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Committee A Procedures

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Each year, shortly following the AAUP's annual meeting, the chair of the Association's Committee A on Academic Freedom and Tenure issues a report on the work of the committee since the previous annual meeting. The report that is excerpted below was initially published in 1962.¹ A joint subcommittee of Committee A and the AAUP's Committee on Governance was established in 2003 to review the Association's case investigation procedures, which encompassed a review of earlier commentary on Committee A procedures. The subcommittee agreed that the 1962 report has stood the test of time quite well and recommended that it again be brought to the attention of the under academic community.

The author of the report was Professor David Fellman, who, after his term as chair of Committee A, served as president of the AAUP (1964-66). In his report, Professor Fellman vividly explains why "deliberateness of decision is an essential part of the [Committee A] process." A great deal that is new and important in higher education, and consequently in the work of Committee A, has occurred since Professor Fellman wrote his report. Faculty appointments on numerous campuses are governed by collective bargaining agreements; the proportion of part-time faculty members has grown to nearly 50 percent of all teachers in higher education; and the role of courts of law in decisions affecting faculty status, as well as the interpretations of relevant statutes and administrative regulations by college and university attorneys, is steadily expanding. These and other developments underscore Professor Fellman's observation that "a flexible approach to our problems is therefore inevitable. We cannot afford to be dogmatic."

Gender-specific references have been removed from the original text, and the text has been updated at a few points to take into account changes in the academic world and in Committee A procedures since the early 1960s.

It is essential, I believe, that the membership of our Association should periodically review, with its officers, committees, and staff, the practices and procedures through which it seeks to do its work. Persistent discussion will suggest room for improvement, and it is absolutely certain that there is always need for wider and better understanding of the problems that are encountered when the Association handles cases involving academic freedom and tenure.

A case usually begins with a complaint, in the form of a telephone-call or a letter, which an aggrieved party writes to the AAUP's Washington office. On occasion, the Association's general secretary will make the first move on the basis of something that has appeared in the newspapers, or has in some other way come to the attention of the AAUP's Washington office.² The general secretary is perfectly free to exercise discretion in deciding when to take the initiative. Furthermore, an occasional complaint is initiated by some third party.

It is important to understand that the complainant does not file a standardized application (or our services. What comes in is an appeal for help, and it may be much too brief, as many are, or confused and somewhat out of focus. Almost invariably, as a consequence, the very first task of the Washington office is to engage in extensive supplementary correspondence in order to secure the necessary details and relevant documents, and to clarify the substance of the complaint. The Washington office usually must have a bill of particulars that goes far beyond the contents of the original letter of complaint. Very often, a number of letters must be written before the necessary information is assembled.

Parenthetically, it should be observed at this point that any member of the academic profession is entitled to invoke our services, whether he or she is a member of the Association or not. To be sure, quite a few satisfied faculty members have joined up afterward, and this is no more than right and proper, though no one is put under any pressure to join, and there is no obligation to do so.

Now equipped with a fair understanding of the complaint and a preliminary view of the kind of evidence available in support, the general secretary determines whether there is a colorable case to deal with. In its simplest form, this means that, if the facts are correctly stated, an injustice has been done.

The general secretary may next write to the head of the institution involved in the case, stating as briefly as possible what the nature of the complaint seems to be, and inviting comment and explanation. In fact, at this point it may well be possible to pinpoint the central elements of the complaint and to request specific explanations. It is then necessary for the Washington office to wait for a response from the institution's administration, and this often involves the writing of follow-up letters to stimulate some sort of action. This correspondence with the administration also generates delay; while complaining parties may be noninformative because of lack of experience, an administration is often dilatory out of calculation. It may be possible to speed up this phase of the process, but Association-imposed time limits for replies are not likely to be very effective, and it is almost impossible to avoid some delay where the administrator is determined to move slowly. I should add that, in many instances, the fact situations may be so complicated that it would be morally wrong to insist upon action that may reasonably be regarded by the administration as overly precipitate.

