Report

Academic Freedom and Tenure: Medaille College (New York)[1]

I. Introduction

This report concerns events that occurred from June 2001 to April 2002 at Medaille College, a private, nonsectarian, coeducational institution, located in Buffalo, with branch campuses in Amherst and Rochester, New York. Founded in 1875 and initially accredited in 1951 by the Middle States Association of Colleges and Schools, the college today awards associate's, bachelor's, and master's degrees, the latter in business administration and education. The college has approximately seventy full-time faculty members and enrolls some 1,750 students, most of whom commute to campus.

The governing board of Medaille College is composed of seventeen members, and its current chair is Mr. Robert L. Stevenson. Dr. John J. Donohue served as acting college president during most of the events discussed in this report. He had previously served the college as dean and then concurrently as dean and vice president for academic affairs before being named acting president in February 2001 after the death of President Kevin I. Sullivan. Dr. Donohue was one of three finalists for the regular position replacing President Sullivan. Following the selection of Dr. Joseph W. Bascuas as president of Medaille College effective July 1, 2002, Dr. Donohue left to become vice president for academic affairs at D'Youville College in Buffalo. Dr. Joseph E. Savarese was acting dean at Medaille College throughout the period of concern in this report.

The cases to be discussed deal with actions taken by the administration and the governing board of Medaille College against Professor Therese Dillon Warden, a tenured member of the Department of Human Services, and Professor Uhuru Watson, a tenured member of the Department of Social Sciences, culminating in their dismissals for cause.

Professor Warden earned a BA in nursing education from St. John's University in New York in 1964. She received an MS in social science from the State University of New York at Buffalo in 1978, and a PhD in cultural anthropology from the same institution 1985. She joined the Department of Human Services at Medaille College in 1986 and was promoted to the rank of associate professor with tenure in 1993. Professor Warden was active in campus governance and also served as president of the local AAUP chapter. In her earlier years at the college, she was instrumental in developing academic programs that resulted in substantial increases in enrollment, notably among minority students.

Professor Watson received a BA in political science and sociology from Kent State University in 1969 and an MA in political science from the State University of New York at Buffalo in 1972. He earned a PhD in political science from SUNY, Buffalo, in 1980. He began teaching at Medaille College as assistant professor in the Department of Social Sciences in 1979, was promoted to the rank of associate professor in 1983, and was granted tenure in 1987, the first African American to gain a tenured appointment at the college.

II. Events of June 2001–April 2002

This section describes the background to the cases discussed in this report and the specific events of interest from June 2001 to November 2001 and from November 2001 to April 2002.

1. Background to the Cases

Before and during his term as acting president, Dr. Donohue undertook steps to move the college in a new direction. He espoused a model for initiating change based on his research on and practice of martial arts, explaining his approach to reaching decisions in a speech before the Rotary Club of Buffalo on January 3, 2001.

He described his own academic specialization in East Asian culture, and stated that his preferred model for making strategic changes was to be found in the writings of Miyamoto Mushashi, a seventeenth-century samurai warrior. He revealed that he had incorporated Mushashi's writing in the MBA curriculum at Medaille College, and that students respond positively to the "ease with which this four-hundred-year-old

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 members at whose request the inquiry was conducted, to the administration of Medaille College, 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.

guide for swordsmen can be adapted to a variety of circumstances requiring strategic visions today." Summing up his views, he observed:

> In a competitive educational marketplace, academics today are increasingly challenged to develop new and innovative programs. This growing dynamic, almost entrepreneurial, approach to program development seems, in many ways, to be diametrically opposed to academic culture: one of cautious, gradual change whose custodians have intense personal and professional investment in the status quo. . . . This is uneasy territory where ideas, resources, and personalities meet.

The president sought to strengthen the traditional liberal arts program at the college by using career-oriented programs, such as business, as funding sources. During his earlier years as dean of the college, Dr. Donohue became embroiled in several controversies with members of the business department, including its chair. In 2000, controversies arose over grade changes initiated by Dr. Donohue and the administration's charge against a faculty member, whose grades were changed, with violating campus policies about class meetings. Also controversial was the administration's decision, said by faculty members to have been reached without meaningful consultation with the business faculty, to contract with the University of Phoenix to establish an MBA program at off-campus sites.

It is evident to the undersigned investigating committee that serious antagonism existed between the business department and Dr. Donohue before he was named acting president of the college in February 2001.

2. June–August 2001

On June 8, 2001, Medaille College's five-person promotion and tenure committee met to discuss several personnel matters. Professor Watson was one of four faculty members serving on the committee. Dean Savarese was its fifth member. Dr. Donohue, as acting president, attended the June meeting at the invitation of the committee. The secretary to the office of the president prepared the minutes of the meeting, which were distributed to the faculty members on the committee in early August.

