

Academic Freedom and Tenure: Morehead State University (Kentucky)

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Academic Freedom and Tenure

MOREHEAD STATE UNIVERSITY

(Kentucky)¹

I. INTRODUCTION

On December 24, 1979, Assistant Professor Franz Altschuler and Instructor Gerry A. Hoover, both in their second year of service in the Department of Art at Morehead State University, were sent notice by President Morris L. Norfleet that their appointments would not be renewed beyond the end of the 1979-80 academic year. They sought assistance from the Association, alleging violation of their academic freedom. Their cases, which remained unresolved, led to authorization of an investigation, and the undersigned *ad hoc* committee visited the campus on November 10-12, 1980. During its visit, the investigating committee became familiar with the related case of Professor Douglas Adams, a tenured member of the Department of Art, and his case too is treated in this report.

Morehead State University, located in the town of Morehead in Eastern Kentucky, is a state-supported institution governed by a ten-member board of regents, eight of them appointed by the governor of the commonwealth, one a member of the teaching faculty elected by the faculty, and one the president of the student government. The University originated in 1888

as a private institution to educate teachers and came under public control in 1922 as the Morehead State Normal School. In succeeding years its name changed several times: to Morehead State Normal School and Teachers College in 1926, to Morehead State Teachers College in 1930, and to Morehead State College in 1948. In 1966, following a period of growth in which enrollment tripled and the physical facilities and academic programs were greatly expanded, it became Morehead State University. Current enrollment stands at approximately 5,200 undergraduate and 1,800 graduate students. Full-time faculty members number approximately 300.

Dr. Adron Doran served as president of Morehead State University for twenty-two years, until the fall of 1977, when President Morris L. Norfleet assumed the office. Responsibility for the coordination of the academic programs rests with the vice president for academic affairs and dean of the faculties. The University's programs are organized into six schools, each with its own dean: Sciences and Mathematics, Applied Sciences and Technology, Business and Economics, Education, Social Sciences, and Humanities.

II. THE CASES OF CONCERN

When they received notice of nonrenewal, Mr. Altschuler and Mr. Hoover were each in their second year of full-time service at Morehead State University, not counting two earlier years of service by Mr. Hoover, from 1969 to 1971, and service by Mr. Altschuler during the last half of the 1977-78 academic year. Mr. Altschuler was educated at the Cooper Union in New York City and the Institute of Design in Chicago, where he was a pupil of Moholy-Nagy and Chermayeff. He joined the Morehead State University faculty, with responsibilities in commercial design, after nearly thirty years as a practicing artist in visual design and approximately twenty-five years of part-

time teaching in postsecondary schools. Mr. Hoover, a free-lance artist and part-time teacher, received his education at Tulane University. Currently he supports himself from sale of his art while maintaining a small farm in the Morehead area. Mr. Altschuler has returned to commercial practice in Chicago. Neither has sought an academic position elsewhere since the termination of his services at Morehead State University in June, 1980.

According to Mr. Altschuler and Mr. Hoover, there had earlier been minor conflicts in the Department of Art between the studio art faculty and the head of the department, Professor Bill R. Booth, but serious difficulties did not arise until August, 1979. At that time, Professor Booth instructed Mr. Hoover to mount an exhibition of faculty members' recent work in the department gallery. Disagreement arose between Mr. Hoover, who was then the assistant director of the gallery, and Professor Roger Jones, another member of the department who was going to exhibit his work, over the appropriate professional standards for the mounting of Professor Jones's drawings. Mr. Hoover

¹The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was sent to the Association's Committee A on Academic Freedom and Tenure, to the teachers at whose request the investigation was conducted, to the administration of Morehead State University, and to other persons directly concerned in the report. In the light of the suggestions received, and with the editorial assistance of the Association's staff, the report has been revised for publication.

and Professor Booth do not agree on what happened next. According to Mr. Hoover, Professor Jones's unframed and unglazed drawings did not comply with Professor Booth's instructions that displayed works of art be prepared and mounted to professional standards. Mr. Hoover states that he sought the advice of Professor Booth, the gallery director, and was told by Professor Booth to "go tell [Professor Jones]." According to Professor Booth, Mr. Hoover approached him not to seek his advice, but to "inform" Professor Booth of the decision that Professor Jones's work was not satisfactorily mounted. In either event, Professor Jones withdrew his paintings and a rug that had already been hung for the show.

