

UNIVERSITY FACULTY SENATE
DIGEST OF SPECIAL MEETING
May 15, 1972

CONVENED: 4:10 PM.

ANNOUNCEMENTS: AAUP has become the collective bargaining unit
for the faculty.

REPORTS: Committee on Committees - Committee vacancies.

RESOLUTIONS
PASSED:

S. Res. 60 - Executive Committee -
Recent Incident of Arson in the Office of
President Trabant.

S. Res. 58 - Computer Committee -
Savings in Computer Use

S. Res. 59 - Committee on Research
Research Report

BILLS PASSED: S.B. 83 - Committee on Faculty Welfare and
Privileges -
Revised Sabbatical Leave Policy

ADJOURNED: 5:45 PM.

UNIVERSITY OF DELAWARE
NEWARK, DELAWARE
19711

UNIVERSITY FACULTY SENATE
303 HULLIHEN HALL
PHONE: 302-738-2829

May 8, 1972

MEMORANDUM

TO: ALL FACULTY MEMBERS

FROM: R. McDonough, Vice President *R. McDonough*
University Faculty Senate

SUBJECT: Special Senate Meeting, May 15, 1972

In accordance with Section IV, paragraph 6, of the Constitution, a special meeting of the University Faculty Senate will be held on Monday, May 15, 1972, at 4 PM, in Room 110, Memorial Hall.

AGENDA

I. ANNOUNCEMENTS

II. NEW BUSINESS

- A. Consider a resolution from the Executive Committee in regards to the recent incident of arson in the office of President Trabant (Attachment)

III. OLD BUSINESS

- A. Report from the Committee on Committees regarding remaining Committee vacancies (Attachment to follow)
- B. Continue consideration of the Proposal from the Committee on Faculty Welfare and Privileges for a Revised Sabbatical Leave Policy (Attachment)
- C. Consider the Report from the Computer Committee concerning savings in computer use (Attachment)
- D. Consider the Report from the Committee on Research (Attachment)
- E. Consider the report of an ad hoc committee of the Senate, comprised of representatives of the Standing Committees of the Senate on Promotion and Tenure, and Faculty Welfare and Privileges, on Considerations and Approaches to Instituting Revisions of Academic Tenure at the University of Delaware (Attachment)

The provision of the Constitution of the Faculty dealing with special meetings states: "The call of a special meeting shall state the purpose or purposes of the special meeting and no business shall be transacted other than that specified in the notice of the meeting."

All Faculty Members

May 8, 1972

Page 2

Attachments relating to "Old Business" were transmitted earlier to members of the previous Senate. All attachments are transmitted herewith to newly-elected Senators. In accordance with the proposal adopted by the Senate on March 6, 1972, one copy of each proposal shall also be distributed per each ten faculty members of each department.

RMCD/dpe

Attach.

RESOLUTION CONCERNING THE INCIDENT OF ARSON
IN THE OFFICE OF PRESIDENT TRABANT

RESOLVED: that this body most strongly condemns the incident of arson committed to the Office of President E. A. Trabant in the early hours of April 28, 1972; that, mindful of the many avenues available for legitimate expression of protest at this University, this body can conceive of no rational motivation for this act; and that this body therefore most urgently requests all members of the University community to join together in guarding against such violent and irrational acts of destruction at our University.

5/8/72

PROPOSALS FOR A REVISED SABBATICAL LEAVE POLICY

"The program of faculty development must be improved... (One objective) must be more frequent and flexible sabbatical leaves for both faculty and administrators. It is especially necessary to institute a sabbatical policy that contains the option of some time off more frequently than the present arrangement of a semester or a year off every seventh year...Requests for sabbatical leave should be reviewed on the basis of concrete proposals for research or improvement of instruction, but special attention should be given to proposals that combine both objectives."

From THE DECADE AHEAD: The Report of the Community Design Planning Commission, Vol. I, p. 44.

1. Purpose of Sabbatical Leaves

Sabbatical leaves are granted by the University to assistant, associate, and full professors, and to administrators holding academic rank, with either or both of the following aims: (1) to provide time for research or other professional or creative activity; (2) to provide time for improvement of instructional materials and techniques or their administration.

Justification of sabbatical leave is determined primarily on the basis of a written proposal outlining the nature of the program to be undertaken and the benefits to the individual and to the University that may reasonably be expected. The department chairman (or other appropriate administrative officer), meeting with a departmental committee to examine the proposals, shall determine their academic merits.

Ultimately, of course, the aim of all sabbatical leaves must be the value to the University in the upgrading of instructional and research programs or their administration.

2. Qualifications for Sabbatical Leave

Apart from the merits of the written proposals, qualifications for obtaining sabbatical leave are as follows: the applicant shall have been a full-time member of the faculty (or a full-time administrator holding academic rank) for six full years, in the application for a full year sabbatical; or for three years, in the application for a semester sabbatical. He shall hold the rank currently of assistant, associate, or full professor. Leaves of absence without pay exceeding ninety days shall not be counted toward the minimum number of years or semesters for eligibility; neither shall they be counted adversely as in any way disqualifying a candidate's application for sabbatical leave, or seriously affecting the recommendation for such leave. Research and Extension Division personnel paid wholly from other than University funds are not eligible to apply for sabbatical leaves.

The award of Fulbright-Hays, Guggenheim, NSF, ACLS, or other extramural grants from appropriately accredited agencies shall not be construed as disqualifying a candidate for sabbatical leave, but on the contrary may be taken, in part, as endorsing his application. Teaching appointments, especially abroad, shall also be regarded as a positive recommendation, but except in the case of Fulbright-Hays lectureships, faculty members may not agree to teach more than half-time while on sabbatical leave.

Occasionally, it may be necessary for the University to postpone the award of an acceptable sabbatical leave request for reasons that have

nothing to do with the specific merits of the application itself. In the event of postponement or deferment of sabbatical leave by the University administration, the intervening period shall be counted toward the accrued time required for the next sabbatical leave application. On the other hand, if a faculty member delays his application until after the normal period has elapsed which would qualify him for leave, he may not claim the intervening time toward another sabbatical leave request.

3. Application Procedure

- a. Applications for sabbaticals are made through department chairmen. Applications must include an outline of activities to be engaged in while on leave, and a statement indicating how the leave will promote the faculty member's professional development and benefit the University of Delaware. Each case is considered individually, but in general approval is limited to those applications that present a well thought through plan of study, research, travel, and/or other activity clearly related to the faculty member's professional field and duties at the University of Delaware.
- b. Applications for full-year sabbatical leave should reach the department chairman by May 1, sixteen months before the leave period; notification of the action on the grant shall be made not later than December 1 following. Applications for half-year sabbaticals should reach department chairman by either May 1 or October 1, depending upon the semester for which the leave is requested, but in either case sixteen months before the leave period; notification of the action shall be made not later than

December 1 or March 1 following. The importance of early application and early notification for the University and for the individual faculty member cannot be overemphasized.

- c. The department chairman, in consultation with an appropriate committee, will evaluate the proposal and will indicate to his dean the rating of the project and the manner in which he proposes to absorb or fill the vacancy thus created, if approved. The dean, if approving in turn, will establish priorities and where required make budgetary recommendations to the Provost. The Provost will study all aspects of the recommendations and make his recommendations to the President for final review and action.

4. Compensation

- a. For full-year sabbatical leaves, awards carry compensation equal to one-half the year's annual salary. Alternatively, if the applicant is eligible for a full year's leave, but wishes to teach during one semester of that period full-time at the University, he may receive full salary for the entire year. Again, alternatively, if the applicant is properly eligible, he may receive full compensation for the entire year by teaching half-time at the University for the entire year.
- b. For half-year sabbatical leaves, awards carry compensation equal to one-half the semester's salary. Alternatively, by teaching half-time at the University, an applicant may receive full pay for that semester.

