AAUP
American Association of University Professors

Academic Freedom for a Free Society

January 27, 2011

Professor Janelle Taylor, President
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Dear Professor Taylor:

You have asked for our comments on the position that the administration of the University of Washington has apparently taken, pursuant to a case that the AAUP has not independently assessed, regarding the due-process rights of faculty members whom a dean has found guilty of research misconduct. In the March 4, 2010, *Final Decision of the University of Washington in the Matter of the Appeal of the Decision of the Hearing Panel regarding Petitions Submitted by Professors Andrew Aprikyan and Phyllis Wise, dated November 5, 2009*, then-President Mark A. Emmert found as follows:

> Under the University's Scientific Misconduct Policy, and the Faculty Code, the Dean of the School or College makes the final University determination as to whether research misconduct has occurred. The Dean's determination is not subject to administrative appeal by the respondent, nor to further review by a faculty panel. The Dean's determination is made based on the investigation of the advisory committee, persons with appropriate scientific expertise and impartiality as required by the University's Scientific Misconduct Policy and the relevant federal code provisions. The respondent is provided the opportunity for meaningful review, comment, and participation during both the inquiry and investigation stages prior to the Dean's final decision. Any appeal of the University's final decision regarding research misconduct must be to court.

The president also found:

> The Dean's role was to make the final determination on scientific misconduct, as he did in this case; the Provost's role was to address the need for personnel and other administrative actions, as she did in this case. The Hearing Panel's role was to adjudicate whether the charges contained in the Provost's petition support the requested disciplinary or punitive actions.

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We understand that, under university regulations concerning research misconduct (Executive Order No. 61), a dean reaches a determination regarding allegations of scientific misconduct after consulting with an advisory committee of faculty members that he or she appoints.

The administration's position, as articulated here, that a dean's determination that a faculty member has engaged in scientific misconduct is not subject to review by an elected faculty body, even when that determination becomes grounds for dismissal, is at odds with a fundamental tenet of academic due process as enunciated in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* (enclosed), the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (also enclosed), and derivative AAUP interpretations. These require that charges brought against a faculty member as grounds for dismissal, or any severe sanction, be heard by a duly constituted faculty committee. According to the 1940 *Statement*, "Termination for cause of a continuous appointment, or the dismissal for cause of a teacher prior to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution." Regulation 7a of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (enclosed) provides that, "[i]f an administration believes that the conduct of a faculty member, although not constituting adequate cause for dismissal, is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period," the requisite safeguards of academic due process are those set forth in Regulation 5 (Dismissal Procedures) of the *Recommended Institutional Regulations*. The core element of the procedures set forth in Regulation 5 is that charges against a faculty member be heard by an elected faculty hearing committee, with the burden of demonstrating adequacy of cause resting with the administration.

From its inception, the AAUP has grounded the protection of academic freedom on the principle that the faculty should have a first-hand concern with its own membership and, therefore, that judgments about the professional fitness of a faculty member should be rendered primarily by professional peers. Our founding policy document, the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* (enclosed), asserts that "[e]very university or college teacher should be entitled, before dismissal or demotion, to have the charges against him stated in writing in specific terms and to have a fair trial on those charges before a special or permanent judicial committee chosen by the faculty senate or council, or by the faculty at large."

We have reviewed the pertinent regulations of the University of Washington, particularly those set forth in *Faculty Code* Chapter 28 and in Executive Order No. 61, and find them to comport in all essential respects with the above-cited standards. We would therefore concur in the finding of the Advisory Committee on Faculty Code and Regulations, which, in its January 6, 2011, report to the Senate Executive Committee, answered the following question in the negative: "According to the Handbook and Code, can deans make findings of academic misconduct that are 'the final decision of the University' and not subject to review by the faculty through the Adjudication Procedure?"

We note, finally, President Emmert's assertion, in his March 4 *Final Decision*, that "the Hearing Panel attempted to substitute its review and consideration of the evidence of scientific

misconduct for that of the advisory committee members who possessed 'sufficiently specialized expertise in the same field as that of the respondent.'" He then added, "The Hearing Panel members, experts in their respective fields of Aeronautics and Astronautics, Scandinavian Studies, Education, English and Comparative Literature, and Family and Child Nursing, were without the requisite expertise to substitute their review or to adjudicate differing opinions in the specialized field involved in this matter." The conclusion we are apparently to draw is that, when an administration brings charges of scientific misconduct (or research misconduct generally) against a faculty member, the abstruse nature of the discipline may require that any reviews of the validity of those charges can be conducted only by experts in the faculty member's field, in this case experts appointed by the administration. If this were indeed the case, many, if not most, faculty hearing committees would be precluded from performing their necessary responsibilities in faculty dismissal proceedings. The 1940 *Statement* itself, however, addresses the question of relevant expertise on a hearing body by recommending that "[i]n 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," thus providing for expert testimony on the particular matter at issue.

I hope that you and your colleagues find these comments useful. If you have any questions or would wish our further assistance, please do not hesitate to contact me.

Sincerely,

Gregory F. Scholtz
Associate Secretary and Director
Department of Academic Freedom, Tenure, and Governance

Enclosures