

---

# The Use and Abuse of Faculty Suspensions

The report that follows is excerpted from a longer report of the same title, which was prepared by a subcommittee of Committee A on Academic Freedom and Tenure and approved for publication by Committee A in August 2008.

---

## I. Background

This subcommittee was charged with reviewing and analyzing the large number of AAUP cases and complaints involving suspension from teaching or research as a sanction imposed on faculty members, and the additional sanction of expulsion or banishment from the entire campus or from certain areas and activities. Although the suspension of a faculty member from some or all duties is not a new phenomenon, it has been increasingly common in recent years; and although Association policy severely limits its use, it appears to have become almost a routine recourse for administrations seeking to discipline faculty members regardless of the seriousness of the alleged cause. The subcommittee has reviewed the development of Association policy since the issuance of the 1940 *Statement of Principles on Academic Freedom and Tenure*, some forty published Committee A reports, a limited number of university task-force reports that examined the use of suspension, and other available material.<sup>1</sup>

Suspension has been defined in different ways both in institutional regulations and by administrations at the time the penalty is imposed on the faculty member. Sometimes, as we will show, administrators decline to use the term and claim that in fact what they are imposing is not a suspension at all. An examination of some of these claims will be useful in restating the central tenets of Association policy. In addition, suspension has sometimes been employed as a sanction independent of dismissal, here termed "freestanding" suspension (see Section IV).

Historically, suspension has been regarded in Association policy as a severe sanction second only to dismissal, because it has been seen primarily in terms of removal of a faculty member from teaching. As one case report put it, "Barring a teacher from his classroom inflicts ignominy upon the teacher and is destructive to the morale of the academic community."<sup>2</sup> An eloquent statement on the adverse effects of suspension, one that has been cited in several subsequent Committee A investigations, was the

finding of the investigating committee in the 1966 case of St. John's University:

The profession's entire case for academic freedom and its attendant standards is predicated upon the basic right to employ one's professional skills in practice, a right, in the case of the teaching profession, which is exercised not in private practice but through institutions. To deny a faculty member this opportunity without adequate cause, regardless of monetary compensation, is to deny him his basic professional rights. Moreover, to a good teacher, to be involuntarily idle is a serious harm in itself. One has only to think of the famous teachers of the past, beginning with Socrates, to realize what a serious injury it would have been to these men to have been denied the right to teach. In the case of the teachers at St. John's, denial of their classrooms was, in itself, serious injury. To inflict such injury without due process and, therefore, without demonstrated reason, destroys the academic character of the University.<sup>3</sup>

In the forty-two years since the publication of the St. John's report, removal from teaching duties is not necessarily the primary or relevant issue in all cases of suspension. The reason for this is that the increasing complexity of faculty work has come to include many more duties than teaching. The more duties a faculty member has, the more there are to suspend him or her from. Moreover, the greater the influence of campus legal counsel in protecting the university from liability, the more reasons can be found for imposing a suspension. As researchers, for example, faculty members often have relationships beyond their institutions that could be compromised by suspension. The relationship of researchers to outside funding agencies, both public and private (including corporate sponsors), is increasingly complicated (some might say vexed) by stringent reporting requirements and restraints posed by the need to avoid conflict of interest. E-mail and computing services, the first of these entirely unknown in 1966 and the second still in a relatively primitive form, now are essential components of almost any aspect of

faculty work. Faculty research in the sciences funds graduate student positions or involves access to and oversight of a laboratory that by the nature of the project may be subject to federal and state regulations dealing with such questions as biohazards or animal care. In addition, today's workplace protections against sexual harassment and provisions for the disabled were never envisioned by the formulators of the 1940 *Statement*, let alone the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*.<sup>4</sup>

It is not surprising under these circumstances that increasingly the Association is dealing with cases that involve partial suspensions, in which the faculty member is blocked from some duties or locations, but not others. The placing of physical constraints short of entire banishment from campus through denial of access to a library, computer center, or e-mail seriously impedes faculty work. That work can be even more seriously affected when the faculty member is barred from his or her office, studio, or laboratory even when not barred from setting foot on the entire campus. Removal from even a single class can, of course, pose serious complications for the faculty member's standing as a teacher.