- c. Inasmuch as the faculty member on leave is still considered to be a full-time employee, all University of Delaware regulations and benefits shall apply to the recipient while he is on leave. The University and the recipient shall both continue to carry on respective financial responsibilities for group life insurance, retirement annuity, hospitalization and major medical insurance, and other benefits. However, if a recipient participating in the TIAA-CREF annuity plan wishes, he may elect to reduce his premium in the same proportion and for the same period as his total compensation is reduced while on leave. In all instances, however, the University's premium payments will remain at their usual level. (This option is not available to participants in the New England Mutual annuity plan since such contracts do not permit temporary reductions in premium.)
- d. The recipient of a sabbatical leave is required to return to this University for at least one full year's service at the conclusion of a sabbatical earned after six years' service, or a full semester at the conclusion of a sabbatical awarded after three years' service. If a faculty member resigns during or at the completion of a sabbatical leave, he must return to the University the amount that he received while on that particular leave.

5. Accountability

Recipients of sabbatical leaves shall report back to their departmental chairmen, deans, and the Provost (or appropriate administrative officer) a summary of their activities during the leave and the accomplishments made. Subsequent awards, it is only fair to say, may in part

be evaluated on the basis of the achievements of previous grants. Therefore, any concrete indications of the value of the grant (books or articles published, renewed requests for services, etc.) should be submitted as and when they become available for inclusion or notation in the faculty member's personnel file in the chairman's office.

Committee on Faculty Welfare and Privileges:

Jay L. Halio, Chairman
Edward E. Schweizer
Barbara H. Settles
Conrad Trumbore
Peter M. Weil

REPORT OF A STUDY

BY

AD HOC COMMITTEE OF THE SENATE

Comprised of Representatives of the Standing Committees of the Senate
on Promotion and Tenure, and Faculty Welfare and Privileges

ON

CONSIDERATIONS AND APPROACHES TO INSTITUTING REVISIONS

OF ACADEMIC TENURE AT THE UNIVERSITY OF DELAWARE

PREAMBLE

The charge, emanating from the legislative halls of many state governments and echoing through the media these days, that the tenure principle as practiced in our universities has been operating to protect faculty incompetence is vigorously disputed by many concerned faculties. Nonetheless, some study of procedures which may afford even greater protection against this occurrence than presently exists is urged by the circumstances prevailing at contemporary university campuses. Any process entailing periodic review of faculty competence must, however, take consideration of the historical origins of the principle of tenure, and must recognize both the scope of the university government's responsibilities in the development of a faculty career and the areas of faculty responsibilities in the conduct of academic duties. (A Standing Committee of the Senate has already been charged with developing a review procedure and already has reported to the Senate, where it is currently being considered and debated. Members of that Standing Committee are represented on this joint subcommittee.) This report to the Senate of the University of Delaware undertakes to address itself to just these facets of the problem. It represents an effort to provide a basis for discussion and, ultimately, for realizing the goal of a reasonable review procedure which, the authors are agreed, alone can guarantee the fullest benefits of the tenure principle to the continued progress of the university.

PRECIS

Section 1: The Background to and History of Academic Tenure in the United States.

This study begins with a survey of the history of academic freedom and the development of tenure as a means of protecting it. Especially noted are attacks upon faculty members' free expression and inquiry by religious groups, by wealthy benefactors, and by patriotic zealots. It is pointed out that such interferences with academic freedom, while differing in type and origin, have continued to the present. The conclusion is therefore reached that the tenure system is still a vital necessity for the preservation of academic freedom.

Note is then taken of recent highly publicized attacks on the operation of tenure. Among the conclusions reached regarding the validity of these charges are (1) The charge that "tenure protects incompetents" is invalid so long as the university carefully screens applicants prior to the grant of tenure and so long as a careful procedure for review of the performance of tenured faculty is established. (2) When the institution's goals change, tenured faculty acquired in earlier years who were perfectly adequate to pursue a different set of goals may be less than adequate given the new, changed objectives. Such an occurrence does represent a cost inflicted by the tenure device but, where weighed against the overwhelming benefits which tenure confers via its protection of academic freedom, such a cost seems well worth paying.

Section 2: Faculty Career Development at the University of Delaware.

The view is taken that the university has a responsibility for developing positive programs of career development so that individual faculty members can continue to grow in stature as scholars, teachers, and members of the university community. Changing goals of the university may imply stronger need for

active career development opportunities. It is assumed that the faculty of any university consists of able people with great capacity for learning if the environment is conducive.

Section 3: Early Retirement as a Means of Reducing the Costs of Tenure.

It is suggested that the University confer with the Delaware State Pension Fund and with TIAA to investigate the possibilities of offering an option of early retirement to certain tenured faculty under prescribed conditions. Such an option, which could be made available via University pre-payment of a faculty member's pension contributions, could be of benefit to both the University and the faculty member, especially in cases where a tenured faculty member is unable to contribute adequately to a changed set of goals and where reassignment or retraining are not feasible.

Section 4: Code of Faculty Responsibility.

A discussion draft of such a code likely to be adopted at the University of Utah, which is modelled on the code of professional conduct of the University of California at Berkeley, is presented for the consideration of the faculty at Delaware. It is felt that a document of this or similar nature is a necessary concomitant of an academic tenure system and is basic to achieving a broader understanding of both its premises and practices.

Section 5: Improved Complaint Procedures.

In addition to periodic reviews of all faculty members, other measures should be taken to strengthen or improve the present tenure system at the University of Delaware. Among these should be: (1) improved complaint procedures (for both complaints by faculty members and against them); (2) the establishment of a university ombudsman; (3) the institution of faculty-student advisory councils at the departmental and college levels.

THE BACKGROUND TO, AND HISTORY OF
ACADEMIC TENURE IN THE UNITED STATES

The practice of awarding tenure, or contracts without term, to faculty members in colleges and universities in the United States is often criticized as a device aimed at providing lifetime employment security to the privileged few of academia.

Although tenure is most certainly not an unmixed blessing, without fault in theory or practice, it seems clear that criticisms such as these are unwarranted and indicate a failure to comprehend the background and basic purpose of tenure.

In the first place, as noted elsewhere in this report, a tenured contract does not guarantee lifetime employment to anyone. Secondly, and more fundamentally, the notion that tenured contracts result in benefits only to those faculty members who receive them seriously misconstrues the entire purpose of tenure.

The tenure device was developed as a means of safeguarding the freedom of college and university faculty members to express their ideas and the results of their scholarly investigations without fear of repression. If its benefits accrued only to those "privileged few" faculty members themselves, it could not be justified. It is, however, society itself which is the intended beneficiary of the tenure device.

As stated by Clark Byse and Louis Joughin:

Academic freedom and tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and independent criticism which other-

wise might be withheld because of fear of offending a dominant social group or transient social attitude.¹

The same general sentiments are expressed by Professor Fritz Machlup:

Ultimately then, academic freedom is a right of the people, not a privilege of the few _____. It is the people at large who have a right to learn what scholars may succeed in finding out if they are left free and secure from reprobation. It is the people at large who have a right to the cultural and material benefits that may flow from the teaching and inquiries of scholars who have nothing to fear when they make honest mistakes.²

If it be granted that society benefits from academic freedom, it would seem that a careful evaluation of the tenure device involves consideration of the following issues:

1. Does evidence exist to demonstrate the need for "special devices" to protect the academic freedom of college and university faculty members?
2. If evidence of the need for such special devices does exist, do tenure contracts provide the protection needed to assure academic freedom?
3. If tenure does have the merit of protecting academic freedom to the benefit of society, does this merit outweigh the demerits associated with granting tenure contracts?
4. Are there alternative means (other than tenure) of protecting academic freedom which involve fewer disadvantages than tenure contracts?

¹Clark Byse and Louis Joughin, Tenure in American Higher Education, p. 4. (Cornell University Press, Ithaca, N. Y., 1959)

²Fritz Machlup, "On Some Misconceptions Concerning Academic Freedom," A.A.U.P. Bulletin, Winter, 1955, reprinted in Academic Freedom and Tenure, edited by Louis Joughin, (The University of Wisconsin Press, Madison, Wisconsin, 1967), p. 182.

THE HISTORY OF ACADEMIC FREEDOM
IN U.S. COLLEGES AND UNIVERSITIES

If academic freedom does indeed require some special devices other than the Constitution and the general guarantee of free speech and due process, a careful look at the history of American colleges and universities should reveal it. This section of the report is intended as a survey of the history of academic freedom in the U.S. and the development of tenure as a means of safeguarding it.

