approached officers of the AAUP's Ohio Conference and staff of the AAUP's Washington office in spring 1997 as a result of the grade-changing dispute mentioned above. The office staff provided comment on the issue of academic freedom and grading in connection with that dispute. The further involvement of the Ohio Conference, both in the formation of the local chapter in 1997 and in the class-enrollment controversy the following year, is described briefly above.

Professor Shevin first contacted the Association's Washington office in early May 1999, following his dismissal from the Tiffin faculty. Based on its review of the documents he had provided, the staff was prepared to write to the administration about issues of academic freedom, tenure, and due process that his case appeared to raise. Concerned that any announcement by the Association of its interest in his case might be viewed as a breach of the conditions established by the administration for continued payment of his year of severance salary, Professor Shevin requested that the staff delay approaching the Tiffin administration until another academic year had passed. During that year, the local chapter, with the encouragement of officers of the Ohio Conference, sought the Association's assistance regarding infringements of the faculty role in the governance of the university.

On September 25, 2000, based on information and documentation it had received from Professor Shevin and other members of the Tiffin faculty, the Washington office staff wrote to President Kidd. The letter conveyed concerns about seemingly serious departures from AAUP-recommended principles and procedural standards in connection with the dismissal of Professor Shevin, and about conditions of academic government at the university. The staff urged the administration to rescind the notice of dismissal issued to Professor Shevin. Responding on October 30, President Kidd asserted that the description of the university contained in the staff's letter did not reflect the reality of the institution, its system of governance, or its faculty. He declined to address the case of Professor Shevin. Subsequent exchanges of letters reflected no change in his position.

With matters remaining unresolved, the general secretary authorized an investigation, and the staff so advised President Kidd by letter of January 25, 2001. Responding on January 30, the president wrote as follows: "The American Association of University Professors has no standing to review decisions made by the University nor does it have any authority over the university's employment practices. David Shevin is no longer employed at Tiffin University. The university fulfilled its contractual obligations to Dr. Shevin. As a result, the AAUP is not an appropriate forum to reconcile his concerns."

On February 14, President Kidd, in Washington on other business, met at his request with members of the AAUP staff to discuss the decision to undertake an investigation. During the meeting, the president spoke about the situation at Tiffin and about the administration's reasons for dismissing David Shevin. He made it clear that he had no intention of reinstating Professor Shevin, but that he would consider other possible steps to resolve the case. Following the meeting, the staff spoke with Professor Shevin about a potential settlement. He reported that his attorney had been having discussions with university counsel but that no resolution had been achieved.

Under the circumstances, and given the other unresolved issues of Association concern, the staff wrote to President Kidd on February 27 to advise him of the decision to proceed as previously announced, and informed him of the composition of the undersigned investigating committee and the dates planned for the visit. President Kidd informed the staff that, owing to the pending litigation, the administration, on advice of counsel, would not cooperate with the investigation. When the chair of the investigating committee telephoned the president on the day before its scheduled visit to ask about a meeting, the president declined that invitation. He also declined to suggest the names of administrators, faculty, or students whom the committee might usefully interview.

The investigating committee, after examining available documentation on the matters of concern, met (or spoke by telephone) on March 15-17, 2001, with a dozen current and former Tiffin faculty members, one of them a former administrative officer, and a former student. The committee convened at a motel some thirty miles away from the Tiffin campus because of indications the committee had received that some current faculty members feared reprisals if it became known to the administration that they were speaking with the committee. The committee regrets not having been afforded an opportunity to meet with current officers of the administration and having to rely primarily on documentary evidence for the administration's positions on the matters covered in this report. The documentary record on Professor Shevin's case is extensive, however. Despite the lack of cooperation from the Tiffin University administration, the committee believes that it has sufficient information to assess the issues of concern, make findings, and reach conclusions.

