

The following is a committee report that will be presented to the President of the Kansas Conference on April 29, 2000. It does not express an official view of the Conference.

Committee A report of the Kansas Conference, April 29, 2000.

In March of 2000 Professor Elmer Hoyer, President of the Kansas Conference, directed the formation of an ad hoc Committee A to interview faculty members with complaints related to possible violations of academic freedom and due process at Kansas University (KU), Lawrence, and at the KU Medical Center, Kansas City. The chair of the committee was Dr. Rich Hughen - FHSU, and the members were Dr. Joe Yanik - ESU, Dr. Talat Rahman - KSU, and Dr. Dolores Furtado, - KUMC. This report is a summary of the findings and recommendations of this committee.

On April 16, 2000, at the University of Kansas, Lawrence, six faculty members were interviewed by our committee. Five of the faculty members were from the Lawrence campus and were from three different departments. The other faculty member was from the KU Medical School in Kansas City. This report will refer to these cases as #1 through #6.

### The Lawrence Campus

#### Violations of Academic Due Process procedures

##### (1) Denial of access to personnel files

Three of the faculty members #2, #4, and #5 at some point were denied adequate access to their files. Particularly alarming were the statements by #2 and #5 that they were asked to sign their blue form without being permitted to see what was in it. [The "blue form" seems to be used as a uniform way to organize their credentials.] This was especially relevant because in each case the faculty members stated that there were discrepancies between what appeared in the typed version of the blue form and the version that they had submitted. In the case of #2 the blue form omitted reference to the status of a book that had been submitted for publication (and that was later accepted) and in the case of #5 there were letters of acceptance of publication that were not included. A fundamental right of all persons, including faculty is the right to read any form that requires their signature. In these cases, the right to verify the blue form for completeness and accuracy before forwarding the file to committee was denied. It is especially disturbing that these alleged incidents happened in three different departments.

Article VII of the KU Faculty Senate Rules and Regulations permits the

maintenance of confidential files. It is clear from reading Article VII that the intention is to protect the confidentiality of external letters of recommendation that were written with a guarantee of confidentiality, and also, to protect the privacy of the files of the faculty member applying for tenure or promotion. It appears that the University of Kansas permits broadening "confidentiality" to include everything, beginning with the typing of the blue form by the office staff and expecting the faculty member to sign the typed form without verifying accuracy and completeness. The potential for abuse with these restrictions is tremendous because the faculty member is not given the opportunity to correct false or misleading information. In the case of #5 it appears this practice resulted in a review committee challenge of the integrity of the submissions by the faculty member. For faculty members #2 and #4 it appears that wrong and/or incomplete information may have led to reasons for the denial of tenure. The AAUP standard is that the faculty member should have complete access to his or her files (Access to Personnel Files-the Redbook).

## (2) Undue influence by Administrators

### Chairs

Testimony of faculty members (#1, #3, #5) indicated that a KU Chairman directly participated in the promotion and tenure review at the departmental level and then also served as the chair of the college committee. Additionally, this individual's spouse also served on the college committee. This practice not only allows undue influence, but individual faculty members may be placed in double jeopardy.

### Deans

The Dean of the college allegedly subjected faculty member # 4 to extra workload, exclusion from activities and positions of responsibilities for which this individual was specifically hired, and exclusion from considerations for a newly created position for which # 4 had the required qualifications. A subsequent dean of the college allegedly manipulated the recruitment of a faculty member by 1) finally resorting to the use external funding to avoid campus policy and accountability and 2) excluded an internal candidate, not based on credentials or other reasonable considerations, and 3) placed a probationary faculty member on 'special probation' with a three-person oversight committee, apparently, as a form of harassment.

### Provost

The Provost, who chairs the University Committee on Promotion and Tenure (UCPT), overturned the committee recommendation which was a supermajority decision (7-3) affecting faculty #5. In the case of faculty member #4, it was reported that the Provost issued intimidating citing violations of University regulations without investigating the charges.

### (3) Retaliatory Acts

There were descriptions of retaliatory acts taken against the faculty members and their supporters. Faculty member #3, who was the former chair of the department to which #1 and #3 belong, said that he/she had experienced the lowest salary increases in the department the last three years despite being productive. This faculty member also reported the removal of lab space, and the loss of a valued administrative position as a consequence of supporting another faculty member for tenure. What was most disturbing was the description of an accusation that by writing an evaluation letter, this faculty member had attempted to "tamper" with the deliberations of the tenure and promotion committee.

It was reported to our committee that the actions of some KU administrators have created an atmosphere of intimidation and fear of reprisals by such actions as; 1) putting probationary faculty on special probation; 2) creating faculty committees to watchdog (harass?) faculty; 3) selective omission of relevant information on forms, 4) not properly informing persons during process; 5) issuance of written warnings; 6) making charges of academic misconduct early in the tenure process that are dropped after negative recommendations for tenure are made, 7) removing faculty members from prestigious committees and visible positions, 8) by giving unjustifiable low annual evaluations and low salary increases relative to others in the unit.

