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# Report of Committee A on Academic Freedom and Tenure, 2017–18

## **Introduction**

In the past year Committee A published several policy documents that address emerging issues affecting academic freedom and tenure, reviewed important cases and case reports of investigations, monitored developments at censured institutions, and formulated recommendations on censure and censure removal.

## **Judicial Business**

### **Impositions of Censure**

At its spring meeting, Committee A considered one case that had been the subject of an ad hoc investigating committee report published since the 2017 annual meeting. The committee adopted the following statement concerning this case, the Council concurred, and the 2018 annual meeting voted to impose censure.

*University of Nebraska–Lincoln.* The report of the investigating committee concerns the administration’s action to suspend from her teaching responsibilities a sixth-year doctoral student with a part-time appointment as lecturer for the entire academic year. At the beginning of the fall semester, the lecturer had protested an on-campus recruitment table for Turning Point USA (TPUSA), a conservative organization that opposes what it views as the liberal agenda in US higher education. TPUSA maintains the Professor Watchlist website. Her protest, which was recorded on video by the undergraduate student staffing the table and widely disseminated online, generated significant attention, leading to threats against her and the university. The administration initially removed the lecturer from her teaching responsibilities, allegedly for her safety, but then refused to reinstate her, even in the subsequent semester, thus extending this suspension to the end of her term of appointment.

Under AAUP-supported standards, an action to separate a faculty member from ongoing academic

responsibilities prior to demonstration of stated cause in an appropriate proceeding is deemed a suspension, and a suspension that is not followed by either reinstatement or the opportunity for a hearing is considered a summary dismissal in violation of academic due process. The AAUP does not regard continuation of salary as having any bearing on these positions. Although the administration took the position that the action taken against the lecturer was neither a suspension nor a dismissal, the chancellor’s announcement that “she will not teach at our university going forward because of [her] inappropriate behavior” left little doubt as to its actual nature. Thus, the investigating committee deemed the action of the UNL administration to be tantamount to a summary dismissal. Although the administration offered the lecturer a grievance process to contest that its action was tantamount to dismissal, it refused to afford her a hearing on the substantive grounds for her dismissal.

The committee found that political pressure on the university was “in some sense . . . at the very heart of [the case].” State legislators maintained that her conduct toward the student staffing the recruitment table was representative of a campus climate hostile to conservative views and called for her dismissal, and the Nebraska Republican Party filed open-records requests for email correspondence related to the case. The investigating committee’s report states that “[t]he conclusion seems inescapable that the basis for [the lecturer’s] dismissal was related to the political content of her speech and thus may have violated her academic freedom, a conclusion that stands unrebutted absent the affordance of a dismissal hearing.”

Committee A on Academic Freedom and Tenure recommends to the 104th annual meeting that the University of Nebraska–Lincoln be added to the Association’s list of censured administrations.

### Removal of Censure

Committee A adopted the following statement recommending removal of Stillman College from the Association's list of censured administrations. The Council concurred in the statements, and the annual meeting voted its approval.

*Stillman College (Alabama).* The 2009 report of the investigating committee dealt with the dismissal of a tenured assistant professor toward the end of his twenty-eighth year of service on grounds of his having violated the faculty handbook proscription of "malicious gossip." The investigating committee concluded that the administration's dismissal of the professor on the stated grounds violated the academic freedom to which he was entitled under the 1940 *Statement of Principles on Academic Freedom and Tenure* and that the administration, in suspending and then dismissing him, disregarded basic requisites of academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The investigating committee further concluded that the policies and practices of the college administration had "created a climate that is inimical to the exercise of academic freedom."

With the installation of a new president in 2017, the Stillman College administration responded to the Association staff's annual inquiry by indicating an interest in resolving the censure. The case of the dismissed faculty member was settled some years ago, and the faculty member is now deceased. The main outstanding issues for the removal of censure therefore concerned institutional regulations. The staff reviewed those regulations and recommended several changes, including the removal of the proscription of "malicious gossip," in order to bring them into closer conformity with AAUP-supported standards. The administration adopted all of the changes proposed by the staff. In May, a representative of the Tennessee conference visited Stillman College to assess the climate for academic freedom and met with representatives of the newly formed Faculty Organization and with faculty at an open forum. She reported that "faculty emphasized, and my observations confirmed, that Stillman College is on an upward trajectory with regard to academic freedom and shared governance. The culture at Stillman College is changing and the administration seems committed to continuing these changes."

Committee A on Academic Freedom and Tenure recommends to the 104th annual meeting that

Stillman College be removed from the Association's list of censured administrations.