Professor Booth, who later stated that he had not agreed with what Mr. Hoover wanted to do, after learning of Professor Jones's reactions sent a memorandum on August 22, 1979, to the five studio art faculty members who were participants in the display. The five included three tenured faculty members, Professors Douglas Adams, Gene Pyle, and Joe D. Sartor, and the two nontenured faculty members, Mr. Altschuler and Mr. Hoover. Professor Booth stated that they, in declining to allow Professor Jones to hang his paintings as he wished, had taken unauthorized action which was a violation of Professor Jones's academic freedom and an "aberration of acceptable professional conduct" for which they would be held "personally accountable." He asked each of the five faculty members to send an apology to Professor Jones for their "professionally abhorrent and ethically repugnant" denial of his freedom of artistic expression. The five faculty members refused and instead on August 27 filed a complaint with the Committee on Faculty Grievances against Professor Booth. In a memorandum sent to the five grievants on September 18, Professor Floy Patton, chair of the faculty grievance committee, informed them that the members of the grievance committee had voted to hear the grievance. The grievance committee heard testimony from the five grievants on September 21. Professor Booth, who was invited to testify, appeared on October 2 and read a brief statement to the effect that the problem was being addressed administratively, making further comment by him inappropriate.

By memorandum dated October 2, Professor Patton notified the five grievants that her committee had not yet reached a decision and "continue[d] to gather information" on the grievance. Six days later, on October 8, Professor Booth sent a memorandum to the five faculty members in which he stated: "I regret that you found the language of the memorandum unacceptable. The memo was written as an emotional response in defense of a member of the faculty." The five faculty members found Professor Booth's explanation unsatisfactory and sent a copy to the grievance committee for its consideration.

The dispute appears to have triggered a series of actions by members of the administration. On September 11, the dean of the School of Humanities, Dr. J. E. Duncan, called a meeting of the five complaining faculty members and Professor Booth. On September 26, they were called to another meeting with the vice

president for academic affairs, Dr. William E. White, and Dean Duncan. According to Mr. Altschuler and Mr. Hoover, Vice President White asked the faculty members not to pursue their complaint with the grievance committee. On October 16, Mr. Altschuler and Mr. Hoover met individually with Dean Duncan and Vice President White for a review of their performance as probationary faculty members. Dr. White stated in a subsequent letter to the Association's staff that his purpose at these meetings "was to ascertain their attitude as to putting [their complaints] behind them and proceeding with the normal business of the department." The five complainants went to the grievance committee and reaffirmed their wish to proceed. Mr. Altschuler and Mr. Hoover have stated that President Norfleet did not seek to discuss the matter with them, but that he reached Professor Adams by telephone at his home and tried to prevail upon him to dissuade his colleagues from pursuing the grievance.

The twelve-member faculty grievance committee met on October 23 and issued a unanimous report on October 30. The report noted the grievance committee's disappointment at being denied access to relevant information and testimony from members of the administration. It upheld the contention of the five faculty members that Professor Booth had overstepped his authority in reprimanding them and that he was unduly threatening. The grievance committee recommended that Professor Booth provide a "personal, handwritten communication sufficiently detailed to embrace the subject: namely, the unwarranted verbal assaults incurred by the aggrieved and admission and recognition that specific statements were made that were untrue, according to undisputed testimony." The grievance committee also recommended "that no disciplinary action should be brought against any of the five individuals presenting the grievance by a University administrative unit as a result of their having appeared before the committee." Five weeks later, on December 7, Professor Booth delivered a brief handwritten note to his five colleagues apologizing for any of the language in his August 22 memorandum that they may have found unacceptable. On December 12, the five acknowledged the apology and stated their willingness to cooperate in the future with the department head "for the betterment of Morehead State University and the Department of Art."

