Suspensions and Dismissals

Implicit, in the preceding chapter, was the assumption that faculty members may move up in rank and salary but never down. In a few instances, in other parts of the world, one encounters universities in which men may be demoted—even as they can be in the military services. But, as far as we know, there is no such practice in American institutions, except occasionally on the lowest ranks, when a shift to a new post may automatically involve a still lower title with no prejudice to the holder.

Suspensions. In rare cases, however, staff members are suspended from teaching functions—usually pending some judicial procedure. If, for example, a man is indicted in the courts for a criminal offense, the University may be justified in suspending him until the verdict is reached.

We would go further in saying that, if a faculty member’s behavior suddenly becomes so erratic that contacts with students seem undesirable, he may be suspended in this case also—pending an investigation by the University. A representative faculty committee as well as administrators, however, should be a party to any such action. If the decision is unfavorable, the usual dismissal procedures can then be set in motion.²

¹ This is true, e.g., of certain universities in the Philippines.
² Such instances are very unusual. If a new instructor proves “impossible,” he can usually be put up with for the rest of the year. The onset of
Whatever the cause of a suspension, salary should be maintained until the action is terminated by reinstatement or dismissal. Otherwise, there is violation of the principle that a man is to be viewed as innocent until proven guilty or—in the academic world—incompetent.

Criteria for Dismissals. The problem of dismissals is most complex. Prior to the last half-century, trustees and administrators commonly claimed the right to dismiss faculty members at their own discretion. Since some dismissals resulted from a dislike of men’s religious, political, or social opinions, it became apparent that tenure was necessary in order to maintain academic freedom. Such freedom may be violated, covertly, by refusing appointment or promotion for similar reasons, but the issue is overt in dismissal cases.

By about the 1920’s, tenure rights in one or both senior ranks were recognized in most American universities—either by statute or by common practice. Also recognized, in practice if not in principle, was the acquisition of de facto tenure by length of service. The present question, therefore, is simply: Under what circumstances is a college or university justified in dismissing a faculty member who possesses tenure?

There is general agreement that a professor can be rightly dismissed for incompetence, for neglect of duty, or “for cause.” Incompetence in the ordinary sense is difficult to establish except in extreme cases, and probationary screening makes it unlikely that such instances will ever appear. Incompetence resulting from personality deterioration is more common. Alcoholism, senility, or insidious mental illness process, personality disorders, alcoholism, etc. is usually gradual and rarely calls for temporary suspension. There can be sudden mental illness, but, if acute, the victim would rarely attempt to teach.
vide illustrations. Elderly men, moreover, may be unable to recognize sheer physical limitations. Reasonable consideration should be extended in such situations and the victim may be persuaded to resign. But, if not, there is an obligation to protect the students and dismissal will be justified.

"Neglect of duty" is another pattern which is difficult to demonstrate save in extreme instances. Now and then, a college has to deal with a teacher who habitually misses classes, refuses to work with colleagues, becomes abusive, and so on. Explanations may be found in some of the factors just mentioned, since "incompetence" and "neglect" are overlapping categories. But even if no one can probe beneath the surface of "plain cussedness," something must be done and that something—as a last resort—may be dismissal.

The concept of "cause" reflects the ethical standards of the community in general and of higher education in particular. The two are largely identical, but a university may have on occasion an obligation to protect staff members from mass sentiment. Everyone agrees that conviction for a serious crime merits dismissal, even though the legal definition of such crime may vary somewhat with time and place. The difficult decisions for a university fall within areas in which there is strong popular disapproval but no legal prohibition.

In situations of this sort, a university should pass judgment in terms of the implications for its own, internal welfare. What may be termed the external reputation of an institution is no guide here, since it could be used to justify submission to any popular hysteria as "good public relations."

Cases which illustrate these distinctions are all too numerous. Suppose, for example, that a teacher is accused of homosexuality. If this condition is criminal under state law and the evidence supports the charge, that would seem to settle
the matter. But, if not, a college is still justified in dismissing him on the ground that his association with students is undesirable. Formal procedures, fortunately, are rarely necessary. On the other hand, if the man is able and original, he may still serve the university in some research capacity.

Common sense must be used in such matters. The test is whether the situation produces tensions within the university, or between it and the community. If not, there is no ground for action. But if it does, suspension or dismissal may be indicated. A university should not antagonize the public unless some principle is involved.

Situations involving morality are bound to occur from time to time and are less serious, in the long run, than are those relating to academic opinions. Many difficult cases have arisen in recent years, for example, over issues involving the Fifth Amendment and/or communism. Since an appeal by a professor to the guarantees of the Bill of Rights is clearly legal, action against him by his university must be based only on the implications which such appeal may have for his teaching. And these implications must be investigated in a judicial manner.

