

# Report

## Academic Freedom and Tenure University of Central Arkansas<sup>1</sup>

This report deals with action by President Winfred L. Thompson of the University of Central Arkansas to dismiss Professor John H. Lammers, who had taught in the Department of English for twenty-four years. It deals also with the president's decision to deny tenure to Dr. Linda D. Arnold, then an assistant professor who had completed thirteen years of full-time service in the Department of English; with the release of two instructors in the Writing Program, Drs. Bill Jenkins and Lou Ann Norman, each of whom had served full time for eight years; and with statements and actions by President Thompson and the board of trustees relating to faculty tenure.

### I. Introduction

The University of Central Arkansas, located in Conway, was founded as the Arkansas State Normal School for the purpose of training elementary and secondary school teachers. Classes began in 1908, with 107 students, eight faculty members, and a campus consisting of one partially completed building. The baccalaureate degree was first awarded in the early 1920s, and the institution was renamed the Arkansas State Teachers College in 1925. Initial accreditation, by the North Central Association of Colleges and Schools, was achieved in 1931. The first graduate program, begun in 1955, led to the master's degree in education.

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1. In accordance with Association practice, the text of the investigating committee's report was 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 text was sent on October 15, 1999, to the faculty members at whose request the investigation was conducted, to the AAUP chapter president, to the administration of the university, and to other persons directly 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 for publication.

The recipients of the draft text had been asked to provide their comments by November 15. Successive requests from the office of President Winfred L. Thompson of the University of Central Arkansas led to an extension of the response date first to December 15, then December 17, and lastly January 3. President Thompson submitted a three-and-a-half-page single-spaced response on December 17, asking that it be published together with the report. He followed on January 13 with a twenty-eight-page double-spaced response, the conclusion of which is largely a summary of what he sent on December 17. Several of the matters covered in the January 13 response are conveyed in subsequent footnotes, and the January 13 conclusion appears as an addendum.

An Association investigation was undertaken at the college during the 1961-62 academic year, following the administration's action to terminate the services of a tenured professor. The investigating committee found that the action was a dismissal in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure*, and censure was imposed by the 1963 annual meeting. The censure was removed in 1968, when Committee A was able to report to that year's annual meeting that a settlement had been reached with the dismissed professor and that the regulations of the institution, its name changed by then to the State College of Arkansas, had been brought into full harmony with the 1940 *Statement of Principles*.

The institution, which in 1975 became the University of Central Arkansas, grew rapidly over the ensuing decades. Currently there are thirty-eight major buildings on its 262-acre campus. The university's departments and programs are organized into six academic colleges and an honors college. Approximately 9,000 students are taught by a faculty of 350.

Dr. Winfred L. Thompson, the institution's seventh president, has been in office since 1988. He has an undergraduate degree from the University of Arkansas at Fayetteville, J.D. and LL.M. law degrees from George Washington University, and M.A. and Ph.D. degrees in history from the University of Chicago. He held administrative positions successively at Arkansas State University and at the University of Arkansas before coming to the University of Central Arkansas as president.

### II. The Case of Professor Lammers

Professor John H. Lammers received his B.A. degree from the University of Arkansas at Little Rock and his M.A. and Ph.D. degrees from Auburn University, specializing in Victorian poetry. He came to what was then the State College of Arkansas in 1973 as an assistant professor in the Department of English. Granted tenure in 1979, he was subsequently promoted in rank first to associate professor and then to professor. His wife, Jane, remains on the university's faculty as a tenured professor of health sciences.

Over the years, Professor Lammers was frequently at odds with colleagues and administrators on a range of issues from faculty governance to such educational matters as pedagogy and testing. Dean Gary D. Stark of the College of Liberal Arts, writing in August 1996 about a complaint from a student that Professor Lammers sharply disputed, stated to him that "your student evaluations

indicate you are a dedicated, caring, demanding teacher who makes his students work hard, and that many, many of the students you teach have a very positive experience in your class and recommend you very highly." The subsequent concerns that were to culminate in Professor Lammers's dismissal related to what he contends were violations of his academic freedom in his efforts to oppose a tyrannical administration and make the university a better place. His adversaries, however, have contended that he was addressing petty dislikes more than important issues and was doing so in ways that were increasingly lacking in perspective, overbearing, rude, offensive, intimidating, and even threatening.

From his own account, Professor Lammers was not hesitant about speaking his own mind, even early on as a probationary faculty member. His doing so under the Thompson administration, however, seems to have taken on a new dimension. When President Thompson arrived in 1988, Professor Lammers, as an elected member of the faculty senate, was involved in a study of the academic performance of scholarship athletes. He sent a copy of his study to the new president, who, according to Professor Lammers, brushed it aside and indicated lack of interest in continuing a serious faculty discussion of the matter. Shortly thereafter, at a presidential breakfast, he confronted President Thompson, in front of faculty and staff, about what Professor Lammers called a lack of "any real knowledge of or commitment to real academic values."

In the months and years ahead, Professor Lammers was to express public opposition to actions by the Thompson administration in letters and columns appearing in the press, particularly Conway's *Log Cabin Democrat* and the student newspaper, the *Echo*. He spoke out against the president's recommending faculty tenure for Provost J. William Berry and other administrators; the administration's move to reverse its predecessor's commitment to provide a tenure-track position for Professor Linda D. Arnold; the administration's melding of the Departments of Sociology, Political Science, and Geography; its splitting the College of Arts and Sciences into a College of Liberal Arts and a College of Natural Sciences and Mathematics; and its transfer of first-year composition courses from the Department of English to a new Writing Program in the College of Fine Arts and Communication. Professor Lammers, without authorization, also released to the media a confidential report of the Arkansas Department of Higher Education (ADHE) about the Department of English. A few months later, when it was announced that the Department of English had won the ADHE's "excellence" award, Professor Lammers wrote to the local paper that the administration had "managed to destroy the academic integrity of this department." These actions seemed to some, including his chair and dean, to constitute public comments harmful to the reputation of his department at the time that it received a major state award. Professor Lammers acknowledged in his various letters and in discussion with the investigating committee that he would not engage in civil conversation with President Thompson and that he made rude sounds and

gestures to Dean Sally A. Roden, Associate Provost Samuel P. Buchanan, and others whom he regarded as "a bad force" or "guilty." Professor Lammers told the investigating committee that he did not consider his actions threatening but that he "wanted to show my disrespect" and to make these people "uncomfortable."

While Professor Lammers's quarrels with the upper administration were proceeding, he was having increasing confrontations with his department chair as of 1990, Professor Terrance B. Kearns, and with Dean Stark. A complaint from a black woman departmental colleague, that in fall 1995 Professor Lammers had implied to a student that grades received from her showed a lack of standards in grading, led Professor Kearns to attempt to mediate the dispute. The colleague agreed to keep her complaint within the department if a "memo of caution" was placed in Professor Lammers's file. Professor Lammers agreed to this resolution, and Professor Kearns issued such a memorandum to Professor Lammers on February 6, 1996, copying it to "department files." The memorandum stated that "it is incumbent upon each of us to avoid even the appearance of impropriety," that the recipient is cautioned "that we must avoid saying anything students might perceive as criticism of our colleagues," and that the recipient is asked to "be especially circumspect in this regard" in any reference to the complaining member. "I trust," Professor Kearns concluded, "that this is an area none of us should have to revisit." Professor Kearns informed Dean Stark that the memorandum "seems to satisfy" the complaining faculty member.

Although Professor Lammers indicated to the investigating committee that he "signed off on the reprimand," he saw himself as implicitly accused of being unfair to a black woman, and responded to Professor Kearns on April 16, 1996, with a vigorous thirty-one-page rebuttal. In the next few months, he returned to this episode in other memoranda.