Notice of nonreappointment was issued to Mr. Altschuler and Mr. Hoover twelve days later on December 24 (a little late under the Association's standard calling for notice to second-year faculty members by December 15, but timely under the Morehead State University regulations that provide a deadline of December 31). On February 4, Professor Gene Pyle resigned from his tenured position "under protest" against the notifications of nonrenewal, characterizing them as an act of injustice by the department head toward his nontenured colleagues.

Mr. Altschuler and Mr. Hoover stated that the most senior member of the art studio faculty, Professor Douglas Adams, was threatened with dismissal by Dean Duncan. The administration subsequently asserted that the dean made no such threat, but Vice

President White, during a visit to the Association's Washington Office the following June, asserted to two staff members that Professor Adams had instigated the upheaval in the Department of Art and that his dismissal for cause was being contemplated by the administration.

After receiving notice, Mr. Altschuler and Mr. Hoover unsuccessfully tried, directly and through their attorney, to secure the record of the grievance committee's hearing and a statement of the administration's reasons for its decision not to renew their appointments. By memorandum of January 28, they stated to the grievance committee that they had received notice of nonreappointment in apparent disregard of the grievance committee's recommendation against disciplinary action, and they asked that the tapes made of the hearing be kept intact. A subsequent memorandum, dated March 5, asked the grievance committee to convene the faculty of Morehead State University to hear their complaint. The March 5 memorandum was delivered a second time on March 24. The committee took no action.

An appeal to President Norfleet, permitted under institutional regulations, was submitted by Mr. Altschuler and Mr. Hoover on January 16. President Norfleet sent a two-sentence response on February 5: "I have reconsidered the decision to not renew your contract for the coming academic year. . . . This is to inform you that my decision stands as is." A letter to their attorney from legal counsel for the University, Mr. Buddy R. Salyer, added that "we are satisfied that we have complied in all respects with our own internal policies. The decision not to renew the contracts of Messrs. Altschuler and Hoover was in no way based on their exercise of First Amendment rights."

Mr. Altschuler and Mr. Hoover asserted that the administrative officers had repeatedly praised their performance as faculty members and that they did not receive, orally or in writing, any reason from the administration for its decision not to reappoint them. They alleged through their attorney that "the decision was not based on their performance as teachers at the University, but resulted from either personal animosity on the part of certain administrators at the University, or a desire on the part of the administration there to squelch dissident voices and to punish them for their critical expressions this past fall."

In early February of 1980, several dozen art students signed petitions in behalf of Mr. Altschuler and Mr. Hoover, praising their excellence as instructors. The students expressed concern for the quality of education at Morehead State University and cited the conflict between the five studio art faculty members and the department head as the only explanation for the notice of nonreappointment. Professor Jones and Professor Maurice Strider of the Department of Art later suggested to the investigating committee that the students were coerced by the five studio art faculty members into signing this petition. Students with whom the investigating committee met emphatically denied any attempts at coercion. A student leader, Mr. Chris Offutt, asserted in a statement given to the investigating committee that the students were not encour-

aged by anyone. He stated that the five students who initiated the discussions were concerned about the dismissals of two of the best teachers in the department and subsequently called for a mass meeting, which was attended by approximately eighty students, and the petition was signed at that time. Later, Mr. Offutt stated, notices appeared in the art building announcing a meeting of concerned students, but it was in fact not called by students. Approximately one hundred students attended this second meeting, along with Professor Booth, who chaired the meeting, Dean Duncan, and Professors Jones and Strider. Mr. Offutt stated that the administrative officers stressed "the potential loss of accreditation" for the University if the students pursued the matter, with Dean Duncan adding that it was not the students' right to know why the faculty members were not being reappointed. Another student who attended the meeting, Mr. David Butler, asserted in a statement he submitted to the investigating committee that "Dean Duncan told us that we hadn't been asked for our opinions and that we weren't being asked and that we wouldn't be asked in the future" and that the dean "hinted that the accreditation of the school could be threatened and our degrees questioned if anything came of a student protest." The administration subsequently denied that the dean suggested anything about the potential loss of accreditation.