According to the minutes, the purpose of the meeting "was to communicate to Dr. Donohue concerns of the Promotion and Tenure Committee about the Business Department and its department chair." The members of the committee and President Donohue candidly and critically discussed at length the work of the department chair. The minutes record that Professor Watson "asked if Dr. Donohue, as Acting President, would convey in a formal fashion the very thoughtful deliberations and concerns of the Committee." The minutes further record that Dr. Donohue stated that "some level of action needs to be taken" concerning the department chair and that he saw a "new person coming in." The minutes report that "Dr. Donohue polled individually the P&T Committee. The group concurred with this proposal." The meeting ended with Dr. Donohue's remarking, "Whether people discuss [the situation of the business department chair] or not, what takes place in the P&T meeting(s) is confidential; members cannot breach it. The same applies to [the president]."

In a memorandum dated June 20, Dr. Donohue stated to the business department chair that he had decided not to renew his administrative appointment. "This action," the president asserted, "is taken with the approval of both the P&T Committee and your immediate supervisor." A week later, in a memorandum of June 27 addressed to the members of the promotion and tenure committee, the chair sharply questioned not only the substance of the committee's reported action but also the committee's authority. The college's *Handbook of the Teaching Faculty*, the memorandum stated, does not provide for the promotion and tenure committee to make recommendations about the appointments of chairs. The memorandum concluded: "Your actions represent a flagrant disregard for the rights of faculty and are in clear violation of the duties assigned to you."

After receiving the June 27 memorandum, as well as a personal note from the department chair expressing disappointment that he had carried out his responsibilities "in such an inappropriate manner," Professor Watson wrote to the other members of the promotion and tenure committee on July 26. He pointed out that the committee is "not involved in the president's institutional and exclusive responsibility to decide, announce, name, and appoint Department Chairpersons at Medaille College"; that Dr. Donohue's memorandum of June 20, with its reference to the promotion and tenure committee, was apparently unprecedented; and that the committee should meet as soon as possible to clarify these matters.

In a separate memorandum to Dean Savarese on August 3, Professor Watson revisited issues he had raised in his July 26 memorandum, but also singled out the dean and Dr. Donohue for criticism. This August 3 memorandum concluded: "I could loathe both of you for ensnarling me in your 'administrative web spinning.'"

Responding to Professor Watson's concerns, Dr. Donohue wrote to the promotion and tenure committee on August 3 and encouraged the committee to meet. He expressed a willingness to issue a new memorandum to the department chair stating that he alone had "made the final determination." The committee met on August 17 and called on Dr. Donohue to issue a clarifying memorandum, which he did on September 6. "For the record," he wrote to the department chair, "let me explicitly state I alone made the decision in regard to your appointment. The P&T Committee made no recommendation to this effect, nor did it 'approve' this action."

Meanwhile, on August 21, Professor Watson had notified Dean Savarese that he was resigning from the promotion and tenure committee, effective immediately, because he believed that his integrity "vis-à-vis the frank comments that must be made about faculty colleagues on this Committee has been profoundly compromised, and I no longer have confidence and trust in the current P&T membership to address errors and mistakes in a timely fashion and to adhere to the . . . Handbook provisions and sections."

3. November 2001–April 2002

No further developments arose concerning the promotion and tenure committee until early November 2001, when the administration began an inquiry into an alleged "breach of confidentiality" of the committee's minutes for the June 8 meeting. The inquiry focused on Professor Warden, who had served on the college's five-person Faculty Council during the 2000–01 academic year, and on Professor Watson. Two other faculty members were also implicated: a tenured professor who was a current member of the Faculty Council and chair of an academic department, and a nontenured faculty member who was serving as president of the AAUP chapter.

In a December 10 memorandum to Dr. Donohue, Dean Savarese, "after a lengthy investigation" conducted by him and the college's director of human resources, concluded that Professor Watson "appears to have initially disseminated the confidential minutes" to Professor Warden. Professor Watson, the dean wrote, "has not admitted this, [but] there is a reasonable body of evidence to suggest that he is the likely suspect."

The dean recommended that Professor Watson be dismissed. The dean stated that Professor Warden had "admitted that she received the minutes," duplicated them, and shared and discussed their content with two other faculty members. He recommended that Professor Warden also be dismissed. As for the other tenured professor, the dean recommended that she be removed as chairperson and censured because, although she had not given the minutes to anyone else, she had discussed them with Professor Warden, did not notify the dean "of the situation," and failed to notify colleagues on the Faculty Council "of her personal involvement" in the matter. The nontenured faculty member's alleged wrongdoing was to have received the minutes from Professor Warden and discussed them with her. Dean Savarese recommended that this individual be censured and not reappointed.

Dr. Donohue asked and received from the senior professor her resignation as department chair. (She was subsequently reappointed to the position by President Bascuas.) The nontenured professor left Medaille College of his own volition at the end of the academic year—he had not been issued notice of nonreappointment—and is now teaching elsewhere.

In letters dated January 10, 2002, Dr. Donohue notified Professors Warden and Watson, respectively, that their conduct as reported by Dean Savarese was grounds for dismissal, that he was prepared to review additional evidence before reaching a final decision, and that, pending a final determination, each was relieved of teaching obligations, effective immediately, with full pay and benefits. Neither professor was to come onto the campus without prior approval of the president or the dean.

