

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

ARTHUR HALL,)
Plaintiff,)
v.) Case No. 2014-CV-464
THE UNIVERSITY OF KANSAS,)
Defendant,) Division 4
and)
SCHUYLER KRAUS,)
Intervenor.)

MOTION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

COMES NOW the Kansas Conference of the American Association of University Professors (“KSAAUP”), by and through its counsel, Stevens & Brand, L.L.P., and moves this Court for an order granting it permission to file an *amicus curiae* brief in the above entitled matter. In support of this motion, movant states as follows:

1. As an initial matter of disclosure, counsel for KSAAUP states that it has represented the Honorable James McCabria as trustee of the trust of his mother, Maxine M. McCabria, deceased. Counsel has previously disclosed this representation to each of the parties to this case.

2. Intervenor Schuyler Kraus seeks certain records pertaining to Plaintiff Arthur Hall under the Kansas Open Records Act, K.S.A. § 45-215 *et seq.* Plaintiff Hall argues that the records should not be produced. Defendant University of Kansas argues that the records should be produced. Intervenor, Plaintiff and Defendant has each asserted that the principle of academic freedom supports its position.

3. KSAAUP is the Kansas Conference of the American Association of University Professors (“AAUP”), a non-profit tax-exempt organization under 26 USC § 501(c)(3). The AAUP is the nation’s oldest, most authoritative and independent national body of academic professionals whose livelihoods are earned as teachers and researchers in institutions of higher education. The AAUP has more than 47,000 members at 500 chapters.

4. “The AAUP’s purpose is to advance academic freedom and shared governance, to define fundamental professional values and standards for higher education, and to ensure higher education’s contribution to the common good.”¹

5. The AAUP has issued guidance on academic freedom, which has been adopted by the University of Kansas.

6. In the attached brief, KSAAUP sets forth relevant AAUP guidance on the academic freedom issues raised in this case. KSAAUP believes such guidance supports Intervenor’s request for Plaintiff’s records.

7. KSAAUP requests permission to submit the attached *amicus curiae* brief for the Court to consider in the event that the Court addresses the issues of academic freedom raised in this case.

WHEREFORE, the Kansas Conference of the American Association of University Professors requests an order granting it permission to file the attached *amicus curiae* brief to address the issues of academic freedom raised in this case.

¹ American Association of University Professors, [AAUP Policy Documents and Reports](#) (11th ed. 2014).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2015, a copy of the foregoing was sent via electronic mail to:

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BRIEF OF AMICUS CURIAE
KANSAS CONFERENCE OF THE
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

I. PRELIMINARY STATEMENT

The Kansas Conference of the American Association of University Professors (“KSAAUP”), a non-profit tax-exempt organization under 26 USC § 501(c)(3), respectfully submits this brief as *amicus curiae* in support of the University of Kansas (“KU”) and its decision to comply with Intervenor Schuyler Kraus’ request under the Kansas Open Records Act, K.S.A. § 45-215 *et seq.* (“KORA”), as it applies to Plaintiff Arthur Hall as a university administrator, while protecting the private communications of bona-fide, vetted and duly appointed rank-and-file faculty members.

The KSAAUP has no financial stake in the outcome of the litigation before the Court. Its interest is driven by the guiding principles of the national American Association of University Professors (“AAUP”):

The AAUP's purpose is to advance academic freedom and shared governance, to define fundamental professional values and standards for

higher education, and to ensure higher education's contribution to the common good.¹

II. AAUP Background

The KU Chapter of the AAUP (“KUAAUP”) is the local-level unit of the Kansas Conference and national American Association of University Professors organization in Washington, D.C., and has wholly adopted, subscribed to and holds as paramount the Policies, Practices, Statements, Principles and Procedures espoused by the national AAUP.

Given 100 years of existence, the AAUP is the nation’s oldest, most authoritative and independent national body of academic professionals whose livelihoods are earned as teachers and researchers in institutions of higher education. With more than 47,000 members at 500 chapters, it has no peer in size, ethical standing or depth of knowledge of the national norms, practices, procedures, principles and policies in governance issues in higher education. The AAUP is completely independent of any corporate or governmental body. It exists without corporate sponsorship, instead relying upon the largess and dues of its members for sustenance. Accordingly, it is demonstrably uncorrupted by the prospect of financial gain or loss or political influence. The AAUP is also composed solely of academic professionals who work exclusively *pro bono* to advance its guiding principles. Most of these principles are expounded upon in the voluminous *AAUP Policy Documents and Reports*.²

Since its founding in 1915, the AAUP has steadfastly advocated, via the power of ethical persuasion, aided by the scholarly press, media and the courts, appropriate

¹ American Association of University Professors, [AAUP Policy Documents and Reports](#) (11th ed. 2014).

² *Id.*

adherence to its guiding principles. The Association issued its first *Statement on Governance* in 1920, emphasizing the importance of faculty involvement in personnel decisions, academic tenure, selection of administrators, budget matters, and determination of educational policies. The *Statement of Principles on Academic Freedom and Tenure* was issued in 1940 (the “1940 Statement”). ([Exhibit A.](#)) This document is considered one of the most important single pieces of governance literature in higher education as it is endorsed by more than 200 august bodies and organizations. (*See Exhibit B.*) It is also considered to be so important by the Kansas Board of Regents (“KBOR”) that KBOR incorporated the AAUP’s first statement on Academic Tenure directly into its policy manual:

The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.³

([Exhibit A.](#), Stmt. 1, at A-3.)

Additionally, the KU Faculty Senate Rules and Regulations incorporates not only the sentence above, but the entire 1940 Statement.⁴ Because the 1940 Statement was in force, adopted and endorsed by KBOR and the KU faculty and administration at the time of the hiring of each of the individuals named in the Intervenor’s KORA request, KUAAUP considers the 1940 Statement’s rules and regulations to be applicable, enforceable and actionable in the case at hand.

The KU Chapter and the Kansas Conference of the AAUP subscribe to the Principles and Statements espoused by the AAUP and are keenly aware of the legally delegated roles of KBOR and the rules, regulations, policies and procedures at the major

³ Kansas Board of Regents, Kansas Board of Regents Procedures and Policy Manual § F.8.b.1 (1995).

⁴ The University of Kansas Faculty Senate Rules and Regulations, FSRR 6.2.1 (1986-1998, 2000), 6.3.1 (2001-2006), 6.1.2 (2007-2011).

universities in Kansas, including KU. As an indication of the authoritative nature of the Statements of the AAUP, its statements are referenced more times in KBOR policies and in KU governance documents than any other entity external to either organization.

State and federal courts have also recognized AAUP Statements, including the 1940 Statement of Principles on Academic Freedom and Tenure, as a widely-accepted authority. *See, e.g., Krotkoff v. Goucher*, 585 F.2d 675, 679 (4th Cir. 1978) (noting wide acceptance of 1940 Statement because it was formulated by both administrators and professors); *McConnell v. Howard Univ.*, 818 F.2d 58, 64 n.7 (D.C. Cir. 1987) (approving use of AAUP Statements in interpreting contractual rights of professors); *Barnes v. Washington State Comm'y College Dist. No. 20*, 529 P.2d 1102, 1104 (Wash. 1975) (citing AAUP statement on academic freedom and tenure as authoritative source).

A keen working knowledge of national norms by KUAAUP leadership comes from national level professional training as well as high-level service in the Kansas Conference (including two KUAAUP leaders who are the immediate past Kansas Conference presidents). Similarly, AAUP officers also serve at the highest levels of KU governance, including the Senate and the Faculty Senate Executive Committee and as the University Senate President Elect.