The Association's Washington Office staff wrote to President Norfleet on March 10 and again on April 22, 1980, urging that the reasons requested by Mr. Altschuler and Mr. Hoover be provided to them and that appropriate procedures be employed to review their allegation that the notices were motivated by considerations violative of their academic freedom. President Norfleet, in replies of April 10 and April 30, declined to comment on the issues raised by the staff or to provide any specific information relative to the action taken against Mr. Altschuler and Mr. Hoover. In his April 30 letter, President Norfleet explained his silence by referring to the faculty members' retention of legal counsel, "thereby giving the impression that they contemplate some sort of legal action against Morehead State University."

With no resolution of these cases in prospect, the Association's general secretary authorized the appointment of an *ad hoc* committee to conduct an investigation. By letter of June 3, 1980, President Norfleet was so informed. Vice President White then asked for an appointment with the Washington Office staff in order, according to a June 10 letter from President Norfleet, "to present to the office of AAUP the complete documentation that is in the public domain which related to the nonrenewal of the contracts of these two individuals." Dr. White's visit ended with his agreeing to discuss with President Norfleet the staff's continuing concern that opportunity for a full hearing be provided to test the faculty members' allegation that their academic freedom had been violated. In a letter of July 25, President Norfleet reiterated a previously stated position of the administration that Mr. Altschuler and Mr. Hoover had access to the faculty grievance committee and that therefore the University was "in complete compliance" with the Association's applicable

procedural standards as well as with "the legal contracts and federal and state statutes and regulations." By letter of September 3, the staff proposed the dates of September 22 and 23 for the investigating committee's visit to the University. President Norfleet requested that the visit be postponed, and in a letter of September 15 Vice President White asked if the Association would cancel the investigation once letters were sent to Mr. Altschuler and Mr. Hoover "making them aware of the continuous opportunity they have had, and still have, to appeal to the faculty grievance committee about the nonrenewal of their probationary contracts." The investigating committee's visit was rescheduled for November 10-12 and occurred on those dates, although Vice President White wrote twice again to assert that the administration had met the Association's standards for academic due process in the notices it had issued to Mr. Altschuler and Mr. Hoover. In addition to the investigating committee's November 10-12 visit to the University, one committee member interviewed Mr. Altschuler in Chicago and the other committee member made two subsequent visits to Morehead for further discussions.

During the course of its visit, the investigating committee received complaints from another of the five studio art faculty members, Professor Douglas Adams, that he had consistently been subjected to harassment by the department head and by administrative officers since he and his four colleagues had appealed to the grievance committee and he had voiced objections to the action taken against Mr. Altschuler and Mr. Hoover. Professor Adams asserted that the department head had accused him of "taking things from the art department," that a class scheduled for him was cancelled for no good reason and he was assigned to an off-campus class instead, that he was committed to providing material for exhibition without his knowl-

edge and consent, that he was subjected to unreasonable bureaucratic requirements in taking his students on field assignments, and that he had been accused of not meeting classes and of excusing classes early.

Professor Adams asserted that in his twelve years at Morehead State University such matters as moving furniture, taking students on field assignments, and the precise hours of his classes had never previously been questioned. In a statement he submitted to the investigating committee, he reported that "Dean Duncan told me he had recommended that I be fired and unless I discontinued my criticism concerning the firing of Mr. Hoover and Mr. Altschuler that he would guarantee my dismissal." Professor Adams further stated that "I have never been absent from my class without notifying the office, except the one occasion when my class was on a test assignment and I was preparing for a presentation to be given two days away in Bowling Green at the spring conference of the Kentucky Art Association. My integrity as a teacher has never been questioned up until we took Dr. Booth before the grievance committee."