The letters stated, as grounds for the action, the following: "Your conduct constitutes grounds for dismissal under Section 7.2. of the *Handbook of Teaching Faculty* for turpitude and for active and voluntary participation in activities deliberately and specifically designed to bring discredit to the college."[2] In addition, Dr. Donohue charged Professor Watson with insubordination—"an independent basis for the recommended discipline"—on grounds that he "refused to fully cooperate" with Dean Savarese's investigation, and that he cancelled a meeting with the president "without an adequate explanation."

Replying on January 12, Professor Warden stated that she was "shocked" by the president's letter, that she would be pleased to meet him before he reached a final decision on her case, and that she had done nothing to warrant suspension let alone dismissal from Medaille College. Professor Warden concluded, "The Handbook states that 'this manner of proceeding [contesting an action] is in accord with the 1940 AAUP document on academic freedom and tenure.' If that is so, then I request that you make no final decision, even after you and I meet, before a committee of faculty peers passes on it."

Writing on January 15, Professor Watson addressed each of the charges against him, denied that he had circulated the minutes, and denied knowledge of "anyone circulating the minutes." He concluded, "I await word of when my scheduled meeting with you regarding this matter is to take place."

Dr. Donohue met with Professor Warden on January 24. In a subsequent letter, dated February 5, the president informed Professor Warden that their meeting "confirms the substance of the investigation's findings. As a result, it is my decision to dismiss you from your faculty position at the College, effective 8 February 2002." Because, according to the president, Professor Warden's conduct constituted turpitude, he discontinued her salary as of that date.

Professor Warden reports that, along with losing her faculty position and her salary, she learned later in the summer that

2. The college's faculty handbook defines turpitude as a "felony conviction or obvious and repeated misconduct in [the faculty member's] performance of academic duties." The handbook, in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure*, states further: "Faculty on continuous appointment who are dismissed for reasons not involving turpitude shall receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution." The 1940 *Statement of Principles* was issued jointly by the AAUP and the Association of American Colleges and Universities.

Dr. Donohue had moved into her office in order to make way for newly appointed President Bascuas and that nearly all the papers she kept in the office—lesson plans, evaluations of students, and irreplaceable data for applied research projects—had disappeared.

In his February 5 letter, Dr. Donohue informed Professor Warden that she could file a grievance under the relevant provisions of the faculty handbook. She did so on that same day with respect to the suspension, dismissal, and charge of turpitude. In her complaint to the five-person grievance committee, an elected faculty body, Professor Warden stated that in late October she discovered that the minutes for the promotion and tenure committee meeting had been placed anonymously in her campus mailbox, and that she photocopied them and gave the copies to the two other faculty members.[3] She stated further that, within two weeks of receiving the minutes, she met, at her initiative, with Dean Savarese to inform him of what she had received and that he proposed that she speak with Dr. Donohue, whom she then called.

According to Professor Warden's account of her conversation with the president, she identified the two individuals to whom she had given copies of the minutes and told the president that she had asked them not to distribute the minutes to anyone else. She declared that her conduct was not blameworthy and asked to be reinstated to her tenured faculty position.

On February 5, the president also wrote to Professor Watson, who, on January 29, had filed a grievance concerning his suspension. The president reiterated the charges and asked that Professor Watson meet with him before February 8. "If you continue to refuse to meet with me," the president stated, "your employment will be terminated effective Monday, February 11, 2002." There followed correspondence between Professor Watson's attorney and the administration, and Professor Watson and his attorney met with Dr. Donohue on February 21. The president issued his decision on April 26, informing Professor Watson that he was dismissed effective that date. Salary payment also ceased as of April 26.

Professor Warden, accompanied by her attorney, appeared before the grievance committee on March 21 and April 30. Professor Watson, also accompanied by an attorney, met with the grievance committee on February 26 and April 16. The grievance committee heard testimony from Dean Savarese on April 17 and from Dr. Donohue on April 18. Neither Professor Warden nor Professor Watson (nor their respective attorneys) was present when the dean and the president gave their testimony. Neither the dean nor the president attended the meetings of the grievance committee when Professors Warden and Watson testified.

Four days before the president dismissed Professor Watson on April 26, the faculty committee that had convened to hear his grievance concerning his suspension issued its report. The same committee had separately taken up Professor Warden's grievances, and on May 21 it issued a report on her case, which is discussed below. The grievance committee in Professor Watson's case, citing the provision in the faculty handbook concerning suspension ("suspension of a faculty member from contractual duties will be made by the President only if his or her continuance directly constitutes an immediate physical or psychological danger to himself or herself, to others, or to the college"), concluded that Dr. Donohue suspended Professor Watson without adhering to the college's "specific procedures" for such action.

The committee's report went on to offer a series of alternative steps. The administration could "ignore the violation"—apparently a reference to the charges against Professor Watson—or dismiss him. In the event that the administration moved to dismiss, the grievance committee recommended, "in lieu of this option," that Professor Watson "acknowledge as true" the "facts of the investigation" conducted by Dean Savarese; that he "authorize the full disclosure" of the grievance committee's report and the results of the dean's investigation "at a full faculty meeting"; that he "apologize in private" to the dean and to Dr. Donohue "for his conduct during the investigation"; and that he "withdraw any present lawsuits" and not "initiate future lawsuits with regard to these matters."