Because KUAAUP has deep knowledge of local, national and state norms, related state laws, rules, regulations, policies and procedures, and detailed knowledge of KU and subordinate unit rules, regulations, policies and procedures, it is not only an authority on these matters, but bears a moral responsibility and ethical imperative to speak on matters of importance with respect to KU governance. Because the issues herein cross boundaries between academic integrity, conflict of interest management, academic freedom, and the

roles and definitions of faculty and administration, KUAAUP is compelled to issue this brief of *amicus curiae*.

III. FUNDAMENTAL ARGUMENT

The professional correspondence between a university administrator and his/her funding officer and/or agency should be open for public scrutiny and review under KORA. As an administrator, Director Arthur Hall is obligated to make his professional correspondence with his funding officers and/or agency available upon request.

IV. ROLES OF ADMINISTRATORS AND RANK-AND-FILE FACULTY

Consistent with its guiding role in establishing nationally accepted norms for the academic community, the AAUP's 1966 *Statement on Government of Colleges and Universities* is the nation's authoritative document on this matter. (Exhibit C.) Contained within this document are clear explanations of the roles of both faculty and administrators. The roles of faculty include primacy in determination of curricular content and structure, among other duties:

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.

(Exhibit C., Stmt. 5, at C-6).

The roles of administrators are distinctly different. Because all administrators (with the exception of the Chancellor) within the KU system work in a pyramid fashion "at the pleasure of" the administrator they report to, the role of the president of the institution sums up in the largest terms the role of her or his subordinates.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; has ultimate managerial responsibility for a large area of nonacademic activities

(Exhibit C, Stmt. 4, at C-5).

Because a continuous, successive chain of administrators from the lowest department chairperson to the chancellor “serves at the pleasure” of the next administrator higher up, they may be relieved of their administrative post at any time for any reason. This form of “at will” employment gives to the person atop the administrative pyramid an exceptionally high degree of control over all administrators. Because administrators are often paid several tens to hundreds of thousands of dollars more than a given rank-and-file faculty member with a similar academic record, many individuals willingly suspend expectations of academic freedom and accept the concept of capricious dismissal while simultaneously accepting these extraordinary boosts in salary. This quid pro quo arrangement is not uncommon in academia and forms a hard dividing line between rank-and-file faculty and administrators.

V. TEST TO DETERMINE ADMINISTRATOR VS. FACULTY STATUS AND VETTING OBLIGATIONS

KUAAUP realizes that outside observers who are unfamiliar with academic status, governance or norms within academia may find it hard to understand the difference between an administrator and a rank-and-file faculty member. While many duly vetted, tenured faculty members serve as administrators, there are some ranks of administrators who hold no academic status, are neither tenured nor tenure-track faculty, and have neither been nor are ever expected to be vetted by academic peers. The test to

determine whether an individual is an administrator or a rank-and-file faculty member is easily explained in the following table. Some academic appointments may land in the “gray zone” where certain conditions indicate one way, while other conditions indicate the other (graduate student lecturers being among them). Only in the situation where all six conditions point one way or another can a hard, definitive, irrefutable conclusion be drawn, as is the case with Director Arthur Hall.

Condition:		Answers and Related Associated Status		
		If “yes” Administrator or Staff	If “no” R&F Faculty	
1	Does the formal offer of employment from the Office of the Provost list tenure status as “Not Eligible?”	If “yes” Administrator or Staff	If “no” R&F Faculty	
2	Does the formal offer of employment from the Office of the Provost list tenure status as “Serve at the Pleasure?”	If “yes” Administrator or Staff	If “no” R&F Faculty	
3	Has the individual been vetted by unit-level, college or school-level, and university-level academic peers via governance-established committees, such as a departmental faculty search committee or the University of Kansas Committee on Promotion and Tenure?	If “yes” R&F Faculty	If “no” Administrator or Staff	
4	Do the individual’s primary duties consist of teaching and/or research?	If “yes” R&F Faculty	If “no” Administrator or Staff	
5	Does the individual report directly to an administrator at the school or college level without any unit-level (departmental) reporting or oversight?	If “yes” Administrator or Staff	If “no” R&F Faculty	
6	Is the individual subject to post-tenure review as directed by KBOR policy (independent of whether or not the administration demands it)?	If “yes” R&F Faculty	If “no” Administrator or Staff	

If all six test conditions point one way or another, then that individual possesses the indicated status as either a member of the administration or a rank-and-file faculty member. As all six conditions are applied to Director Arthur Hall, it is abundantly clear that he is an administrator and not a rank-and-file faculty member.

VI. CONCERNS REGARDING UNVETTED ADMINISTRATORS ASSUMING FACULTY ROLES

The national and international rankings of departments, colleges, schools and the university as a whole are boosted or harmed by the standing within the academic community of the individuals who function as their faculty members, performing research and/or teaching. Without proper vetting by trained experts and peers, there is no quality control over the teaching and research of faculty. And because the educational enterprise within the State of Kansas is its largest single monetary investment, the public good is undeniably harmed if the educational enterprise is harmed in this way.

Nevertheless, during the past several years, under previous administrations, KU has placed persons hired to 100% administrative positions in the roles of faculty members -- without the essential initial vetting process and ongoing peer evaluations that are essential to maintaining the quality of the faculty and that of the instruction and research they deliver. Individuals hired to perform only administrative duties, once appointed, have seen their job functions change, to include teaching and/or research. As demonstrated above, these activities are strictly the purview of rank-and-file faculty members whose record is properly scrutinized by faculty peers who are experts in their field. Accordingly, even though their scholarship and/or teaching may be proper and

professional, the public at large, the profession, and the media can always see them as suspect.

This situation saddles a public institution with individuals whose very presence causes concern among the national academic community. If the academic community senses that the reputations of an institution's faculty members are questionable, then the reputation of that institution is placed in jeopardy.

Moreover, some of these appointments have been given to individuals who are closely associated with wealthy individuals or corporate entities. While the funds that typically come with such persons are generally welcome by the university, the impression that KU has been "bought" is catastrophic to its reputation.

Not all administrators who are serving in faculty roles are unqualified. Indeed, many administrators at KU began their careers as rank-and-file faculty members. They therefore went through the extensive evaluation process involved in hiring, promotion, and further review of their performance. By contrast, administrators who have not undergone this process may or may not be qualified. There is simply no way to tell.

VII. CONFLICT OF INTEREST DEFINITION AND ISSUES

The general firewall that KU puts in place to prevent corruption of the academic enterprise by the interests of corporate entities or wealthy ideologues is seen in its conflict of interest management practices, committees and associated decisions. A Statement on Conflicts of Interest was issued by the AAUP in 1990. (Exhibit D.) The AAUP has defined a conflict of interest as follows:

A conflict of interest may most easily be defined as a circumstance in which a person's primary interests and responsibilities (such as the responsibility to

analyze research results as dispassionately as possible) may be compromised by a secondary interest. Identifying a conflict of interest does not entail an accusation of wrongdoing. Conflicts of interest have been shown to affect judgments unconsciously, so a conflict of interest refers to a factual circumstance wherein an impartial observer might reasonably infer that a conflict is present. Not all conflicts of interest are financial in nature, but financial conflicts of interest are not only the ones most easily managed but also the ones most likely to undermine public respect for, and trust in, higher education.⁵

Clearly, teachers and researchers who have well defined conflicts of interest are to be avoided if an academic enterprise is to maintain its integrity and standing in the academic community.