In late March, 1981, Dean Duncan visited with the chairman of the investigating committee to discuss Professor Adams's allegations. He asserted that the administration had been especially kind to Professor Adams, rewarding him generously with increases in salary and other encouragement. He implied that he had allegations that he could make against Professor Adams, but he declined to reveal them. He cautioned that the administration would not put up with any more foolishness from Professor Adams. When Professor Adams was informed of Dean Duncan's remarks, he said that he would welcome hearing or receiving any charges against him that the administration wished to make.²

III. ISSUES AND FINDINGS

A. *Procedural Concerns: Providing Reasons upon Request and Opportunity for Appropriate Review*

The Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* entitles probationary faculty members, upon request, to an oral and then to a written statement of the reasons that contributed to the decision against reappointment and to a review of the decision by a faculty body. The *Morehead State University Faculty Handbook* makes no provision for either a statement of reasons or opportunity for review in a case of nonrenewal of a probationary appointment. As was stated earlier, neither their attorney nor the members of the Washington Office staff were able to secure for Mr. Altschuler and Mr. Hoover a statement from the administration of its reasons for deciding not to reappoint them. Moreover, the members of the investigating committee, when they met with President Norfleet on November 10, 1980, were unable to elicit any statement of reasons for the nonrenewal of the two faculty members. The

investigating committee accordingly finds that Mr. Altschuler and Mr. Hoover were denied their right under the Association's recommended standards to a statement of reasons from the administration for its decision not to reappoint them.

With Mr. Altschuler and Mr. Hoover having alleged that the decision not to reappoint them was based on considerations violative of their academic freedom, they were entitled under the Association's procedural standards to receive, and the Association's staff had urged that they receive, the kind of review called for in Regulation 10 of the Association's *Recommended Insti-*

²The administration, responding to the draft text of this report that we sent to it prior to publication, has stated (1) that various administrators have denied doing anything to harass Professor Adams; (2) that Professor Adams's conduct had been questioned by administrators before the art gallery incident; and (3) that Professor Adams subsequently received a salary increase and a requested leave of absence.

tutional Regulations on Academic Freedom and Tenure. Regulation 10 provides for an allegation of violation of academic freedom to be reviewed by a faculty committee which can determine that the allegation should be tested through formal adversary proceedings, in the manner set forth in Regulations 5 and 6 of the *Recommended Institutional Regulations* but with the complainant bearing the burden of proof.

In his meeting with the investigating committee on November 10, President Norfleet stated: "if the grievance committee decides not to hear a case, I will not force them," and "never in the history of this institution have I prevented a teacher from going to the grievance committee." In these statements President Norfleet implied that the faculty grievance committee was the appropriate body to receive an appeal from Mr. Altschuler and Mr. Hoover and that they did not avail themselves of the opportunity, a position he and Vice President White, respectively, took in their letters to the Washington Office staff on July 25 and September 15.

The record shows, however, that on two occasions following their receipt of notice of nonreappointment Mr. Altschuler and Mr. Hoover sent memoranda to the grievance committee. The first, dated January 28, 1980, informed the grievance committee of their nonrenewal, stating that "this totally disregards the committee's recommendations" (namely, that "no disciplinary action should be brought against any of the five individuals" who had filed a grievance against their department head). They also asked that the tapes of the grievance committee's earlier hearing "be kept intact and safe." Their second memorandum, dated March 5 and sent again on March 24, was to Professor Floy Patton, chair of the grievance committee, asking her to "call a meeting of the Committee on Faculty Grievances to vote a convening of the faculty of Morehead State University for the purpose of presenting our case to that body" and informing her that their "appeals to President Norfleet have been turned down." The investigating committee, noting that there are no provisions in the *Faculty Handbook* for nontenured faculty members to appeal a decision against reappointment, cannot accept the administration's claim that Mr. Altschuler and Mr. Hoover, in having requested a hearing before the faculty as opposed to one before the grievance committee, did not avail themselves of the procedures for a hearing available to them. It would seem logical to assume that the chair of the faculty grievance committee would have informed Mr. Altschuler and Mr. Hoover that their appeal should be addressed to the faculty grievance committee itself, rather than to the faculty as a body, had it been clear to her that the grievance committee retained jurisdiction in the matter. No action, however, was taken by the committee.