Before dipping into the history of academic freedom it would appear to be useful to provide a working definition of that much used phrase. In what follows, we shall adopt the definition offered by Professor Machlup:

Academic freedom consists in the absence of, or protection from, such restraints or pressures - chiefly in the form of sanctions threatened by state or church authorities or by the authorities, faculties or students of colleges and universities, but occasionally also by other power groups in society - as are designed to create in the minds of academic scholars (teachers, research workers, and students in colleges and universities) fears and anxieties that may inhibit them from freely studying and investigating whatever they are interested in, and from freely discussing, teaching or publishing whatever opinions they have reached.³

³F. Machlup, ibid., p. 178.

THE CHURCH AND ACADEMIC FREEDOM

- THE 19TH CENTURY⁴

Since many of the earliest colleges founded in the U.S. were sponsored by religious groups, it should not be surprising to find that most of the early attacks on academic freedom came from various church groups.

In one of the most celebrated early cases, Thomas Cooper, president of South Carolina College and "one of the most distinguished men in American academic life," came under attack from the clergy and his college's Board of Trustees in the 1830's because of his outspoken opposition to Calvinism and his views on other controversial issues. Cooper fought these attacks with vigor and, though he was not dismissed, "the publicity given to his views by the case hurt the college so badly that he was forced to resign a few years later, along with his whole faculty."⁵

In another much-published early case in the 1850's, Professor Wolcott Gibbs, "an outstanding chemist--known and recommended by the most distinguished scientists in the United States"⁶ was denied an appointment by the Columbia University trustees for the apparent reason that he was a Unitarian.

The Cooper and Gibbs cases were only two of many attacks on academic freedom by the churches in mid-nineteenth century. According to Hofstadter and Metzger, "The politics of sect intruded even upon the nominally neutral ground of the state universities. ---For varying periods of time, North Carolina, Tennessee, Vermont, Kentucky, Transylvania, Miami, Indiana, and Alabama universities fell under the direct influence and control of par-

⁴This and the following sections on the history of academic freedom in the U.S. draws heavily on the excellent book by Richard Hofstadter and Walter P. Metzger, The Development of Academic Freedom in the United States, (Columbia University Press, New York, 1955).

⁵Hofstadter and Metzger, ibid., p. 269.

⁶Hofstadter and Metzger, ibid., p. 270.

ticular sects. The universities of Missouri, Mississippi, and Michigan bowed to the pressure of several competing denominations."⁷

Nor were matters much improved after the Civil War. Not long after Darwin wrote his Origin of Species a very large number of American professors who "heretically" expounded Darwin's views on evolution, came under attack. In 1884, Professor James Woodrow, a Presbyterian minister with a Ph.D. from Heidelberg, was dismissed by the Presbyterian Theological Seminary in Columbia, South Carolina for allegedly espousing Darwinism. Around the same time the "able" Alexander Winchell was dismissed by Vanderbilt University for a similarly "offensive belief in Darwin's theories. And in yet another much publicized case, the president of Yale University protested the extension of Darwin's ideas into the field of sociology by demanding that Professor William Graham Sumner abandon the use of Spencer's Study of Sociology as a textbook."⁸

Many additional specific examples of religious intrusion on academic freedom during the 19th century could be cited. The main point, however, seems clear. The power of various religious groups has been used extensively over many years to undermine academic freedom.

⁷Ibid., pp. 298-99.

⁸Ibid., p. 335.

ATTACKS BY WEALTHY BENEFACTORS AND BUSINESS ON ACADEMIC FREEDOM

- TURN OF THE CENTURY

But the church was not the only power group which attempted dictation to faculties of colleges and universities. In the final decades of the 19th century, more and more colleges began to receive substantial financial support from wealthy families and businesses. This support, welcome though it was, did not always come without strings attached.

"Thus," report Hofstadter and Metzger, "big businessmen and professors came into fateful contact. The former supported the university and took command of its organ of government, the latter surveyed society and tried to sway its course: two spheres of action and interest, formerly far apart, drew close and overlapped."⁹

The result, of course, was not always conflict but the list of interferences with academic freedom which resulted is impressive. A few outstanding examples will illustrate.

In the 1880's eminent economist Henry Carter Adams was dismissed by Cornell as a result of a pro-labor speech which irritated a powerful benefactor of the University.¹⁰

Professor Richard T. Ely was tried by a committee of the Regents of the University of Wisconsin in 1894 for believing in strikes and boycotts, justifying and encouraging the one while practicing the other."¹¹

Economist Edward W. Bermis was dropped by the University of Chicago in 1895 allegedly for delivering a speech against the railroad companies while the Pullman strike was going on."¹²

⁹Ibid., p. 418.

¹⁰Ibid., p. 419.

¹¹Ibid., p. 426.

¹²Ibid., p. 427.

In 1898, Professor H. H. Powers, "a popular teacher in political science" at Stanford, was forced to resign at the insistence of the university's main benefactress, Mrs. Leland Stanford, because a speech on religion which he delivered offended her.

In 1900, economist Edward A. Ross publicly defended Eugene V. Debs, municipal ownership of utilities and free silver. He too was forced to resign from Stanford for his "radical" views.¹³

Around the same time Professor J. Allen Smith, "author of a liberal dissertation on the money problem and a supporter of William Jennings Bryan in the election of 1896,---was fired from Marietta College by a board of trustees dominated by Charles G. Dawes, a wealthy partisan conservative.¹⁴ To further illustrate the interference of politics with academic freedom, Smith was subsequently offered a position at the University of Missouri where a "--- Populist president proposed to make room for a true believer by firing a gold standard professor."¹⁵

¹³Ibid., pp. 437-441.

¹⁴Ibid., pp. 423-24.

¹⁵Ibid., p. 424.

THE EARLY TWENTIETH CENTURY

WORLD WAR I AND THE "LOYALTY" ISSUE

With World War I, another wave of vicious repression of academic freedom was launched.

The crisis of 1917 plunged the academic profession into vast and unheralded new difficulties. A mob fanaticism arose that put every freedom in jeopardy. ---All over the nation, patriotic zealots on boards of trustees, in the community, and on the faculties themselves, harrassed those college teachers whose passion for fighting the war was somewhat less flaming than their own. Suddenly, the gains for academic freedom that had painfully and gradually been won---were swept aside."¹⁶

Among the many examples of this particular period were the following:

Three professors at the University of Nebraska were dismissed because they did "believe in internationalism, impede the sale of liberty bonds, and criticize their more patriotic colleagues."¹⁷

The University of Minnesota fired Professor William A. Schaper, chairman of the Political Science Department, for having the temerity to say that "he did not wish to see the Hohenzollerns---wiped out root and branch."¹⁸

Columbia University's Board of Trustees took over the responsibility of setting up an investigating committee to determine whether and to what extent teaching at the University tended "to encourage a spirit of disloyalty."¹⁹

Professor J. McKean Cattell, "---one of the leading psychologists of his generation" was ultimately dismissed by Columbia for sending "a petition---to three Congressmen, urging them not to approve a bill then pending which would have sanctioned the use of American conscripts on European battlefields."²⁰

¹⁶Ibid., pp. 495-96.

¹⁷Ibid., p. 497.

¹⁸Ibid., p. 497.

¹⁹Ibid., p. 498.

²⁰Ibid., p. 500.

Dr. Leon Fraser, an instructor of politics at Columbia, was fired in 1917 for the crime of making "some critical remarks about the military camp in Plattsburg."²¹

THE MID-TWENTIETH CENTURY -

THE ISSUES OF COMMUNISM, CIVIL RIGHTS, AND MORALITY

One might legitimately be tempted to dismiss these lists of blatant intrusions on academic freedom from the distant past as ancient history with little relevance for today's world if it could be shown that "that kind of thing can't happen any more." It would be heartening if such were the case but a reading of the more recent record provides little justification for such faith.

For example, the American Association of University Professors has received some three thousand complaints since 1915 dealing with interference with academic freedom.

In an interesting discussion of "Academic Freedom of the Faculty Member as Citizen," Professors Thomas J. Emerson and David Haber break recent cases down into three categories: "(1) those dealing with political conduct of the faculty member; (2) those concerned with other forms of extra-mural conduct; and (3) those involving intra-mural opposition to the university administration."²²

²¹ ibid., p. 501.

²² T. J. Emerson and David Haber, "Academic Freedom of the Faculty Member as Citizen," Law and Contemporary Problems, Summer, 1963, p. 536.