In a word, automatic dismissal for invoking one of the Amendments is a violation of freedom, but such invocation may justify an intra-university investigation of motives and circumstances. If a fair inquiry shows that the professor was motivated by principle, or by the conviction that investigators were prejudiced against him, no further action by his institution is in order.

If, on the other hand, inquiry shows that the man "had something to hide," what are the implications for his teaching or even for his research? Let us say that this something is membership in the communist party or at least strong sym.
pathy therewith. The case thereupon involves the larger issue of the status of professors who are communists.

Here again, if communist affiliation is not a statutory offense, the matter must be judged in relation to the implications for university functions. And conscientious observers are sharply divided on this point. One group holds that communist discipline prevents any open-mindedness, that those who accept it are "agents" rather than merely "members," and that they are therefore incapable of objectivity in either teaching or creative work. Others are convinced that individual communists may actually do objective teaching and research, at least in those disciplines which have no obvious political or social aspects.

In view of this divided opinion, even affiliation with communism is not sound ground for automatic dismissal. It is, however, good ground for intra-university investigation and possibly for suspension. Whether any individual communist professor is incapable of giving good service cannot be determined by surmise or in terms of "guilt by association." Each case must be looked into on its own merit.

If there is good evidence that the man in question exploited his post for the purpose of indoctrinating students, he should be dismissed. (Within a secular institution, parenthetically, we would say the same thing of professors who indoctrinate students with particular religious views.) But if there is no good evidence that a professor has exploited his position in this manner, there are no legitimate grounds for dismissal.

3 Obviously, this point does not necessarily apply to colleges with religious affiliations.

4 Similar positions, re cases involving the Fifth Amendment and/or communism, have been taken recently by the U.S. Supreme Court in situations analogous to college dismissals; see, e.g., Slochower v. Bd. of Higher Ed., 350 U.S. 551 (1956).
Dismissal Procedures. Dismissal is a serious matter which may, in some cases, end a faculty member’s academic career. The interests of trustees, of the faculty, and of the individual concerned must all be taken into account.

In the Nearing case of 1915, the trustees of the University in effect dismissed an assistant professor without consultation or warning. Although this action was legal, inasmuch as Dr. Nearing had no claim on tenure, the method employed seemed so arbitrary that it aroused widespread protest. Soon thereafter, in consequence, the University Statutes were so modified as to permit the dismissal of a professor on the petition of a faculty; and provision was also made for hearing and answering charges against the person concerned.

From 1915 to 1940, no removals were made at Pennsylvania without faculty approval. Nor does the writer know of any such cases since the latter date. Instances probably occurred in which dismissals were recommended by administrators without the knowledge of faculties; but, if so, nothing came of them.

In a word, the University has had a fine record in the matter of dismissals for more than forty years—one which compares favorably with that of most sister institutions. Its present Statutes simply state (Art. IX) that “The Executive Board (of the Trustees), upon the recommendation of a Faculty, may suspend or remove... any member of such faculty. ...” The Manual further provides for a hearing before the Executive Board and for consultation with a faculty committee, and adds that the Board’s decision is final.

These regulations, excellent in themselves, should be made more explicit. The statutory clause is ambiguous in that it

5 Edward P. Cheyney, History of the University of Pennsylvania, 1940, p. 371.
may be interpreted in either of two ways: (1) that dismissals may be proposed only by a faculty; or (2) that this is only one method of procedure, the trustees meantime reserving a right to act on their own initiative if they so wish. Our own opinion is that, since the faculties are best informed about the circumstances of a professor's acts, the formal initiative in dismissal cases should be in their hands alone.\(^6\)

One may urge against this view, nevertheless, that faculties have a vested interest in tenure which may lead them to oppose almost any dismissal on principle. Will they, then, ever initiate proceedings looking toward such action? Critics of the Association of American University Professors, which has done much to establish tenure rights throughout the country, insist that this body has shown more concern about preventing unjust dismissals than it has about encouraging justifiable ones. In a word, will faculties show as much concern about obligations as they do about their rights?

The answer here must be found in experience. Faculties are, no doubt, in a more embarrassing position in moving against colleagues than are trustees or administrators—hence any hesitation on their part is understandable. And they may believe that, at the worst, there is less danger in letting an occasional incompetent or otherwise objectionable professor "get by" than there is in permitting dismissal initiative from above. But the issue remains. It can usually be resolved, in

\(^6\) There was long an impression among the faculties, based no doubt on the regulation of 1915, that a professor could not be dismissed except "by a vote of his peers." This is still true, if only a faculty can initiate proceedings. It could also be true, conceivably, if action was started by the trustees and the issue submitted by them to a faculty. If the latter were authorized to make the final decision, there would be a reversal of roles but no change in the substance of things. But if the trustees both initiated an action and then reviewed the faculty's recommendation, they would function both as prosecutors and judges.
our opinion, through the action of a third party, namely, the administrators.