When President Norfleet responded on February 5 to an appeal from the two faculty members by stating that "my decision stands as is," he made no mention of further avenues of internal appeal. Also, his letters to the Association's staff dated April 10, April 30, and June 10, which contended that the administration was "in substantial compliance with [the Association's]

recommended procedures," said nothing about access to further internal appeals.

After the Morehead State University administration was informed by the Association's staff that an investigation had been authorized, it then referred to the opportunity for internal review of the decision not to reappoint the two artists. In his letter of July 25, 1980, President Norfleet stated to the staff that "faculty members have the right to appeal [to the grievance committee] as many times as they desire to do so." In Vice President White's letter to the staff of September 15, he stated that the administration was willing to send letters to Mr. Altschuler and Mr. Hoover "making them aware of the continuous opportunity they have had, and still have," to appeal. In its reply of September 23, the Washington Office staff reiterated its recommendations for providing the two faculty members with reasons and the opportunity for review of their allegation of violation of academic freedom in accordance with the *Recommended Institutional Regulations*. "Merely inviting Professors Altschuler and Hoover to submit a written appeal," the staff explained, "without assuring them an actual hearing, failing to provide for a full adversary proceeding of record as specified in Regulations 5 and 6, and stating that the final decision rests with the president instead of providing for potential appeal to the governing board, appear to constitute conditions which do not satisfy the due process provisions of Regulation 10."

In a letter of September 26 to the staff, Vice President White stated that the chair of the grievance committee, in response to an inquiry from him, said that Mr. Altschuler and Mr. Hoover had not "listed any complaint, made any grievance, or made an appeal to the committee" regarding the nonrenewal of their appointments. The administration has cited their alleged failure to appeal to the grievance committee as supportive of its position that it has acted in accord with Regulation 10 of the *Recommended Institutional Regulations* in their cases. As has already been explained, however, Mr. Altschuler and Mr. Hoover did in fact seek to appeal their nonreappointment and they did in fact approach the faculty grievance committee in this regard. Members of the faculty grievance committee told the investigating committee that they did not hear the case because Mr. Altschuler and Mr. Hoover did not technically ask the committee to review their nonreappointment but instead asked it to "call a meeting of the committee on faculty grievances to vote a convening of the faculty of Morehead State University for the purpose of presenting our case to that body." In the judgment of the investigating committee, the communications from Mr. Altschuler and Mr. Hoover to the faculty grievance committee provided ample grounds for the grievance committee to act and the grievance committee did not meet its responsibility to Mr. Altschuler and Mr. Hoover in resting on a technicality and not convening to deal with the appeal of their faculty colleagues. The investigating committee finds that Mr. Altschuler and Mr. Hoover sought to appeal the decision not to reappoint them, which they alleged to be in violation of their academic free-

dom, but were not afforded the review called for in the Association's *Recommended Institutional Regulations* nor any other form of faculty review.

B. Substantive Concerns: The Academic Freedom of Mr. Altschuler and Mr. Hoover

The 1940 *Statement of Principles on Academic Freedom and Tenure* specifies that "during the probationary period a teacher should have the academic freedom that all other members of the faculty have." The issue before the investigating committee is whether the administration's decision not to renew the probationary appointments of Mr. Altschuler and Mr. Hoover was based significantly on considerations violative of that academic freedom.