### Violations of Rules and Regulations/Handbook

#### (1) Failure to follow procedures in a consistent manner

There are dates established for each stage of the tenure and promotion process. Three of the faculty members #1, #4 and #5 stated that their deadlines were altered significantly. The most significant change was the date by which the initial materials were due. The date was moved back from early fall to the middle of July. (One of them presented a sheet in which the original dates were crossed out and the new dates handwritten in red.) The faculty members were apparently not informed of this until the end of the previous spring semester. This is a significant change in dates and, in one department, the faculty members #1 and #5 said that in the following year (1999-2000), the deadlines were moved back to the original dates. On the other hand in this academic year one of the other faculty members #4 testified that the dates were changed in a similar manner in a different unit. The fact that this practice allegedly occurred in two different units in two different years is very disturbing. Communication with faculty under review is often delayed until deadlines are missed, or overlooked

completely resulting in misinterpretations and assumptions that further erode faculty confidence in the integrity of the promotion and tenure process.

(2) Apparent discrepancies between the procedures followed and the description outlined in the Faculty Handbook

The KU Faculty Handbook describes the formation of a University Committee on Promotions and Tenure (UCPT). Section 6.1.10 states, "The UCPT is a committee of eleven chaired by the Provost, who votes only in the case of ties." Section (6.1.11) states, "The UCPT acts in an advisory capacity to the Chancellor, who has responsibility for approval." There is no provision in the Faculty Handbook for an independent decision by the Provost. In fact, it seems clear the intent is that the Provost votes only in the case of a tie vote by the other 10 members of the committee. Our interpretation of the handbook rule is that a simple majority decides thereby allowing for those instances when the Provost may break the tie. But the present practice calls for a supermajority (7-3) in order to receive a positive recommendation from the UCPT. If this is true, then it renders the statement in the Faculty Handbook, about the Provost breaking ties, meaningless. In addition the Provost apparently submitted an independent judgment to the Chancellor. For faculty members #5 this independent judgment was a reversal of the positive recommendation of the UCPT- a recommendation that apparently received the necessary supermajority. We were told that this is the only case in recent history of the Provost disagreeing with the decision of the UCPT and making an independent and contrary recommendation to the Chancellor.

(3) Misuse of Student evaluation forms

Faculty members #1 and #5 reported that hand written comments from student's evaluation forms were quoted out-of-context and/or edited and placed in their tenure and promotion packages, and only negative student comments were included. Copies of student evaluations (numerical as well as hand written comments) were allegedly made available to administrators, including University attorneys without the faculty member's permission. In the case of #5, it was reported that an administrator also solicited additional comments on his/her class performance not only from selected students in the course but also from a sibling of a student (the sibling was not a student in the course).

Lack of Academic Community

(1) An apparent failure to follow up on complaints of unfair treatment

Two of the faculty members (#1 and #4) said that they had gone to the campus Equal Opportunity Officer (EOO) to complain of unfair treatment on the basis of race. (These incidents occurred before the application for tenure and promotion.) According to their statements, the EOO convinced them not to file complaints and promised to pursue the matter informally. Faculty member #4 was encouraged to wait for improvement and was assured that filing was unnecessary because others had addressed the issue. The faculty members felt that nothing meaningful was achieved by the EOO and, in subsequent legal action, the failure to have filed formal complaints surfaced with negative impact. Their perception was that the EOO was just trying to muffle their complaints. While it may be appropriate for the EOO to attempt to mediate a situation before filing a formal complaint, it seems that this office should assume a more supportive role in determining whether or not the situation has been adequately resolved, and, if it hasn't, the office should then proceed with an investigation.

(2) No meaningful response to complaints

Faculty Members indicated that complaints filed with administrators were met with a display of sympathy, but without meaningful intervention. Also, the administrators did not initiate a peer review regarding the various complaints. The faculty members also characterized their interactions with the office of faculty ombudsman, and campus AAUP leaders as being sympathetic (going through the motions) rather than taking actions. Faculty members emphasized that there was no established appeal and grievance procedure for denial of tenure. Appeals, they were told, could be filed with the chair of the committee on Tenure and Related Problems, but faculty members were also told unofficially, that this was proforma. In any event, the faculty reported that the ombudsperson was not able to provide them with a set of steps to be followed after submission of the letter of initial appeal. Without the possibility of addressing their concerns to a peer group like a faculty grievance board, several faculty members have resorted directly to legal action to seek justice and address their grievances.

(3) Fear, intimidation and retaliation seems all too pervasive on this campus

While the numbers of faculty members treated in a negative manner are small, those faculty who are part of reviews etc. seem to be backed by the administration. This approach can not be considered as beneficial to the University community, as essential to the reputation, or justified on the basis of the elevation of academic standards at the university. Fear and

intimidation tactics are inconsistent with academic freedom and therefore run counter to the good of the university and society in general.

### Conclusions

To address the issues raised by the interviews, we conclude that specific remedies should include:

(1) Faculty members should have complete access to their files at all times with the exception of letters of recommendation for which they have specifically waived the right to access. This is consistent with AAUP policy and it is consistent with court decisions. A faculty member should not be forced to go to the expense of hiring a lawyer in order to see these files.