### III. Issues

#### 1. PROCEDURAL CONCERNS

The 1940 *Statement of Principles on Academic Freedom and Tenure* calls for a maximum period of probation not to exceed seven years of faculty service, with retention beyond that period to be with tenure. The regulations governing faculty appointments at Tiffin University do not provide for a system of academic tenure. All full-time faculty members serve on term appointments of varying lengths, indefinitely renewable at the discretion of the administration.

On April 2, 1999, Professor Shevin, having been notified the previous February 25 of the administration's decision to terminate his services effective at the end of the 1999–2000 academic year, sought, through his department chair, Professor Fankhauser, to invoke the university's "problem resolution procedure," as set forth in Tiffin's *Personnel Handbook*. According to the handbook, the procedure

provides a process for employees to discuss issues of concern with management and to receive careful consideration and a prompt resolution of their problems in a candid, constructive manner. It should be used to address any situation that is perceived by an employee to be unjust or inequitable.

Each employee is encouraged to discuss work-related concerns or problems with their [sic] immediate supervisor. If a problem cannot be resolved informally at this level, the employee may put in writing the details of his or her concern and submit the written document to the immediate supervisor. The written statement will be reviewed by the president, who will appoint a person to decide the matter. The employee and his or her supervisor will request a hearing with the appointed person for resolution of the problem. Final resolution of the problem will be made by the appointed person and discussed with the employee and supervisor.

Despite the foregoing, stated as applicable to "any situation," President Kidd, by letter dated April 8, declared that "nonrenewal of contract does not fall under the [procedure]. It is not the university's intent to give employment decisions to a third party. . . . The [procedure] was designed to handle conflict between the supervisor and the employee about work-related concerns—not about employment or nonemployment." Similarly, Professor Shevin reported that counsel for the university, responding on November 6, 2000, to letters from Professor Shevin's attorney, reiterated President Kidd's position as follows: "All of the concerns raised by Dr. Shevin to date pertain to the decision of termination and/or nonrenewal and are not within the purview of independent review. That decision remains solely within the discretion of the president. . . . *Dr. Shevin was an employee at will and could*

*be terminated for any reason or no reason at all.*" (Emphasis added.)

The administration has adhered to the position that the action it took on February 25, 1999—when Vice President Pathi notified Professor Shevin that his services were being terminated at the end of the 1999–2000 academic year—was a nonreappointment. The Association's recommended standards for faculty members who have been issued notice of nonreappointment, set forth in its *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, call for the person or body that has decided against retaining the faculty member to provide the individual, upon request, with a written statement of the reasons in explanation of that decision. These standards provide further that the affected faculty member should have an opportunity to seek review by a representative faculty committee not previously involved in the matter, which would entertain a complaint that inadequate consideration had been given to the faculty member's qualifications, or that impermissible considerations—violations of academic freedom or discrimination—figured significantly in the negative decision. In cases of nonreappointment, the policies of Tiffin University provide neither for a written statement of reasons nor opportunity for independent faculty review. Indeed, decisions on nonretention are said by the president and other administrators to be subject to no form of intramural review but, instead, left to the unfettered discretion of the president and the vice president for academic affairs. Even if the February 25 action against Professor Shevin were to be construed as a nonreappointment, by not having been provided either a written statement of reasons or an opportunity for faculty review, he was denied basic safeguards of academic due process called for in a case of nonreappointment.

The investigating committee finds, however, that the February 25 action against Professor Shevin should not be viewed as merely a notice of nonreappointment. Professor Shevin was completing his twelfth year of full-time teaching at Tiffin when he was notified that his services were being terminated, and thus he had served well beyond the permissible seven-year period of probation under the 1940 *Statement of Principles*. He was accordingly entitled under this document to the protections against termination of services that accrue with continuous tenure.

However one interprets the action the Tiffin administration took on February 25, the investigating committee finds that the action the administration took the following May, when it suspended Professor Shevin from ongoing academic duties and barred him from the campus, effectively constituted a dismissal for cause. The 1940 *Statement of Principles* calls for the following safeguards of academic due process in cases involving dismissal for cause:

Termination for cause of a continuous appointment or the dismissal for cause of a teacher previous to the expiration

of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions.