Prior to the dispute over how to hang the art exhibit, both Mr. Altschuler and Mr. Hoover, from all that the investigating committee could discern during its visits to Morehead State University, received nothing but praise from the administration for their professional effectiveness. The administration subsequently denied that administrators had done nothing but praise them, yet not a single administrator questioned the competence of the two faculty members in their discussions with the investigating committee. The committee repeatedly asked whether Mr. Altschuler and Mr. Hoover were considered to be competent faculty members. The answer given to the investigating committee was always an emphatic yes. Mr. Altschuler and Mr. Hoover report that in individual meetings with Vice President White and Dean Duncan on October 16, 1979, less than ten weeks before they were issued notice of nonreappointment, "we were complimented on the quality of our teaching, the good reports from students, cautioned about our private lives, our lack of tenure, and promised a tenured future provided we met our obligations, both curricular and extra-curricular."³

Mr. Altschuler and Mr. Hoover contend that the grievance relating to the dispute with Professor Booth which they, together with three tenured colleagues in the Department of Art, submitted to the Committee on Faculty Grievances, led directly to the administration's decision not to renew their appointments and that the decision thereby violated their academic freedom. They contend that Dean Duncan had urged the art studio faculty members not to go to the grievance committee, and Professor Adams contends that President Norfleet had urged him to persuade his colleagues not to go through with their grievance. The findings of the grievance committee had referred to an effort by Professor Booth to intimidate faculty members and had warned that "no disciplinary action should be brought by the administration against any of the five individuals presenting the grievance."

When the administration nonetheless shortly thereafter notified the two individuals without tenure that they would not be reappointed, many students and faculty members concluded that the action was in retaliation for the criticism of the department head and the pursuit of the grievance despite the administration's opposition. The student petitions and student press accounts drew a direct connection between the filing of the grievance and the nonreappointments; and Professor Pyle, in resigning from his tenured position, made clear his concern for the academic freedom of his nontenured colleagues in the Department of Art.

The Morehead State University administration insisted that "the decision to not reemploy Professors Altschuler and Hoover was not motivated, in whole or in part, by their exercise of free speech, nor was it based in whole or in part on their filing a complaint with the grievance committee at Morehead State University." Yet, in declining to provide the faculty members with the reasons for its actions and opportunity for appropriate review, it allowed to stand what the investigating committee judges to be a *prima facie* case of violation of the faculty members' academic freedom. Vice President White, when he visited the Association's Washington Office to confer with the staff, did refer in rather vague terms to incidents of apparent uncooperativeness by Mr. Altschuler and Mr. Hoover, claiming that their alleged deficiencies were explained to them during counselling sessions unrelated to the controversy over the art exhibit. The staff, noting that the incidents mentioned by Vice President White seemed petty at best, urged again that the administration's reasons be placed in writing and that a requisite hearing be provided.

The investigating committee found nothing during its visits to Morehead State University that suggests any sufficient reasons for not renewing the appointments of Mr. Altschuler and Mr. Hoover that are permissible under generally accepted principles of academic freedom. The investigating committee has found that the administration praised their work prior to the gallery controversy and grievance committee hearing; that no administrator questioned their competence; that pursuit of their grievance was soon followed by notice of nonreappointment; and that the administration repeatedly refused to give them reasons or provide for a hearing. The investigating committee concludes that a strong *prima facie* case has been established that the administration's actions against Mr. Altschuler and Mr. Hoover were in retaliation for their having appealed persistently to the faculty grievance committee, a case which was not dispelled in any institutional proceeding.

³Dr. White, in commenting on this report prior to publication, denied having complimented Mr. Altschuler and Mr. Hoover, stated that he had no authority to promise tenure, and said that his only references to their "private lives" was to his concern that art work they were doing under private contracts, respectively for Ashland Oil and for Playboy Enterprises, not be done on University time.