VIII. ACADEMIC FREEDOM PROTECTIONS OF ADMINISTRATORS VS. RANK-AND-FILE FACULTY

KU (as is the case with all Kansas Regents universities) subscribes to the AAUP 1940 Statement on Academic Freedom and Tenure, which states:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline

(Exhibit A, Stmts. 1 & 3, at A-2.)

Because the administration, faculty and governance structures have for decades adopted this statement, the opinion of KUAAUP is that duly vetted, properly appointed rank-and-file faculty members at KU are entitled to all of the rights and freedoms

⁵ American Association of University Professors, AAUP Policy Documents and Reports 269 (11th ed. 2014).

described in the 1940 Statement and throughout the KU Faculty Senate Rules and Regulations § 6.1.2.

Conversely, no unit of KU has adopted the mirroring statements from the American Association of University Administrators providing that an *administrator* has a right to academic freedom. It should be noted that no verbiage in any Faculty Senate Rule or Regulation, University Senate Rule or Regulation, Provost Office Policy, or Human Resources Department Policy speaks anywhere on academic freedom for administrators when performing their administrative duties at KU. Rather, the fact that all administrators “serve at the pleasure” of higher ranking administrators is an indication that those individuals have sacrificed certain protections and standards so as to receive nontrivial financial gain.

IX. KUAAUP OPINION ON ACADEMIC FREEDOM AND E-MAIL EXCHANGES OF FACULTY AND ADMINISTRATORS AND REPORTING REQUIREMENTS UNDER KORA

The AAUP has constructed a thoughtfully considered statement on academic freedom and electronic communications. (Exhibit E.) This statement clearly pertains to duly appointed bona-fide faculty members and not administrators. (Exhibit E, Stmt. 1-2, at E-2 – E-3.) A cornerstone component of this statement is:

The basic standard for e-mail privacy should be that which is assured to persons who send and receive sealed envelopes through the physical mail system . . .

(Exhibit E, Stmt. 9.c, at E-6.)

Accordingly, KUAAUP holds that the electronic communications of bona-fide, duly appointed rank-and-file faculty members in their roles as faculty members should be held as private as their correspondence would be in physical printed format. Because of this opinion, KUAAUP and KSAAUP limited their financial support to Intervenor's KORA request so as to support only those records associated with individual(s) other than bona-fide, duly appointed rank-and-file faculty members.

Conversely, KUAAUP considers maintenance of transparency in the actions of administrators when carrying out their administrative duties to be paramount in the proper governance of KU. Accordingly, it is the opinion of KUAAUP that the professional correspondence between administrators and external funding agents should be open and inspectable under KORA.

Because Director Arthur Hall meets all of the administrator tests of Section V above, it is the opinion of KUAAUP that he is therefore an administrator of KU. Accordingly, it is the opinion of KUAAUP that his professional correspondence with any and all external funding agents should be inspectable under KORA, and KUAAUP supports Intervenor's request for e-mail correspondence from Director Hall.

Respectfully submitted,
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Exhibit A

AAUP 1940 Statement of Principles on Academic Freedom and

Tenure and 1970 Interpretive Statements

1940 Statement of Principles on Academic Freedom and Tenure

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges (now the Association of American Colleges and Universities) agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges in 1969. The governing bodies of the two associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.¹ The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.^{[1] 2}

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. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.^[2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.^[3]

3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.^[4]

Academic Tenure

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

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,[5] 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 term 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 the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.[6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[7]
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.[9]
5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

1940 Interpretations

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7–8, 1940, the following interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.

3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

1970 Interpretive Comments

Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 Statement of Principle on Academic Freedom and Tenure have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 Statement, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 Statement is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 Statement; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 Statement on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the Statement on Professional Ethics adopted in 1966 as Association policy. (A revision,

adopted in 1987, may be found in AAUP, Policy Documents and Reports, 10th ed. [Washington, D.C. , 2006], 171–72.)

2. The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.

4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 Statement immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher’s fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 Statement should also be interpreted in keeping with the 1964 Committee A Statement on Extramural Utterances , which states inter alia: “The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position. Extramural utterances rarely bear upon the faculty member’s fitness for the position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.”

Paragraph 5 of the Statement on Professional Ethics also deals with the nature of the “special obligations” of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of “rank of full-time instructor or a higher rank” is intended to include any person who teaches a full-time load regardless of the teacher’s specific title. 3

6. In calling for an agreement “in writing” on the amount of credit given for a faculty member’s prior service at other institutions, the Statement furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor’s tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these

matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. 4

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the Standards for Notice of Nonreappointment, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
2. Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the Statement on Recruitment and Resignation of Faculty Members, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the Recommended Institutional Regulations on Academic Freedom and Tenure, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the Statement on Procedural Standards in Faculty Dismissal Proceedings, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 Statement is silent.

The 1958 Statement provides: "Suspension of the faculty member during the 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." 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 concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that

kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

Endnotes:

1 The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

2 Boldface numbers in brackets refer to Interpretive Comments that follow.

3 For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," Policy Documents and Reports, 9th ed. (Washington, D.C., 2001), 88–91.

4 For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," Policy Documents and Reports, 10th ed. (Washington, D.C., 2006), 55–56.

EXHIBIT B

**Endorsers of the AAUP 1940 Statement of Principles on Academic
Freedom and Tenure and 1970 Interpretive Statements**

Academic Senate for California Community Colleges 1996
Academic Senate of the California State University 2004
Academy of Management 1965
African Studies Association 1975
Agricultural and Applied Economic Association 1962
Agricultural History Society 2004
American Academy of Religion 1967
American Anthropological Association 1970
American Association for Applied Linguistics 1986
American Association for Cancer Education 1986
American Association for Chinese Studies 1968
American Association for Clinical Chemistry 1988
American Association for the Advancement of Slavic Studies 1967
American Association for Higher Education 1950
American Association for the History of Medicine 2000
American Association of Colleges for Teacher Education 1950
American Association of Colleges of Pharmacy 1967
American Association of Pharmaceutical Scientists 1988
American Association of Physicists in Medicine 1990
American Association of Physics Teachers 1982
American Association of Teachers of Arabic 1994
American Association of Teachers of French 1968
American Association of Teachers of German 1985
American Association of Teachers of Italian 1985
American Association of Teachers of Spanish and Portuguese 1969
American Association of University Professors 1941
American Business Law Association 1971
American Catholic Historical Association 1966
American Catholic Philosophical Association 1966
American Chemical Society 1977
American Classical League 1974
American Comparative Literature Association 1974
American Conference for Irish Studies 1999
American Council of Learned Societies 1963
American Council of Teachers of Russian 1994
American Council on the Teaching of Foreign Languages 2005
American Culture Association 1999
American Dialect Society 1968
American Economic Association 1962
American Educational Studies Association 2007
American Finance Association 1967
American Folklore Society 1975
Americans for the Arts 1972
American Historical Association 1961
American Institute of Biological Sciences 1975
American Institute of Chemists 1985
American Jewish Historical Society 2001
American Library Association (adapted for librarians) 1946
American Mathematical Society 1967
American Musicological Society 1969
American Philological Association 1963
American Philosophical Association*** 1974
*** Endorsed by the Association's Western Division in 1952, Eastern Division in 1953, and Pacific Division in 1962
American Physical Therapy Association 1979
American Physiological Society 2006