If and when a reply is secured from the administration—and there have been cases where no reply was ever received in the office, in spite of repeated requests made by different media of communication—the general secretary then gets into touch again with the complaining party, and explains the situation in the light of the reply from the administrative officer of the institution.

Correspondence continues until the general secretary has been able to determine whether the case involves a violation of academic freedom or tenure or a serious denial of academic due process. Although each case must in fairness to its essential nature be looked at mainly in terms of its own elements, it can generally be said that the Association is both sensitive to the plight of the individual and to the degree in which the situation has significance for the general interests of the academic profession. As matters go forward, it is of course necessary that thought be given to the use of our limited resources for the handling of complaints that are not clearly of general concern to the academic profession.

Before deciding on the next step, however, the general secretary invariably seeks to reach some sort of amicable settlement mutually agreeable to the parties; indeed, such an effort is sometimes made before the Washington office communicates officially with an administration. We always prefer adjustment to prosecution. It is a deeply rooted and wise tradition of our Association to prefer quiet inquiry over public action, reasonable persuasion over rebuke, an equitable settlement over a total rupture. Consequently, it tends to delay acknowledging even to itself that conciliation has failed, and that the case deserves stronger treatment. I do not think that the Washington office should depart from this tradition. A first effort to achieve a peaceful settlement is entirely appropriate, and, furthermore, it often succeeds. The Association has a far more impressive record of successful defense of academic freedom and tenure than the known public record would suggest. It is hardly necessary to point out that the conciliation processes consume time and effort.

If and when our efforts at conciliation fail, it is necessary for the general secretary again to consider whether to close the case file or go forward. Again, the decision involves a weighing of the significance and relationship of relevant factors. If the decision is affirmative, the procedures that then follow are concerned with the definition of the issues; on-the-spot investigation by a special investigating committee; the writing, editing, and publication of a report; and action by the AAUFs Committee A on Academic Freedom and Tenure and the Association's annual meeting.

As a first step, the general secretary appoints a special ad hoc investigating committee, but the setting up of these committees is no easy task. Finding volunteer investigators is a time-consuming and very often a disappointing business. We seek top-caliber people for these committees, but this very quality of excellence often tends to make them less available, for these are the very people who are in great demand for all sorts of purposes. Geographical propinquity is, for economic reasons, a factor in the search for investigators, but this is also a deterrent, because academic people are understandably reluctant to become involved in nearby conflicts. The hunt goes on until the right individuals are found, but alas, time also marches on.

The Washington office, at this point, prepares a detailed summary of the case for use by the investigating committee. The major known facts are stated, relevant documents are summarized, the factual issues as tentatively seen by the staff are spelled out, the names of persons to see and talk to are listed and explained, and the relevant principles that seem to relate to the controversy are stated. These summaries are prepared with great care, and frequently constitute very substantial documents. It is very important that our staff, with its experience and expertise, should analyze for the benefit of ad hoc committees what seem to be the relevant principles and precedents relating to the particular case at hand. Then, with the aid of the Washington office, the ad hoc committee makes a campus visit. It is usually, though not always, received by the administration of the institution, and given a place to work. The committee hears the complaining party (or parties) and the administration, and whatever witnesses they care to suggest or may otherwise be available. Documents and records are inspected. Then the members of the investigating committee return to their respective homes, and by a process of exchanging views, usually through correspondence, arrive at a consensus and agree to a draft report. Here, again, delay is built into the system, for since we are committed to investigation by teams, we require collaborative reports. In the delicate field of freedom, professional rights, and academic due process, topics about which so many people regard themselves as expert and have strongly held views, it is often extremely difficult to achieve consensus. Time can be consumed in the process of resolving intra-committee friction.