### Other Committee Activity

At its October 27–28 meeting, Committee A approved *National Security, the Assault on Science, and Academic Freedom*. The report, which was endorsed by the Council in November and published online in December, is printed in this issue of the *Bulletin*. It documents "troubling threats to academic freedom in the physical and natural sciences in two different areas. In the area of international scientific exchange, Chinese or Chinese American scientists have been targeted and charged with espionage. The second area, the field of climate science, has been subjected to vicious attempts to discredit its validity, which have intensified significantly since Donald Trump took office." If you have not yet read this timely report, I urge you to do so. I want to thank the other members of the subcommittee that prepared the report—Joan Wallach Scott and Michael E. Mann from Committee A and Temple University physicist Xiaoxing Xi, who was himself a target of an unfounded national security investigation.

At its June 1–2 meeting the committee successfully concluded its long discussion—extending over multiple meetings—of Regulation 13 ("Part-Time Faculty Appointments") of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. I am pleased to report that the committee agreed to streamline the language of that regulation and to make other changes elsewhere in the *Recommended Institutional Regulations* that together provide greater clarity to what has always been the Association's policy on the rights of part-time faculty members, namely that "[t]here should be no invidious distinctions between those who teach and conduct research in higher education, regardless of whether they hold full-time or part-time appointments or whether their appointments are tenured, tenure-track, or contingent. All faculty members should have access to the same due-process protections and procedures." We feel strongly that these clarifications will facilitate assistance to part-time faculty members facing challenges to their academic freedom or job security. Committee A member Don Eron deserves special thanks for his outstanding and persistent work on this issue. Don will be offering a session at the Summer Institute on the rights of contingent faculty members that will provide advice on how this regulation may best be utilized by activists.

At its June meeting the committee also discussed two troubling developments related to the academic

boycott of Israel. The committee continues to oppose all academic boycotts, including such a boycott of Israel, as inconsistent with principles of academic freedom. At the same time, however, we defend the right of faculty members to advocate such a boycott. In that light we were deeply troubled by the action of the state of Israel in denying entry to Columbia University law professor Katherine Franke. When Professor Franke sought to visit Israel solely on academic business, Israeli officials denied her entry because of her alleged advocacy of a boycott, apparently determined by her listing on a notorious blacklist. A Committee A subcommittee is in process of preparing a letter to the Israeli government indicating our concern and pointing out that this action undermines the efforts of those who seek to oppose academic boycotts, since it would appear that the Israeli government has in this case imposed its own academic boycott.

In a similar vein, the committee discussed legislation in as many as seventeen states criminalizing support for the boycott, divestment, and sanctions (BDS) movement. As a result, some public universities in those states have begun to ask that external speakers invited to campus and others who contract with these universities, such as external reviewers of tenure and promotion materials, sign a statement pledging that they do not now, nor will they in the future, endorse BDS. Specifically, we are deeply alarmed by reports that Arizona State University and the University of Houston require speakers and other academics to certify that they are not involved with the BDS movement and that the University of Houston has even extended the requirement to its own faculty and students. A subcommittee is currently preparing a statement opposing such practices that will be released this summer.

This spring Executive Director Julie Schmid, on the recommendation of the staff committee on investigations, approved an academic freedom investigation at St. Edward's University in Austin, Texas. An investigating committee has been appointed, a visit has been scheduled, and we look forward to receiving a report in the fall.

Throughout the year, the Committee A staff has been reporting to the committee about developments at institutions on the list of censured administrations. Given positive movement at several of these institutions, the staff and the committee are optimistic that Committee A will be bringing before next year's annual meeting several recommendations for removal.

Finally, I want to mention that the committee heard reports on targeted online harassment, against which the Association has been campaigning; on the issues posed by free-speech legislation described in a recent report by the Committee on Government Relations, printed elsewhere in this issue of the *Bulletin*; on the April global congress of Scholars at Risk, which the AAUP Foundation supported financially and which Executive Director Schmid attended; and on the situation at European University at St. Petersburg, which I visited this spring, courtesy of the US State Department, to speak about academic freedom and the work of the AAUP. The committee also in June discussed at great length a thought-provoking memorandum from staff member Hans-Joerg Tiede on the history of the AAUP's support for extramural expression as a key element of academic freedom.

### Conclusion

A year ago I reported on the addition of Cheryle Adams to the AAUP staff as program coordinator in the Department of Academic Freedom, Tenure, and Governance. While Cheryle, unfortunately, accepted a position elsewhere earlier this year, I am happy to report that longtime AAUP staff member Debra Hanible has stepped into this gap on a part-time basis with enthusiasm and her usual diligence. Debra organized our successful June meeting with grace and aplomb, and we look forward to working with her in this new role.

Lastly, I want to thank the members of Committee A for their tireless work on behalf of the principles of academic freedom, our profession, and the AAUP. I would also like to thank the members of the Department of Academic Freedom, Tenure, and Governance, as well as other members of our devoted and hard-working national staff, for their support of the committee and for their tireless efforts on behalf of academic freedom, shared governance, and the common good throughout higher education.