When the Department of English won the ADHE award, a dispute between Professor Lammers and Dean Stark precipitated the first of two formal grievances that Professor Lammers, arguing that his academic freedom had been denied, was to file. In response to Professor Lammers's January 20, 1997, letter to the *Log Cabin Democrat*, Dean Stark on January 22 wrote to Professor Lammers conveying surprise at having read in his letter "that the academic integrity of the English department has been destroyed, that you liken the department to a dead entity ('posthumously') and that to award the program 'excellence' (and excellence funding?) now, after its loss of integrity and its metaphorical death, would be ironic." The dean stated in conclusion that he considered the letter "to be an example of the silliness and unprofessional behavior you so readily detect in others but so seldom in yourself." (Professor Lammers's letter to the newspaper had described President Thompson's actions as "silliness" and "unprofessional and unethical power plays.")

Professor Lammers wrote to Professor Kearns and then, on April 4, to Dean Stark, alleging that the January 22 letter violated his academic freedom. As a remedy, he sought a letter from the

dean admitting the violation. Dean Stark's reply, dated April 18, asserted that the intent of his January 22 letter was not to censor or discipline its recipient, that he was expressing his opinion, and that he had a right to free speech, just as Professor Lammers did. He apologized for characterizing Professor Lammers's conduct as "silly" and "unprofessional" if Professor Lammers felt that he was thereby being called names or demeaned, but he said that, not having violated Professor Lammers's academic freedom, he could not admit to having done so. Provost Berry concurred in the dean's position. At Professor Lammers's request, his complaint was sent to President Thompson, who referred it to the Academic Freedom Committee as a formal grievance.

The Academic Freedom Committee received presentations from Dean Stark and Professor Lammers, held hearings on September 12, 1997, and on October 3 issued its report. On the issue of whether the dean's January 22 letter had violated Professor Lammers's academic freedom, the committee voted 6 to 4, with one abstention, that it had not. The committee commented that, while the Lammers *Log Cabin Democrat* letter "lacked civility, and seemed unprofessional in its lack of respect or appropriate restraint," Dean Stark unfortunately chose to reply "in kind," that his letter was "sarcastic and demeaning," and that he "admitted as much to the committee and apologized for his lack of judgment." The committee recommended that all records relating to the matter be removed from the Lammers personnel file. Professor Lammers, however, requested that all the materials be retained in the file.

The above grievance over academic freedom had barely come to closure when Professor Lammers initiated an additional academic freedom grievance, this one directed against his department chair. This complaint was over a dispute about the appropriateness of material Professor Lammers had posted on a departmental bulletin board. On October 7 Professor Kearns sent him a memorandum stating that he had removed items posted by Professor Lammers on the bulletin board and that the particular board was not "a private place for faculty to share their causes of the moment" but rather "a public space" for posting "matters of official business or items of general professional information." Professor Lammers responded on October 20 with a twenty-four-page letter to the chair, alleging that the chair's actions and new policy regarding the bulletin board, together with a memorandum about making departmental information public that the chair had sent a year earlier, violated his academic freedom. Professor Lammers told the investigating committee that "our bulletin board was being stolen. If they can do that, they can do anything." Noting a statement by the chair that he had issued his October 7 memorandum "after consulting with the dean," Professor Lammers stated that his new complaint was also directed against Dean Stark.

A new Academic Freedom Committee was charged on January 20, 1998, with reviewing these allegations. This committee examined the written record, held hearings on February 11, and is-

sued its report on February 20. The committee stated that it was basing its decision not on how academic freedom "might be or should be" defined but rather on how it is specifically defined in the university's faculty handbook. That definition, tracking the three-paragraph definition in the 1940 *Statement of Principles*, addresses freedom in research, freedom in the classroom, and freedom of the faculty member as a citizen to speak or write on public issues extramurally. Presumably because the allegations brought by Professor Lammers dealt with his intramural activities regarding university policies and practices, the committee decided that Professor Lammers's academic freedom, as the faculty handbook defines the term, had not been violated. The committee, however, "by general consensus," did determine that "Dr. Lammers's freedom of speech has been restricted by the actions of his chair and dean."

The committee's report also provided the observations that follow:

The work climate that has developed among Dr. Lammers, Dr. Kearns, and Dean Stark is unwholesome and needs much work;

Dr. Lammers perceives that his academic freedom and freedom of speech have been affected and his perception reflects reality to him;

An unethical, harassing, hostile work environment has been created and exists among those involved in this grievance;

The tone of the letters and memos written to Dr. Lammers by his chair and dean is inappropriate and unprofessional;

There has been a complete breakdown in communication among those involved in this grievance;

As UCA administrators, [the chair and the dean] need to work diligently to assure that the concerns of this faculty member and others under their leadership are addressed in an ethical and professional manner;

All parties to this grievance share the burden of responsibility for allowing this climate to develop to the detriment of collegiality within the College and Department.

Writing on February 25, 1998, President Thompson provided his reactions to the Academic Freedom Committee's report. He stated that "the complaint borders if it does not encroach upon the realm of the frivolous"; "that Professor Lammers's concerns lack merit altogether"; and, with respect to the Kearns memorandum of October 7 that led to the grievance, that he finds "nothing in [it] that is inappropriate." He ended by thanking the committee members "for their service in this tedious affair."

On April 13 and 14, Professor Kearns reported to Dean Stark about two indignities Professor Lammers allegedly inflicted upon him: in the presence of another department member and the department's secretary, Professor Lammers had growled at him ("some sort of guttural sound"); and, in Professor Kearns's presence, Professor Lammers made a derogatory remark about him to

a student. Professor Kearns stated that Professor Lammers seems to be moving "away from being merely eccentric and impolite to something potentially more grievous." Stating that "some serious decisions need to be made," he asked Dean Stark to refer the situation "to the appropriate higher authorities." Several other reports of growling and rude gesturing to others had also surfaced. In response to inquiries from the investigating committee, Professor Lammers acknowledged that he had "harumphed" at several people and "waved" in an exaggerated way. He described himself several times as "very angry" or feeling "a lot of anger," but felt that he was the one being punished and "pushed beyond any limit I've known."

On the matter of Professor Lammers's having made a "guttural sound," Professor Kearns wrote that he felt obliged "to ask that you take whatever steps might be necessary to avoid repetition. Because such behavior can be detrimental to the smooth and professional operation expected of a departmental office, any future instances may necessitate some serious and appropriate action." On the matter of Professor Lammers's flippant remark to a student, the chair asked him "to consider how such remarks could appear to students or visitors who find themselves in the suite on official business."

Professor Lammers replied that same day, apologizing for the guttural sound and saying there would be no recurrence but at the same time complaining that the chair was chastising him for expressing himself unprofessionally in the vicinity of the departmental office while other department members, the chair included, had spoken unprofessionally in that area and had not been admonished.

In a memorandum to Dean Stark of April 14, Professor Kearns wrote that he had come to the conclusion that Professor Lammers's "recent behavior has become so unacceptable and unprofessional that there is an institutional obligation to act." He added that "my suspicion is that we have some sort of medical situation here." He asked that his concerns be forwarded to John A. Mosbo, interim provost, so that steps might be taken. Professor Kearns went on to mention new incidents and noted that Professor Lammers had mentioned therapy by a physician but that he was unsure if he was continuing treatment. He stated that he was "beginning to have some fear about the situation" and indicated that he did not know if this should be treated as a medical problem or a misconduct situation. On April 27 Professor Kearns wrote to Professor Lammers again expressing concern about his behavior in the office.

An April 30 memorandum from Professor Kearns to Dean Stark reported that on the previous evening Professor Lammers had visited the department secretary at her home to talk about people conspiring against him. Professor Kearns made "official notice of the increasing apprehension my staff and I feel about what Lammers's future actions might be." Professor Kearns stated that his secretary was made "uncomfortable" by the visit, but he had "no recommendation for action to make at this

time" except to insist that his concerns be "registered and forwarded to the provost and the university counsel for their files." Dean Stark immediately forwarded this memorandum to the interim provost.