Whether a suspension is partial or total, whether or not it is accompanied by expulsion or banishment from the campus, in many cases administrations, often acting on advice of their legal counsel, do not seem, or care, to grasp the severe effects that suspension can have, not only on the reputation—and morale—of an accused faculty member, but also on his or her ability to contest the intended sanction. Suspension usually implies an extremely negative judgment, for which the basis remains untested in the absence of a hearing, even though an administration may claim that it is saving the faculty member embarrassment. That potential embarrassment must be risked (or at least the faculty member should be permitted to risk it) if the individual is to have a chance of clearing his or her name.<sup>5</sup> Beyond that, suspension may create a prejudicial atmosphere totally out of proportion to the alleged offense and undeserved in the light of the professor's previous record (see the 1970 report on the case at Alfred University).

## II. The Development of Association Policy

The 1940 *Statement of Principles* is silent on the question of suspension, but the St. John's investigating committee found it "reasonable to construe" the statement "as applying to suspension from all academic duties," since such an action is "tantamount to summary dismissal within the

meaning of the statement." Association policy on suspension derives explicitly from recommendation number 3 of the joint *Statement on Procedural Standards in Faculty Dismissal Proceedings*:<sup>6</sup> "Suspension of the faculty member during [dismissal] proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." The 1970 *Interpretive Comments* on the 1940 *Statement* added that "[a] suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process."

The fullest expansion of these points, which links suspension to a subsequent dismissal proceeding, is found in the *Recommended Institutional Regulations on Academic Freedom and Tenure*<sup>7</sup> (1968 and subsequent revisions, hereafter cited as *RIR*), section 5c(1):

Pending a final decision by the hearing committee, the faculty member will be *suspended or assigned to other duties in lieu of suspension, only if immediate harm* to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal and will be treated as such. Salary will continue during the period of the suspension. (Emphasis added.)

The 1971 *Report of the Joint Committee on Faculty Responsibility*,<sup>8</sup> the Association's first extensive discussion of sanctions short of dismissal, listed eight such sanctions in ascending order of severity, of which the eighth, "suspension from service for a stated period, without other prejudice," is the most severe.<sup>9</sup> "If the alleged offense is believed serious enough to warrant suspension without pay for a stated period, it is clear that a considerable measure of academic due process must be provided (for example, informal conference, screening committee, written statement of charges, regularized faculty committee, complete transcript, right to counsel, right of cross examination, etc.)."<sup>10</sup> As a result of this report, *RIR* 7a was added in 1971, providing (in language much more exacting than the report) for suspension as a sanction separate from dismissal but requiring the same standard of due process:

If the administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction such as *suspension from service for a stated period*, the administration may institute a proceeding to impose such a severe sanction; the procedures outlined in Regulation 5 [governing dismissals] will govern such a proceeding. (Emphasis added.)

In short, the development of Association policy originally saw suspension as preceding potential dismissal; after 1971 it also recognized the possible levying of suspension as a freestanding sanction. The first of these types of suspension occupies the bulk of the cases we survey here, and can be broadly classified either as a *prehearing* suspension, in which suspension with pay is imposed until a dismissal hearing can be held, or a *pretermination* suspension, in which suspension, albeit not a freestanding sanction, is levied without any commitment to holding a formal dismissal hearing and may indeed be regarded as self-sufficient for the institution's purposes, leading to termination immediately or at the end of the faculty member's term of appointment. In either case, however, depending on the circumstances (including indefinite and nondefinitive suspension prolonged over several academic terms), such an action may be seen as tantamount to a dismissal for cause, as will be repeated several times in this report.

### III. Definitional Issues in Association Policy and Case History

Five key definitional issues underlie RIR 5c(1), and in this section the subcommittee treats them in the order in which they are treated in that regulation.

#### A. The Meaning of Suspension

As we have said, removal from classroom or laboratory duties has been at the core of the development of Association policy and case reports, although suspension in a broader context is understood to figure, and usually has figured, in such cases. The report of the investigating committee on St. John's University pointed out that removal from teaching is the severest of sanctions, whether resulting from dismissal or from potentially temporary suspension. This position is unequivocally restated in the 1995 report of the investigating committee concerning a nonreappointment case at the University of Southern California, which argued that the mere continuance of the faculty member in some duties did not negate the underlying fact of suspension:

Suspending a faculty member is a very serious sanction. The provision on suspension in the USC Faculty Handbook [which tied suspension only to the initiation of dismissal proceedings, like earlier AAUP policy, and which invoked the standard of "immediate harm"] is plainly intended to make suspension difficult. If assignment to some duty, however trivial, were to mark faculty members as not suspended, accomplishing the purpose for which an administration might wish to suspend a faculty member would be easy. The threat to academic freedom of interpreting suspension in this way is obvious.