American Political Science Association 1947
American Psychological Association 1961
American Psychological Society 1989
American Real Estate and Urban Economics Association 1969
American Risk and Insurance Association 1965
American Society for Aesthetics 1992
American Society for Eighteenth-Century Studies 1992
American Society for Legal History 1977
American Society for Theatre Research 1990
American Society of Agronomy 1990
American Society of Church History 1986
American Society of Criminology 2001
American Society of Journalism School Administrators 1967
American Society of Plant Physiologists 1968
American Society of Plant Taxonomists 2006
American Sociological Association 1963
American Speech-Language-Hearing Association 1968
American Statistical Association 1975
American Studies Association 1963
American Theatre Association 1964
Animal Behavior Society 1990
Archaeological Institute of America 1964
Arizona-Nevada Academy of Science 1965
Association for Asian Studies 1975
Association for Canadian Studies in the United States 1999
Association for Communication Administration 1981
Association for Education in Journalism and Mass Communication 1966
Association for Jewish Studies 1976
Association for Psychological Science 1989
Association for Research on Ethnicity and Nationalism in the Americas 2006
Association for Social Economics 1967
Association for Spanish and Portuguese Historical Studies 1976
Association for the Advancement of Baltic Studies 1994
Association for the Sociology of Religion 1967
Association for the Study of Higher Education 1988
Association for Theatre in Higher Education 1999
Association for Symbolic Logic 2000
Association for Women in Mathematics 1997
Association of American Colleges and Universities 1941
Association of American Geographers 1963
Association of American Law Schools 1946
Association of Ancient Historians 1999
Association of Black Sociologists 2005
Association of College and Research Libraries 2007
Association of Literary Scholars and Critics 2006
Association of Schools of Journalism and Mass Communication 1971
Association of Slavic, East European, and Eurasian Studies 1986
Association of Social and Behavioral Scientists 1968
Association of Teachers of Japanese 1994
Association of Theological Schools 1970
Chinese Historians in the United States 2001
Classical Association of the Middle West and South 1964
College Art Association of America 1970
College English Association 1968
College Language Association 1973
College Theology Society 1967

Community College Humanities Association 2002
Council for Chemical Research 1988
Council for Philosophical Studies 1969
Council of Academic Programs in Communication Sciences and Disorders 1996
Council of Colleges of Arts and Sciences 1992
Council of Independent Colleges 1965
Council of Teachers of Southeast Asian Languages 1994
Council on Social Work Education 1967
Crop Science Society of America 1990
Czechoslovak Studies Association 2007
Dante Society of America 1980
Dictionary Society of North America 2005
Eastern Communication Association 1999
Eastern Finance Association 1968
Eastern Psychological Association 1950
Eastern Sociological Society 2001
German Studies Association, 2006
Group for the Use of Psychology in History 2001
History of Education Society 1969
History of Science Society 1987
Illinois Community College Faculty Association 1990
Immigration and Ethnic History Society 2002
International Society of Prostistologists 1990
Iowa Higher Education Association 1977
John Dewey Society 1967
Latin American Studies Association 1992
Law and Society Association 2006
Linguistic Society of America 1975
Massachusetts Regional Community College Faculty Association 1973
Mathematical Association of America 1965
Medieval Academy of America 1990
Metaphysical Society of America 1977
Middle East Studies Association 1982
Midwest Sociological Society 1963
Missouri Association of Faculty Senates 2000
Modern Language Association 1962
Mountain-Plains Philosophical Conference 1966
National Association for Ethnic Studies 1999
National Coalition for History 2006
National College Physical Education Association for Men 1969
National Communication Association 1981
National Council for Accreditation of Teacher Education 2005
National Council for the Social Studies 1996
National Council of Teachers of English 1991
National Education Association 1985
National Science Teachers Association 1989
National Women's Studies Association 2006
New England Historical Association 2001
New York State Mathematics Association of Two-Year Colleges 1972
North American Conference on British Studies 1975
North Central Sociological Association 1980
Oral History Association 1987
Organization of American Historians 1963
Pennsylvania Historical Association 1973
Phi Beta Kappa Society 1968
Philosophy of Time Society 1998

Renaissance Society of America 1989
Rocky Mountain Modern Language Association 1974
Sixteenth-Century Society and Conference 1975
Society for Applied Anthropology 2006
Society for Armenian Studies 2006
Society for Buddhist-Christian Studies 2005
Society for Cinema and Media Studies 1992
Society for Early Modern Catholic Studies 2002
Society for Ethnomusicology 1990
Society for French Historical Studies 1987
Society for German-American Studies 2001
Society for Historians of American Foreign Relations, 2006
Society for Historians of the Gilded Age & Progressive Era 2001
Society for Industrial and Applied Mathematics 2006
Society for Military History 2006
Society for Neuroscience 1989
Society for Philosophy in the Contemporary World 1999
Society for the Advancement of Scandinavian Study 2006
Society for the History of Technology (SHOT) 2006
Society for the Scientific Study of Religion 2001
Society for the Study of Social Biology 2005
Society for the Study of Social Problems 2005
Society of American Archivists 1966
Society of Architectural Historians 1975
Society of Biblical Literature 1989
Society of Christian Ethics 1968
Society of Dance History Scholars 2006
Society of Professors of Education 1970
Soil Science Society of America 1990
South Atlantic Modern Language Association 1967
South Central Modern Language Association 1964
Southeastern Psychological Association 1966
Southeastern Women's Studies Association, 2009
Southern Economic Association 1963
Southern Historical Association 1963
Southern Management Association 1964
Southern Society for Philosophy and Psychology 1953
Southern States Communication Association 1966
Southwestern Philosophical Society 1964
Southwestern Social Science Association 1964
Texas Association of College Teachers 1976
Texas Association of Colleges for Teacher Education 1977
Texas Community College Teachers Association 1970
Texas Library Association 1977
The Historical Society 1999
University and College Labor Education Association 1989
University Film and Video Association 1968
Western History Association 1966
Western States Communication Association 1976
World Communication Association 1999

Exhibit C

AAUP 1966 Statement on Government of Colleges and Universities

1966 Statement on Government of Colleges and Universities

The statement that follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution. The statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.

It is not intended that the statement serve as a blueprint for governance on a specific campus or as a manual for the regulation of controversy among the components of an academic institution, although it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structures and procedures. The statement does not attempt to cover relations with those outside agencies that increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning: for example, the United States government, state legislatures, state commissions, interstate associations or compacts, and other interinstitutional arrangements. However, it is hoped that the statement will be helpful to these agencies in their consideration of educational matters.

Students are referred to in this statement as an institutional component coordinate in importance with trustees, administrators, and faculty. There is, however, no main section on students. The omission has two causes: (1) the changes now occurring in the status of American students have plainly outdistanced the analysis by the educational community, and an attempt to define the situation without thorough study might prove unfair to student interests, and (2) students do not in fact at present have a significant voice in the government of colleges and universities; it would be unseemly to obscure, by superficial equality of length of statement, what may be a serious lag entitled to separate and full confrontation. The concern for student status felt by the organizations issuing this statement is embodied in a note, "On Student Status," intended to stimulate the educational community to turn its attention to an important need.

This statement was jointly formulated by the American Association of University Professors, the American Council on Education (ACE), and the Association of Governing Boards of Universities and Colleges (AGB). In October 1966, the board of directors of the ACE took action by which its council "recognizes the statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the institutions which are members of the Council." The Council of the AAUP adopted the statement in October 1966, and the Fifty-third Annual Meeting endorsed it in April 1967. In November 1966, the executive committee of the AGB took action by which that organization also "recognizes the statement as a significant step forward in the clarification of the respective roles of governing boards, faculties, and administrations," and "commends it to the governing boards which are members of the Association." (In April 1990, the Council of the AAUP adopted several changes in language in order to remove gender-specific references from the original text.)