On May 6 Professor Lammers received a standard notice of his salary for the 1998-99 year. The letter stated that shortly after the May 8 meeting of the trustees, Professor Lammers would be receiving a "notice of appointment" from the president, confirming his salary, rank, and tenure status. On May 7, however, Professor Kearns forwarded a letter to Dean Stark requesting "with regret and considerable personal sorrow" that Professor Lammers be dismissed for cause, under the faculty handbook's provision allowing dismissal on grounds of "personal misconduct that substantially impairs fulfillment of faculty obligations." The dean and the interim provost respectively concurred.

Despite his April 27 memorandum warning Professor Lammers to conduct himself professionally in the office, Professor Kearns's letter of May 7 referred to an incident that had occurred just that day. He stated that Professor Lammers had "loudly confronted" three other English professors in the department's office. Professor Kearns chose not to meet with the undersigned investigating committee, which thus does not have his own assessment of the confrontation. Some members of the department, however, described the confrontation as intense and pointed out that the three who were confronted were Professor Lammers's friends and supporters. Professor Kearns, these colleagues suggest, may well have seen Professor Lammers, in venting his anger, as no longer able to distinguish between foe and friend, making action to remove him from the faculty now imperative.<sup>2</sup>

Early in the evening of May 8, two police cars, one from the city of Conway and the other from the university's Department of Public Safety, approached the Lammers home from opposite directions and parked with their fronts facing. The police delivered a memorandum, dated that day and signed by President Thompson, informing Professor Lammers of the termination of his appointment, effective immediately.

The reasons for dismissal were set forth as follows:

- (1) creation of an atmosphere of discomfort that disrupts the English department's ability to do its work;
- (2) unprofessional behavior causing disharmony, dissension, and an adverse impact on the English department and its responsibilities to both students and faculty;
- (3) voluntary and repeated outbursts of "loud noises and guttural sounds" directed at both faculty and administrators, as well as obscene gestures to administrators;
- (4) personal and unprofessional actions to

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2. Dean Stark, having received a prepublication copy of this report, commented on the report's treatment of the reasons for the Lammers dismissal that "it overemphasizes his conflicts with Dr. Kearns and me and underplays his frequent and increasingly sharp conflicts with his colleagues, students, and others."

wards faculty, administrators, secretarial staff and students both on and off campus; (5) reasons addressed in two recent memorandums to you dated April 27th and 30th, 1998; and (6) a pattern of unprofessional and intimidating conduct ongoing for a number of years.<sup>3</sup>

President Thompson's memorandum referred Professor Lammers to the faculty handbook regarding the opportunity to appeal and told him that he could direct any questions about the dismissal action to the university counsel. It informed him that at no time was he to return to the campus without having made prior arrangements with the Department of Public Safety.<sup>4</sup> Photographs of Professor Lammers were delivered to the Conway police later that evening, and guards were stationed outside President Thompson's office and outside his home and Professor Kearns's home through the weekend that followed.

Professor Lammers, who protested that he would "never hurt a flea," subsequently obtained some employment as a substitute

3. Professor Lammers, upon his receipt of the prepublication text, commented as follows on the stated reasons for his dismissal:

None of the supposed charges against me were either articulated clearly, specified clearly, or carefully or even carelessly investigated. I was subjected to vague complaints, vague rebukes, and unsubstantiated and unexamined rumors and gossip. The administration gladly listened to any allegations against me and believed or pretended they believed anything they heard.

How is my putative "rudeness" supposed to have prevented me from carrying out my professional responsibilities? Did my supposed "rudeness" invalidate my publications? Did it make me a bad teacher? Did it prevent me from serving on committees and in other service capacities? Where is the slightest hint of any evidence for this diminished professional effectiveness? This lack of evidence and lack of a logical link between alleged "rudeness" and professional incompetence seem to me to be of the essence. The fact that no attempt has been made by the administration to explain how my "rudeness" made me unable to teach or to carry on scholarship shows that my real "sin" was not "unprofessional" behavior but behavior that made for administrative "discomfort."

4. President Thompson stated in his response to the prepublication text that the termination of Professor Lammers's appointment "was not final until acted upon by the Board of Trustees on August 14." He had begun his May 8 memorandum to Professor Lammers, however, by stating that "The Board of Trustees today accepted the recommendation of responsible administrators in immediately terminating your employment as a faculty member at the University of Central Arkansas." President Thompson's statements on when the board acted on the dismissal, and indeed on whether it acted, are inconsistent. Writing to the Association's staff on July 20, 1998, he stated: "The Board of Trustees took no action regarding Dr. Lammers's employment status and the language to the contrary was in error. Administrative action was taken by me, and I informed the Board of Trustees of this personnel action." On the other hand, in his response to the prepublication draft of this text, President Thompson called "blatantly false" a reference in section V to the current faculty handbook's provision that a final decision on dismissal rests with the president. (The current faculty handbook, section XV, no. 12, provides that, in cases of dismissal, "The president will make the final decision after considering the recommendation of the [faculty hearing] committee.")

English teacher in the city high school and as a sports writer for the city newspaper. He engaged counsel, on whose advice he waived the opportunity, provided in the faculty handbook, for a scheduled personal conference with President Thompson and Professor Kearns. His counsel discussed the case with university counsel, and the two attorneys apparently agreed that Professor Lammers could pursue a "grievance appeal" before a faculty body, with the administration's having the burden of proof. Professor Lammers's attorney reported that there was some talk about a potential cash settlement but that reinstatement, according to university counsel, would not be considered. Professor Lammers changed attorneys in early June 1998, and his new attorney informed the university that his client had decided to waive all internal university appeal procedures and proceed directly to litigation.

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The University of Central Arkansas AAUP chapter, and soon afterward Professor Lammers himself, asked for the assistance of the national Association in dealing with the May 8 dismissal. The Association's staff examined the available documentation and on June 25 wrote to President Thompson to convey concern. The staff's letter referred to Association-supported procedures in a case of dismissal and to the university's faculty handbook in effect when Professor Lammers was granted tenure, both requiring that a dismissal occur only after demonstration by the administration of adequate cause in a hearing of record before an elected body of faculty peers. Noting that President Thompson's first notice of intention to dismiss Professor Lammers came in the form of a memorandum announcing his immediate termination, the staff's letter urged the rescission of the action pending the outcome of a hearing before an appropriate faculty committee to determine adequate cause.

Replying by letter of July 20, President Thompson stated that he was unable to discuss the Lammers dismissal in detail because the university had been notified of forthcoming litigation. He asserted that "all university policies were followed" and that there had been "agreement with his first attorney regarding all aspects of due process." He confirmed that notification of dismissal was tendered by sending police officers to the Lammers residence, stating that it "was accomplished in this manner for what we believe were valid reasons. . . . When all of the facts and circumstances are open for inspection and review," President Thompson concluded, "I believe you will agree that the university acted appropriately."

The staff did not respond promptly to the July 20 letter because it had been told by Professor Lammers's current attorney that litigation would soon be initiated, and it wished to have the legal issues identified by the attorney so that these could be distinguished from the academic issues of concern to the Association. Weeks went by without the filing of a legal complaint, however. Upon learning in early October that the attorney would not be working on the matter before November, the staff decided to proceed.

Accordingly, by letter of October 14, the staff wrote again to President Thompson.<sup>5</sup> Questioning his July 20 statement that "all university policies were followed" regarding Professor Lammers, the staff characterized the action on May 8 "as being in plain disregard of applicable university policies and certainly of generally accepted standards of academic due process." Responding to the president's statement about having reached agreement on procedures with Professor Lammers's first attorney, the staff stated that, whatever the attorney might have found agreeable, his client, rightfully in the Association's judgment, rejected any arrangement not involving his reinstatement pending the outcome of appropriate dismissal proceedings. The staff again urged that the dismissal action be rescinded and that any further action be in conformity with generally accepted standards for academic due process.