The investigating committee went on to say that even at a research university, where research may carry as much weight as teaching, "suspending [faculty members] from teaching is suspending them, and the committee believes that the term is so understood by faculty members across the country, whether at research universities or at institutions engaged primarily in teaching." Additionally, if the reason alleged for suspension is the best interest of the students, such an action is "a devastating indictment of a faculty member. Its impact is no less devastating if the faculty member continues to be assigned nonteaching duties."<sup>11</sup>

The italicized language in the following quotations from Association policy seems somewhat less emphatic, and could conceivably lead to confusion. Thus RIR 5c(1) describes the faculty member as "*suspended or assigned to other duties in lieu of suspension*," which might seem to imply that suspension from classroom duties is not really a suspension—or tantamount to dismissal—if other duties, either preexisting or newly imposed, are still expected.<sup>12</sup> RIR 7a and the Association's 1971 joint subcommittee report on faculty responsibility both speak of *suspension from service*, which seems to imply, on the contrary, that suspension involves all aspects of the faculty member's duties. In some cases, however, administrators appear to have seized on circumstances that they believe render the designation "suspension" moot, not least because if the administration's action is not really suspension, the level of due process need not accord with Association-supported standards or indeed, sometimes, with the standards set forth in the institution's own stated regulations.

Resistance to calling the action a suspension can be particularly prevalent in cases that involve continued payment of salary to the faculty member during the period of suspension, as if the mere fact of pay were sufficient to absolve the administration of impropriety, but it is also the

case in reassignments when the faculty member is removed from the classroom.<sup>13</sup>

Despite the changes in academic work that we have noted, suspension still probably continues to be understood, especially by the public, primarily to mean suspension from teaching. Under no circumstances, however, does an assignment to other duties alter the fact that the faculty member has been suspended, unless the consent of the faculty member to the reassignment pending a hearing has been sought and granted. Nor does the continuation of the faculty member in other ongoing activities, such as committee service, alter that fact. Still, the apparent discordance or inconsistency between *RIR* 5c(1) and 7a needs to be resolved. Finally, and fittingly in terms of what we have said about the altered character of faculty duties, the term "suspension" may be equally appropriate in the case of a faculty member who does little or no teaching but who is removed from those duties that are directly related to his or her professional fitness, for example, the director of a research institute or a librarian.<sup>14</sup>

### *B. Immediate Harm*

*RIR* 5c(1) speaks of the threat of immediate harm to oneself or others as a precondition to suspending a faculty member. But unlike suspension, which is capable of legislative definition, "immediate harm" is a much more problematic, if not elusive, concept; administrations that have invoked it as a justification for suspension have given it what, to say the least, are very broad interpretations.

In many of the cases we have reviewed, the administration did not attempt to justify a prehearing or pretermination suspension on the basis of "immediate harm." In one case, the reason for suspension was the distribution of an essay as required reading in an advanced writing course, an essay that the president found offensive. The professor was subsequently reinstated with "a censure for poor judgment in this instance."<sup>15</sup> Where some mention of the concept, if not the exact term, occurred, it was frequently attached to vague, trivial, or even faintly comical charges: "inefficiency," "neglect of academic duty," holding students or colleagues up for public contempt, and the authorship of two anonymous letters critical of the president; "teaching deficiencies" that were "harmful to the institution" and to "the immature and impressionable minds of undergraduates"; "employing an attorney and contemplating litigation"; the distribution of a satire of a required fall faculty workshop as well as the conduct of a course in social processes that students claimed would require them to under-

take projects that might lead to their arrest if they were to get good grades; and both the giving of advice to students to go to other colleges and the fact of declining enrollments in the faculty member's discipline.<sup>16</sup> In this last case, "When the investigating committee pointed out to [the president] that the standard implies more direct and tangible harm, he suggested that [the faculty member's] emotional condition posed possible harm to students and faculty."<sup>17</sup> Elsewhere, three dismissed faculty members notified of suspension with pay were charged with "repeated disregard for institutional objectives, policies, and/or authority." They were told that their "continued and repeated conduct constitutes a continual threat to the operation of the college as well as a threat to the board of regents in their statutory authority."<sup>18</sup> One suspension was based on a reference in the college handbook to the need to uphold the institution's "good name and reputation," which in the words of the investigating committee was "so loose and so open to differing interpretations as to be nearly meaningless. It could be used to justify the suspension of members of the faculty who say or do anything of which the administration does not approve."<sup>19</sup>