1. Introduction

This statement is a call to mutual understanding regarding the government of colleges and universities. Understanding, based on community of interest and producing joint effort, is essential for at least three reasons. First, the academic institution, public or private, often has become less autonomous; buildings, research, and student tuition are supported by funds over which the college or university exercises a diminishing control. Legislative and executive governmental authorities, at all levels, play a part in the making of important decisions in academic policy. If these voices and forces are to be successfully heard and integrated, the academic institution must be in a position to meet them with its own generally unified view. Second, regard for the welfare of the institution remains important despite the mobility and

interchange of scholars. Third, a college or university in which all the components are aware of their interdependence, of the usefulness of communication among themselves, and of the force of joint action will enjoy increased capacity to solve educational problems.

2. The Academic Institution: Joint Effort

a. Preliminary Considerations.

The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

Joint effort in an academic institution will take a variety of forms appropriate to the kinds of situations encountered. In some instances, an initial exploration or recommendation will be made by the president with consideration by the faculty at a later stage; in other instances, a first and essentially definitive recommendation will be made by the faculty, subject to the endorsement of the president and the governing board. In still others, a substantive contribution can be made when student leaders are responsibly involved in the process. Although the variety of such approaches may be wide, at least two general conclusions regarding joint effort seem clearly warranted: (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

b. Determination of General Educational Policy.

The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his or her charge and to attain the goals of the institution. The interests of all are coordinate and related, and unilateral effort can lead to confusion or conflict. Essential to a solution is a reasonably explicit statement on general educational policy. Operating responsibility and authority, and procedures for continuing review, should be clearly defined in official regulations.

When an educational goal has been established, it becomes the responsibility primarily of the faculty to determine the appropriate curriculum and procedures of student instruction.

Special considerations may require particular accommodations: (1) a publicly supported institution may be regulated by statutory provisions, and (2) a church-controlled institution may be limited by its charter or bylaws. When such external requirements influence course content and the manner of instruction or research, they impair the educational effectiveness of the institution. Such matters as major changes in the size or composition of the student body and the relative emphasis to be given to the various elements of the educational and research program should involve participation of governing board, administration, and faculty prior to final decision.

c. Internal Operations of the Institution.

The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community. Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

A second area calling for joint effort in internal operation is that of decisions regarding existing or prospective physical resources. The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections. The function of each component in budgetary matters should be understood by all; the allocation of authority will determine the flow of information and the scope of participation in decisions.

Joint effort of a most critical kind must be taken when an institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested. The president should be equally qualified to serve both as the executive officer of the governing board and as the chief academic officer of the institution and the faculty. The president's dual role requires an ability to interpret to board and faculty the educational views and concepts of institutional government of the other. The president should have the confidence of the board and the faculty.

The selection of academic deans and other chief academic officers should be the responsibility of the president with the advice of, and in consultation with, the appropriate faculty.

Determinations of faculty status, normally based on the recommendations of the faculty groups involved, are discussed in Part 5 of this statement; but it should here be noted that the building of a strong faculty requires careful joint effort in such actions as staff selection and promotion and the granting of tenure. Joint action should also govern dismissals; the applicable principles and procedures in these matters are well established.¹

d. External Relations of the Institution.

Anyone—a member of the governing board, the president or other member of the administration, a member of the faculty, or a member of the student body or the alumni— affects the institution when speaking of it in public. An individual who speaks unofficially should so indicate. An individual who speaks officially for the institution, the board, the administration, the faculty, or the student body should be guided by established policy.

It should be noted that only the board speaks legally for the whole institution, although it may delegate responsibility to an agent. The right of a board member, an administrative officer, a faculty member, or a student to speak on general educational questions or about the administration and operations of the individual's own institution is a part of that person's right as a citizen and should not be abridged by the institution.² There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

3. The Academic Institution: The Governing Board

The governing board has a special obligation to ensure that the history of the college or university shall serve as a prelude and inspiration to the future. The board helps relate the institution to its chief community: for example, the community college to serve the educational needs of a defined population area or group, the church-controlled college to be cognizant of the announced position of its denomination, and the comprehensive university to discharge the many duties and to accept the appropriate new challenges which are its concern at the several levels of higher education.

The governing board of an institution of higher education in the United States operates, with few exceptions, as the final institutional authority. Private institutions are established by charters; public institutions are established by constitutional or statutory provisions. In private institutions the board is frequently self-perpetuating; in public colleges

and universities the present membership of a board may be asked to suggest candidates for appointment. As a whole and individually, when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to ensure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership.

Since the membership of the board may embrace both individual and collective competence of recognized weight, its advice or help may be sought through established channels by other components of the academic community. The governing board of an institution of higher education, while maintaining a general overview, entrusts the conduct of administration to the administrative officers—the president and the deans—and the conduct of teaching and research to the faculty. The board should undertake appropriate self-limitation.

One of the governing board's important tasks is to ensure the publication of codified statements that define the overall policies and procedures of the institution under its jurisdiction.

The board plays a central role in relating the likely needs of the future to predictable resources; it has the responsibility for husbanding the endowment; it is responsible for obtaining needed capital and operating funds; and in the broadest sense of the term it should pay attention to personnel policy. In order to fulfill these duties, the board should be aided by, and may insist upon, the development of long-range planning by the administration and faculty. When ignorance or ill will threatens the institution or any part of it, the governing board must be available for support. In grave crises it will be expected to serve as a champion. Although the action to be taken by it will usually be on behalf of the president, the faculty, or the student body, the board should make clear that the protection it offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution.³

4. The Academic Institution: The President

The president, as the chief executive officer of an institution of higher education, is measured largely by his or her capacity for institutional leadership. The president shares responsibility for the definition and attainment of goals, for administrative action, and for operating the communications system that links the components of the academic community. The president represents the institution to its many publics. The president's leadership role is supported by delegated authority from the board and faculty.

As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for the institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of the president's administration.

The president must at times, with or without support, infuse new life into a department; relatedly, the president may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty but may also, in the interest of academic standards, seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to ensure that faculty views, including dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly, the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; has ultimate managerial responsibility for a large area of nonacademic activities; is responsible for public understanding; and by the nature of the office is the chief person who speaks for the institution. In these and other areas the president's work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

5. The Academic Institution: The Faculty

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.⁴ On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chair or head of a department, who serves as the chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chair or department head should not have tenure in office; tenure as a faculty member is a matter of separate right. The chair or head should serve for a stated term but without prejudice to reelection or to reappointment by procedures that involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chair or head has a special obligation to build a department strong in scholarship and teaching capacity.

Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.⁵

The agencies may consist of meetings of all faculty members of a department, school, college, division, or university system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

The means of communication among the faculty, administration, and governing board now in use include: (1) circulation of memoranda and reports by board committees, the administration, and faculty committees; (2) joint ad hoc committees; (3) standing liaison committees; (4) membership of faculty members on administrative bodies; and (5) membership of faculty members on governing boards. Whatever the channels of communication, they should be clearly understood and observed.

On Student Status

When students in American colleges and universities desire to participate responsibly in the government of the institution they attend, their wish should be recognized as a claim to opportunity both for educational experience and for involvement in the affairs of their college or university. Ways should be found to permit significant student participation within the limits of attainable effectiveness. The obstacles to such participation are large and should not be minimized: inexperience, untested capacity, a transitory status which means that present action does not carry with it subsequent responsibility, and the inescapable fact that the other components of the institution are in a position of judgment over the students. It is important to recognize that student needs are strongly related to educational experience, both formal and informal.

Students expect, and have a right to expect, that the educational process will be structured, that they will be stimulated by it to become independent adults, and that they will have effectively transmitted to them the cultural heritage of the larger society. If institutional support is to have its fullest possible meaning, it should incorporate the strength, freshness of view, and idealism of the student body.