Following the president's dismissal of him on April 26, Professor Watson, in a May 9 letter from his attorney to the chair of the grievance committee, requested a hearing on his dismissal. He disputed the allegations against him, and he also disputed the administration's position that the allegations, "if true, support the conclusion that they amount to turpitude or activity designed to bring discredit to the College." The letter expressed the "expectation" that the grievance committee "will conduct a full, fair and impartial hearing," and that, consistent with the faculty handbook, there will be opportunity to "question and/or confront within reasonable limits" all adverse witnesses.

The grievance committee's May 21 report in Professor Warden's case concluded, as had the committee's report of April 22 in Professor Watson's case, that her suspension was inconsistent with the faculty handbook. With respect to dismissal, the committee was "extremely dissatisfied" with Professor Warden's conduct "as well as her action since the time of her dismissal which we believe [has] brought discredit to us all"—the latter presumably a reference to her meeting with faculty members on other campuses to discuss her case.

With respect to the charge of turpitude, the committee declined "to delve" into the matter because it was "not within its purview . . . since [the committee] is limited to matters of procedure." Lastly, the committee recommended, "in lieu" of

3. One member of the grievance committee had served on the promotion and tenure committee when it discussed the status of the business department chair in June 2001.

dismissal, that the administration "reinstate" Professor Warden under several conditions: that she agree that the grievance committee could place a "letter of censure" in her personnel file; that she be "prohibited from serving on any confidential committees for five years"; that she agree to undergo an annual review for three years to be carried out by the promotion and tenure committee; and that she would write a "letter of apology to the Medaille College community that will be read at a faculty meeting." Professor Warden found none of these recommendations acceptable.

As stated above, the committee had also received a grievance from Professor Watson with regard to his dismissal. In addition to filing the internal grievance, Professor Watson submitted a complaint to the New York State Division of Human Rights, alleging discrimination on the basis of race. Responding to the complaint on May 15, counsel for the college stated that Professor Watson's intramural grievance "will allow the [Grievance] Committee to directly address the issue of whether the Complainant's discharge was for requisite cause." In a letter to Professor Watson dated June 3, the chair of the grievance committee stated that "[i]t is our determination that the issues raised in your grievance are substantive matters. The Grievance Committee is limited to procedural matters only." The committee therefore declined to hold a hearing on Professor Watson's dismissal. The letter went on, "Additionally, when you distributed a packet of information to the Medaille College faculty on or about May 16, 2002, you took your petition outside the ordinary grievance procedure and compromised the Grievance Committee since any decision rendered would have at least the appearance of impropriety."

Professors Warden and Watson sought the assistance of the Association with respect to the disciplinary actions against them in January 2002, and its staff wrote to Dr. Donohue on February 8, 2002, and again on March 7 to convey the AAUP's concern that the actions that had been taken against the two professors to that point presented issues of tenure and academic due process. The chair of the New York State AAUP Conference's Committee A on Academic Freedom and Tenure wrote on March 1 to Dr. Donohue to express the same concerns.

The president did not reply to the staff's letters. But in a March 8 letter to the New York State AAUP officer, the president stated that it would be "inappropriate" for him to discuss the "employment situation" of the two professors, that the college's faculty handbook "contains a process whereby a faculty grievance committee may review and conduct a hearing with respect to . . . employment decisions," and that "[a]ny information that you have been given that these individuals have been denied access to this process is inaccurate."

The Association's staff wrote again to the administration on July 15, urging newly appointed President Bascuas to allow Professors Warden and Watson to return to their faculty positions pending any further consideration of their cases consistent with the college's official policies and Association-supported standards. Replying on August 2, the president stated that he had been directed by the chair of the board of trustees to review the cases. "However," he wrote, "my review will be limited to ascertaining whether or not the appropriate process as outlined in the faculty handbook was followed in each instance and will not be a de novo review of the facts." The president stated that he anticipated concluding his review in late August or September.

In a letter of November 4, President Bascuas informed the staff that he had completed his review, that he had provided the chair of the board with an oral report, and that he had found that "the process followed in each instance did not deviate materially from the process outlined in our Faculty Handbook and the grievants were given a fair hearing by their colleagues."

In mid-December, with the issues of Association concern not having been resolved, the AAUP's general secretary authorized an investigation into the cases of Professors Warden and Watson, and President Bascuas was so informed. As noted previously, Professor Watson had filed a complaint with the New York State Division of Human Rights. Professor Warden has initiated a civil action in New York State's Supreme Court.

In a letter dated January 28, 2003, President Bascuas informed the Association's staff that the college, "acting on the advice of legal counsel, . . . declines to participate in any way in the investigation you propose." The chair of the undersigned investigating committee wrote to President Bascuas on February 21, expressing the committee's "desire to learn more about the administrative perspective" on the two dismissal cases and providing information about where the committee could be reached while it was in Buffalo. The president did not reply. The investigating committee chair wrote similarly to Dr. Donohue, but received no reply from him.