Whether or not recourse to suspension may in some cases be necessary under circumstances that involve immediate harm to a faculty member or others, it is clear that none of the foregoing charges could be construed as involving immediate harm in the rigorous sense that Association-recommended policy implies. If, in predismal cases, there is no invocation, let alone evidence, of immediate harm, there should be no suspension to begin with.

The problem is not only how to delimit the concept of "immediate harm," but also what is meant by "others." Who and what are these others? Are they living, breathing human beings, or are they abstractions referring to institutional self-interest or administrative dignity? It is relatively easy to establish what immediate harm is not, as our examples, ranging from the risible to the sinister, testify. At least one investigating committee, however, has offered suggestions on what it might be: namely, disruption of, or the encouragement of anyone else to disrupt or otherwise impede, another individual's performance of university duties; making it difficult for the university to administer any of its programs or facilities; or using the classroom to espouse, gratuitously and irrelevantly, any views relating to the political and religious causes and controversies to which the faculty member is committed outside the classroom.<sup>20</sup> A quite different kind of case might be one in which a qualified medical

opinion was obtained that actual physical danger to self and others existed when a faculty member had been behaving irrationally, was making serious threats against others on campus, and was known to have access to weapons. The large majority of the AAUP's published case reports seem to concur with the point that "harm" is meant to be understood as physical (a 2003 investigating committee report on the University of South Florida suggests that harm could include the physical obstruction of the orderly conduct of academic business), and they all agree that "others" refers to people and not to institutional reputation, the general good of the institution, or fears of hypothetical developments such as the fear of litigation that an investigating committee thought might have figured in another case.<sup>21</sup> The concept of immediate harm is inextricably bound up with the gravity of the charges, and the grounds for suspension should therefore be as stringent as those for dismissal. A perceived emergency tends too often to set the stage for a suspension, not only of the faculty member, but also of academic due process itself.

This being said, however, it seems unrealistic to confine the justification for suspensions exclusively to a narrow concept of "physical harm." A more mundane reason for suspension might be a legitimate fear that a disaffected faculty member is impairing the ability of his or her colleagues to carry out their business, for example, by being repeatedly disruptive in department meetings, making it impossible to carry out the work of the department. A professor's inability to handle a chaotic classroom situation might also raise concerns about immediate harm to the students in that class. Or there might be good reason for concluding that a researcher's handling of grant money is so irresponsible as to jeopardize continuance of the grant. In such cases the harm done by the faculty member may be real and immediate, but not physically threatening. Still, it needs to be emphasized that suspension from duties for these kinds of reasons also requires the affordance of academic due process to the accused faculty member.

*C. Consultation with a Faculty Committee*  
RIR 5c(1) stipulates that before an administration suspends a faculty member, it should consult with an appropriate faculty committee charged with handling issues of academic freedom and tenure "as to the propriety, the length, and the other conditions of the suspension." The requirement of consultation reflects the fact that realistically a genuine and immediate threat of harm can hardly

be demonstrated in a timely manner through a full due process hearing. When, as seems increasingly to be the case, suspension is justified either by invoking the threat of immediate harm or by relying on some verbal formula that falls far short of that but is nonetheless taken as self-justifying, such a justification is used to trump the necessity, desirability, or even the possibility of consulting with a faculty body. The language of the provision and its placement under Regulation 5 presupposes that the context is one of pending dismissal proceedings preceded by a statement of charges. In the situations considered in this report, however, suspension tends to take place before any formal charges are filed, and may or may not be followed later by a dismissal proceeding.<sup>22</sup>

Faculty consultation of the sort envisioned in this situation may be regarded not only as an appropriate exercise of faculty responsibilities in a matter affecting faculty status but also as a prudent measure on the part of the administration.