With respect to Professor Shevin's suspension, Interpretive Comment Number 9 on the 1940 *Statement* provides that "a suspension which is not followed by either reinstatement or opportunity for a hearing is in effect a summary dismissal in violation of academic due process."

These due-process requirements are elaborated upon in the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* of the AAUP and the Association of American Colleges and Universities, and are further amplified in Regulations 5 and 6 of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. Of special relevance are the requirements of (a) a written statement of charges, framed with reasonable particularity, of the grounds proposed for the dismissal, and (b) an adjudicative hearing of record before a committee of faculty peers, in which the burden is on the administration to demonstrate adequacy of cause.

The investigating committee finds that the Tiffin administration, in failing to provide Professor Shevin with a written statement of the charges against him, and in denying him opportunity for a faculty hearing at which it would assume the burden of demonstrating grounds for its actions (both those in February and those in May), thereby denied Professor Shevin his rights under the 1940 *Statement of Principles* and derivative AAUP-supported standards.

## 2. SUBSTANTIVE CONCERNS

While Professor Shevin was not provided with a written statement of the reasons for his removal from the Tiffin faculty, on two very different occasions President Kidd orally set forth his reasons.

In a meeting with President Kidd on May 6, 1999, one day after Vice President Pathi had notified him of his suspension and banishment, Professor Shevin asked why this was occurring. The president, according to Professor Shevin, "stormed a series of accusations at me. These were that I had leaked the story of the change in [a faculty colleague's] grades to the press in 1997, taken the issue of class inflation to the AAUP, politi-

cized my classrooms to discuss my own case with the students, and to advocate on my own behalf, taken the story of threats on my contract to the local press, [and] 'badmouthed the university all over town.'"

In February 2001, at his meeting in Washington with members of the Association's staff, President Kidd stated that, among other grounds for issuing Professor Shevin notice of termination of services in February 1999, the principal one had to do with long-standing concerns about his teaching performance. President Kidd asserted that, going back to 1993, Professor Shevin's performance in the classroom had gradually deteriorated, that he was repeatedly warned about teaching deficiencies, and that he failed to address the problems. Asked to explain the administration's action in May to suspend Professor Shevin from further academic duties and banish him from the campus for the remainder of his three-year contract, the president cited concerns about his possibly disrupting the campus if he were allowed to stay on until the contract expired. In support of his explanation, President Kidd (as he had stated to Professor Shevin in May 1999) alleged that, in the weeks following the issuance of notice of termination, Professor Shevin used his classes to gain support for his reinstatement, encouraged a student rally on campus on his behalf to which he invited the local press, and in other ways acted to divide the university.

Informed by the staff of President Kidd's statements alleging deficiencies in his academic performance, Professor Shevin stated that no question had ever been raised with him about his professional fitness to continue on the faculty, nor any warning issued that he needed to improve the quality of his teaching or face possible dismissal.

Specifically with regard to the president's allegations of deterioration in Professor Shevin's teaching performance dating back to 1993, the investigating committee notes that in 1997, four years after the alleged beginning of his decline, Professor Shevin was promoted to the rank of full professor following review by a three-person faculty committee in which teaching competence was the principal criterion. While the faculty committee questioned the sufficiency of the "initial documentation" that he "submitted as proof of satisfying effective classroom instruction," it recommended his promotion after reviewing "additional survey results and classroom observations submitted by Dr. Shevin." Its letter of recommendation raised no concerns about his teaching performance that might have warranted denial of promotion.

The investigating committee has found little substantive support for President Kidd's assertion that the quality of Professor Shevin's teaching had declined, or even that it had become a matter of significant concern. There is the negative November 1998 evaluation written by Vice President Pathi, in his capacity as acting dean of the School of Arts and Science, but most of the teaching evaluations by students, as the investi-

gating committee has been able to interpret them, and virtually all of the classroom visitation reports prepared by Dr. Pathi's predecessors as dean are quite positive. Former colleagues of Professor Shevin, in correspondence with the Association's staff and in interviews with the investigating committee, have described him as an outstanding instructor. Indeed, nothing in the abundant documentation reviewed by the investigating committee suggests that, the Pathi evaluation aside, any major concerns had ever been raised about Professor Shevin's teaching.