Some examples of cases in the first category include that of Rocky Mountain College where "a faculty member who had been given leave of absence to serve in the state legislature was refused reappointment because of his liberal record in that position."²³ At Western Washington College of Education, "the president was dismissed after attack by a right-wing group for having allowed radical speakers on the campus, failing to hold patriotic meetings, allowing an 'anti-American' Social Science Club to function, and tolerating a 'subversive' college newspaper."²⁴ In 1948, an Evansville College professor "was dismissed for participating in the Henry Wallace campaign for the presidency."²⁵ In 1958, the University of Michigan fired Professor Mark Nickerson, a former Communist Party member largely on the grounds that "his continued membership in the Medical School would be harmful to the school and may injure the reputation of the university as a whole."²⁶

In addition to cases such as the above, there have been an impressive number dealing with the issue of faculty members' refusal to testify before Congressional investigating committees or to take specified loyalty oaths."

A much publicized case in the second category above was the dismissal, in the early 1960's, of Professor Leo Koch by the University of Illinois for

²³Ibid., p. 536.

²⁴Ibid., p. 536.

²⁵Ibid., p. 536.

²⁶Ibid., p. 537.

writing a letter to the campus newspaper which included the professor's endorsement of pre-marital sexual intercourse.

Some years earlier, a professor at Alabama Polytechnic Institute was dismissed as a result of a letter to the student newspaper which stated "what is difficult to understand is the reasoning of those persons who profess decency, a feeling for their fellow man and who boast of their moral standards, yet who nevertheless hesitate to join the crusade to drive ignorance, poverty and social injustice from our midst." The Institute's Board of Trustees refused to renew the professor's contract on the grounds that such statements "in view of the racial tension in Alabama---violated the canons of appropriate restraint, respect for the opinion of others, and the duty to dissociate one's views from that of the university."²⁷

Finally, in the category of "intra-mural opposition to university administration," the 1940's, 1950's and 1960's have seen academic freedom cases involving "much conduct as by-passing the president in making direct contact with the trustees; voting against the establishment of an ROTC program; criticizing the president to students (outside the classroom); making derogatory remarks about university officials---; and general 'friction' or 'failure' to cooperate."²⁸

²⁷ Ibid., p. 540.

²⁸ Ibid., p. 541.

TENURE AS A MEANS OF PROTECTING ACADEMIC FREEDOM

The above list of specific examples of violations of academic freedom may seem unnecessarily long for a report of this sort. Their inclusion is a result of the Committee's feeling that if one is to evaluate the merits and demerits of the tenure device, one must first appreciate the nature of the offenses against which tenure is intended to protect.

In fact, of course, the academic freedom cases actually listed here only scratch the surface of the thousands of actual instances which have occurred in the nation's history. And even if all had been listed, they alone would reveal only a very minute part of the damage they have inflicted on academic freedom in this nation. One can only speculate on the number of professors who have not themselves been attacked for their views or research, but whose work has been partially stifled as an indirect result of what they have seen happening to others.

Professor Machlup perhaps expresses this point most succinctly when he says:

The occupational work of the vast majority of people is largely independent of their thought and speech. The professor's work consists of his thought and speech. If he loses his position for what he writes or says, he will, as a rule, have to leave his profession, and may no longer be able effectively to question and challenge accepted doctrines or effectively to defend challenged doctrines. And if some professors lose their positions for what they write or say, the effect on many other professors will be such that their usefulness to the students and to society will be gravely reduced.²⁹

²⁹F. Machlup, "On Some Misconceptions Concerning Academic Freedom," op. cit., p. 180.

Even a cursory look at the history of America's colleges and universities makes it painfully clear that the preservation of academic freedom requires some sort of special protection. The purpose of this report is to explore the pros and cons of tenure contracts as a means of providing such protection.

The first formal proposal for tenured contracts for U. S. college and university faculty members came in the Declaration of Principles by the newly formed American Association of University Professors in 1915. That statement included the following specific proposal regarding tenure:

In every institution there should be an unequivocal understanding as to the term of each appointment; and the tenure of professorships and associate professorships, and of all positions above the grade of instructor after ten years of service, should be permanent (subject to the provisions herein-after given for removal upon charges). In those state universities which are legally incapable of making contracts for more than a limited period, the governing boards should announce their policy with respect to the presumption of reappointment in the several classes of position, and such announcements though not legally enforceable, should be regarded as morally 'binding'.³⁰

This statement was widely hailed and was endorsed by the American Association of Colleges in 1925. Subsequently these two organizations, the AAUP and the AAC, met in a series of conferences over the years which resulted in a new policy document, the 1940 Statement of Principles on Academic Freedom and Tenure. The 1940 statement has since been endorsed by over fifty academic organizations.³¹

³⁰"The 1915 Declaration of Principles" reprinted in Academic Freedom and Tenure, L. Joughin, ed., (The University of Wisconsin Press, Madison, 1967), pp. 174-75.

³¹See L. Joughin, ed., op. cit., pp. 34-35.

On the specific subject of tenure, the 1940 statement says the following:

After expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, exempt in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.---

--Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full time service in all institutions of higher education; but subject to the proviso that when, after a time of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his appointment is for a probationary term of not more than four years---.³²

RECENT CONTROVERSY OVER TENURE

The 1940 "Statement of Principles," supplemented by additional interpretive policy statements and guides issued in 1958, 1961, and 1964, has been the standard under which tenure for college and university faculty members has been extended and defended for the past thirty years.

In recent years, however, the tenure device has come under attack from a number of quarters. In several state legislatures, bills have been introduced to outlaw tenure. The American Council on Education's Special Committee on Campus Tensions "has called for a re-examination of tenure."³³

The President's Commission on Campus Unrest, while granting the usefulness of tenure as a guarantor of academic freedom, has expressed the view that it

³²"1940 Statement of Principles on Academic Freedom and Tenure", reprinted in Academic Freedom and Tenure, L. Joughin, ed., p. 37.

³³The Chronicle of Higher Education, March 22, 1971, p. 4.

"can also protect practices that detract from the institution's primary functions, that are unjust to students, and that grant faculty members freedom from accountability that would be unacceptable for any other profession."³⁴ The American Association of State Colleges and Universities, a group of state college and university presidents, recently withdrew its endorsement of the 1940 "Statement of Principles", and came out with a new policy statement in which it is explicitly argued that "academic tenure is not a prerequisite to academic freedom."³⁵ Partially in response to these expressions of discontent, the American Association of University Professors and the Association of American Colleges have appointed a special commission to re-examine the tenure issue and to report on its findings during 1972.

As expressed in a recent article in the Wall Street Journal,

Critics contend that tenure is a relic of the past, an unnecessary obstacle to overdue academic reforms and a system that is unfair to all concerned - taxpayers, professors and students alike. They see tenure inflating college costs and lowering quality by causing undue turnover in the beginning, untenured faculty ranks while providing lifelong job security for incompetents in the top echelon.³⁶

Although summarization is difficult, these recent expressions of dissatisfaction with the results of tenure appear to include the following specific charges:

1. By providing lifetime employment security, tenure sometimes protects incompetent professors who not only are negligent in their own duties but who may use their protected positions to frustrate efforts at educational reform.

³⁴Ibid.

³⁵The Chronicle of Higher Education, November 15, 1971.

³⁶The Wall Street Journal, April 16, 1971.

2. In some cases, large numbers of tenured faculty must be retained even though the need for their services, as evidenced by student enrollment in their classes, has fallen off sharply, thereby inflicting severe financial burdens on the institution.
3. In some cases, colleges and universities may be forced to terminate the services of some of their brighter, more able young faculty members because the tenured ranks are "clogged" with less able senior faculty members whom they are required to retain.
4. The economic security provided by tenure contracts is a benefit which - by raising the supply of teachers and making the academic profession more attractive to the security-conscious - tends to lower academic salaries.
5. Tenure is no longer needed as a guarantor of academic freedom. Faculty members neither require nor merit special protections beyond those available to all citizens under the Constitution. The constitutional guarantee of free speech and adequate procedures insuring due process should be sufficient to protect any faculty member from arbitrary or unjustified treatment.

Let us consider these charges against tenure, one by one.

DOES TENURE PROTECT INCOMPETENTS?