#### *D. Suspension with Pay*

While Association-supported policy specifies continued payment of salary (unless otherwise forbidden by law) in all circumstances in which a suspension is a prehearing sanction, the AAUP has never argued that pay alone is sufficient, whether as a matter of relief, as a way to obviate the potential stain of a suspension, or as a benevolent action that expunges any further obligations on the part of the administration. Continuance of salary is not only an essential ingredient of decent treatment, but even more fundamentally also a recognition that a final determination on the guilt or innocence of the accused faculty member has not yet been reached through a hearing. Moreover, if the subject faculty member is without a salary, mounting a defense against charges is much more difficult, if not impossible.

This subcommittee takes no heart from the fact that in many, if not most, of the cases we examined, the suspended faculty member remained on salary. We suggest, rather, that this practice often reflects one of two less than benign assumptions (and possibly both): first, that continuance of salary relieves an administration from the necessity of a faculty hearing because the adverse action supposedly can no longer be described as a suspension; second, that the continued payment of salary provides a contractual hedge in the event of litigation.<sup>23</sup> In cases of freestanding suspension, however, where the matter has been examined deliberatively in a

proceeding in accordance with Association-recommended standards of academic due process, suspension without pay may be deemed an appropriate punitive sanction.

#### *E. Expulsion or Banishment*

If the continuation of a faculty member in his or her duties poses such a serious threat to the safety of self or others, for the faculty member's own protection, as well as that of others, physical removal from the campus may be the only reasonable or responsible course of action. As we noted in the introduction to this report, Association policy nowhere sorts out actions like "quarantine," "exile," "banishment," or "expulsion."

The routinization of the practice of banishment suggests an intention to add insult to injury. When the effect of suspension is not only to remove the faculty member from teaching duties but also to deny him or her access to the material needed to prove that the charges are groundless and wrongful, such a practice is doubly intolerable. It may be that some instances of banishment have resulted from a misapplication of business practices that might be appropriate in the corporate sector but not in an educational institution. In a business, a disgruntled employee who has been fired could conceivably use his or her office computer to transmit private corporate information to a competitor. In a college or university, such an interest is not likely to be at stake. But unless the threat of immediate harm is so exigent as to require the faculty member not only to be suspended but also to be absent from campus—and we think the standard in that case should be of high magnitude indeed—or unless there is demonstrable evidence that the faculty member's office itself contains material or information that poses a high risk to campus security, we see no grounds to support banishment as a sanction superimposed on the suspension itself.

#### **IV. Suspension as an Independent Sanction (Freestanding Suspension)**

It is well attested in the Association's case history that suspension without a hearing, or a hearing indefinitely deferred, is tantamount to dismissal.<sup>24</sup> Regulation 7a envisions a deliberative proceeding in cases in which the immediate-harm standard is not likely to apply. One might argue, for example, that a serious academic offense (for example, scientific misconduct) was not grounds for dismissal in light of the individual's total record, and certainly not for the application of the "immediate-harm standard," but nonetheless

sufficiently serious to justify the imposition of a severe sanction.

A University of New Hampshire case offers the kind of situation in which freestanding suspension might conceivably have been the object of a disciplinary proceeding. In that case, a faculty member in the Department of English was suspended, initially without pay, and told to undergo weekly counseling for at least a year at his own expense with "a professional psychotherapist approved by the university" for having allegedly violated a policy on sexual harassment by using sexually charged metaphors to describe the nature of establishing a topic in technical writing. "Shadow sections" were set up for the students who were upset by what they regarded as his inappropriate sexual innuendoes. The reprimand that went with the suspension required that in addition to undergoing mandatory counseling the professor (1) reimburse the university for the cost of those sections, (2) not retaliate against the students who had filed charges, and (3) apologize in writing, by a specified date, to the protesting students for having created a "hostile and offensive academic environment." Since he denied the factual basis of the charges that led to these sanctions, the faculty member refused to comply. In this case, suspension was initially imposed but put in abeyance pending a faculty hearing on the procedures. Though the faculty committee was to find that the professor's grievance had merit and that he had not been granted the opportunity to prepare a defense, three weeks before the committee issued its report he learned that he would not be scheduled to teach any classes during the fall semester, though his salary and benefits would continue. The four conditions attached to the reprimand became part of the conditions on which the suspension would be removed. Although the administration is not on record as having at any time threatened formal dismissal, the sanction ultimately became one of suspension without pay, which, in the absence of the faculty member's compliance, the investigating committee assumed correctly was tantamount to a dismissal for cause. Had a body of the faculty been convened in a due process hearing to render judgment on the matter, under AAUP policy any formal recommendation that might have emerged, up to and including suspension without pay (a suspension with a stated date by which it would be lifted), should have been the end of the matter, absent an appeal by the faculty member to the administration and ultimately the governing board if the recommendation were unfavorable.<sup>25</sup> One lesson of the New Hampshire case, applicable to prehearing suspen-