With regard to President Kidd's allegation that Professor Shevin encouraged students to rally to his cause and used his classrooms to that end, the investigating committee found no evidence to support the charge. Professor Shevin sharply denies he took such actions. In addition, one of Professor Shevin's former colleagues who met with the investigating committee reported that a student leader who discussed her personal views about Professor Shevin's situation with that colleague stated that she herself had notified the local newspaper of the situation and the students' intended rally. Another leader of the student protest was quoted in the local press as having stated that "[t]here ha[d] been no coercion from . . . professors" in connection with the petition drive, that the effort was entirely student driven.

While Professor Shevin maintains that he did not involve himself in the student efforts on his behalf, he does acknowledge having acceded to a student's request to permit her to report on overall student concerns about his situation during the final minutes of one class. Professor Shevin also told the investigating committee that he responded to e-mailed questions about his situation that he received from students and faculty. While in hindsight Professor Shevin, or any other faculty member in similar circumstances, might have chosen to respond differently, the investigating committee found no evidence that Professor Shevin's own actions or words in any way inflamed the campus. Nor is there reason to believe that the campus situation would have eased had Professor Shevin ignored questions about his circumstances that were put to him by faculty, staff, and students and distanced himself from the inquiries and concerns of the university community. Those inquiries and concerns were conveyed by others, who were protesting what they believed to be wrong in the administration's handling of Professor Shevin's case. The investigating committee finds that the actions by Professor Shevin cannot reasonably be construed as having been so divisive or disruptive—or having threatened to become so—as to warrant his summary dismissal from the faculty.

With regard to the other stated grounds offered by President Kidd for Professor Shevin's dismissal, Professor Shevin acknowledges that he had indeed approached the AAUP's Ohio Conference on the class-size "cap" issue after internal governance processes had brought no result, and the investigating committee considers what he did in seeking advice and

assistance from the conference to have been perfectly proper. Professor Shevin flatly denies having gone to the local press about the 1997 grade-changing controversy or about his own situation in 1999, or having "badmouthed the university all over town." More to the point, the investigating committee finds that none of those charges, individually or collectively, even taken at face value, constitutes sufficient grounds for dismissing Professor Shevin. Faculty are entitled, and indeed should be encouraged, to involve themselves in efforts to strengthen their institutions as best they can, in accordance with their professional responsibilities. Professor Shevin's actions lie within those precepts, so far as the investigating committee can determine, and the committee finds that the administration's reaction was grossly disproportionate to the conduct by Professor Shevin that ostensibly provoked it.

### 3. ACADEMIC FREEDOM CONSIDERATIONS

The Association's 1994 statement *On the Relationship of Faculty Governance to Academic Freedom* recognizes that "[t]he academic freedom of faculty members includes the freedom to express their views . . . on matters having to do with their institution and its policies," and that academic freedom is an "essential [condition] for effective governance. . . . The protection of the academic freedom of faculty members in addressing issues of institutional governance is a prerequisite for the practice of governance unhampered by fear of retribution." The document goes on to state that "it is . . . essential that faculty members have the academic freedom to express their professional opinions without fear of reprisal." Regulation 5(a) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* further provides that "adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens."

In Tiffin University's mission statement, printed in its 1999–2000 catalogue, the institution proclaims its goals to "[o]ffer a setting for our faculty that is collegial and conducive to the creation and dissemination of knowledge and competence," and further to "[f]oster high ethical standards, love for learning, [and] feeling of community . . . among our students, our staff, and our faculty."