With no further response received from President Thompson, the Association's general secretary authorized an investigation. The president and other concerned parties were so informed by letter of October 27.

The investigating committee's visit to the University of Central Arkansas took place on January 20–22, 1999. Professor Lammers, who was not allowed on campus, met with the committee at its hotel in Conway. President Thompson, who provided a suitable room for meetings on campus, himself met with the committee on January 21 and again on January 22. Professor Kearns, as noted earlier, declined to meet with the committee, and Dean Stark had left to take a position elsewhere and was not available. The investigating committee met with Professor Arnold off campus, and it talked by telephone with Dr. Jenkins and Dr. Norman, both of whom were no longer in Conway. It met with over two dozen members of the faculty, including several from the Department of English, several from the two Academic Freedom Committees that had dealt with the Lammers complaints, the director of the Writing Program, present and former officers of the faculty senate, and officers of the AAUP chapter. The committee thanks all with whom it met for their cooperation and their cordiality.

### III. Other Cases

Other members of the University of Central Arkansas faculty suffered adverse action in 1998 and turned to the Association for assistance. The investigating committee has inquired into the case of Professor Linda D. Arnold and into the cases, parallel to each other, of Drs. Bill Jenkins and Lou Ann Norman.

#### 1. Professor Linda D. Arnold in the Department of English

In a letter of February 12, 1998, Professor Arnold was informed by Associate Provost Samuel P. Buchanan (acting as provost because Provost Berry had submitted his resignation) that the Council of

Deans did not support her application for tenure. "Therefore," Associate Provost Buchanan wrote, "I am unable to recommend your application to the President." Professor Arnold was one of two faculty members from the Department of English evaluated for tenure in 1998. Both candidacies were denied, but only Professor Arnold appealed. The year before, the department's only tenure recommendation was also denied. Associate Provost Buchanan's letter observed that Professor Arnold's record was "strong in teaching effectiveness, weak in scholarship, and uneven in service to the university." An additional stated factor in the decision was the overall staffing of the Department of English as well as of other academic units within the university. Associate Provost Buchanan noted the faculty handbook's relevant provision: "In addition to and exclusive of individual qualifications and performance, consideration must be given to such matters as the number of tenured members within the department, potential of continued staff additions, prospective retirements and resignations, enrollment patterns, programmatic changes, and other significant institutional considerations."

The university's Tenure Appeals Committee that later heard Professor Arnold's case reported to President Thompson on April 9, 1998, its vote by seven to one "that the negative tenure recommendation by Associate Provost Sam Buchanan was arbitrary and capricious." In a May 12 letter to Professor Arnold and Interim Provost Mosbo, President Thompson rejected the committee's decision and upheld the denial of tenure. He then, however, directed the provost "to identify other non-tenure positions which Dr. Arnold might effectively fill." In fall 1998, Professor Arnold was carrying out similar duties and teaching the same methods course in the Department of English—but as a staff member without faculty status.

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Linda Arnold first began teaching at the University of Central Arkansas in 1981 as a part-time instructor. In 1985 her appointment became full time, nontenure track. Under the provisions of the 1983 faculty handbook, someone with thirty hours of additional graduate work beyond the master's degree would be eligible for a position that was probationary for tenure. Professor Arnold completed the thirty hours and applied for probationary status. Her application was initially rejected by the administration, but subsequent negotiations led to a probationary appointment beginning in 1992. She was offered two years of probationary credit for her prior service but relinquished it in order to finish her doctorate, which seemed to her essential for being granted tenure. She received her doctorate in English education from the University of Arkansas at Little Rock in 1996. In fall 1997 her file for tenure went forward with the unanimous affirmative vote of the tenured faculty in her department and the enthusiastic support of the College Tenure Committee and Dean Stark.

Professor Arnold's particular responsibilities in the Department of English were supervising student teachers and teaching the course on methods of teaching English required for certification of all University of Central Arkansas students preparing to be

5. The staff's October 14 letter also addressed the cases of Professor Linda D. Arnold and Drs. William Jenkins and Lou Ann Norman, to be outlined in the next section of this report.

teachers of English in the public schools. Her degree and her previous experience from 1967 to 1973 as a public school teacher made her the only qualified person in her department to oversee the preparation of student teachers, because public school certification in Arkansas was required for the position. In May 1998, the same month that President Thompson upheld the rejection of her tenure candidacy, Professor Arnold received the university's annual Teaching Excellence Award.

Despite the initial implications in Associate Provost Buchanan's letter that the rejection of the tenure recommendation was based in part on her weak scholarship and mixed service, these reasons were soon minimized as substantial factors. In an interview on February 18, 1998 (as transcribed from an audiotape), Associate Provost Buchanan acknowledged to Professor Arnold that "there were other concerns" that overrode the assessment of her scholarship or service, namely, "the number of tenured faculty in that department. . . . I think that there is serious concern when a department is 100 percent tenured and I see an enrollment trend that tends to be going down." The chair of the Tenure Appeals Committee, in an April 9 report to the president, referred to testimony by Associate Provost Buchanan "that Dr. Arnold's service and research were adequate for tenure and similar to other successful tenure candidates in the current and prior years." According to the report, the "primary reason" cited by Associate Provost Buchanan was "staffing concerns."

The Tenure Appeals Committee found that "Dr. Buchanan's decision was based on information that was incorrect" and that data used in determining faculty-student ratios "inadvertently included English faculty teaching in the writing program and honors college as FTE [full-time equivalent] in English, thus understating the student-faculty ratios in English." The committee concluded "that Dr. Buchanan's decision process was negligent to such a degree that his decision was arbitrary, that is, without basis of fact." It rejected Professor Arnold's claim in her appeal that the administration's decision was "punishment" for her having exercised "freedom of speech" by associating herself with the members of the Department of English who were critical of the administration. Professor Arnold had argued that Dean Sally A. Roden's hearsay criticism of her work on a committee, including Dean Roden's comment that "her tone is rather negative toward the administration," had influenced the Council of Deans. The appeals committee did take issue with a number of erroneous comments made in the Council of Deans about Professor Arnold's case, and it expressed concern at the perception "of a general undercurrent of negative hearsay statements made in the Council of Deans meeting which may have had undue influence on the decision."

Under the liberal provisions of Arkansas's Freedom of Information Act, the administration was required, upon request by a citizen, to provide the record of the meeting of the Council of Deans at which the Arnold case was discussed. The minutes were provided to Professor Arnold in shorthand, and she paid to have them transcribed. That transcript was part of the evidence of

record used by the appeals committee. In the discussion at the meeting of the Council of Deans, a question arose about her "potential for positive leadership." The dean replying, presumably Dean Stark of the College of Liberal Arts, who was presenting her case to the Council, said, "My experience is that she has been more cooperative than many of the faculty within the department. A more moderate voice." Another dean disagreed, "I have been in situations where I have heard her comments, and her tone is rather negative toward the administration."

Although the transcript of this meeting indicates that some of the deans had not read the file, and that others introduced hearsay comments about Professor Arnold's performance, the transcript also indicates an extended discussion of the staffing problems in a department with a major decline in enrollment and a faculty membership that would have become 100 percent tenured in 1998. Thus tenuring Professor Arnold would have increased the number of tenured faculty, not changed the student-faculty ratio. The number of faculty in the Department of English became an issue after 1996, when offerings in first-year composition were removed from the department and placed in a separate writing program. (The procedures through which this was done have themselves been a matter of contention between the Department of English and the administration.) Several members of the department were transferred to the new program; a number of others who remained based in the department taught some sections in the Writing Program. From 1996, when courses in composition were housed in the Department of English, to 1997, when they were not, the full-time equivalent (FTE) students taking English courses dropped from 712.9 to 314.4, while the FTE Department of English faculty dropped from 37.42 to 14.5. With the transfer of faculty members, the student-faculty ratio actually increased from 19.1 to 21.7. The department chair's count of the actual number of students enrolled in courses designated as English differs slightly from the figures provided by the administration, but both agree that between 1,528 and 1,594 students were enrolled in fall 1997. The administration's figures showed a decline in credit-hour production in the Department of English from 1996's total of 10,651 to 1997's total of 4,683. Of these totals, the decline at the lower level in credit-hour production went from 9,441 to 3,738, an indication of the effect of removing the first-year composition courses from the department. No other department in the College of Liberal Arts in this period had more than a minor change in its total credit-hour production.