When the ad hoc committee completes its draft report, it then goes to the Washington staff; thereafter, it goes to Committee A for review, and, if necessary, additional revision, and a vote on whether or not to publish the report. Some revision is invariably found to be necessary, and often extensive revision is indicated. It is not at all surprising that the Washington office and Committee A are obliged to revise reports. After all, the amateur investigator is bound to make mistakes, and needs the corrective hand of those who have continuous experience and a practiced skill. Furthermore, not all professors write with equal effectiveness; styles differ; very long reports must be cut down; unclear reports must be redrafted; inconsistencies must be reconciled. During this stage, there is a great deal of coming and going among members of the staff and of Committee A and of the investigating committee. Negotiations of complexity and delicacy must be undertaken. It is by no means a simple matter to produce a report that can, in good confidence, be presented to the academic profession for its approval. The initial authors of a report may often object to the mutilation of their manuscript. Frequently, as a consequence, protracted negotiations ensue.

There is the added problem of achieving consensus among the members of Committee A. I can testify, from very considerable personal experience, that the members of this committee not only take their functions seriously, but also have minds of their own. I should add that, even as an abstract proposition, you must agree that getting more than a score of professors to agree to a report is at best no easy task. Furthermore, the members of Committee A are scattered all over the country, they have their normal academic functions to fulfill, and each has a right to express opinions about the draft report and suggest changes. As a result, a generous supply of comment can flow into the office of the general secretary on every conceivable point, ranging from minor grammatical items to substantial discussion of basic questions of high principle. All of this is bound to take time, though I should add that members of Committee A are almost invariably prompt in making reply to inquiries from the office. But differences of opinion do develop, occasionally very fundamental differences, and in some fashion they must be reconciled.

At this point, it is the function and high responsibility of the general secretary to rationalize and fit the various suggestions and criticisms that come in into a coherent report acceptable to Committee A. This often involves the general secretary in protracted negotiations with the members of the investigating committee as well as the members of Committee A. Reports are often so thoroughly rewritten at this point that they must be recirculated among members of Committee A, so that agreement as to the changes can be secured.

After the general secretary has a report on which there is agreement and which Committee A has voted to publish, our procedure then requires the general secretary to submit draft copies to the principal parties involved in the controversy, on a confidential basis, for their inspection. They are invited to submit any comments, corrections, or suggestions they may choose to make with respect to the document submitted to them. Sometimes quick words of full approval are forthcoming. Sometimes the replies are more complex

and quite verbose. This, again, is a time-consuming business, but I am sure that all will agree that it would not be proper procedure to proceed with the publication of a report before the parties on both sides have had a chance to make objections. We do not always agree with the parties, but we do believe that they should have an opportunity to state their views, so that we may once more have opportunity to correct errors, if we are satisfied that errors have in fact been uncovered. If substantial corrections are once more indicated, then the general secretary may feel obliged to redistribute the report once more among the members of the ad hoc committee and of Committee A.

At some point during this long period of report preparation and revision, it becomes clear that the facts and arguments are in essentially final form, and the draft report is scheduled for publication.

Reports published in *Academe: Bulletin of the AAUP* will precede annual meetings by anywhere from one to eleven months; our policy is not to ask the annual meeting to make a determination on the imposition of censure unless the members have had adequate opportunity to read and study the report. Finally, Committee A, which meets a week before the annual meeting, receives the report of the general secretary regarding developments at each institution reported on; in some circumstances the late news has been known to arrive even while Committee A is in session. It is at this meeting, which immediately precedes an annual meeting, that Committee A takes its next series of vital votes in new cases where reports have been published since the previous annual meeting. The committee may recommend to the annual meeting that censure be imposed, or that action on censure be deferred, or that no action at all be taken. These recommendations are reported to the AAUP's governing Council, seeking its concurrence, and then a report is made to the annual meeting itself.