The committee visited Buffalo on February 27 and 28, 2003, where it interviewed Professor Warden, Professor Watson, and an additional ten current and former Medaille College faculty members, including individuals who had served on the grievance committee. The committee regrets that the current Medaille College administration and Dr. Donohue chose not to cooperate with the investigation, but it believes that it has sufficient information for the findings and conclusions which follow.

III. Issues and Findings

This section describes the suspensions of Professors Warden and Watson and the procedural and substantive issues relevant to their dismissals.

1. The Suspensions

As recounted earlier in this report, the Medaille College *Handbook of the Teaching Faculty* states that "[u]pon the recommendation of the academic dean, suspension of a faculty member from contractual duties will be made by the president only if his or her continuance directly constitutes an immediate physical or psychological danger to himself or herself, to others, or to the college." Regulation 5(c)(1) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* states that a faculty member "will be suspended . . . only if immediate harm to the faculty member or others is threatened by continuance."[4] The regulation further provides that, before suspending a faculty member, the administration will consult with a faculty committee concerning the "propriety, the length, and the other conditions of the suspension."

Professors Warden and Watson were suspended from their faculty duties on January 10, 2002, and then remained on suspension until their dismissals on February 8 and April 26, respectively. Dr. Donohue gave no reason for suspending either professor. The principal charges against Professors Warden and Watson focused on their alleged mishandling of a faculty committee's minutes for a meeting that took place in June 2001. The suspensions were imposed nearly seven months later, and some two months after the administration began its inquiry into alleged "breaches of confidentiality." In the investigating committee's judgment, nothing in the alleged misconduct of Professors Warden and Watson remotely constituted "an immediate physical or psychological danger to [themselves], to others, or to the college," and a repetition of the alleged misconduct was not prevented by denying them further access to their classes or to the campus. Moreover, the administration did not consult with any faculty body about its intended actions. The investigating committee finds that the Medaille College administration suspended Professors Warden and Watson from their academic responsibilities in disregard of the college's own stated policy and of Association-supported standards of academic due process.

2. The Dismissals: Procedural Issues

The 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* provide that a faculty member is entitled, before dismissal, to a hearing on the charges before an independent faculty body. The procedures in a dismissal case set forth in Regulations 5 and 6 of the AAUP's *Recommended Institutional Regulations* require preliminary discussions between the faculty member and administrative officers "looking toward a mutual settlement" and "informal inquiry by the duly elected faculty committee" (a separate body from the one that holds the hearing of record), which may recommend that proceedings should be undertaken "without its opinion being binding upon the president."

During the hearing, the burden of proof "shall be satisfied only by clear and convincing evidence in the record considered as a whole." The faculty member "will have the right to confront and cross-examine all witnesses" and "a verbatim record of the hearing or hearings will be taken and a typewritten copy will be made available to the faculty member without cost." Should the president reject the report of the hearing body, "the president will state the reason for doing so, in writing, to the hearing committee and to the faculty member, and provide an opportunity for response before transmitting the case to the governing board."

The Medaille College faculty handbook states that a faculty member who is notified of dismissal and "wishes to contest the action" can "initiate the grievance procedure of this handbook; this manner of proceeding is in accord with the recommended procedure in the 1940 AAUP document on academic freedom and tenure." The grievance committee has the "full and complete authority" to "assure the right of each party and advisor to question and/or confront within reasonable limits all witnesses who testify" and "to keep an adequate record of the hearing." The handbook further provides that "[i]n any case in which the president decides against the recommendation of the Grievance Committee, he or she will meet with the committee to explain the decision."

To allow a faculty member a hearing on dismissal only by initiating a grievance after he or she has been dismissed is fundamentally at odds with academic due process as provided in the 1940 *Statement of Principles*. In a dismissal proceeding that is in accord with the 1940 *Statement*, the accused faculty member is afforded the opportunity to present his or her position to a faculty hearing body before dismissal can occur.

One consequence of the administration's judging and penalizing Professors Warden and Watson without having first subjected these cases to the test of academic due process is that the two professors in effect had to prove why they should not have been dismissed. A telling illustration of this problem occurred when Professor Warden and her attorney met with the grievance committee on March 21, 2002. According to a transcript of the meeting prepared by Professor Warden from electronic tapes provided to her by the committee, the following exchange took place between her attorney and two members of the committee:

> Attorney: There is something very radically wrong [with] what is going on. As you know, I think the most important grievance filed by Dr. Warden deals with the lack of due process. We should be looking for at this point a hearing before an appropriate faculty committee. The

4. This regulation is consistent with the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, which, like the 1940 *Statement of Principles*, was issued jointly by the AAUP and the Association of American Colleges and Universities.

burden of proof is on Medaille in respect to what has been done to Dr. Warden.

First Committee Member: You are saying the burden may be on you?

Attorney: To justify the grievances. I'm saying that I don't think that is proper.

Second Committee Member: As the Handbook outlines procedures [the] onus is on the faculty member to clearly articulate how circumstances, how experiences violated the Faculty Handbook. Whatever way we go about getting a clear understanding is not as important as how we arrive at clarity.