(2) A consistent set of procedures should be spelled out clearly in the Faculty Handbook and strictly adhered to in all cases. Deadlines should be consistent across campus and vary little from year to year. If there is a requirement of a supermajority vote in the UCPT then this should be spelled out in the Faculty Handbook. If the Provost is to render an independent judgment then this, again, should be spelled out in the Faculty Handbook, and, in that case, he/she should not be a member of the UCPT.

(3) A policy of actively investigating complaints of discrimination needs to be instituted and enforced. When a faculty member contacts the EOO about the possibility of filing a complaint, the EOO should take an active role in either correcting the situation or, if it cannot be resolved to the satisfaction of the complainant, making sure that a formal complaint is filed.

(4) Steps should be taken to limit the ability of chairs to engage in retaliation for academic disagreements. This has a chilling effect on academic freedom. Those who have been victimized in this manner should be encouraged to file a formal complaint and such complaints should be actively investigated. Chairs who engage in this practice should be removed from their positions.

(5) Safeguards should be put in place to limit the influence of any one individual. Chairs or anyone else who will be rendering independent judgments should not be serving on tenure and promotion committees. No one in the campus community should participate in, or have direct influence on, more than one level of review.

(6) Faculty Handbook should provide explicit guidelines to the process of

appeal and grievance in cases of tenure denial.

(7) Faculty Handbook should provide explicit description of the role of ombudspersons in cases of appeal and grievance.

(8) Attempts should be made to resolve conflicts between faculty members and administrators through mediation without forcing faculty to resort to legal action.

#### Recommendation to the Kansas Conference

This committee recommends that the Kansas Conference of the AAUP refer this information regarding the University of Kansas - Lawrence cases along with a request for investigation to the National AAUP Office (Martin Synder, staff assigned to Committee A with a copy to the Chairwoman of Committee A).

#### UNIVERSITY OF KANSAS MEDICAL CENTER

##### Violation of Academic Due Process procedures

(1) A faculty member with de facto tenure was terminated with no cause

Faculty member #6 had a teaching position at the medical center for 21 years and was promoted to Associate Professor effective July 1, 1999. In September 1999 the faculty member received a letter of non-reappointment from the Dean of the School of Medicine. As a contract employee tenure was never formally granted. According to the Redbook, 'Statement of Principles on Academic Freedom and Tenure of the AAUP'

"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." (p.4)

"Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years..." (p.4)

"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." (p.6)

Accordingly, faculty member #6, who has had a full-time teaching position at the KU Medical Center for 21 years, should be considered to have tenure.

According to the faculty member's statements and supporting documentation, no reasons in writing have been provided as cause for this termination despite written request by the faculty member for an explanation. Since faculty member #6 was promoted in July of 1999, after extensive peer review, and had received no negative evaluations in the intervening period, the sudden dismissal could not be based on performance.

The Board of Regents approved long term (3-5 year) contracts for full time faculty in 1995. It is under this authority, presumably, that the decision was made. However, 1) this individual had already earned de facto tenure before this change was approved by the Board and 2) this case makes it clear that there are serious questions about the rationality and legality of this provision in view of the Regents assertion that they also adhere to AAUP guidelines.

(2) To deny a person the right to a grievance is a denial of Academic due process

The request by faculty member #6 for a written explanation for his/her termination (non-reappointment ) has not been provided. Subsequently a letter of clarification from the Dean indicated that the contract would run out June 30, 2000 and that a contract decision can not be grieved (peer reviewed). According to the evidence and documentation this faculty member has not been permitted to appeal his termination. To avoid providing reasons upon written request by a faculty member is in violation of the Faculty Handbook.

### Conclusions

To address the issues raised by the interviews, we conclude that specific remedies should include:

(1) Faculty member #6 should be reinstated immediately. This is the only possible correction for this injustice.

(2) There should be a re-examination of the Regents' policy allowing faculty members to be employed on a contract basis with no expectation of tenure. This case illustrates the extreme threat to academic freedom represented by the use of non-tenure track contracts for the employment of faculty members.

### Recommendations to the Kansas Conference

(1) We recommend that the President of the Kansas Conference attempt to mediate this case. The AAUP should argue that this person, who has been on the faculty for 21 years and advanced to the rank of Associate Professor, has earned tenure (de facto tenure in AAUP terms). The faculty member has been involved in teaching, evaluation of students and in scholarship sufficient to establish a base of support that extends throughout the world. Lack of sufficient cause for dismissal is the basis for asking the Vice Chancellor of the University of Kansas Medical Center to intervene with a long term 5 year contract in the School of Medicine. Should KUMC fail to respond adequately to the mediation effort, the Kansas Conference should request an investigation by the National AAUP office. The request should focus on investigation of the administrative practices of Kansas University and could lead to censuring the Administration (not the University).

(2) In addition, the pattern of disregard for due process in cases of individuals on contract should prompt a request for a meeting with the 3 regents who oversee the University.

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Chair 4/29/00

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Member 4/29/00

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