From the information available to the investigating committee, it seems clear that Professor Shevin, during his last years on the Tiffin faculty, repeatedly incurred the displeasure of the administration as a result of his outspoken challenges to several of its actions. He told the investigating committee that, in his mind, the search to fill a position in the Department of Fine Arts, with competencies in both studio art and art history, was the beginning of "the real unpleasantness" for him at Tiffin. Despite this incident and his purported involvement in

publicizing the grade-changing dispute around the same time, Professor Shevin was notified of reappointment for a three-year term and promoted to the rank of full professor at the end of the 1996–97 academic year. Evidently, however displeasing some members of the Tiffin administration may have found his conduct and attitude at that time, they were not seen as warranting denial of his reappointment and promotion. (The investigating committee notes that, although it has seen the positive recommendation of the faculty committee, it has not seen any documents from the administration relating to Professor Shevin's candidacy for promotion.)

During the next two years, and especially after the appointment in November 1997 of Dr. Pathi as academic vice president, clashes between Professor Shevin and the administration recurred. Of particular note was the previously described hostile reaction of President Kidd and Vice President Pathi to Professor Shevin's involving the AAUP's Ohio Conference in the dispute over course-enrollment caps during the summer of 1998. Soon after that episode, Dr. Pathi withdrew payment of the modest stipend that Professor Shevin had been receiving for several years as humanities coordinator. The vice president also assigned Professor Shevin, the highest-ranking member of the English department faculty, a full teaching load of introductory first-year-level courses for the fall and spring semesters.

President Kidd, in discussing with members of the Association's staff the administration's grounds for dismissing Professor Shevin, made it clear that he held Professor Shevin responsible for purported leaks to the local press about various campus matters that had brought adverse publicity to the university. In addition, the president described Professor Shevin as hostile and divisive in his dealings with the administration. As noted in the previous section of this report, President Kidd also alleged that Professor Shevin had politicized his classes.

The investigating committee finds that, perhaps with the exception of the charges, contested by Professor Shevin, that he involved students in his conflict with the administration, most, if not all, of the conduct for which the university's chief administrative officers criticized Professor Shevin fell within the ambit of academic freedom. The investigating committee found no evidence that Professor Shevin encouraged or actively induced any students to petition or demonstrate on his behalf, and it has seen no corroborative evidence supporting President Kidd's claim that Professor Shevin's teaching was below the university's standards or otherwise inadequate. The investigating committee accordingly finds that the administration's actions against Professor Shevin in February and May 1999 were based significantly on considerations violative of his academic freedom, and that the administration thus acted in violation of the academic freedom as well as the tenure provisions of the 1940 *Statement of Principles* in Professor Shevin's case.

#### 4. CLIMATE FOR ACADEMIC FREEDOM

Current and former members of the Tiffin faculty have complained about an inhospitable atmosphere at the university for criticizing the administration and its operation of the institution. The investigating committee found during its visit that the climate for academic freedom at the university, while never particularly supportive, has become so chilled that some members of the faculty have a sense of concern that they will be punished, or even dismissed, in retaliation for customarily protected speech or conduct. The absence of a tenure system exposes and promotes the vulnerability of the faculty. The investigating committee was told that members of the faculty regard the termination of Professor Shevin's appointment as an example of what the administration will do even to experienced, well-performing faculty members who voice dissenting views.

In spring 1997, during the campus grade-changing controversy, several faculty members interviewed by a reporter for the Tiffin *Advertiser-Tribune* apparently insisted on anonymity, citing fear of possible retribution. The university, the reporter observed, "does not provide tenure to professors." That fall, when another article appeared in the same newspaper, this time relating to the removal of Dr. Debra Israel as vice president for academic affairs, President Kidd indicated his great displeasure with the media coverage. According to the minutes of the October faculty meeting:

He was emphatic that he disapproved of what appeared to be an "underground PR department," and that such behind-the-scenes activities were not in the best interests of the university. Rather, open, collegial communication should be the norm. The newspaper had received a phone call from someone at TU and had been briefed on the matter. Responding to [a faculty member's] question as to whether speaking to the press was grounds for dismissal, President Kidd indicated that it was not. Rather, from his perspective, the issue was with someone who was apparently trying to ruin an institution which faculty and staff had worked so hard to improve. He appealed to all to deal with internal matters internally. He objected to the *A-T* story because it was about a colleague, not about a policy of the institution. He concluded his comments on this topic by calling for a positive refocusing of collective energies on accomplishing the goals the university has set for itself.