This inherent defect in the Medaille College faculty regulations was compounded by severe flaws in the proceedings that took place before the grievance committee.

Under Association-supported standards of academic due process, the subject faculty member has the right to confront and cross-examine witnesses in a dismissal proceeding. As noted above, the Medaille College faculty regulations require the grievance committee to ensure that each party will "question and/or confront . . . all witnesses who testify." Professors Warden and Watson each appeared before the grievance committee with only their respective attorneys present, and they were not present when Dean Savarese and President Donohue testified against them. They were thus denied the opportunity to confront and cross-examine witnesses whose testimony was plainly central to their cases.

In Professor Warden's case, the grievance committee stated that it was "extremely dissatisfied" with her conduct but recommended reinstatement if she agreed to several punitive conditions, all of which she rejected. Despite having concluded that Professor Warden's conduct in the matter of the promotion and tenure committee minutes was blameworthy, the committee declined "to delve" into the charge of moral turpitude on grounds that its purview was "limited to matters of procedure."

The investigating committee does not find the grievance committee's position tenable. Nothing in the Medaille College faculty handbook limited the jurisdiction of the grievance committee to "matters of procedure"; indeed, as noted above, the grievance committee is identified in the handbook as the faculty body that is to consider the substance of the charges in a dismissal case. Moreover, the grievance committee had addressed the substance of the dismissal charges against Professor Warden; its unwillingness to address the even more serious charge that her conduct was morally turpitudinous was, in the judgment of the investigating committee, an abuse of its responsibilities.

In Professor Watson's case, the grievance committee asserted that it declined to hold a hearing on his dismissal because the issues he had raised were substantive and the committee was "limited to procedural matters only." The committee's position in Professor Watson's case was in striking contrast to its willingness to render a judgment on the substance of the dismissal charges against Professor Warden.

The committee's refusal to consider the dismissal of Professor Watson also stands in contrast to the judgment it reached in its report on his suspension. In that instance, the committee recommended, "in lieu" of dismissal, that Professor Watson "acknowledge as true" the charges against him and that, among other measures, he apologize for his conduct and authorize the "full disclosure" of the committee's report. The committee had plainly concluded that Professor Watson was guilty of misconduct, but it denied him the opportunity to be heard in his defense that the alleged misconduct was not sufficiently grave to warrant the severe sanction of dismissal and the even more severe sanction of dismissal on grounds of moral turpitude.

Moreover, the evidence used against Professor Warden and Professor Watson was expanded beyond the events concerning the possession and distribution of the promotion and tenure committee minutes. In its report of May 21, 2002, the grievance committee reproved Professor Warden for "her actions since the time of her dismissal which we believe have brought discredit to us all." The investigating committee understands those actions to have been her seeking the assistance of the AAUP and her meeting with faculty members on other campuses to discuss her case. With respect to Professor Watson's case, the chair of the grievance committee, writing on June 3 to inform him that the committee did not intend to consider his dismissal, questioned his having distributed information about his case to faculty members at Medaille College after he had been dismissed. According to the committee chair, when Professor Watson "took" his petition "outside the ordinary grievance procedure," he "compromised the Grievance Committee since any decision rendered would have at least the appearance of impropriety."

The grievance committee seems to have assumed that what Professors Warden and Watson did after they had been dismissed constituted additional instances of inappropriate conduct bearing upon their fitness as faculty members at Medaille College. There was no opportunity for the two professors to rebut such an assumption.

Beyond the defects in the actual hearing procedures, the administration did not meet with the grievance committee to explain why it had decided to override the committee's recommendation in each case to impose severe sanctions "in lieu" of dismissal. The Medaille College faculty handbook required this step, as does Regulation 5 of the AAUP's *Recommended Institutional Regulations*.

Overall, the investigating committee finds that the procedures attending the dismissals of Professors Warden and Watson were inimical to basic requirements of academic due

process. Indeed, the committee finds the failures to have been so severe as to raise serious doubts regarding the adequacy of procedural safeguards for any faculty member at Medaille College who faces dismissal or other serious sanctions.

3. The Dismissals: Substantive Issues

The 1940 *Statement of Principles* refers to "dismissal for cause" of faculty members. Regulation 5 of the Association's *Recommended Institutional Regulations* provides that adequate cause for dismissal "will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers." It further provides that "the burden of proof that adequate cause exists rests with the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole."

The Medaille College faculty handbook states that "[t]ermination for cause of a continuous appointment . . . may be made only for the gravest reasons: obvious abuses of academic freedom, consistent failure or inability to discharge responsibilities, turpitude (i.e., felony conviction or obvious and repeated misconduct in his or her performance of academic duties), or active and voluntary participation in any activity deliberately and specifically designed to bring discredit to the college."

Dr. Donohue charged Professor Warden with having "knowingly copied and distributed" confidential minutes of the promotion and tenure committee to persons unauthorized to receive them "in violation of established practice and policy." He charged Professor Watson with having distributed the minutes to persons unauthorized to receive them, also in violation of established practice and policy. Professor Watson was further charged with insubordination for not "fully" cooperating in two meetings with Dean Savarese in his investigation of the matter and for canceling a meeting with the president "without an adequate explanation." In each case, President Donohue stated that the alleged misconduct with regard to the minutes of the promotion and tenure committee amounted to "voluntary participation in activities deliberately and specifically designed to bring discredit to the college," and that the purported misconduct constituted turpitude as defined in the faculty handbook.