sions as well as freestanding suspensions, would seem to be that a suspension must be for a stated term and at its end be considered to have met the conditions of the punishment exacted; it cannot be premised on a suspension of indefinite duration requiring the performance of certain duties (particularly undergoing mandatory counseling, which the professor resisted because its acceptance amounted to a coerced admission of guilt) to be satisfied without becoming a dismissal for cause.<sup>26</sup>

## V. Effects of Suspension on the Faculty Member

More needs to be said about how suspension may not only cause psychological damage but also compromise the ability of the faculty member to respond.

Quite aside from the long-range effects of a suspension on an individual's record, more immediate complications may create a climate in which a faculty member, already placed on the defensive, can then be targeted for engaging in further "misbehavior" that in fact might be a consequence of the act of suspension itself.

The attachment of conditions for removal from suspension further contributes to a hostile climate in which the fairness of any subsequent judicial proceeding—if there is one—is seriously compromised. Sometimes the conditions seem to have no other purpose than that of humiliation. In one egregious instance, a professor was replaced as the course instructor but ordered by the dean to continue to attend the class and listen to the new teacher until further notice, an action triggered by student complaints over his grades. In this instance, the dean repeatedly interrupted the faculty member, took over the class, and "treated [him] like an errant schoolboy in front of his classes" prior to the suspension.<sup>27</sup> Sometimes a condition may be imposed even if dismissal has been decided upon anyway and is attached to the expiration of the faculty member's existing contract. Thus at one community college, two professors were given notice of nonreappointment fifteen months in advance but suspended from teaching during the final academic year, allegedly because of declining enrollments in the business department. Subsequently, letters were sent to the two faculty members reaffirming the suspension decision but warning that "any conduct which, in the college's opinion, is detrimental to the interests of its operation, will result in the cessation of the salary-benefit continuation plan."<sup>28</sup> The investigating committee judged this as an indication of motives for the suspension other than declining enrollments, but the conditions surrounding the suspension, threatening termination if even one misstep (as defined by

the administration) occurred, are of the kind that contribute to an intolerable atmosphere for faculty members already under the normal pressures consequent upon termination of services.

## VI. Concluding Comments

This subcommittee has provided an examination of historical experience within the AAUP and what can be drawn from it by way of policy discussion. Such a discussion might turn on the question whether there are changes in campus climate sufficient to call for a review, from the ground up, of at least the rhetorical adequacy of current AAUP policy. Certainly new technologies such as e-mail and computing have extended the potentially damaging effects of suspension actions since the days when access to the classroom was the principal, if not the only, issue. But to come at the matter from a different angle, we also report in the wake of heightened campus tensions ranging from fatal gunfire in a classroom to threatening graffiti that cause an entire campus to shut down. Does the Association have an affirmative obligation to counsel administrations on how they might resist public pressure for quick action lest another tragic or threatening instance were to occur for which they would be held accountable? The fact is—and one could argue that this has always been the case—that classical academic freedom issues are not always in play in a suspension action, notably in an emergency situation. The irrational behavior of a faculty member who endangers his or her colleagues because he or she has access to dangerous biological agents may require quick administrative action in the first instance, with faculty follow-up. Some may believe that such cases involve questions of degree, not kind; others may disagree and believe either that new policy is needed or that, at the very least, existing policy needs to be recast in such a way as to acknowledge legitimate safety concerns more clearly and to take into account the intense nature of public pressure on those whose oversight of an institution includes direct responsibility for public safety. We will be content if this report begins that discussion.

## Notes

1. According to a staff memorandum, the Association, since its founding in 1915, has published nearly 120 reports in which suspension has figured as an element in the case, beginning with 1917 and 1919 reports on the University of Montana. It should also be borne in mind that literally thousands of complaints and cases involving suspension have been dealt with by the Association over nearly a century that never

reached the investigative stage, much less became the subject of a published report.

2. "Academic Freedom and Tenure: College of the Ozarks," *AAUP Bulletin* 49 (Winter 1963): 358.