Administrative officers are in the best position really to start dismissal actions. They are better informed than trustees, and in a more detached position than the faculties. And they are, moreover, in a position to influence the faculties. A dean who has a serious case on his hands can usually expect moral support from a faculty committee and have a reasonable prospect of this reaction in a faculty as a whole—provided that the case does not seem to violate academic freedom. The writer knows of such instances, and it will be noted that dismissals have occurred at Pennsylvania and elsewhere with faculty approval. Efforts are needed, nevertheless, to alert some faculties to their responsibility in such matters.

If dismissal actions are actually started by administrators and then formally initiated by faculties, the first interpretation of the Statute noted above may be maintained. Meanwhile, of course, a faculty may actually start the ball rolling if it is so inclined.

From this point on, the University's regulations need amplification. In the Manual, at least, procedures should be spelled out—not only in protection of the man in question but also in the interest of the trustees. The judicial nature of the whole process ought to be made clear. Otherwise, if an ousted man brings suit, a court may find breach of contract and grant him damages—or even convict the trustees for non-compliance or contempt. 7

Assuming that dismissal actions at the University will originate with administrators and faculties, the following procedures are desirable:

(1) The dean, after discussion with the chairman and other department members, informs the professor of the proposed action and of the reason therefor.

(2) Discussions are held “off the record” with a view to possible adjustment. The parties involved are the dean, his personnel committee, the professor, and the latter’s counsel or other adviser. If this effort fails, then:

(3) The dean, with the approval of the personnel committee, notifies the professor that he is entitled to a hearing and “confronts” him with the pertinent data (written charges, list of dean’s witnesses, summary of evidence, pertinent statutes or rulings, nature of the hearing).

(4) The hearing is conducted by a faculty committee of five, at least three of whom are elected. The other two may be appointed by the dean. Preferably, a standing committee is used, and the committee on academic freedom may serve in this connection. The committee selects its own chairman, who might well be a professor of law.

(5) The hearing is conducted in a judicial manner—that is, a record is kept and made available to all concerned; both parties have a right to present witnesses, to cross-examine, and to remain throughout the hearing; prompt adjudication is assured. If the hearing-committee decides against dismissal (by majority vote), the proceedings are ended. If not, they recommend directly to the faculty concerned.

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8 The term, as used here, does not denote rank.
9 If the professor declines a hearing, the dean and his personnel committee make recommendations directly to the faculty concerned.
10 The dean or other administrator, and the professor. Each may be aided by counsel or other adviser.
(6) The faculty considers this recommendation, coming from their own representatives. If the majority approves, the faculty recommends dismissal to the trustees.

(7) The trustees (acting as a sort of appellate court which makes its own rules and has the record before it) takes final action.\textsuperscript{11}

No reference has been made, up to this point, of administrators above the level of dean. In practice, in other institutions, it has often been the president who spearheaded dismissal procedures and then recommended to trustees. But at Pennsylvania the tradition is otherwise; in the Nearing case, for example, the president took no active part. And the Pennsylvania statute directs that formal initiative comes from a faculty. Hence it seems well for a dean to marshal his own faculty, so to speak, and for that group to make the recommendation to the trustees.

The president's advice is likely, of course, to be requested by the trustees. He may therefore wish to be kept informed about a case, and the record and presumably the dean's opinion will be available to him.

The hearing and record, however, should be considered confidential in most respects. If the faculty consulted request it, a copy of the record may be shown to any committee they appoint for the purpose. But it should not be revealed to anyone not immediately concerned, except on the approval of the dean or of the president.

\textsuperscript{11} The proceedings here suggested are based, in part, on those approved by Byse and Joughin, \textit{op. cit.}, 62-87, and on those accepted by the A.A.C. and the A.A.U.P. Byse and Joughin report that examples of most procedures noted may be found in other institutions; though in some instances, only in a minority of them. Thus, 57 percent of eighty institutions studied provided hearings before bodies of some sort, and these were faculty committees in 25 percent of the schools (63).
These procedures assure adequate protection to the professor; and they also protect the University (trustees) in case of subsequent appeal to the A.A.U.P.\textsuperscript{12} or to the courts. If they seem elaborate, one should remember that they rarely need be invoked but that, when they are, the issue is a most serious one. Even the reputation of the University may be involved.

\textsuperscript{12} If a dismissed person appeals to the A.A.U.P., the latter's officers look into the case in a preliminary way. If they think procedures have been just, no formal investigation is made. University administrators can often avoid difficulties by consulting the A.A.U.P. before or during procedures, and this has been done at Pennsylvania in the past.