It is obvious that those who are most directly concerned with these matters are wide open to complaints of slowness and delay. There is, of course, nothing new about such complaints, for they are as old as the Association itself. And delay is unfortunate, for there is much truth in the adage that justice delayed is justice denied. On the other hand, a decision delayed may well mean a concession gained. And what may seem terribly urgent on a local campus may appear in an altogether different perspective when viewed in terms of the best interests of the academic profession as a whole. Furthermore, by refusing to close a doubtful case, the Association allows itself to search for a solution. Sometimes, by engaging in protracted discussions with administrations, the Association wins its point by sheer attrition. By ordering a campus investigation, even after a lapse of time, the Association strikes alarm in recalcitrant administrations and undercuts their maneuvers. By plodding, the Association prods.

To the familiar charge that we move slowly, I would prefer to say that we move with deliberation. While we do not go out of our way to drag our feet, it is still true that great speed in handling cases is not usually an avowed objective. To a faculty member on the firing line of acute controversy the time we take may seem very great indeed, but in the long run the best interests of higher education in this country are served by the careful and thorough examination of the facts and issues that are involved in our reports. In the whole process of dealing with cases involving academic freedom and tenure, there are always important elements of discretion and judgment on the part of those who must deal with them. Thus the general secretary must exercise judgment in deciding whether to go ahead with a complaint. While I suspect that most complainants are understandably certain that their cases involve cosmic issues, those issues may not seem of such magnitude when viewed by outsiders with trained judgment. Many complaints are not in (act very substantial. They do not present the sort of issues that we should be considering or have the resources at our disposal to handle. Furthermore, some complaints are clearly more important than others, and we must necessarily use our limited resources in the most efficient possible manner. This involves making choices. Finally, for one reason or another, many complaints are withdrawn, and adjustments are made, so that a case does not eventuate.

Committee A must exercise discretionary judgment throughout the various stages in the life of a case. Discretion is involved in revising and agreeing to a report. Discretion is involved in deciding whether to recommend censure. There have been many cases where there were clear violations of acceptable standards, and where censure was not recommended. Violations, in short, are not equally serious; it is a matter of judgment as to which punishment fits the crime.

Discretion is also involved in deciding whether to recommend the lifting of censure, and in deciding upon the adequacy of the terms. Should we ever take an administration off the censure list, for example, before adequate redress is made to the injured party? While such redress may be eminently desirable, and always sought, it has been impossible for Committee A to make redress an absolute sine qua non for the removal of an administration from the censure list. All factors must be considered, and not merely redress, when we consider the lifting of censure. Sometimes the best interests of higher education are better served by taking an administration off the list even though satisfactory redress is not forthcoming. Occasionally, partial redress seems preferable to the long wait that may be required if full redress is insisted upon. Again, our main concern must be the interests of the academic profession as a whole rather than those of the complaining party. A flexible approach to our problems is therefore inevitable. We must exercise discretion in the light of all relevant considerations. We cannot afford to be dogmatic.

Finally, in the broadest possible sense, it should be noted that the 1940 Statement of Principles on Academic Freedom and Tenure, which is our basic constitutional charter, is a very brief document. It does not say much on very many subjects, and what it does say is said in very general terms. We are dealing with a charter that does not give us very explicit directions. We continue to issue derivative documents, but most of our working standards necessarily remain product of construction, developed through the process of dealing with specific cases arising in concrete circumstances. It is in this fashion that we have developed over the years standards of academic freedom and tenure, such as the whole concept of academic due process. This is a complex and difficult method, but this is the way Anglo-American law generally has developed, and while it involves much pain and anguish, it has yielded rich results. And deliberateness of decision is an essential part of this process. Deliberation is a price we have been prepared to pay for confidence in our methods and respect for our purposes.

1. The full text of the report is in the AAUP Bulletin 48 (summer 1962): 155-63. See also "Association Procedures in Academic Freedom and Tenure Cases," Policy Documents and Reports, 9th ed. (Washington, D.C.: AAUP, 2001): 302-04.
2. "General secretary" refers to the individual holding that office or another staff member of the AAUP to whom the general secretary delegates this duty.

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