**HENRY REICHMAN** (History), *chair*  
California State University, East Bay

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## Cases Settled through Staff Mediation

*The following accounts exemplify the work of Committee A's staff in bringing cases to resolution during the 2017–18 academic year.*

[Since this case attracted wide publicity, our account does not preserve the subject professor's anonymity.] The case of Professor Johnny Williams at Trinity College (Connecticut) was one among a growing number of cases in which a faculty member's social-media posts became the subject of reports in conservative news outlets that focus on drawing attention to perceived left-wing bias in academia. Following such reports, individual faculty members and their institutions have become the objects of campaigns of online harassment, including death threats.

On June 16, Professor Williams posted a link on Facebook to an anonymous article titled "Let Them Fucking Die" published on the website Medium. After noting that the US Capitol police officer wounded in the June 2017 shooting attack on the Republican congressional baseball practice in Alexandria, Virginia, was an African American lesbian, the article pointed out that she was wounded protecting the life of a Republican congressman who had reportedly addressed a white supremacist meeting in 2002 and who has a record of voting against legislation that promotes LGBTQ rights. The article argued that "[s]aving the life of those that would kill you is the opposite of virtuous."

On June 18, responding to the fatal shooting of an African American woman by officers of the Seattle Police Department, Professor Williams posted this additional comment on Facebook: "It is past time for the racially oppressed to do what people who believe themselves to be 'white' will not do, put an end to the vectors of their destructive mythology of whiteness and their white supremacy system. #LetThemFuckingDie." Two days later Campus Reform, a conservative news website, characterized this post as "seemingly endors[ing] the idea that first responders to last week's congressional shooting should have let the victims 'fucking die' because they are white."

Soon after, Professor Watchlist, a website that aggregates news reports of incidents reported on sites such as Campus Reform, added Professor Williams to its gallery of "college professors who discriminate

against conservative students and advance leftist propaganda," and it misinterpreted his Facebook post as follows: "After Republican Congressman Steve Scalise was shot by a Bernie Sanders supporter, Williams said the first responders should have let the Congressmen die for being white."

Both Professor Williams and Trinity College received extensive online threats. On June 21, Trinity College closed for one day in response to them, and President Joanne Berger-Sweeney issued a public statement condemning both the Medium article and Professor Williams's "use of the hashtag," calling both "reprehensible." "The Dean of the Faculty will review this matter," she announced, "and advise me on whether college procedures or policies were broken."

The next day Professor Williams released the following statement in the *Hartford Courant*: "In yesterday's frenzy, amid the escalating threats to my family and me and the incessant harassment that so many associated with Trinity College were receiving, there is one important thing I didn't say: I am sorry. I regret that the hashtag that I quoted from the title of an article was misinterpreted and misperceived as inciting violence and calling for the death of 'white' people. I never intended to invite or incite violence. My only aim was to bring awareness to white supremacy and to inspire others to address these kinds of injustices."

On June 26, President Berger-Sweeney announced publicly that "a leave is in the best interest of both Professor Williams and the college," adding that "[t]he review by the Dean of the Faculty of the events concerning Professor Williams will continue." The following day, the Association's staff wrote the president to convey the Association's concern over Professor Williams's suspension. The staff's letter pointed out that the AAUP regards the suspension of a faculty member from his or her primary responsibilities as a severely adverse personnel action and that, under AAUP-recommended standards, a faculty member can be suspended only to sanction serious misconduct or to protect the faculty member or others from "immediate harm." The staff's letter went on to state

that there was “nothing in the record to indicate that the administration has imposed a suspension upon Professor Williams as a penalty for misconduct” or that the administration had claimed that its “action responds to a threat of immediate harm.” The letter added that if the suspension had indeed been intended to address a threat of immediate harm, the administration would have been obliged, under AAUP-supported standards, to consult with an appropriately constituted faculty committee regarding the propriety, the length, and any other conditions of the suspension. The letter concluded that since no such consultation had occurred, “the action taken against Professor Williams [appeared to be] entirely at odds with normative standards of academic due process,” and it urged that Professor Williams be reinstated to his normal faculty responsibilities immediately.

The administration took no action. On July 5, the Association’s staff wrote again to inform the president that the AAUP’s staff was sending to the college “two expert consultants, versed in the professional aspects of the issues and particularly in applicable AAUP-supported standards” to interview Professor Williams, other members of the faculty, and administrative officers regarding the relevant issues prior to “drafting a report of findings and recommendations.”