It is, of course, impossible to cite specific data which either proves or disproves this contention. The issue is not simply one of whether or not there are any cases of submarginal professors being protected by tenure. It seems obvious, with the tenure device as widespread and long-established as it is, that there are.

The fundamental issues are not whether any "deadwood with tenure" exists but rather:

1. Are so many incompetent professors being protected by tenure as to outweigh the benefits which the tenure device provides by maintaining the academic freedom of those who are not incompetent?
2. Is it the tenure device which is ultimately responsible for the continued employment of incompetent professors?

This committee has no means at its disposal to estimate the degree to which tenure at the University of Delaware has protected incompetence. It is, however, our considered opinion that such occurrences are rare and that, at this institution in any case, tenure has purchased the protection of academic freedom at a very small price in terms of "deadwood".

Much more fundamental, however, is the question of whether it is the tenure device itself which can properly be charged with continuing incompetent professors in their jobs.

The "1940 Statement of Principles" of the AAUP specifically states that faculty members with tenure may have their contracts terminated "for adequate cause." Adequate cause, the statement later implies, involves proven "incompetence" and "moral turpitude." These provisions seem to make it clear that, in a formal sense at least, it is not the tenure device which protects incompetent faculty members. It is rather the failure of the institutions involved to ferret out and demonstrate the incompetency of any tenured faculty member.

There is one circumstance, however, in which a tenure system may be a real impediment. This could be the case when a university (or department) which

already has a sizable number of tenured faculty recruited under earlier, different standards, changes drastically its educational objectives and desires to "upgrade" its faculty in accordance with its new objectives. In such a case, assuming that the existing tenured faculty is not really incompetent, the pace of desired "upgrading" may be slowed down measurably until a number of the old tenured faculty reach retirement age. Here is where early retirement and reassignment within the university may come.

DOES TENURE REQUIRE THE RETENTION OF FACULTY NO LONGER NEEDED?

According to one recent article in the press, the tenure system obligates colleges and universities to retain the services of faculty no longer needed. The article pointed out one case where foreign language requirements had been dropped, resulting in a sharp cutback in student enrollments in that area.

"Why not cut back on the professors in those departments? The university's hands are tied because of tenure, the centuries-old practice of granting lifetime employment to college professors."

"A number of universities across the country have departments in which tenured faculty members outnumber students. 'Unlike business or even government agencies, a university can't realize cost savings just by lopping off a department, no matter how outmoded or unneeded it becomes.'"³⁸

How accurate is this view of tenure and its consequences? Not very. Resorting once again to the "1940 Statement of Principles," we note that termination of tenured faculty contracts is specifically sanctioned "under extraordinary

³⁸Wall Street Journal, April 16, 1971.

circumstances because of financial exigencies." Presumably this means that tenured faculty whose services are no longer needed can be terminated whenever their continued employment creates serious financial difficulties for the institution.

While it is clear that tenure does not prevent termination of tenured faculty in cases of financial exigency, it should be recognized that in practice, financial exigency as a cause for such terminations may not always be easy for the institution to prove. As a result, it is entirely possible that some tenured faculty might be kept beyond the point when their services are actually needed. To the extent this is the case, the tenure device can, indeed, involve undesirable costs.

DOES TENURE FORCE THE DISMISSAL OF ABLE, YOUNGER FACULTY?

It has been argued that the existence of a sizable number of tenured faculty may force a college or university to terminate the services of promising younger faculty members in pursuance of a rigid "up or out rule" because not enough tenured positions are open to permit their retention.

This argument is rather difficult to evaluate since it seems to present an institution with a somewhat special set of circumstances. Logically, such a situation could only arise where the institution has a quota system of some sort on its tenured positions or a situation in which a predicted future decline in enrollment bars the more or less permanent expansion in faculty which the granting of additional tenured contracts would imply. Consequently, barring such exceptional circumstances, this does not appear to be a valid objection to tenure.

DOES TENURE PRODUCE LOWER SALARIES FOR FACULTY?

There may well be some degree of validity to this charge. In the "1940 Statement of Principles" it is argued that "Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability." Thus the basic AAUP position is that tenure is required not only to protect academic freedom but also to provide economic security.

The "security" aspect of tenure could conceivably have two effects which may be considered unfavorable by some. In the first place, if it does attract more people into the academic profession than would otherwise have been the case, such an addition in supply would, other things equal, tend to have the effect of lowering salaries. This would amount, in effect, to the faculty "trading off" the advantage of somewhat higher salaries in exchange for the advantage of greater long run security.

Secondly, it might be argued that the "security" aspect of tenure could have the effect of attracting a different type of faculty member than would be attracted in its absence. Those who place a higher premium on security may be attracted while some of those who would prefer higher salaries to security may be turned away.

It is impossible to estimate these effects accurately, but it is the feeling of this committee that they represent, at most, minor influences of tenure.

IS THE CONSTITUTIONAL REQUIREMENT OF FREE SPEECH AND DUE PROCESS
SUFFICIENT TO SAFEGUARD ACADEMIC FREEDOM?

Among the critics of tenure, a considerable number take the position that while academic freedom is, indeed, of great importance, the tenure device is not required to achieve it.³⁹ This viewpoint is perhaps best summed up by the following quote from a press article:

---a faculty member, outside of the classroom, neither requires nor deserves protections above and beyond those guaranteed any other citizen under the U. S. Constitution.

Within the classroom, critics say, procedures guaranteeing due process can be established to protect a faculty member from unjustified dismissal or restrictions.

'Outside the classroom, just what special dispensation does an academician have - other than constitutional freedom?' asks an official of an educational association. 'As I see it, academic freedom is just another phrase for constitutional rights, properly understood.'⁴⁰

The defenders of tenure reject this logic outright. In the first place, it is argued, if the constitutional right to free speech were, in fact, an adequate guarantor of academic freedom, the shocking list of arbitrary dismissals which led up to the adoption of the AAUP "1940 Statement of Principles on Academic Freedom and Tenure" would not have occurred. Indeed, it was precisely because the ordinary processes of constitutional law proved an inadequate defense for academic freedom that the tenure device became widely accepted. The differences between general freedom of speech and academic freedom is well expressed by the following quote:

³⁹See above, footnote 35, for the recent statement of the American Association of State Colleges and Universities.

⁴⁰Wall Street Journal, March 22, 1971.

In the United States, academic freedom is not a right that professors or students have under the Constitution or under any law of the land, whereas general freedom of speech is one of the civil liberties protected by the Bill of Rights in our Constitution. While violations of this right can be taken to the courts of law, infringements of academic freedom can be protected only by appealing to the conscience of individuals and groups in society; there is no recourse to the courts except where contractual relations are involved. Finally, academic freedom requires special safeguards quite different from those provided by the freedom of speech guaranteed in the Constitution.

The Constitutional guarantee of free speech implies only that one who says unpopular or supposedly dangerous things will not be punished by the government, and that Congress will not make any laws to interfere with free speech. Professors need more than this absence of governmental sanctions, more than a guarantee that they will not be jailed for the expression of their thoughts. If they are to be encouraged to pursue the truth wherever it may lead, to 'follow out any bold, vigorous, independent train of thought,' braving the criticism, ridicule, or wrath of their colleagues, they need protection from all more material sanctions, especially from dismissal.⁴¹

A similar position regarding the inadequacies of constitutional law as a guarantor of academic freedom are expressed by William P. Murphy as follows:

The struggle for academic freedom has demonstrated that academic tenure and due process are the means essential to achieving that great end. In this struggle constitutional law can become an important support in public institutions, through the requirement of a hearing prior to a teacher's discharge and by prohibiting certain reasons for discharge. ---But constitutional law can never be more than an occasional ally in the struggle for academic freedom.---To combat and redress all the myriad ways in which academic freedom may be undermined and thwarted will always require vigilant and determined self-help activity within the academic community itself. For this the law will never be a substitute.⁴²

⁴¹F. Machlup, "Some Misconceptions Concerning Academic Freedom," op. cit., pp. 179-180.

⁴²William P. Murphy, "Academic Freedom - An Emerging Constitutional Right," Law and Contemporary Problems, Summer, 1963, p. 484.