3. "Academic Freedom and Tenure: St. John's University (New York)," *AAUP Bulletin* 52 (Spring 1966): 18–19.

4. AAUP, *Policy Documents and Reports*, 11th ed. (Baltimore: Johns Hopkins University Press, 2015), 3–12.

5. See "Academic Freedom and Tenure: St. Mary's College (California)," *AAUP Bulletin* 62 (Spring 1976): 73: "The investigating committee disagrees sharply with the assertion that a unilateral administrative decision not to offer a hearing can be in the best interests of a faculty member. A formal hearing can result, in some cases, in embarrassment and even stigmatization for the faculty member involved. The waiver of dismissal proceedings, however, lies not within the discretion of the administration but . . . [that] of the affected faculty member." The same can be said for hearings on suspension. The severity of the sanction is underlined in the case of Armstrong State College, where the administration attempted to argue that, since a suspended faculty member's appointment had not been renewed prior to the suspension, the suspension itself was of negligible importance. The investigating committee objected: "The fact of nonrenewal does not in itself imply adverse judgment with regard to an individual faculty member's fitness to teach. The enforced separation of a teacher from his classroom, however, is an action of severity, to be taken only for serious and pressing reasons, with significant professional damage to the individual's future in teaching" ("Academic Freedom and Tenure: Armstrong State College [Georgia]," *AAUP Bulletin* 58 [Spring 1972]: 74).

6. *Policy Documents and Reports*, 91–93.

7. *Ibid.*, 79–90.

8. *AAUP Bulletin* 57 (December 1971): 524–27.

9. The first seven are as follows: "a. An oral reprimand; b. A written reprimand; c. A recorded reprimand; d. Restitution (e.g., payment for damage done to individuals or to the institution); e. Loss of prospective benefits for a stated period (e.g., suspension of 'regular' or 'merit' increase in salary, suspension of promotion eligibility); f. A fine; g. Reduction in salary for a stated period."

10. Donna R. Euben and Barbara A. Lee, "Faculty Discipline: Legal and Policy Issues in Dealing with Faculty Misconduct," *Journal of College and University Law* 32, no. 2 (2006): 241–308, offers a longer list of lesser sanctions more elaborate than the Association's, prefacing it with the workplace idea of "progressive discipline," in which behavior, when repeated, may be subject to increasingly severe degrees of sanction. The Association appears never to have dealt formally with this issue, perhaps in part not only because by its nature academic work is less repetitive than work in some other settings, but also because many cases involve faculty members not heretofore charged with any kind of misconduct whose actions suddenly give offense to

an administration. College and university files doubtless contain instances of reprimands accompanied by the threat of more serious penalties if the behavior is repeated (the principal author of this report is aware of such an instance at his own institution), but predictably many such instances may be assumed to have flown under the Association's radar. The Euben and Lee article has provided valuable information from legal sources for some of the issues we deal with here.

11. "Academic Freedom and Tenure: University of Southern California," *Academe* 81 (November–December 1995): 47–48.

12. This runs contrary to actual case history, though one of the most egregious cases reported avoids the term "suspension" in describing what happened. At Texas A&M University, the professor, a tenured faculty member with sixteen years of experience and a promotion to full professor two years before the events, was placed on "probation" and reassigned to research duties under conditions so intolerable as to make it difficult, if not impossible, for him to carry them out ("Academic Freedom and Tenure: Texas A&M University," *AAUP Bulletin* 53 [Winter 1967]: 379–80). The research assignment was extended a second year with the promise (unfulfilled at the time of the report) of "a proper hearing on his fitness to assume a full-time teaching position." At Armstrong State College, a faculty committee majority found that a mandatory leave constituted a suspension not provided for in the college's own statutes, a view with which the investigating committee concurred. A minority of the same faculty committee took a different view because the faculty member could still perform committee and department assignments.

13. We return to the issue of suspension with pay in Section III.D. With respect to definitional issues in investigations, see "Academic Freedom and Tenure: Adelphi University," *AAUP Bulletin* 53 (Autumn 1967): 285, where the investigating committee "reject[ed] flatly the [administration's] effort to draw a distinction between a suspension and a 'terminal leave of absence with salary.'" The committee wryly noted that "the distinction appears to be no more than an effort to borrow the happy connotations which the phrase 'terminal leave' carries in military service to mask removal from the classroom, in this case on flimsy charges and without a hearing." At Meharry Medical College, handbook guidelines broadly comporting with AAUP-supported standards for suspension were circumvented by the administration's declaring the affected faculty members to be on "administrative leave with pay" ("Academic Freedom and Tenure: Meharry Medical College [Tennessee]," *Academe* 90 [November–December 2004]: 73).