Before the visit could take place, the administration issued a public statement acknowledging that Professor Williams’s social-media posts “were protected by academic freedom and did not violate Trinity College policies.” The statement further declared, “Our understanding of academic freedom in America today is rooted largely in a joint statement from 1940 by the American Association of University Professors and the Association of American Colleges that asserted the fundamental importance of academic freedom for the common good and the advancement of truth.” Professor Williams agreed to remain on a leave of absence through the fall semester, and he returned to his regular faculty duties in the spring.

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A tenured associate professor and director of graduate studies at a religiously affiliated private university in the Southwest received notification of dismissal on the ground of having repeatedly violated campus parking regulations. The professor was informed that the dismissal was grievable under the provisions of the university’s employee handbook, which called for a hearing before a committee composed entirely of

administrators with the faculty member having to bear the burden of rebutting the charges.

The professor sought the Association’s assistance, and a staff member promptly wrote the administration to convey the AAUP’s concern that the faculty member was being deprived of a faculty dismissal hearing that would afford the requisite safeguards of academic due process, notwithstanding the fact that the institution’s regulations included faculty dismissal policies that largely conformed to Association-recommended standards. Staff urged the administration to withdraw the notice it had issued to the professor and to ensure that any future action concerning the faculty member be consistent with AAUP-supported principles and standards.

In response, the administration took the position that despite the fact that the professor was a faculty member with indefinite tenure, the procedures in the faculty handbook did not apply to her because the basis for her dismissal was unrelated to academic freedom and tenure.

The staff’s reply elucidated the inseparable connection between tenure and academic due process and strongly urged again that any future action against the professor be consistent with Association-supported academic due-process standards. In its final response, the administration alluded to the staff’s “thoughtful and thorough” canvassing of the issues and agreed to cancel the administrative hearing and to afford the professor a hearing before a faculty-elected hearing committee in accordance with the institution’s faculty dismissal procedures.

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In November 2016, a full-time faculty member in her sixth year of service received notice that her visiting appointment at a private liberal arts college on the West Coast would not be renewed beyond the 2016–17 academic year. In notifying her, the vice president for academic affairs stated that the basis for the decision was a faculty handbook provision limiting to five years the service of faculty member with visiting appointments. The vice president further stated that, in addition to the already violated proscription in the faculty handbook, the administration was prevented from reappointing her to a seventh year because “AAUP language is very clear on this issue.”

The Association’s staff wrote to the administration in June 2017 to convey its concern that the notice issued to the faculty member was seriously

deficient when measured against normative academic standards. The staff's letter pointed out that the Association's *Standards for Notice of Nonreappointment* entitle faculty members who have completed two or more years of full-time service to at least twelve months of notice prior to the expiration of their appointments, regardless of whether their appointments are tenure track. The letter further stated that the staff was unaware of "AAUP language" that would forbid an administration's reappointing a faculty member in any year of service but surmised that the vice president had in mind sentences from the 1940 *Statement of Principles on Academic Freedom and Tenure* noting that "[a]fter the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure" and that "[b]eginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years."

The staff explained that these two provisions do not prohibit an administration from appointing a faculty member to a seventh year of service; instead, they set forth the AAUP's long-standing position that faculty members with more than seven years of full-time service enjoy "de facto tenure," that is, entitlement to the procedural protections that normally accompany tenured status. It seemed apparent to the staff that the administration decided not to reappoint the faculty member because it wished to avoid being obliged to extend her the due-process protections of de facto tenure. Assuming such to be the case, the staff wrote that, under the 1940 *Statement*, de facto tenure does not take effect in the seventh year but "after the expiration" of the seventh year—in other words, in the eighth year. The staff's letter concludes, "The notion that 'AAUP language' justifies denying [the faculty member] reappointment is therefore incorrect."

Although the administration did not acknowledge the staff's letter, it did reappoint the faculty member to a seventh, terminal year.

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A tenured professor of religion at a religiously affiliated university in the South received notification that for financial reasons his position was being eliminated and his services terminated at the end of the academic year. In contravention of AAUP-recommended standards, the institution had not declared a state of financial exigency, and the administration had not involved the faculty in the discussions that preceded

the decision to single out the professor's appointment for termination. The institution's regulations, moreover, do not provide an opportunity for a faculty hearing in such matters, as required under AAUP-supported standards.

The professor sought the Association's assistance, and a staff member wrote urging the administration to withdraw the notice issued to him and to allow him to continue at the university if courses remained to be taught that the professor was qualified to teach. The staff member also urged the administration to make an effort to offer the professor a resolution that he could accept. The AAUP chapter of a nearby university organized an event in support of the professor. In July the professor informed the staff that a negotiated settlement to his lawsuit had been reached, adding, "AAUP's policies and efforts were a major factor in my ability to persevere through this difficult ordeal. Thanks to you and the Association for your support. . . . I shall remain a supporter of AAUP and its ideals." ■