Tenure, in summary protects the faculty member against a whole host of possible infringements on academic freedom which the constitutional law cannot reach. Without tenure, the burden is entirely upon the discharged faculty member to prove that his institution has wronged him in some way subject to legal adjudication. With tenure, the shoe is on the other foot. The institution, having once made the judgment that the faculty member merits the award of a tenured contract, must then prove him guilty of incompetence or moral turpitude to justify his dismissal.⁴³

SUMMARY - THE COSTS OF TENURE

It is clear that the benefits of tenure may not be purchased by the academic community at no cost. The tenure system does carry with it a number of disadvantages which must not be lightly dismissed.

First, there is the possibility that tenure will protect the jobs of incompetent or, at best, mediocre professors. As noted above, this only need be a serious problem where the institution involved does an inadequate job in screening before the grant of tenure and review after its grant. (See report on "Review Procedures" prepared by the Senate Committee on Faculty Privileges and Welfare.)

Secondly, it seems clear that tenure will have the effect of slowing down an attempt to "upgrade" the faculty when the educational objectives of an institution suddenly change.

⁴³Or prove a case of financial exigency.

Third, tenured contracts in disciplines with declining enrollments may raise costs somewhat unless the institution can prove financial exigency.

Fourth, if the number of tenured positions available is fixed for some reason, "up or out" rules may force the termination of contracts of some able, younger faculty members.

Fifth, it is possible that the grant of tenure may hold down somewhat on the level of faculty salaries and may be responsible for attracting more security-conscious people into the academic profession.

Any judgment of the tenure device must somehow balance off these very real costs against the benefits to the academic profession and to society of the much enhanced measure of academic freedom which tenure clearly does provide.

CAREER DEVELOPMENT AT THE UNIVERSITY OF DELAWARE

If a tenure policy includes a strong review and complaint procedure, there may still be some criticism of tenure when a positive program of career development is not implemented. The complexity of responsibilities among departments, colleges and general university administration to assist staff members realize potentialities may, in fact, mean that no one is making use of the devices available.

Careers do change. From management and sociological studies of career choice and occupational patterns it can be seen that job descriptions have a transient appeal and utility to people. If a person is going to be involved in teaching and research over a long period of time, it may be that the areas of teaching and research will need to change over a period of years. It can not be assumed that the staff member will be doing exactly the same activities as he did when he was granted tenure. The career development responsibility of an administrator may be to see to which areas the person could be moving rather than simply hope that the professional person sees all the opportunities available.

Some tenured people are judged inadequate. In contrast, it can be that with advancing years a person may continue to do exactly what he did at the time he achieved tenure, but that the university's goals and objectives change in that period as constraints and incentives purposely move them from these goals. If the tenured person is asked to do things other than effective teaching and research productivity, it can be viewed as a product of the institutional environment as well as the person's inner directed qualities. When a management-based approach to looking at institutions of higher education is taken rather than a vocational or monastic approach to viewing these

institutions, we cannot look simply to the removal of insecurity for the person as the reason why he has failed to develop in the direction ascertained when tenure was achieved. Tenure is earned by performance. At the time the person achieved tenure he was judged able to produce the kinds of behaviors which the institution at that time found important.

Why then is the person unappreciated? It may be that continued performance at that level is an ineffective response to changing students. Perhaps the students are coming better prepared or more poorly prepared in the area in which the teacher is working and that the same kinds of response that were effective at one point are no longer useful. It may be that the institution has itself encouraged the person to move away from those skills which he demonstrated at the point tenure was awarded. This can be because the university had need for other kinds of activity. Heavy teaching loads may encourage people to develop courses that become highly structured and difficult to change. A light teaching load could take a person from the classroom to such an extent that he finds reentry into a dialogue or interaction with students difficult because of shyness and other kinds of personal habits that are developed by not having the contact with young people.

Tenured people are used heavily for quasi-administrational and committee work assignments within the university because their security allows them to speak freely. The time generally used for such assignments may redirect their efforts from teaching and research.

At least some of the data from sociology says that people become what they are expected to become rather than they achieve in terms of totally inner

motives and directions. Thus, if we find ineffective teaching in a person who has been on our campus for a number of years, it could be because he has been expected to become a poor teacher rather than because he has some driving need to be an ineffective teacher.

Approaches to modifying inadequate behavior. Changes in job description could be useful adjuncts to encouraging continued career development. No doubt teaching the same course under the same format for a number of semesters in a row can be a stultifying experience. Visiting professors or departmental reassignment could alleviate this problem. Administered loads can be used to encourage people to develop new insights into their own subject matter and into approaches for teaching it. The improvement of instruction grant approach might be strongly encouraged by administrators for people who have had long stints with the same course with little or no new input. Such grants then are not looked upon as awards for people who are already doing an excellent job of teaching, but rather as a real means for reevaluating present teaching and looking for new approaches. An improvement of instruction grant proposal should include some opportunity for the person to make contact with people who have other approaches or who have been doing experimental kinds of teaching. We often forget that such things as overhead projectors are for many people pieces of equipment that appeared long after they did their undergraduate and graduate work, and long after they served their apprenticeship in teaching. If we would like to encourage people to use supportive devices, illustrative materials, and audio-visual aides, then we should actively pursue getting them involved. Situations which encourage innovation have to be set up. We cannot wait for people to realize that they are in need before we give them opportunity to

expand horizons. It is the university's own responsibility to actively encourage longtime faculty members to find new outlets and new approaches. Viewed in this framework, even a sabbatical program might not focus on whether or not one has earned a sabbatical (by already having produced outstanding work in some scholarly enterprise) but rather a sabbatical program might be a tool for reshaping perspectives. A person who seems to be doing good scholarly work on a regular basis might be encouraged to spend at least part of his sabbatical working on other phases of his professional development, such as his teaching. A good teacher might need an infusion of scholarship or administrative internship as a sabbatical program. If we find someone has problems with writing his research, we might implement actual writers' workshops. Large companies, such as du Pont, have long ago faced the fact that they can have good managerial candidates who cannot write a decent memorandum and actually hire people to come in to improve writing talent and to do criticism of professional work in a constructive way. We could act to facilitate productive professional relationships outside the university where this would be helpful; i.e., co-authorships, coordinated research, teaching visitation. This university may need more involvement with the outside world in terms of bringing visiting scholars to the university. One approach, which is already in use by some departments, is the device of having an advisory group drawn from the discipline from outside the university. This group can be involved in evaluating career development programs for the total department or college and viewing the long term impact on the shape of the academic design.

Recognition that a person's contribution may be evaluated differently by colleagues and various levels of administrators can lead to see that values are not completely shared and priorities are not the same for all parts of the

university. Sometimes conflict over expectations must be resolved before a career development approach can be adopted for an individual.

These kinds of meanderings in search of career development opportunities are simply suggestive of a different approach. Instead of saying "How has the person failed?" let us say "How can the University help the person to succeed?" How can we make the investment that we've put into a professional person pay off? When we schedule our professional's time in terms of temporary short-term demands, we fail to tend to the sorts of activities which would help a person grow over a long period of time. If we find that our choices in staff in the past have been somehow not in keeping with our present goals, we either ought to be quite helpful in terms of finding places for these people outside the system, that is, by actually doing some seeking for better job placement for them, or we should evaluate the person's talents and move to help him develop in terms of the new goals. Most people can learn as adults. We have significant bodies of information in psychology and education which suggest that people are adaptable and that their need to grow and change may be viewed as a positive input to the growth of the university.

Recognition of different kinds of work. The Community Design Commission has drawn attention to establishing goals of the university and strongly endorsed the priority on teaching excellence as well as pointing out a variety of other important functions of the university. A variety of kinds of personalities, skills, interests and abilities may be needed to meet the needs of the differing students whom we wish to help. Considerations of status and prestige are secondary to these student-oriented goals, and faculty members who perform needed functions should not be faulted if their audience is more local than

universalistic and their former students more well known than themselves. This is not to slight the need for people who reach out into their discipline and the world beyond the university to change patterns of thought as well as students. It is to recognize the contributions of different kinds of people to a complex venture - the academic community.

SUMMARY OF CAREER DEVELOPMENT

With a tenure policy which includes periodic review and complaint procedures there appears opportunity for the university to take a more active role in facilitating the development of its staff. The view that the development of a professor is his own personal problem and that the activities which professors do to expand their horizons are simply for their own personal enjoyment and greater saleability on the academic market becomes old fashioned.