The investigating committee observes that the attitude toward faculty extramural speech critical of the university that the president displayed in these remarks is consistent with some of his charges against Professor Shevin, as discussed above.

The harmful consequences of the lack of a system of academic tenure at Tiffin University are compounded by President Kidd's



assertion—echoed by university counsel—that Tiffin faculty are merely “at-will” employees who can be dismissed for any reason or no reason at all. The Association has long emphasized that retaining postprobationary faculty members on indefinitely renewable term appointments is inimical to academic freedom. Tiffin University had (and has) a considerable number of long-serving faculty members who, under the institution’s policies, can be issued notice of nonreappointment at any point without having recourse to any appeal or hearing process. Such procedures jeopardize the faculty’s exercise of academic freedom.

The investigating committee wishes to emphasize the intensity of the concerns voiced to it by both current and former members of the Tiffin faculty over the unhealthy current climate for academic freedom at the institution. In the last few years, senior professors who had been long-standing leaders on the faculty have resigned and accepted positions elsewhere, stating to the investigating committee that they based their decision to leave on their feeling that their criticism of the administration put them at risk. Professors still on the faculty made clear to the committee their belief that, should their cooperation with this investigation become public knowledge, their dismissal would be a likely result. Current Tiffin faculty members who agreed to talk with the investigating committee requested that the interviews be conducted at a site some distance from the campus. Others declined to meet with the committee even out of town. Those who did speak with the committee were anxious about doing so. One person commented that “the level of fear is intense.” The anxiety of the faculty, in the absence of tenure and academic due process, was all too evident to the investigating committee.

Concerns about academic freedom have not been limited to members of the faculty. According to a local press report on the student rally in support of Professor Shevin that took place in March 1999, one student protester indicated that some of her fellow students feared reprisals for speaking out on behalf of Professor Shevin: “[A] lot of people are afraid to say or do anything; this campus has ways to do something about it.” Indeed, one student leader who circulated e-mail messages to the rest of the student body to alert them about the administration’s action against Professor Shevin and about student efforts to rally support reported that the administration suspended his campus e-mail account. A second student, who elected to transfer to another institution, wrote to the investigating committee about an occasion when students met to complain about curricular changes at the university only to be told by the administration that “[t]here are people in this room who can make or break your future.” The student wrote that she regarded that as “a violation of [her] personal freedom.”

##### **5. FACULTY ROLE IN INSTITUTIONAL GOVERNANCE**

Generally accepted standards of academic government are enunciated in the Association’s 1966 *Statement on Government of*

*Colleges and Universities*. That document rests on the premise of appropriately shared responsibility and cooperative action among governing board, administration, and faculty in determining educational policy and in resolving educational problems within the academic institution. It also refers to “an inescapable interdependence” in this relationship which requires “adequate communication among these components, and full opportunity for appropriate joint planning and effort.” It further asserts that “the interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict.”

Section V of the *Statement on Government* defines the particular role of the faculty in institutional government, stating in pertinent part:

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.

The particular authority and primary responsibility of the faculty in the decision-making processes of the academic institution in these areas derive from its special competence in the educational sphere. It follows from this proposition that the faculty should play an active and meaningful role in the development as well as in the revision of institutional policy in those areas in which the faculty has primary responsibility.

As one facet of the “interdependence” emphasized in the *Statement on Government*, Section V of that document asserts the expectation that

[a]gencies for faculty participation in the governance of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution.

Implicit in the foregoing passage is the expectation that the faculty will play a primary role in the establishment as well as in any subsequent revision or modification of the institution’s governance structure.