Given the decline in credit-hour production when composition was removed from the Department of English, as well as a general decline in the total number of students enrolled at the university, one can appreciate the administration's concern about the number of faculty members the department needed and whether tenuring additional faculty would cancel all flexibility for the foreseeable future.

In the previous year, 1997, the candidacy for tenure of a member of the Department of English had also been rejected by the

administration, in part for staffing reasons. That year, the Department of English had one part-time faculty position; in 1998, it had none. Writing as department chair on November 4, 1997, to the College Tenure Committee about Professor Arnold, Professor Kearns addressed the issue of "staffing demographics," noting that there had been a decline in the number of female department members and that "at the moment, there are only two tenured women among us." He stated that Professor Arnold was essential to the department because she was "the department's specialist in teaching methods and its director of student teaching (and the only member of the faculty with a valid Arkansas state teaching certificate)."

The recommendation from the College Tenure Committee to Dean Stark, sent on December 17, 1997, did not raise issues of staffing, addressing itself only to the merits of what it saw as a strong file, which it "enthusiastically" supported. The dean's letter recommending Professor Arnold to the provost, sent on January 15, 1998, did raise the issue of staffing directly. Dean Stark noted the denial of tenure to the department member the year before "in part because of staffing issues" as well as the possibility of retirements in the next few years of four tenured members fifty-seven years of age or older, the healthy number of majors, and the percentage of majors seeking teaching certification. "I do not believe staffing issues in the Department of English prevent Dr. Arnold from obtaining tenure," he concluded.

The report of the Tenure Appeals Committee faulted the provost's office for not consulting with Dean Stark or Professor Kearns about staffing concerns before making the decision to deny tenure. The April 9 report of the appeals committee recounts that Dean Stark also "testified that even if the English Department was fully tenured, the university would maintain flexibility since the English faculty could teach in the writing program and nontenured and part-time writing faculty could be terminated in a worst-case scenario of decreasing enrollments." In his May 12 response to the Tenure Appeals Committee, in which he rejected its findings, President Thompson concentrated on the issue of the administration's "responsibility to take current and anticipated staffing needs of the university into account in making tenure recommendations." He also stated that Associate Provost Buchanan "would have been justified by the terms of the *Handbook* in making a negative recommendation" on the grounds of Professor Arnold's "weak" scholarship and "uneven" service to the university. (In conversation with this investigating committee on January 22, 1999, President Thompson again said that he did not consider that the Arnold case was strong on its merits and that the administration had made "the right recommendation" in denying her tenure.) The president's letter concluded, however, by directing "the provost, if necessary in cooperation with other vice presidents, to identify other non-tenure positions which Dr. Arnold might effectively fill." He wrote that if she took such a position and "if, in future years, there are retirements (there are at least four tenured members of

the English Department who are or soon will be eligible to participate in the university's early retirement program), resignations, or other changes in staffing needs which justify an additional tenure-track position in the Department of English, Dr. Arnold will be eligible to apply." (There were two unanticipated retirements following the Lammers dismissal and the Arnold tenure denial, but in fall 1999 President Thompson continued to view the department as relatively overstaffed.)

In June, Interim Provost Mosbo sent Professor Arnold descriptions of five nonfaculty positions. A position was identified in the College of Education's professional field services working with students seeking certification at the secondary level. Interim Provost Mosbo informed her in a letter of July 21 that acceptance of the position entailed "a corresponding agreement on your part to waive any and all future litigation that might be filed regarding the denial of tenure." On August 6, an "agreement and release" was signed in which "UCA agrees to offer Dr. Arnold a non-classified staff position in the College of Education," and Professor Arnold "agrees to completely release" UCA from all claims in this matter. The salary for the new position was the same as in her previous position, and she retained the merit raise that had been awarded for the 1998-99 academic year. In her role in the field-services office, she was also assigned to teach the same methods course for English that she had taught in the past.

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The Association's Washington office staff, having been kept abreast of developments in Professor Arnold's case by her and by the officers of the AAUP chapter, wrote initially to President Thompson on June 22, 1998, to convey the AAUP's concerns. The staff observed that Professor Arnold's probationary service had been severely excessive under the standard set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and that denying her tenure after her many years of service because of "staffing needs" was an abuse of the system of probation and tenure. The staff expressed hope that she would be retained on mutually acceptable terms and with an expectation that she would not be subjected to involuntary termination without affording of full academic due process.

After Professor Arnold had begun in her new position, in which she was no longer recognized as a member of the faculty but still continued to teach, the staff in its October 12 letter to President Thompson reiterated the Association's expectation that Professor Arnold, should her continuance at some point ever be at issue, be afforded the procedural safeguards to which a faculty member who has served beyond any reasonable period of probation is entitled.

## 2. Drs. William Jenkins and Lou Ann Norman in the Writing Program

In 1996, as noted earlier, the Writing Program was established at the University of Central Arkansas, with Professor David Harvey engaged to direct it. Initially, most of the faculty mem-



bers in the program either had been transferred from the Department of English or continued to be in that department but taught writing sections for the new program. One of Professor Harvey's goals was to establish the Writing Program with its own core of tenure-track faculty who were trained in teaching composition. His plan was to convert two non-tenure-track positions a year to two probationary positions. During the 1997-98 academic year, Professor Harvey proceeded with plans to recruit for the two probationary positions. If no one resigned, he expected that two non-tenure-track faculty members would not be retained.

After completing the recruiting in late February 1998 and getting the program's allotment of temporary positions for the next academic year, Professor Harvey informed Dr. William Jenkins and Dr. Lou Ann Norman on March 17, 1998, that he would not be reappointing them. Each had taught full time as non-tenure-track instructors for eight years.

The university's faculty handbook had been revised in 1996. Prior to the revision, the handbook required that faculty members with two or more years of service, nontenure track as well as probationary, receive at least twelve months of notice before the expiration of their current appointment. The standards for notice as revised in 1996 stated only that "when a non-tenurable faculty member is not reappointed, the university should act in a reasonable manner to provide timely notification where practicable." Drs. Jenkins and Norman each wrote to Professor Harvey requesting the reasons for their not being renewed and questioning his not having taken their seniority into account. Professor Harvey did not respond to them. They both told the investigating committee that they had not been given written or oral indication that their performance was in any way unsatisfactory, nor, prior to March 18, had they been given any reason to believe that their reappointment was in doubt. During his meeting with the investigating committee, Professor Harvey confirmed what Drs. Jenkins and Norman had reported.

The October 14, 1998, letter from the Association's staff to President Thompson informed him that Drs. Jenkins and Norman had notified the Association about their cases. The staff observed that their release on short notice after eight years of service, without demonstration of cause, is unacceptable under the 1940 *Statement of Principles*.