The evaluations made at regular periods are shared with the professor and steps to accomplish improvement or redirection of effort may be proposed. Administered loads can be used realistically to change expectations and potentialities for staff. Sabbatical programs can be seen as both educational and productive ventures not as reward mechanisms. More frequent and earlier sabbaticals may be necessary if the university is developing rapidly or changing its goals. In-service education in such areas as educational technology, computer uses, administrative skills and other areas where the graduate studies of most mature professors were lacking or now inadequate should become the part of the university's role in staff growth as it is in industry. Changes in actual job descriptions may be necessary if the university makes changes in its goals, and opportunity to retrain should be made available to the individual. If an academic atmosphere which encourages learning by all

in the university community is attained, only a few professors will fail to respond and to make useful contributions to that community. The clarity of purpose which a code of responsibility can give to both faculty and administrators can contribute to this continuous learning process.

EARLY RETIREMENT AS A MEANS OF REDUCING THE COSTS OF TENURE

It has been noted above that a careful review procedure as well as a well-conceived program of career development can aid substantially in minimizing the costs which accompany an effective tenure system.

Neither approach, however, can always deal adequately with the occasional case of the older tenured faculty member who, though still "competent" in an absolute sense, may no longer be able to contribute in the degree and/or direction his department requires.

Such a situation could arise from several sources. Individuals reach their peak professional proficiencies at differing ages. Some faculty members are more vigorous and productive at age 60 than colleagues half their age. Others, however, for reasons of health, family circumstances, or motivation, may find it increasingly difficult to pull their full weight some years before their normal retirement date.

A somewhat similar situation is that noted above, where a tenured faculty member, still quite competent to perform the tasks for which he was hired years earlier, may find himself unable to contribute much in a department whose mission and objectives may have changed markedly over the years.

Such situations can be difficult, both for the faculty member who finds himself in an increasingly uncomfortable environment, and for the University which must, under tenure rules, continue to employ him to retirement age. But there exists a solution which may, in some cases, benefit both the faculty member and the University without in any way compromising the principles of tenure.

Such a solution is the device of voluntary early retirement. Suppose, for example, that a faculty member at age 60 finds academic life increasingly onerous and difficult. He suffers as he struggles to continue in a profession for which he has lost his appetite and vitality. His students suffer as his dissatisfaction is reflected in his teaching. And the University loses as it must continue to employ him despite below "par" teaching and scholarly activity.

In such a case, it may be to the benefit of all parties for the University to offer the faculty member the option of early retirement at full retirement benefits. Such an option, of course, would require that the University make a lump sum pre-payment to TIAA or the State Pension Fund to assure the faculty member a paid-up pension. Despite this added cost, however, the University may find the option working to its benefit. In exchange for the payment to the retiring professor's pension annuity, it has obtained the opportunity to replace him with a younger, perhaps more vigorous scholar at a substantially lower salary. The signers of this report strongly urge that the University proceed, at the earliest possible time, to develop a voluntary early retirement plan.

It is important, however, to stress the fact that such a program must be voluntary and the terms negotiated--to be instituted only in cases where there is mutual agreement on the part of both the University and the faculty member involved. For should a tenured faculty member be forced to accept early retirement against his will, the very purpose of tenure could be completely undercut.

CODE OF FACULTY RESPONSIBILITIES

It is widely recognized⁴⁴ that members of the academic profession bear certain obligations of professional character. The broad substance of these has been expressed in a series of statements which are included for consideration in an appendix to this report. Subsequently, it has been urged⁴⁵ that rules for "faculty self-regulation" should be adopted and this recommendation has been carried out at several large university campuses.

The authors of this report are agreed in the conviction that the formulation and acceptance of such a "Code of Faculty Responsibilities" would provide the necessary guidance for the practice of the tenure system at the University of Delaware and is in the best interests of the educational goals and other community functions of the University. Clearly, the most appropriate code will be sufficiently flexible and readily applicable to the circumstances of contemporary campus life. On the other hand, it should afford to the University's faculty and administration reasonably specific guidelines for identifying those deeds and omissions which constitute "due process" grounds for termination or disciplinary action.

⁴⁴See for examples L. Joughin, ed., Academic Freedom and Tenure, Univ. of Wisconsin, 1969, pp. 64, 82.

⁴⁵AAUP Bulletin, Vol. 56, No. 4, p. 375 (Winter 1970).

In the interests of illustrating the nature of the Code of Faculty Responsibilities, which the authors of this report regard as worthy of consideration as a basis for developing the structure most suited to the needs of this University, a draft document under discussion at the University of Utah is presented below. It should be pointed out, too, that this illustration was originally modeled on the code of professional conduct adopted by the University of California (Berkeley) Senate on February 11, 1971.

UNIVERSITY OF UTAH
CODE OF FACULTY RESPONSIBILITIES
(DISCUSSION DRAFT)

I. General Policies

The 1966 Statement of Professional Ethics, and the 1970 Statement on Freedom and Responsibility, approved by the American Association of University Professors, are confirmed and declared applicable to the faculty of the University of Utah.

While all members of the faculty are expected to adhere to acceptable standards of professional ethics and responsibility, not every departure from the ideal specifications set forth in the 1966 Statement exposes a faculty member to formal disciplinary sanctions. On the other hand, disciplinary sanctions, as authorized in this Code, should ordinarily be imposed on a faculty member for acts or omissions incompatible with the 1966 and 1970 Statements and which significantly impair the University's central function as an institution of higher education.

The acts and omissions designated in part II of this Code as bases for university discipline are not intended to comprise an inclusive description of the kinds of faculty behavior which may warrant imposition of sanctions. Other acts or omissions may also justify disciplinary action if, consistent with the general policies here expressed, they are determined to be irresponsible, incompetent, or unethical, or they are found to significantly impair the fitness or ability of the faculty member to discharge his obligations to the University.

II. Acts and Omissions Warranting University Discipline

Acts and omissions of faculty members which may warrant imposition of university disciplinary sanctions include:

1. Unjustified failure to meet scholarly responsibilities, as evidenced by -
 - (a) Intentional violation of canons of intellectual honesty, such as plagiarism or other intentional misappropriation of the work of others.
 - (b) Discrimination, in the exercise of the responsibilities of a faculty member, upon grounds irrelevant to academic eligibility, qualifications, or performance, such as political beliefs, race, religion, sex, or ethnic origin.
 - (c) Failure to meet the responsibilities of instruction, including persistent intrusion of material which has no relation to the subject matter of the course; arbitrary refusal to meet with and counsel students in academic matters; use of nonacademic criteria in evaluation of student work; or unjustified failure to meet scheduled classes.
 - (d) Use of the position or powers of a faculty member to impair a student's academic freedom.
2. Breaches of responsibility within the University community, as evidenced by -
 - (a) Willful interference with or denial of lawful freedom of movement or use of University physical facilities to any person entitled thereto; willful interference with the lawful performance of the duties of the faculty or staff of the University; or willful interference with the lawful pursuit of educational activities on campus.
 - (b) Intentional violation of applicable laws or of university rules and regulations relating to the maintenance of public order, safety, welfare, and security of persons and property upon the University campus, where such violation significantly impairs the central function of the University as an institution of higher education; or incitement of others to violate such laws or university rules and regulations, when the incitement creates a clear and probable danger that violation will occur.
 - (c) Unauthorized utilization of university resources or facilities on a significant scale for personal pecuniary gain or for political or sectarian activity.
 - (d) Deliberate misrepresentation of personal views as a statement of position of the University or an agency of the University.
 - (e) Commission of a crime the circumstances of which demonstrate unfitness to be a member of the faculty of the University.