The respect of students for their college or university can be enhanced if they are given at least these opportunities: (1) to be listened to in the classroom without fear of institutional reprisal for the substance of their views, (2) freedom to discuss questions of institutional policy and operation, (3) the right to academic due process when charged with serious violations of institutional regulations, and (4) the same right to hear speakers of their own choice as is enjoyed by other components of the institution.

Notes

1. See the 1940 "Statement of Principles on Academic Freedom and Tenure," AAUP, Policy Documents and Reports, 10th ed. (Washington, D.C., 2006), 3–11, and the 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings," *ibid.*, 12–15. These statements were jointly adopted by the Association of American Colleges (now the Association of American Colleges and Universities) and the American Association of University Professors; the 1940 "Statement" has been endorsed by numerous learned and scientific societies and educational associations.

2. With respect to faculty members, the 1940 "Statement of Principles on Academic Freedom and Tenure"

reads: "College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution" (Policy Documents and Reports, 3–4).

3. Traditionally, governing boards developed within the context of single-campus institutions. In more recent times, governing and coordinating boards have increasingly tended to develop at the multi-campus regional, system wide, or statewide levels. As influential components of the academic community, these supra-campus bodies bear particular responsibility for protecting the autonomy of individual campuses or institutions under their jurisdiction and for implementing policies of shared responsibility. The American Association of University Professors regards the objectives and practices recommended in the "Statement on Government" as constituting equally appropriate guidelines for such supra-campus bodies, and looks toward continued development of practices that will facilitate application of such guidelines in this new context. [Preceding note adopted by the AAUP's Council in June 1978.]

4. With regard to student admissions, the faculty should have a meaningful role in establishing institutional policies, including the setting of standards for admission, and should be afforded

opportunity for oversight of the entire admissions process. [Preceding note adopted by the Council in June 2002.]

5. The American Association of University Professors regards collective bargaining, properly used, as another means of achieving sound academic government. Where there is faculty collective bargaining, the parties should seek to ensure appropriate institutional governance structures which will protect the right of all faculty to participate in institutional governance in accordance with the "Statement on Government." [Preceding note adopted by the Council in June 1978.]

Exhibit D

AAUP 1990 Statement on Conflicts of Interest

1990 Statement on Conflicts of Interest

The statement that follows was approved for publication by the Association's Committee on Professional Ethics in June 1990.

American universities and colleges have long been engaged with the institutions of the wider society, to their mutual benefit. Universities have trained ministers, teachers, corporate leaders, and public servants, and have taken on wider responsibilities in research and administration for state and federal governments. The years after World War II brought both quantitative and qualitative change in this relationship as a result of the global responsibilities assumed by the United States and of the strikingly new importance attained by science. This change was symbolized and advanced by an immense increase in federal and state funding for higher education and in investment by private foundations. Now, as universities have entered an era of more stringent budgetary limitations, yet another major shift has occurred—to greater reliance on private funding and to a closer symbiosis between universities and industry.

The many opportunities offered to both university researchers and the private sector by sweeping developments in certain areas of science and technology have led to new concerns in both universities and government. One such concern, about freedom to do research and to publish the results, has rightly exercised universities in deliberations about whether or not to undertake such joint efforts and on what terms. More recently, the question of conflict of interest has been raised anew, with regard to the pressures that financial interests of faculty members participating in extra-university enterprises may exert, consciously or not, on the design and the outcome of the research.

The American Association of University Professors has addressed these questions in the past, and we believe it important to reaffirm the 1965 joint statement of the AAUP and the American Council on Education, *On Preventing Conflicts of Interest in Government-Sponsored Research at Universities*, and to commend the 1983 report of an Association subcommittee on Corporate Funding of Academic Research.¹ The latter report, avowedly tentative and anticipating a fuller statement at a later time, properly assumed that the initiative must lie with university faculties for drawing up such conflict-of-interest guidelines as are appropriate to each campus, with due regard for the proper disclosure of a faculty member's involvement in off-campus enterprises, in terms of investment, ownership, or consultative status; for the use of university personnel, including students; and for the disposition of potential profits.

Recent developments have suggested the following considerations to be taken into account by faculties involved in developing or revising such guidelines.

Government proposals for policing possible conflicts of interest have been overwhelmingly rejected by the academic community as involving a massive, unneeded enlargement of the government's role on the campus. Faculties must be careful, however, to ensure that they do not defensively propose a similar bureaucratic burden differing only in the locus of administration. Any requirements for disclosure of potential conflicts of interest should be carefully focused on legitimate areas of concern and not improperly interfere with the privacy rights of faculty members and their families.

Because the central business of the university remains teaching and research unfettered by extra-university dictates, faculties should ensure that any cooperative venture between members of the faculty and outside agencies, whether public or private, respects the primacy of the university's principal mission, with regard to the choice of subjects of research and the reaching and publication of results.

Faculties should make certain that the pursuit of such joint ventures does not become an end in itself and so introduce distortions into traditional university understandings and arrangements. Private and public agencies have a direct interest in only a few fields of research and in only certain questions within those fields. Accordingly, external interests should not be allowed to shift the balance of academic priorities in a university without thorough debate about the consequences and without the considered judgment of appropriate faculty bodies. So, too, care must be taken to avoid contravening a commitment to fairness by widening disparities—in teaching loads, student supervision, or budgetary allocation—between departments engaged in such outside activity and those not less central to the nature of a university, which have, or can have, no such engagement.

The ability to procure private or government funding may in certain circumstances be an appropriate consideration in making judgments about salaries, tenure, and promotion, but it must be kept in proper proportion and be consistent with criteria established by the faculty. Guidelines concerning intra-university research support should guard against making its availability dependent, solely or predominantly, on the likelihood that the research so supported will result in obtaining outside funding.

Note

1. Academe: Bulletin of the AAUP 69 (November–December 1983): 18a–23a.

Exhibit E

AAUP Statement on Academic Freedom and Electronic Communications

Statement on Academic Freedom and Electronic Communications

This report, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Association's Council in November 2004.

The advent of electronic and digital communication as an integral part of academic discourse has profoundly changed the ways in which universities and their faculties pursue teaching and scholarship. Such changes are manifest in the methods by which information is obtained and disseminated, the means of storing and retrieving such information, and of course the ways in which professors teach and students learn. While basic principles of academic freedom transcend even the most fundamental changes in media, recent developments require a re-examination of the application and implications of such principles in a radically new environment.

One overriding principle should shape any such review: Academic freedom, free inquiry, and freedom of expression within the academic community may be limited to no greater extent in electronic format than they are in print, save for the most unusual situation where the very nature of the medium itself might warrant unusual restrictions—and even then only to the extent that such differences demand exceptions or variations. Such obvious differences between old and new media as the vastly greater speed of digital communication, and the far wider audiences that electronic messages may reach, would not, for example, warrant any relaxation of the rigorous precepts of academic freedom. The changes in medium, profound though they are, herald what may be even more basic changes, from familiar and tangible physical space to intangible virtual space.

Several specific issues do, however, deserve attention—not so much because the new media differ sharply from the older and more familiar media, but more because college and university policies that were developed for print and telephonic communications may simply not fit (or may fit imperfectly) the new environment. Analysis of these rapidly changing conditions may not only yield clearer understanding of the need for adaptation, but also help to shape policies better suited to the digital environment, while protecting academic freedom as fully as the precepts they modify and even supersede.