## IV. Issues

### 1. The Lammers Case

President Thompson's memorandum to Professor Lammers of May 8, 1998, notifying him that he had been dismissed on grounds of misconduct, quoted the provision in the current faculty handbook that "adequate cause for dismissal . . . of a faculty member may be established through demonstration by the university of failure to meet professional responsibilities or personal misconduct." The memorandum went on to charge

Professor Lammers with misconduct in a half-dozen areas, but he was removed from the faculty, banished from the campus, and dropped from the payroll without any demonstration that the charges constituted adequate cause for dismissal. Moreover, the administration made no apparent effort to pursue its concerns regarding Professor Lammers in the context of a perceived medical situation rather than one of purposeful professional misconduct.<sup>6</sup> President Thompson has stated that "all university policies were followed" in the Lammers case, but the investigating committee finds that the policy calling for demonstration of cause in effecting a dismissal clearly was not followed. The committee finds that the May 8 letter of termination was a summary action by President Thompson, imposed in disregard of the provisions for a pre-termination hearing called for in the applicable joint statements of the AAUP and the Association of American Colleges and Universities: the 1940 *Statement of Principles on Academic Freedom and Tenure* and the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

In his letter to the Association's staff dated July 20, 1998, President Thompson asserted that an agreement had subsequently been reached with the attorney initially engaged by Professor Lammers "regarding all aspects of due process." Professor Lammers, however, rejected any agreement that did not involve his reinstatement to the faculty. The investigating committee thinks that he should have been reinstated to faculty status pending the outcome of a faculty hearing. If Professor Lammers's administrative superiors believed that his behavior had come to pose a threat of immediate harm, his placement on paid suspension pending a hearing would have been permissible under the provisions of the 1958 *Statement on Procedural Standards*. Clearly impermissible under that document, however, was the immediate dismissal of Professor Lammers from membership on the faculty by presidential decree.

The several characterizations of a possible medical reason behind Professor Lammers's behavior by the chair of the Department of English in April and June 1998 suggest that the chair signaled the administration that Professor Lammers may have become unable to control his words and actions. The investigating committee thus is troubled by the resulting decision to dismiss Professor Lammers on grounds of "misconduct," a word implying misbehavior that is deliberate and intentional. The committee was told by President Thompson that the university has an office to oversee provisions of the Americans with

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6. President Thompson in his response commented as follows: "To the best of the university's knowledge then and now, Dr. Lammers has never informed the university that his actions have been caused by any medical condition or disability. . . . Had Dr. Lammers raised any such matter, the university's course of conduct might have been different, but the university cannot presume to exercise for him a right which he does not choose to assert. We question whether the AAUP can do so or criticize the university for not having done so."

Disabilities Act and that other cases have occurred on campus of providing medical leave for conditions that produced unacceptable workplace behavior, such as alcoholism. Although Professor Lammers's chair raised the medical issue, the central administration took no discernible steps to explore the possibility of a medical leave or other appropriate medical accommodation before summarily effecting a dismissal.

Regulation 4(e) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* sets forth a procedure, "Termination for Medical Reasons," that is distinct from a dismissal for cause. Termination is to be "based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment." The faculty member or a representative is to be afforded opportunity to respond to the evidence and to have it reviewed by a faculty committee before a final decision on termination is reached. Severance salary is to be provided. If those responsible had come to believe that action regarding Professor Lammers was necessary, the procedure recommended in Regulation 4(e) seems to the investigating committee far more fitting than summary dismissal on charges of misconduct. The manner in which the dismissal was made known to Professor Lammers also calls for comment. Sending police cars to protect the homes of President Thompson and Professor Kearns, if they felt threatened and requested it, might be seen as an understandable precaution, but sending two police cars to the home of Professor Lammers to deliver a statement dismissing him was a gross overreaction that could only have deepened his mental stress.<sup>7</sup>

Even had there been a hearing at the University of Central Arkansas on the Lammers dismissal, the procedures set forth in the current faculty handbook would have denied him important rights that the 1958 *Statement on Procedural Standards* provides. He would not have had the right to be represented by counsel. He would not have had the right to question adverse witnesses. With the final decision on dismissal resting with the president, he would not have had the right to appeal to the board of trustees.

## 2. The Arnold Case

As has been stated earlier, Professor Arnold was told by Associate Provost Buchanan that an overriding argument for rejecting her

candidacy for tenure was that the university should not risk having an additional tenured member of the Department of English because it would be an obstacle to reduction in staffing if a further decline in enrollment should occur.

The investigating committee sees Professor Arnold's case as exceptional in two respects. First, her role in the department was essential as long as the university would continue to train secondary school teachers of English under its current system of placing intern supervision within the department of specialty. The loss of composition courses did not affect the number of students at the upper levels who were the special charge of Professor Arnold, and thus the department's need for her services was not likely to diminish. The administration, while concerned about future staffing needs, did not appear to consider that the role Professor Arnold was fulfilling would still have to be carried out by someone, and that no other member of the department was qualified in this area.<sup>8</sup>

Denying tenure to Professor Arnold on the basis of tenure density when there was an identifiable and stable need for her work served to impose a tenure quota on the department.<sup>9</sup> The Association opposes tenure quotas, in part because they are almost never compelled and because more acceptable alternatives are usually available. The Association recommends that institutions take the long view rather than the short view in determining appropriate responses to matters of tenure density. President Thompson's letter of May 12, 1998, directing the provost to identify some kind of staff position for Professor Arnold, notes that the Department of English had at least four tenured faculty members who were or would soon be eligible for retirement, a point made by Dean Stark in his original recommendation in which he explained that staffing was not a problem. Had President Thompson accepted the recommendation of the Tenure Appeals Committee, he could have granted tenure to Professor Arnold without increasing the number of tenured members of the department over what it had been when the Council of Deans voted against tenure in her case. Even if the administration's action could be seen as helping to attain a desired mix of senior and junior Department of English faculty, Association policy, as enunciated in its statement *On the Imposition of Tenure*

7. "This statement," President Thompson responded, "combines irrelevance, inaccuracy, and hyperbole. First, the method in which the notice was delivered, whether good or bad, is irrelevant to any AAUP policy in question. Second, 'two police cars' were not sent to Dr. Lammers's house. When delivery of the notice was being discussed, a UCA policeman was present and later delivered the notice. Unknown to President Thompson, the UCA policeman called the Conway Police Department to learn the location of Dr. Lammers's residence. The Conway officer agreed to accompany the UCA officer. All of this occurred without the knowledge of President Thompson or Dr. Kearns. The statement is hyperbole in that it assumes that delivery of the notice was an 'overreaction' causing a worsening of a 'mental stress' which has neither been claimed nor established."

8. Responding to this paragraph, President Thompson stated that a "relative overstaffing of faculty members in the English Department teaching sophomore literature courses was ameliorated" by the transfer of Professor Arnold to the College of Education.

9. President Thompson responded that "the university does not have a tenure quota policy and has not imposed a de facto tenure quota on the English Department nor upon any other department in the university. In fact, the president opposes tenure quotas. . . . However, avoiding the Scylla and Charybdis of tenure quotas on the one hand and overtenured departments on the other requires careful staffing and sometimes difficult decisions, as the AAUP statement on tenure quotas itself acknowledges. The university does this by allowing staffing patterns to be taken into account in reaching tenure decisions."

*Quotas*, is that "the system of tenure does not exist as subordinate to convenience and flexibility. The protection of academic freedom must take precedence over the claimed advantages of increased flexibility." The investigating committee finds the retention of Professor Arnold in a compensatory position to be sufficient evidence that denial of tenure for her did not serve a compelling staffing need.

A second exceptional feature in Professor Arnold's case concerns the length of her faculty service. She began working full time in 1985 with an appointment designated as nontenure track and was given a probationary appointment in 1991. All of this full-time service, under the Association's recommended standards, should have been probationary or tenured. The AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* begins as follows: "Except for special appointments clearly designated at the outset as involving only a brief association with the institution, all full-time faculty appointments are either with continuous tenure or probationary for tenure." The 1940 *Statement of Principles* calls for a probationary period not to exceed seven years, with a decision on tenure to be reached by the end of the sixth year. Under these Association-supported standards, Professor Arnold should have been evaluated for tenure by the end of the 1990-91 academic year. The investigating committee accordingly finds that the administration, in retaining her until 1998 before evaluating and rejecting her candidacy for tenure, acted in disregard of these standards.