Questions raised by these dismissal letters include, first, whether Medaille College had an established practice and policy concerning the confidentiality of the minutes for the promotion and tenure committee. Second, if such a practice and policy existed, did Professor Warden or Professor Watson violate it? Third, if either did, was her or his conduct sufficiently grave to warrant dismissal? And, fourth, was the conduct of Professors Warden or Watson so blameworthy as to constitute turpitude? Finally, there is the charge of insubordination against Professor Watson.

From what the investigating committee has been able to determine, the official policies of Medaille College contain no provision regarding the confidentiality of the minutes of any faculty committee. Whether and to what extent the minutes of a particular faculty committee at Medaille College have, in practice, been considered confidential no doubt has varied with the committee and the issue before it. With respect to the promotion and tenure committee, the minutes for its meeting of June 8, 2001, stated that "what takes place in the P&T meeting(s) is confidential; members cannot breach it." The investigating committee has no reason to believe that this statement represented a departure from the committee's past practices, or to believe that the minutes for the committee's meeting of June 8, 2001, were not considered confidential by the members of the promotion and tenure committee, including Professor Watson.

Professor Watson, in his meetings with Dean Savarese, as the latter was conducting an inquiry into the breach of confidentiality, and in his statements to the grievance committee, denied that he had shared the committee's minutes with a person not authorized to receive them. In his memorandum of December 10, 2001, to Dr. Donohue, the dean acknowledged Professor Watson's denial but went on to say that there was "a reasonable body of evidence to suggest that he is the likely suspect."

That "body of evidence" was not identified in the memorandum; in Dr. Donohue's letter of January 10, 2002, suspending Professor Watson; in the grievance committee's report of April 22, which refers to Professor Watson's "violation" of confidentiality; or in the president's letter of April 26 dismissing Professor Watson. Perhaps Dean Savarese or Dr. Donohoe, in their meetings with the grievance committee, offered evidence in support of their claim that Professor Watson was the "likely suspect," but Professor Watson was given no opportunity to question the dean or the president and to respond to their testimony.

Whatever their view of Professor Watson's conduct as a member of the promotion and tenure committee, however, the grievance committee and the administration, by their reported comments and actions, indicated scant appreciation of the importance of academic due process in resolving the disputed facts. Even if there were "clear and convincing evidence" that Professor Watson wrongly gave the committee's minutes to Professor Warden, the question remains whether doing so warranted his dismissal from the faculty of the college.

A dismissal is a grave action and should be undertaken, as stated in the Medaille College faculty handbook, "only for the gravest reasons." The administration presented the charge against Professor Watson (as well as against Professor Warden) in such a way as to satisfy the standards set forth in the faculty handbook for dismissing a tenured faculty member. It accused him of engaging in an "activity deliberately and specifically designed to bring discredit to the college."

In the investigating committee's judgment, however, Dr. Donohue failed to demonstrate that the charge against Professor Watson reached the level of gravity envisioned in the handbook. The president asserted that Professor Watson wrongfully shared the minutes with Professor Warden, but the investigating committee is aware of no evidence in support of the administration's contention that he "deliberately" and "specifically" intended by this action "to bring discredit to the college." Nor does evidence exist that the administration gave consideration to Professor Watson's "record as a whole" in reaching its decision to dismiss him. The investigating committee believes that Professor Watson's dismissal was grossly disproportionate to the gravity of the alleged offense.

As to the charge that Professor Watson refused to cooperate fully with Dean Savarese, and that he canceled a meeting with Dr. Donohue "without an adequate explanation," the available evidence indicates that Professor Watson was angered by the inquiries directed at him, and that his initial discussions with the administration were marred by considerable tension on both sides.

Professor Watson's meeting with Dean Savarese on November 30, 2002, is illustrative. According to Professor Watson's account of what happened, he was "confronted" by the dean while en route to his class, and the dean "insisted" that he meet with him "right at that moment." Professor Watson did not want to meet at that time "because of the proximity to my class," but he agreed to "[t]his unscheduled and coerced meeting."

The investigating committee observes that Professor Watson was not charged with having failed to cooperate with the dean, but rather with not having cooperated "fully." Nor was he charged with having failed to provide any explanation to the president, but with not having offered an "adequate" one. Apart from the question whether and to what extent a faculty member's conduct might properly be considered insubordinate, the charge of insubordination in this case was too insubstantial, in the judgment of the investigating committee, to warrant dismissal or any sanction at all.

With regard to Professor Warden, she acknowledged that she had received the minutes of the promotion and tenure committee, although in her meeting with the grievance committee in April 2002 she questioned the official status of the minutes. "They were a draft of something," she stated. "They did not say confidential on them. I have seen other documents that say that. These did not."