III. Sanctions

1. Upon a determination pursuant to established academic procedures that a faculty member is guilty of a violation of this Code,

the selection of an appropriate sanction shall be based upon all of the circumstances of the case, including:

- (a) The seriousness of the infraction.
 - (b) Its impact upon the effectiveness of the university in discharging its functions.
 - (c) The relative probability of repetition of the infraction by the faculty member, and of the commission of like infractions by others.
 - (d) The attitude of the faculty member with respect to the future discharge of his professional obligations.
2. Disciplinary measures taken pursuant to this Code shall be governed by the general principle that the severity of sanction imposed shall be proportional to the gravity of the offense.
3. Sanctions which may be imposed for violations of academic responsibilities may include, in ascending order of severity -
 - (a) Private reproof.
 - (b) Letter of reprimand.
 - (c) Official censure by the president of the university.
 - (d) Imposition of explicit probationary terms and conditions, violation of which may result in dismissal from the University.
 - (e) Suspension from duty without pay for a specified period.
 - (f) Reduction in pay.
 - (g) Dismissal from the university.
4. At any stage of proceedings against a faculty member based upon formal charges of violations of this Code, the faculty member, with the approval of the president of the university may be permitted to tender his resignation, to accept a reduction in pay, or to take a leave of absence without pay for a specified period of time, in lieu of formal prosecution of the charges and imposition of a formal sanction.

APPENDIX

Pertinent Statements on Professional Ethics (Quoted incompletely from L. Joughlin Ed., Academic Freedom and Tenure, Univ. Wisconsin, 1969, p. 88):

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning on his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Further elaboration of this position is incompletely quoted below from AAUP Bulletin, Vol. 56, No. 4, p. 375 (Winter 1970)

Membership in the academic community imposes on students, faculty members, administrators, and trustees an obligation to respect the dignity of others, to acknowledge their right to express differing opinions, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus. The expression of dissent and the attempt to produce change, therefore, may not be carried out in ways which injure individuals or damage institutional facilities or disrupt the classes of one's teachers or colleagues. Speakers on campus must not only be protected from violence, but given an opportunity to be heard. Those who seek to call attention to grievances must not do so in ways that significantly impede the functions of the institution.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Faculty members may not refuse to enroll or teach students on the grounds of their beliefs or the possible uses to which they may put the knowledge to be gained in a course. The student should not be forced by the authority inherent in the instructional role to make particular personal choices as to political action or his own part in society. Evaluation of students and the award of credit must be based on academic performance professionally judged and not on matters irrelevant to that performance, whether personality, race, religion, degree of political activism, or personal beliefs.

It is a teacher's mastery of his subject and his own scholarship which entitle him to his classroom and to freedom in the presentation of his subject. Thus, it is improper for an instructor persistently to intrude material which has no relation to his subject, or to fail to present the subject matter of his course as announced to his students and as approved by the faculty in their collective responsibility for the curriculum.

Because academic freedom has traditionally included the instructor's full freedom as a citizen, most faculty members face no insoluble conflicts between the claims of politics, social action, and conscience, on the one hand, and the claims and expectations of their students, colleagues, and institutions, on the other. If such conflicts become acute, and the instructor's attention to his obligations as a citizen and moral agent precludes the fulfillment of substantial academic obligations, he cannot escape the responsibility of that choice, but should either request a leave of absence or resign his academic position.

IMPROVED COMPLAINT PROCEDURES

In addition to periodic review of all faculty members, improved complaint procedures are necessary to strengthen the present tenure system, particularly against charges, however well or ill founded, that faculty members with tenure are above criticism - or the penalties that some kinds of criticism should entail. Students, administrators, and indeed other faculty members have the right to feel that abuses of tenure and the faculty code of responsibility and conduct can be dealt with fairly, promptly, and dispassionately. This is the obverse side of the situation in which faculty members may properly present grievances against the abuse of academic freedom or privilege; and without question an effective tenure system requires both sides.

At present, the Committee on Faculty Welfare and Privilege is developing procedures for receiving and hearing complaints that in many respects parallel the procedures for receiving and hearing grievances by the faculty (as adopted by the University Faculty Senate: see Appendix). The key aspect to both of these sets of procedures is that the faculty Committee on Faculty Welfare and Privilege should serve initially as an informal advisory body, attempting to conciliate conflicts wherever and whenever possible without interfering with the rights of anyone to be heard or to press to charges. A great deal can and should be accomplished without the necessity of going to formal hearings and formal disciplinary actions, the conditions for which, however, must remain clearly outlined in published form. Even before committee action is initiated, students and others must be encouraged to seek redress for complaints with department chairmen, deans, and other appropriate administrative officials; only when matters cannot be resolved satisfactorily in these ways,

or when either of the parties feel the situation is or has grown beyond these kinds of mediation, should faculty committee assistance be sought. On the other hand, certain kinds of complaints may best be handled outside of the usual administrative channels. So that a small faculty committee may not be swamped with hearing such grievances at the initial stages - for, after all, the members of that committee have other important duties to fulfill as well as their committee assignments - we recommend the establishment of a University Ombudsman.

The University Ombudsman, an office which derives from certain Scandanavian institutions, has been tried with considerable success elsewhere, for example, at the University of Michigan. Essential to this success has been the special qualifications of the person holding the office: he must be respected by both students and administrators, as well as by the faculty from whose ranks he is chosen. He must have the ability, above all, to distinguish between real grievances and crank complaints, between the serious and the trivial. And he must be eminently approachable by even the most timid student. Beyond these personal qualifications, he must be granted a good deal of leeway with which to carry on his investigations and access without undue red tape entanglements to people in the highest authority. Like the faculty committee, the Ombudsman should be able to work quietly behind the scenes, arranging for disposition of grievances without the glare of publicity, to the mutual benefit, often, of both the aggrieved and the person against whom the complaint is made. Nevertheless, when reconciliation or satisfaction cannot be obtained, access to the faculty committee should still remain available to the student or other person lodging the complaint. At no point in any of the methods or procedures

for receiving and hearing complaints should the complainant feel that he is being given a false hearing, or runaround. If his complaint has no merit, then he should be informed of this and an explanation offered. Candor and directness should govern all proceedings on all sides.

In addition to these means of hearing complaints, much can be accomplished by student-faculty advisory councils that may prevent unfortunate or potentially disrupting situations from developing. At the very heart of community, which has lately become the watchword of the University of Delaware, lies the need for effective communication. Faculty-student advisory groups, meeting with and/or without department chairmen and deans, can do a great deal to air gripes and dissatisfactions, not only with curricula and regulations, but also with personnel matters involving teaching, especially. We recommend, therefore, that each department and college establish a Faculty-Student Council, meeting on a regular basis, with members duly elected, to discuss all matters of importance relating to the academic unit from which it has been formed, including personnel matters (except those of such personal or particular nature as may best be relegated to other channels). We further recommend that a majority of each Council's meetings be open to all interested parties and, of course, duly advertised.

SUMMARY AND RECOMMENDATIONS

In summary, this Committee offers the following conclusions and recommendations:

1. The tenure device is an indispensable necessity for the preservation of academic freedom and must be retained in a viable form.
2. The potential costs of tenure may include:
 - a. The risk or danger of providing, incidentally, for the shelter or continuation of some "incompetent" faculty members.
 - b. "Upgrading" faculty when institutional objectives change.
 - c. Large numbers of tenured faculty in disciplines with declining enrollments may raise costs. (In the opinion of this Committee, appropriate long-range planning will tend to minimize these costs.)
 - d. A rule which limits the number of tenured contracts may require termination of contracts of some able, younger, but untenured faculty members. (This Committee is unaware of the existence of such a rule at the University of Delaware.)
 - e. Faculty salaries may be somewhat lower as a result of tenure than they would be in its absence. (Although this opinion has been expressed in some testimony, no supporting data has been found by this Committee.)
3. The Committee recommends the following general means of minimizing the costs of tenure:
 - a. Thorough and careful evaluation of faculty members prior to granting tenure.
 - b. A regular procedure for periodic review of the performance of tenured faculty to guard against the retention of "incompetents", and to identify needs for career redevelopment. The Committee recommends

that the appropriate faculty group draw up and submit for the Faculty Senate's consideration a "Code of Faculty Responsibilities."

- c. More effective use of career development programs and reassignment to more suitable jobs to assure the most efficient use of faculty talents and interests.
 - d. Implementation of a voluntary early retirement program in cases where such an arrangement may benefit both the University and the individual faculty member.
 - e. The establishment of a University Ombudsman and improved complaint and grievance procedures.
4. The Committee concludes unanimously that the benefits of tenure far outweigh its costs.

Ad Hoc Committee of the Senate

Jay Halio

Department of English

Harry D. Hutchinson

Department of Economics

Harold Kwart (Chairman)

Department of Chemistry

Barbara H. Settles

College of Home Economics