Professor Arnold understood that to obtain tenure she would need the doctoral degree and a good record in teaching, research, and service. When she was evaluated during the 1997-98 academic year, she had the degree, publications comparable in number to those of other candidates who were successful, an outstanding teaching record, and a service record which most of her evaluators considered to be strong. The investigating committee finds that the administration denied tenure to Professor Arnold after she had essentially met the stated expectations, and that it did so for a reason that is unconvincing and in any event was beyond her control.

The investigating committee is also concerned about the role of the university's Council of Deans in tenure and promotion recommendations, as evidenced by Professor Arnold's case. This body reviews tenure and promotion cases and votes on a recommendation to the provost. Nothing in the faculty handbook provides for this role. President Thompson informed the investigating committee that the Council of Deans had been doing this for more years than he has been president, but he could not cite anything other than "tradition" as allowing for this function. The transcript of the meeting at which the Arnold case was considered reflects casual and uninformed discussion of files which some of the deans had evidently not read. The Council of Deans also appears to act without stated procedures or standards, as its members introduce hearsay comments and matters not repre-

sented in the files being reviewed. No deliberative body in the process of tenure and promotion with the power to vote on a recommendation should act without clear rules about that body's procedures and responsibilities.<sup>10</sup>

### 3. The Jenkins and Norman Cases

Notice in mid-March of nonreappointment following an appointment ending in May was extremely short notification by any standard. The investigating committee sees it not only as far short of the Association's recommended one year but also as counter to the spirit of the 1996 faculty handbook revision that called on the university to "act in a reasonable manner to provide timely notification where practicable." Because Professor Harvey had been engaged in the effort to advertise, interview, and recruit for two new probationary lines since the fall, he presumably could have informed Drs. Jenkins and Norman that if the recruiting was successful he would not be able to renew their appointments. Had he given them notice of nonreappointment earlier, they would have had more opportunity to relocate successfully. Notice of nonreappointment could have been rescinded later if circumstances had changed so that positions were available. In conversation with the investigating committee, Professor Harvey indicated that in June and July 1998 he did have to make two emergency appointments for the 1998-99 academic year, when two members of the Writing Program unexpectedly left the university. He said that he did not offer these positions to Drs. Jenkins and Norman because he had been led to believe that one had already taken a position elsewhere and the other had moved from Conway and presumably was also no longer available.

The Association's concern with these two cases extends beyond the issue of inadequate notice. The 1940 *Statement of Principles on Academic Freedom and Tenure* limits full-time nontenured service to seven years, with notice required by the end of the sixth year if the faculty member is not to be granted tenure and with retention beyond the seventh year carrying the protections of tenure. Having served nearly eight years as full-time members of the faculty before being notified of the termination of their services, Drs. Jenkins and Norman should not, under these principles, have suffered termination by unilateral action of their program director. The investigating committee accordingly finds that the director of the Writing Program, in terminating the services of these two faculty members, acted in disregard of the applicable provisions of the 1940 *Statement of Principles*.

10. Responding to this paragraph, President Thompson stated that "the chief merit [in having the Council of Deans make recommendations relating to promotion and tenure] is that it helps provide some degree of consistency in the application of standards across campus. A number of institutions have alternative arrangements, such as requiring review and recommendation from off-campus scholars, a practice UCA has never adopted. Whether UCA's practice is good or bad, . . . the practice violates no AAUP policy."

## V. A Higher Salary in Lieu of Tenure

President Thompson himself has faculty tenure at the University of Central Arkansas, and upon his recommendation it has been granted to others holding administrative office. Still, he has criticized the value of the tenure system and what he has experienced firsthand with its workings. In his annual state-of-the-university address to the faculty on August 25, 1998, he proposed an alternative to appointments that are probationary for tenure for new faculty members, beginning with the academic year 1999–2000.<sup>11</sup>

The president's alternative provides the new faculty member who chooses to take it with an indefinite series of annually renewable three-year appointments, thus assuring two years of notice in the event of nonreappointment. The appointments would be for twelve months a year rather than nine. They would carry a salary set at eleven-ninths of the average national salary for the particular rank. According to one estimate, a new assistant professor would begin with approximately \$20,000 more in initial base salary by giving up eligibility for tenure and selecting the Thompson alternative.

On September 11, 1998, the university administration's newsletter, *Contact*, had as its feature story an expression of interest in President Thompson's plan by Dr. Richard Chait, a professor of higher education at Harvard University. Professor Chait, who directs the Project on Faculty Appointments, funded by Pew Charitable Trusts, obtained the president's agreement to include a case study of his plan as part of the project's research on "creative alternatives to traditional tenure." The newsletter story's headline was "Harvard Asks about UCA Experiment."

The Arkansas legislature subsequently approved funding for thirty twelve-month positions at higher salaries, and the university's board of trustees voted its approval of the new category of faculty appointments. The investigating committee does not know how widely the new category was advertised; it suspects that most of the recruiting at the university for the 1999–2000 academic year was for one-year non-tenure-track positions. The committee did, however, see one announcement, appearing in the *H-Net Job Guide* on December 7, 1998, for an assistant professor of history. The announcement stated that "the successful candidate will have the option of a tenure-track nine-month appointment with a competitive salary or a three-year (renewable yearly), eleven-month nontenurable appointment at a salary eleven-ninths that of national average for assistant professors of history."

11. "For the record," President Thompson stated in his response, he "does not oppose the basic concepts of tenure, but he has criticized many aspects of the tenure system as it is currently practiced in the United States and will continue to do so. An AAUP investigative report, and the likely censure to follow, based in whole or in part upon his views or his actions in proposing alternatives to tenure, is a disgraceful throwback to the McCarthyite practices of a darker period of our history, made more reprehensible by the fact that it emanates from an organization representing the professoriate."

A story in the *Boston Globe* on March 18, 1999, reported Provost Mosbo as stating that two professors for whom the non-tenure-track alternative was available had been recruited and that "neither was interested in the premium. One, he said, thought tenure offered prestige; the other said tenure was simply 'the way it works' at a university." As of the end of the 1998–99 academic year, the AAUP chapter officers were unaware of any takers for the academic year to follow.

With newly recruited faculty members choosing the tenure system rather than President Thompson's higher-paying alternative, he next offered it to current faculty members who were given no other choice but to take it if they wished to remain on the faculty. The investigating committee has been provided with a seven-page memorandum of May 28, 1999, from President Thompson addressed to two current faculty members whose candidacies for tenure the provost rejected. Copies of the memorandum went to the membership of appeals committees that had found the provost's decisions to be arbitrary and capricious. President Thompson's memorandum dwells at length on "the shortcomings of the tenure system as it is administered at UCA, endorsed by the AAUP, and followed by most colleges and universities in the United States." The president accuses the appeals committees of being "egregiously misinformed, misguided, and blatantly biased in favor of the appellants." He upholds the provost's decisions while describing the two faculty members as having "established lackluster but not markedly unsatisfactory records" and as having become "victims of a rigid, ossified system as unfair to them as it is harmful to the university." Under past policies, the president states, the two faculty members would have had to leave the university after a final year, but this is no longer true under the newly adopted policy allowing three-year non-tenure-track appointments. While the policy was formulated with the recruitment of new faculty members in mind, according to the president, "it is not by its terms so restricted." President Thompson concludes by directing the provost to offer the two faculty members further appointment under the "quite generous" terms of the new policy, thereby affording "an opportunity to implement the policy and to determine whether the policy meets the university's expectations."

Professor Richard Chait, an early proponent of the option of selling tenure rights for a higher salary, is quoted in the March 18, 1999, *Boston Globe* story as stating that choice and voluntarism are hard to counter: "In an academy where academic freedom is the watchword, one has to ask does academic freedom extend to the freedom to determine the best lawful circumstances under which one wishes to work."