1. Freedom of Research and Publication

The basic precept in the 1940 Statement of Principles on Academic Freedom and Tenure that “teachers are entitled to full freedom in research and in the publication of the results” applies with no less force to the use of electronic media for the conduct of research and the dissemination of findings and results than it applies to the use of more traditional media. Two special concerns may, however, occasion slightly different treatment and might cause the modification of policies.

ACCESS TO INFORMATION IN DIGITAL FORMAT

Ensuring unfettered faculty access to print-format materials (e.g., in library collections of monographs and journals) is seldom a concern; universities rarely limit or restrict the availability to faculty of such materials. Access to certain materials in digital form may, however, present different problems. Several universities did in the mid- and late 1990s attempt to curtail access, through the campus computer network, to certain sexually explicit graphics (e.g., “alt.sex” newsgroups) under conditions in which access to comparable print images would be routine. The Virginia General Assembly enacted in 1996 a law that specifically forbade state employees (including all professors at Virginia public institutions) from using state-owned or leased computers to gain access to sexually explicit materials—at least without receiving explicit permission from a “superior” for a “bona fide research purpose.” Although no other state appears to have imposed comparably draconian limits on access, Virginia’s law was eventually sustained by a federal appeals court despite vigorous legal challenges by six professors, who persuaded a trial judge that the law abridged First Amendment freedoms.

To the extent that a university may respond to such constraints as did the University of Virginia—essentially by granting dispensations to all academic areas on the premise that specific faculty requests for access would indeed reflect “bona fide research purposes”—the vital interests of academic freedom would

be best protected against such regrettable intrusions as those imposed by statute on Virginia's public institutions.

There may be other exceptions, but they can only be noted, not developed fully. For example, seeking access to material protected by the laws of intellectual property may also pose special considerations, about which users might well be cautioned. Institutional policies should identify clearly any such restrictions or limitations on faculty access that the institution deems vital to ensure compliance with federal and state law.

POSTING OF UNLAWFUL MATERIAL

Institutional policy should also address the posting of potentially unlawful material. In many disciplines, scholars may quite legitimately share material that would be deemed "sexually explicit"—art, anatomy, psychology, etc. Such sharing is at least as likely to occur electronically as it has traditionally occurred in print. The difference in medium should no more affect the validity of such exchanges than it should justify a double standard elsewhere. There may, however, be legitimate institutional interests in restricting the range of persons eligible to receive and gain access to such material—especially to ensure that minors are not targeted for images that might lawfully be treated as "harmful to minors." Any policies designed to protect minors must, however, avoid denying materials to adults who have a valid claim of access—a point that every federal court facing this issue has stressed in the course of striking down at least eight state "harmful to minors on the Internet" laws in recent years.

2. Freedom of Teaching

A basic tenet of the 1940 Statement of Principles is that "teachers are entitled to freedom in the classroom in discussing their subject." The scope of that principle is clear enough in the traditional physical classroom with four walls, a floor, and a ceiling. Increasingly, however, the "classroom" may be a Web page, an electronic bulletin board, a news group, or other electronic medium that clearly has no physical boundaries. Not only do students and professors communicate regularly through e-mail, but much of the material related even to face-to-face classes appears on, and is exchanged through, electronic media. Thus the concept of "classroom" must be broadened to reflect these realities. The "classroom" must indeed encompass all sites where learning occurs—Web sites, home pages, bulletin boards, list servs, etc.¹

There is, however, one legal caution: A recent state court case (decided on other grounds) raised the potential of professorial abuse of the student-teacher relationship through digital means. Professors might be tempted to post student papers on course Web sites—a practice that should require permission even for print copying and dissemination—and must be sensitive to the vastly greater potential for embarrassment (or worse) to the author by making sensitive personal opinions or information instantly available to a far larger audience. Such risks are magnified many times by an Internet posting, a potential that may warrant one of those few "special rules" for academic discourse in cyberspace.

3. Access to the System: Acceptable-Use Policies

Most colleges and universities have adopted acceptable-use policies governing access to their computing networks and, through those channels, to the Internet. Such policies should not, however, inhibit access to e-mail. No conditions should be imposed upon access to and use of the network more stringent than limits that have been found acceptable for the use of traditional campus channels, unless and to the extent that electronic systems warrant special constraints. Requiring each faculty user to obtain and enter a password is clearly a necessary condition for the functioning of the system, even though print communications impose no counterpart. Moreover, requiring that passwords be kept secret and changed periodically may also be a necessary (if unique) safeguard for a computing network.

More problematic are restrictions such as those that deny the use of the system for "personal matters" or for other than "official university business." Clearly, computing time is a scarce and valuable resource, priority in the use of which may reasonably reflect the institution's core mission. Thus some limits may be justified to prevent abuse of the system for extraneous purposes; a ban on the advertising of commercial products and services offers a familiar example. The difficulty with language such as "only official university business," apart from a distressing lack of precision, is the inherent invitation to selective use of such a standard by an administration anxious to impose substantive constraints on faculty activity. Any restrictions

that an institution feels it must impose on “acceptable use” must therefore be clearly and precisely stated, must be content-neutral and narrowly defined, and should address only systemic abuses by users, such as the posting or sending of material that would cause the system to malfunction or would severely inhibit the access of other users.

4. Responsibility in Extramural Utterances

AAUP policy, most notably the 1964 Committee A Statement on Extramural Utterances, recognizes that faculty members, speaking as citizens, should be accurate and should “exercise appropriate restraint” as well as show “respect for the opinions of others” in extramural statements. “Extramural utterances,” the committee pointed out, “rarely bear upon the faculty member’s fitness for continuing service.” Whatever problems the physical environment may present for drawing lines between on- and off-campus statements become unmanageable in cyberspace. Are statements posted on a faculty member’s home page “intramural” or “extramural”? And does it matter whether a particular statement was entered from the professor’s home or office computer—or partly from each? Given these uncertainties, the “extramural utterances” reference simply should not apply to electronic communications, even though the central principles of faculty responsibility to colleagues and community are no less fully applicable in a digital environment. The accident of where a professor happens to be when he or she “utters” a statement bound for the Internet should have no bearing on any judgments made about possible departure from accepted canons of responsibility.

5. Unwarranted Inference of Speaking for or Representing the Institution

The 1940 Statement cautions that faculty members “should make every effort to indicate that they are not speaking for the institution” when in fact they are not doing so. The meaning of that constraint is clear enough in the print world. One may refer to one’s faculty position and institution “for identification purposes only” in ways that create no tenable inference of institutional attribution. In the digital world, however, avoiding an inappropriate or unwarranted inference may be more difficult. Several years ago, for example, a Northwestern University instructor claimed that a senior colleague’s Holocaust-denial statements, posted on the professor’s campus-based personal Web page—in contrast to the same statements that had earlier appeared in book form—“make it appear that I and every other [Northwestern] faculty member are a party to what I consider a libel.” A California state university was directed to remove from the Web page of a politically active student a strident attack on an incumbent state senator, claimed to violate California’s strict ban on any use of state resources for “partisan political purposes.” Quite recently, homophobic statements that a university professor posted on his Web log created an analogous concern within the campus community; students who merely sought routine course information and assignments might have been, and occasionally were, exposed to statements some found offensive in ways that would not have happened in the print world.

Institutions may reasonably take steps to avoid such inferences of institutional attribution or complicity, in ways that print communications would not warrant. Disclaimers may be useful, though lawyers often exaggerate the value of such statements. Especially if specific concerns have been raised about material posted on a faculty member’s Web page—a Holocaust-denier, or the gay-basher, for example—the poster might preface such material with a clear statement that “material on this Web site does not represent the views of, and has not been reviewed or approved by, _____ University.” Such a disclaimer could also be generalized on the institution’s home page, or on the directory by which a visitor to the site would initially explore professorial

Web pages or Web logs. No such statement should imply either approval or disapproval but should, consistent with principles of academic freedom, recognize that the individual professor (not the institution) is responsible for his or her views or opinions.