Faculty members at Tiffin University have complained about what they perceive as a pattern of administrative indifference toward or disregard for the legitimate role of the faculty in institutional decision making over the past several years and a lack of sensitivity to faculty needs and concerns. Among the matters of particular concern that they have cited are the following:

a. After the incident in spring 1997 (described above) involving the unilateral administrative change of a faculty member's grades, the faculty adopted a student grade-appeal policy, which the administration declined to implement, substituting its own policy without faculty review or approval.

b. In summer 1998, the administration, without consulting with the faculty, made several important changes in the university catalogue with respect to academic policies and programs—areas in which the *Statement on Government* calls for the faculty to have primary responsibility. These apparently included substantive revisions in the mission statement of the general-education program, alterations in the requirements for the bachelor of arts degree, the deletion of faculty-approved courses, and changes in course descriptions. The administration, as noted earlier, subsequently uncapped enrollments in English and mathematics classes, contrary to policies established by duly constituted faculty bodies.

c. On May 1, 1999, the board of trustees, at President Kidd's request, terminated the existing *Constitution of the Body of Tiffin University*, a document that afforded the faculty a forum in which it could discuss any issue concerning the general welfare of the university and make recommendations to the president and the board. The document also provided for normal parliamentary process. A new entity called the "faculty" was created through a board-mandated *Academic Governance Structure*. Faculty members have complained that this new document has further centralized the administration's authority by effectively stripping the faculty of all control over its own business, including the conduct of its own meetings and its authority over the curriculum. They have further complained that the document makes no provision for any formal rules of process, including basic parliamentary procedure, and that faculty meetings now consist largely of reports of administrative officers with little opportunity for faculty debate and deliberation. They state that these changes had been proposed to the board of trustees without any prior consultation with the faculty, and that the changes were carried out without recourse to the university's established governance mechanisms and indeed in contravention of the *Constitution's* stated provisions for amendment.

The investigating committee finds that the changes in Tiffin University's system of governance enacted by the administration, and the manner in which these changes were instituted, are fundamentally at odds with principles of academic governance set forth in the *Statement on Government* and with previous governance practices at the university. The committee has seen no evidence that the administration supports by word or deed the concept of "shared governance" in educational policy or process. Effectively all academic authority on the campus appears to lie directly and immediately in the hands of the administration. Reports of recent faculty quiescence suggest

that the administration's reputation for punishment of independent faculty has served its purposes.

#### IV. Conclusions

1. The administration of Tiffin University acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in dismissing Professor David A. Shevin without having provided him with a written statement of the charges against him and without having demonstrated cause for its action in a hearing of record before a faculty committee.

2. The administration violated Professor Shevin's academic freedom, in notifying him of dismissal and then suspending him from any further teaching and banishing him from the campus because of its displeasure with conduct that should have been protected under principles of academic freedom.

3. The absence of a system of academic tenure at Tiffin University inhibits the faculty's exercise of academic freedom.

4. Tiffin University's official policies and the administration's practices are seriously deficient in meeting the standards for faculty participation in institutional governance under principles of shared authority, as enunciated in the *Statement on Government of Colleges and Universities*. ☞

HIRSCHEL KASPER (Economics)  
Oberlin College, *Chair*

GEORGE E. LANG (Mathematics)  
Fairfield University

JEAN WILHELM (Theater)  
Goucher College  
*Investigating Committee*

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

JOAN WALLACH SCOTT (History),  
Institute for Advanced Study, *Chair*

Members: JEFFREY HALPERN (Anthropology), Rider University; LAURA KALMAN (History), University of California, Santa Barbara; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), University of California, Berkeley; LINDA RAY PRATT (English), University of Nebraska-Lincoln; DONALD R. WAGNER (Political Science), State University of West Georgia; JANE L. BUCK (Psychology), Delaware State University, ex officio; MARY A. BURGAN (English), AAUP Washington Office, ex officio; MARTIN D. SNYDER

(Classics), AAUP Washington Office, *ex officio*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; ROBERT M. O'NEIL (Law),

University of Virginia, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; GREGORY SCHOLTZ (English), Wartburg College, *liaison* from Assembly of State Conferences.