Professor Robert A. Gorman, who has served as chair of Committee A and as president of both the AAUP and the Association of American Law Schools, sees the relationship between the option and academic freedom very differently. In his words,

This is a horrific proposal, akin to suggesting that faculty relinquish for cash their right to speak critically of university

policies, or of the scholarly views of certain colleagues, or on issues of national moment. Tenure for the faculty member is a means to a larger social end. Faculty members should not be encouraged, or permitted, to barter that end for cash, particularly when they are likely to feel that their academic freedom will never be curtailed and that the trade-off is therefore of little consequence. All too often, experience shows, that will prove not to be the case.<sup>12</sup>

The investigating committee, finding the new policy at the University of Central Arkansas inimical to principles of academic freedom and tenure, concurs with Professor Gorman.<sup>13</sup>

## VI. Governance

There was no prior consultation with a faculty body before President Thompson acted in May 1999 to extend the policy of an alternative to tenure to apply to current faculty as well as new faculty members being recruited. This was by no means the first time in which the Thompson administration had unilaterally made decisions on major matters of faculty concern.

This investigation had barely been announced when the AAUP chapter provided the national AAUP with a detailed and heavily documented report on governance at the university. It recounted occasion after occasion when duly constituted faculty bodies were bypassed, overruled, or simply ignored. Many of these occasions involved the administration's rejection of the faculty position in cases of reappointment or the granting of tenure. Others involved matters such as the following: the administration's changing the academic calendar without going through the faculty's calendar committee; its establishing the Writing Program in disregard of the wishes of the Department of English and without the approval of the Faculty Senate; its consolidation of the Departments of Geography, Political Science, and Sociology into one department; its splitting the College of Arts and Sciences into three colleges; its creation of a University Council (with membership drawn from the administration, the faculty, and the student body), seen by faculty members who met with the investigating committee as a challenge to the role of the Faculty Senate; and its issuance (through the Council of Deans) of guidelines, separate from those set forth in the faculty handbook,

<sup>12</sup> *Harvard Magazine* (November–December 1997).

<sup>13</sup> Responding to this section of the report, President Thompson stated that the new policy "was carefully constructed to ensure that the rights of no faculty member were abridged. All choice for selecting either a tenure-track or multi-year appointment remains with the faculty member. In days when tenure is under attack, the AAUP should applaud, not criticize, those institutions willing to experiment with alternatives which assure academic freedom and offer higher salaries for faculty. Institutions of higher education should be free not only in thought, but in experimentation; thus it is appalling that the AAUP condemns a proposal where freedom of choice remains with the faculty member."

for evaluation by the deans and the provost of candidates for tenure and promotion.<sup>14</sup>

The investigating committee discussed governance issues with officers of the faculty senate and with the authors of the chapter's report, and it has examined surveys of faculty opinion done in 1992 and again in 1995 by the faculty senate. Between the two surveys, in 1994, the faculty voted no confidence in the administration. A majority of the faculty in the 1992 survey and a larger majority in 1995 expressed the opinion that the administration does not act toward the faculty in good faith, that it does not consider the faculty handbook to be binding on itself, and that it does not hold the faculty in professional respect. The investigating committee was convinced by its meetings at the university that a still larger majority of the faculty would respond in this way if the survey were done again in 1999.<sup>15</sup>

Faculty members at the University of Central Arkansas have high expectations about what their role in academic governance should be. Perhaps in some cases they expect too much, but it is clear to the investigating committee that the current administration is hostile to genuinely collegial academic governance. The committee finds that the administration, supported by the board of trustees, does not allow the faculty to fulfill its role under principles of shared authority as enunciated in the Association's *Statement on Government of Colleges and Universities*.

## VII. Conclusions

1. The administration of the University of Central Arkansas dismissed Professor John H. Lammers without having afforded academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. In effecting the dismissal without first having demonstrated adequate cause, the administration also acted in disregard of the university's own stated policy.

2. In denying tenure to Professor Linda D. Arnold, the administration acted in disregard of the 1940 *Statement of Principles* and the Association's *Statement on Procedural Standards in the Renewal*

<sup>14</sup> Regarding the University Council, President Thompson responded that the Faculty Senate took no action opposing it. Regarding the guidelines issued by the Council of Deans, the president characterized them as "merely administrative tools intended to assure consistent application of various university policies in each of the six academic colleges."

<sup>15</sup> "Here," President Thompson responded, "the report moves to sheer, unsubstantiated speculation. . . . Even if the investigators could accurately assess faculty sentiment based on this visit, they have absolutely no authority to do so and egregiously encroach upon the prerogatives of the faculty, staff, and administration. Of course, the fact is that the investigators met with . . . only those who agreed to meet with them. In no way can it be assumed that those who chose to meet with the investigators are representative of the faculty and staff."

or *Nonrenewal of Faculty Appointments* as well as its statement *On the Imposition of Tenure Quotas*.

3. The administration terminated the services of Dr. William Jenkins and Dr. Lou Ann Norman, without adequate notice, stated reasons, or opportunity for appeal, after they had served beyond the maximum probationary period permitted under the 1940 *Statement of Principles*.

4. The adoption by the administration and the board of trustees of a policy allowing faculty members to eschew the tenure system for a higher salary violates basic principles of academic freedom and tenure.

5. The administration has denied the faculty its role in academic governance as set forth in the *Statement on Government of Colleges and Universities*. ☞

JACK H. SCHUSTER (Education and Public Policy), The Claremont Graduate University; *chair*

LINDA RAY PRATT (English), University of Nebraska–Lincoln

#### *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: ANITA L. ALLEN (Law), University of Pennsylvania; JEFFREY HALPERN (Anthropology), Rider University; LAURA KALMAN (History), University of California, Santa Barbara; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; IRWIN H. POLISHOOK (History), Herbert H. Lehman 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; MARY A. BURGAN (English), AAUP Washington office, *ex officio*; JORDAN E. KURLAND\* (History and Russian), AAUP Washington office, *ex officio*; JAMES T. RICHARDSON (Sociology and Judicial Studies), University of Nevada–Reno, *ex officio*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois at Urbana–Champaign, *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*; WALTER P. METZGER (History), Columbia University, *senior consultant*; BEULAH WOODFIN (Biochemistry), University of New Mexico, *liaison from the Assembly of State Conferences*

\*Did not participate in the vote.

## Addendum: Response of President Thompson

*President Thompson's January 13, 2000, response to this report concludes as follows:*

As the university has pointed out previously, the AAUP, its staff, and investigating committee suffer from blatant conflicts of interest. The AAUP's own guidelines were violated when the investigating committee accepted hospitality at a social gathering planned and attended by members of the local chapter during the investigation, and including individuals whom the investigators interviewed. Further, the AAUP itself engaged in a conflict of interest when it provided financial support to John Lammers, a party to the investigation and litigant against the university. It does not mitigate the conflict to argue, as has AAUP Associate General Secretary Jordan Kurland, that payments to Dr. Lammers were made from a separate AAUP fund. The selection of Linda Pratt, an English professor, in a case primarily involving members of an English department, violates basic concepts of due process and fair play. The investigation was tainted *ab initio*, and was made even worse by the fact that the conflicts were not revealed to the university, but only reluctantly acknowledged when the university discovered them.

The university denies each and every conclusion reached by the report; objects to the fact that the conclusions are based in large part on accusations about which the university was not notified; disputes the information resulting from an inadequate investigation, incorrect information and misrepresentations; contends that it attempts to infringe upon the academic freedom of the president of the university; asserts that it inaccurately charges the university with the imposition of a tenure quota policy; and reflects a lack of knowledge of the AAUP's own policy statements.

Members of the local AAUP chapter, which instigated the investigation, have failed in their crass attempts to involve students in their faculty political causes, have failed to intimidate the administration and board of trustees with a "no-confidence" vote, have lost their dominant role in the faculty senate, and must similarly fail in their attempt to use an outside organization to force their viewpoints upon the faculty, staff, students, administration, and board of trustees of the University of Central Arkansas. ☞

—WINFRED L. THOMPSON