6. Sanctions for Abuse or Misuse: Terminating Electronic Access

Administrations at some institutions appear to have viewed computer and Internet access as a lower-order faculty perquisite that may be summarily terminated. Such views need to be rejected unequivocally. Access to campus computing facilities, and through them to the Internet, represents a vital component of faculty status for most scholars and teachers. Yet it would be naïve to suggest that circumstances might never

warrant withdrawal or suspension of digital channels. Access may be denied or limited only for the most serious of reasons (e.g., creating and unleashing on the campus server a destructive virus), and only after the filing of formal charges and the pursuit of rigorous procedures, even where the transgression may not be so grave as to warrant dismissal or suspension. The university's policies must specify with precision the infractions that might warrant such a severe sanction, recognizing only conduct that jeopardizes the system and the access of others—contrasting with a rule still on the books of one major public university that imposes a minimum three-day suspension upon any user found eating in a computer lab—a ban presumably aimed at students, but theoretically applicable to professors as well. The policy should also prescribe the procedures to be followed in such a case. In exigent circumstances, a faculty member's computer access might be summarily and briefly suspended during an investigation of serious charges of abuse or misuse. Any such suspension should be approved by the chief academic officer as well as the chief information technology officer, should be no longer than necessary to conduct the investigation, and should be subject to some form of prior internal faculty review.

7. Freedom of Artistic Expression

AAUP policy elsewhere recognizes that academic freedom includes freedom of artistic expression “in visual and performing arts.” Increasingly, artistic expression that challenges conventional tastes and norms does involve digital images, even more than images on canvas, film, or dance. It is thus vital to affirm that academic freedom does include such novel as well as more traditional media. Indeed, much of the recent constitutional litigation over regulation of Internet content has raised precisely such issues. The Supreme Court has struck down congressional bans on “indecency” on the Internet, and on “virtual child pornography,” while lower federal courts have consistently invalidated state bans on the Internet posting of “material harmful to minors” in digital form.

8. Campus Speech Codes and Harassment Policies

The AAUP has condemned restrictive speech codes and harassment policies that target speech on the basis of the speaker's viewpoint or message.² Such condemnation should apply with equal force to regulation of digital or electronic campus speech. Such differences as exist among media do not warrant harsher treatment of threats, slurs, epithets, or harassing language because they occur in digital form. Indeed, it is quite possible that electronic messages are protected to an even greater degree than their print-era counterparts. The doctrine of “fighting words” offers an illustration. While the Supreme Court held many years ago that a speaker could be punished for highly provocative face-to-face utterances likely to trigger a violent response—the definition of “fighting words”—there does not seem to be any basis for treating even the most intemperate digital “flaming” in the same way, since the proximate, “in-yourface” risks simply do not exist when the combatants are seated at keyboards an unknown distance apart. We know far less about the legal status of digital threats; the federal appeals court in California upheld a substantial judgment in favor of abortion-clinic staff members against a group that had posted hateful and threatening statements on the “Nuremberg Web site,” the court reasoning that the named abortion providers could reasonably have felt as directly threatened by such messages on a Web site as by similarly menacing language found on a poster or flier or uttered orally. Other cases are pending that may define more sharply the nature and liability of digital threats. The central point here is that campus speech codes and broad verbal harassment rules are no more tolerable when they target digital or electronic hate messages than when they target similarly spiteful print messages.

9. Privacy of Electronic Communications

Institutions of higher learning seem hardly immune from the belief—pervasive in the corporate world—that the level of privacy due to digital communications is substantially lower than what users of more traditional media may expect. In the relatively few judicial tests of this issue, courts seem to accept such a lower standard, even for faculty communications. One federal appeals court recently and illustratively rejected a university professor's electronic-privacy

claim, because “the employee was explicitly cautioned that information flowing through or stored in computers within the network cannot be considered confidential, and where computer users were notified that network administrators and others were free to view data downloaded from the Internet.” Although the content of the material involved in that case was indefensible—a professor's files of child pornography—such broad judicial pronouncements extend well beyond forbidden material, and dangerously imply an almost dismissive view of privacy claims in the campus as well as in the corporate context.

There are undeniable differences among communications media, which may take some toll on privacy. A college or university computing network legitimately “backs up” some portion of each day’s e-mail traffic. Information-technology staff members in the normal course of events have a degree of access to electronic messages that would be unthinkable for personnel in the university mailroom or the campus telephone switchboard. By its very nature, electronic communication incurs certain risks that have no print counterpart—for example, the potential invasion of the system by hackers, despite the institution’s best efforts to discourage such intrusions. These risks are simply part of the reality of the digital age, and our extensive reliance upon computer networks for the conduct of academic discourse. Yet such claims as university “ownership” of the hardware and telephone lines, or the need to ensure that the university’s business gets done on time, could dangerously diminish the countervailing interests in digital privacy. There are genuine academic freedom concerns that have not yet been recognized by the courts, and that are less than fully or adequately reflected in most institutional policies. The sensitivity of academic communications and the wide range of scholarly purposes for which digital channels are invoked warrant a markedly higher level of protection.

A fully responsive policy would reflect at least these criteria:

- a. Every college or university should make clear, to all computer users, any exceptions it deems necessary to impose upon the presumed privacy of communications, whether in print or in digital form.
- b. There must be substantial and meaningful faculty involvement in the formulation of any such exceptions (e.g., requiring formal approval or endorsement by a faculty senate or comparable governance group).
- c. The basic standard for e-mail privacy should be that which is assured to persons who send and receive sealed envelopes through the physical mail system—that envelopes would not be opened by university officials save for exigent conditions (e.g., leaking of a noxious chemical or ticking or other indicia of an explosive).
- d. If a need arises to divert or intercept a private e-mail message to or from a faculty member, both the sender and the recipient should be notified in ample time for them to pursue protective measures—save in the rare case where any such delay would create imminent risk to human safety or university property.
- e. The contents of any such messages that have been diverted or intercepted may not be used or disseminated more widely than the basis for such exceptional action may warrant.
- f. Should the occasion ever arise to suspend or terminate an individual faculty member’s access to the computer system, so drastic a step should be taken only in response to a serious threat to the system, and should be preceded by a hearing before a faculty committee on the specific charge or charges of misuse or abuse.
- g. Finally, similar safeguards should be fashioned (with full and meaningful faculty involvement in that process) and applied to other facets of electronic communications within the campus community—for example, the posting of sensitive evaluations or course materials, whose confidentiality may prove harder to maintain than might initially be supposed. Careful consideration should be given to privacy needs in myriad situations where unauthorized disclosure of electronic messages and materials could jeopardize personal reputations and other vital interests, and could ultimately deter free and open communications within the campus community. Such principles as these, designed as they are to ensure privacy of electronic communications, will require careful and extensive study by each institution, and the tailoring of specific responses consistent not only with institutional needs and values, but also with state and local law. This report is designed to facilitate that process.

Notes

1. For a more comprehensive treatment of teaching at a distance, see the Association’s 1999 “Statement

on Distance Education,” Policy Documents and Reports, 10th ed. (Washington, D.C.: AAUP, 2006), 211–13.

2. See the AAUP’s statements “On Freedom of Expression and Campus Speech Codes,” Policy Documents and Reports, 37–38, and “Sexual Harassment: Suggested Policy and Procedures for Handling Complaints,” *ibid.*, 244–46.