She had earlier told the grievance committee that what she read "was clearly disturbing, for . . . [they] did not reflect the legitimate process and functions of that committee." She copied the minutes and gave the copies to a member of the college's Faculty Council and to the president of the local AAUP chapter, two individuals she considered "representatives of governance bodies on campus." She reports that she asked these two faculty members not to give the minutes to anyone else, and that she notified Dean Savarese and Dr. Donohue of what she had done.

Professor Warden believed that the minutes revealed that the promotion and tenure committee had not functioned properly in an important personnel matter, and that this problem needed to be called to the attention of two faculty leaders. Professor Warden's assessment of the seriousness of the matter and what to do about it was based on her long service in faculty governance at Medaille College.

Faculty committee documents that are clearly marked confidential must remain so. If they do not, confidentiality for committee documents would have no meaning. The investigating committee recognizes that Professor Warden could reasonably conclude from the document she had received that the unusual problems experienced by the promotion and tenure committee called for an unusual response. The question remains, however, whether Professor Warden's conduct exceeded the limits of legitimate action. An evaluation of her conduct involves questions of degree and intent. The investigating committee believes that even if the administration's charges against Professor Warden were sustained, they could not justify the actions it took against her.

Professor Warden gave copies of the minutes to the two faculty members and to no one else. She additionally sought to limit any further distribution by asking the two individuals to keep the minutes in confidence, and there is no evidence that they failed to honor her request. She spoke with Dean Savarese and Dr. Donohue and told them what steps she had taken. In sum, the available evidence indicates that Professor Warden, having found the committee's minutes in her campus mailbox, intended by her actions to deal responsibly with what she saw as a serious issue of governance.

One might still conclude that Professor Warden should have done no more than give the minutes to the administration. If the course she actually pursued was a mistake, however, the investigating committee believes that her conduct did not warrant the conclusion that she was no longer fit to serve as a tenured professor at the institution. As in Professor Watson's case, the committee believes that the dismissal of Professor Warden was grossly disproportionate to the seriousness of the offense.

The investigating committee thus finds no substantial evidence in the cases of Professors Warden and Watson to justify the sanction of dismissal, and certainly, the committee finds no evidence to justify the even more severe sanction of dismissal because of moral turpitude.

The 1940 *Statement of Principles* provides that tenured faculty members who are dismissed for cause will receive at least one year's salary "whether or not they are continued in their duties at the institution" unless there has been a finding of moral turpitude. Interpretive Comment 9 on the 1940 *Statement*

states that moral turpitude refers to conduct that is "so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally." The Medaille College faculty handbook provides for terminal salary for a dismissed tenured faculty member consistent with the provisions of the 1940 *Statement*. The handbook, as noted earlier, defines turpitude as a "felony conviction or obvious and repeated misconduct."

Professor Warden received notice of dismissal on February 5 effective February 8, 2002, and her salary ceased on that date. Professor Watson received notice of dismissal on April 26, which date also saw the cessation of his salary. The administration justified the immediate cessation of salary on grounds that the faculty members' conduct amounted to turpitude. The grievance committee did not recommend dismissal in either case, and the investigating committee is unaware of any other evidence that the administration's position concerning turpitude reflected a consensus of the particular community constituting Medaille College, let alone the academic community generally.

Dr. Donohue may have been offended by what he considered to be the misconduct of Professors Warden and Watson, but his hostility toward them, in this investigating committee's judgment, should not have been cause for charging them with turpitude and dismissing them from the faculty of Medaille College. The harm inflicted on Professors Warden and Watson by dismissing them was compounded in Professor Warden's case by the unexplained disappearance of nearly all the research records, evaluations of students, and other files that were in her campus office.

The investigating committee remains uncertain about the reasons for the drastic actions taken by the administration of Medaille College against Professors Warden and Watson. Did the allegation of turpitude result only from the incident concerning the minutes of the promotion and tenure committee (and in Professor Watson's case, from alleged insubordination), or from some additional circumstance? The investigating committee cannot provide the answer. Dr. Donohue did not respond to any of the staff's letters, and neither he nor President Bascuas was willing to meet with the committee.

The investigating committee does find that the administration's action in dismissing the two professors for conduct it claimed to be turpitudinous, without having demonstrated the validity of its claim in a proceeding in which the professors could be heard in their own defense, warrants condemnation in the strongest terms.

IV. Conclusions

1. The administration of Medaille College suspended Professor Therese Dillon Warden and Professor Uhuru Watson from their academic responsibilities and barred them from the campus without evidence of a threat of immediate harm as required in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and the college's own official policies.

2. In subsequently dismissing Professors Warden and Watson from the faculty, the administration denied them academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure,* the 1958 *Statement on Procedural Standards,* the Association's derivative *Recommended Institutional Regulations,* and the college's own policies. The faculty grievance committee contributed to these denials of due process.

3. In light of the available evidence, the charges against Professors Warden and Watson, even if sustained, were not of sufficient gravity to warrant dismissal and certainly did not justify taking the extreme action of dismissal without terminal salary on grounds of turpitude. Those actions were grossly disproportionate to the seriousness of the alleged offenses.

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Investigating Committee

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