14. An interesting twist on these cases is offered by the Loma Linda University report, involving clinical professors of medicine who, although deriving their income chiefly from practice, nonetheless were in the investigating committee's judgment entitled to be treated as faculty because they took on such traditional faculty duties as teaching, research, and training of interns. See "Academic Freedom and Tenure: Loma

Linda University," *Academe* 78 (May–June 1992): 42–49.

15. "Academic Freedom and Tenure: University of South Florida," *AAUP Bulletin* 50 (Spring 1964): 54.

16. "College of the Ozarks," 358; "Adelphi University," 281; "Academic Freedom and Tenure: Amarillo College," *AAUP Bulletin* 53 (Autumn 1967): 300; "Academic Freedom and Tenure: Elmira College," *AAUP Bulletin* 61 (Spring 1975): 66–70; "Academic Freedom and Tenure: Birmingham-Southern College," *Academe* 65 (May 1979): 237.

17. "Birmingham-Southern College," 237.

18. "Academic Freedom and Tenure: Oklahoma College of Osteopathic Medicine and Surgery," *Academe* 71 (May–June 1985): 39.

19. "Academic Freedom and Tenure: Philander Smith College," *Academe* 90 (January–February 2004): 61.

20. "Academic Freedom and Tenure: University of South Florida," *Academe* 89 (May–June 2003): 67. In a recently publicized incident at Saint Xavier University (Chicago), the campus was closed temporarily because of a graffito threatening violence on a specific date. If an incident like this led to the identification of a faculty malefactor, the demonstration of immediate harm to institutional operation would conceivably be a relatively easy matter. As it happens, a student was subsequently charged.

21. "Academic Freedom and Tenure: University of New Hampshire," *Academe* 80 (November–December 1994): 76.

22. At the University of New Hampshire, the faculty member argued that cancelation of his fall teaching schedule, prior to the issuance of the report of a hearing panel studying his grievance, made it unlikely that he could receive a fair hearing.

23. "Courts generally rule that suspension with pay does not trigger constitutional due process concerns at public institutions" (Euben and Lee, "Faculty Discipline," 277). The same line of reasoning has led to the argument, in *Simonson v. Iowa State University*, 603

N.W.2d 557, 559 (Iowa 1999), that paid administrative leave "did not trigger due process protections under the state and federal constitutions because [the professor] was not deprived of any economic benefits" (278).

24. A reasonably typical case is that of the King's College, in which suspension with pay for a terminal year was followed neither by reinstatement nor by opportunity for a hearing ("Academic Freedom and Tenure: The King's College [New York]," *Academe* 76 [July–August 1990]: 45–52). Also relevant are cases, like a number of the ones we have reviewed, involving nontenured faculty members who have been given notice of nonreappointment and then had a terminal suspension added to that notice, even though their salary may have been continued.

25. The case was complicated by the fact that it was heard ultimately by mixed faculty-student-staff committees; in one case the chair was a student.

26. The New Hampshire case was ultimately resolved in the courts, which found that the sanctions against the professor, taken as a whole, constituted "more than a de minimis deprivation of [the faculty member's] due process rights," and that his suspension without pay provided an independent basis for a preliminary injunction on the grounds of prior and continuing irreparable harm to the faculty member (*Silva v. New Hampshire*, 888 F. Supp. 293 (D.N.H. 1994); Euben and Lee, "Faculty Discipline," 281). See also Euben and Lee's discussion of a related case, *Delahoussaye v. Board of Supervisors of Community and Technical Colleges*, 906 So. 2d 646 (La. Ct. App. 2005); the two cases together seem to provide evidence encouraging institutions to continue the payment of salary to a suspended faculty member in order to avoid claims of economic damage.

27. "Academic Freedom and Tenure: Tennessee State University," *Academe* 73 (May–June 1987): 43.

28. "Academic Freedom and Tenure: Dean Junior College (Massachusetts)," *Academe* 77 (May–June 1991): 28.