IV. OTHER CONCERNS

When Vice President White discussed the Altschuler and Hoover cases with the Association's staff, he at one point attributed their alleged noncooperativeness to the influence of Professor Douglas Adams. Dean Duncan later told a member of the investigating committee that the administration would not put up with anything more from Professor Adams. For many years prior to the filing of the grievance in the fall of 1979, Professor Adams had reason to believe that he was well thought of by the administration. His allegations of harassment since that time, described to the investigating committee and noted earlier in this report, strongly suggest to the committee that he may have suffered retaliation from the administration for having exercised his academic freedom.

The investigating committee subsequently learned that another Morehead State University faculty member, Professor Gary K. Frazier, sought assistance from the Association's staff upon being notified after eleven years of full-time faculty status, during which time he was not granted tenure, that his services were being terminated. The staff stated to President Norfleet in a letter of May 18, 1981, that "the general academic community would view a faculty member in his eleventh year of service no longer as a probationer but as one entitled to the procedural protections against termination of appointment that accrue with indefinite tenure." President Norfleet replied on June 10 that "Morehead State University has never adopted the 1940 *Statement of Principles* and consequently is under no obligation to conform to it."⁴

The current Faculty Review Committee which replaced the Committee on Faculty Grievances in August, 1980, is composed of "two members from each of the six schools." The members are elected by the total faculty but nominated by the Committee on Faculty Organization. The members of the Committee on Faculty Organization, though also elected by the entire faculty, are nominated by the Committee on

Faculty Nominations, which is composed of one representative from each of the six schools who is appointed by the president. Although the nominees submitted by the Committee on Faculty Nominations to the Committee on Faculty Organization must be "approved by vote by the entire faculty" and nominations "may also be made from the floor," it is clear to the investigating committee that the cumbersome nature of the process and the ultimate appointment of the Committee on Faculty Nominations by the president allows for effective control by the administration of the Faculty Review Committee. The role of the review committee is described as "an advisory one," with recommendations to "be made to the president in the form of advice or counsel and not in the form of conclusions or decisions." Even a faculty committee under such constraints might function constructively if there were sufficient good will and harmony among the members of the faculty and administration, but the investigating committee found a climate at Morehead State University sufficient to keep any faculty committee from playing an effective role if the administration should confront a dissident faculty voice.

The climate at Morehead State University is illustrated by some specific incidents witnessed by the investigating committee during its visit. The committee was told that word spread quickly about who visited the motel where interviews were conducted. One faculty member would speak to the committee only on the telephone, and another consented to come only after dark. One said: "It could happen to me tomorrow, same as with Doug Adams, Altschuler, and Hoover. It's just that I haven't rubbed them the wrong way."

From what it witnessed of the climate at Morehead State University, the investigating committee found remarkable not the smallness of the number of faculty members willing to talk freely but the courage of those who did.

V. SUBSEQUENT DEVELOPMENTS

Replying by date of April 27, 1982, to a draft text of this report sent to him for his comments prior to publication, President Norfleet of Morehead State University submitted a ten-page "Institutional Response." In it, he reiterated that, as a matter of University policy, reasons for nonreappointment of probationary faculty members are neither provided nor officially recorded. Denying that there was any relationship between the pursuit by Mr. Altschuler and Mr. Hoover of their

grievance in the closing months of 1979 and the notice of nonreappointment issued to them in December of that year, he asserted that discussions relating to their professional performance and the decision not to reappoint them dated from February 13, 1979, over six months prior to the incident in the art gallery. He offered no evidence in support of this assertion.

On April 30, 1982, the head of the Department of Art, Professor Booth, submitted a notarized twelve-page "Response to the AAUP Report" accompanied by seventeen notarized "exhibits." In it, he asserted that the investigating committee "concluded incorrectly that Mr. Altschuler and Mr. Hoover were denied reappointment because they pursued a grievance against their administrative superior," that "Mr. Altschuler was advised periodically, prior to August,

⁴President Norfleet, in commenting on the prepublication text of this report, stated that some of Professor Frazier's service was at the rank of instructor and that University policy does not count service at the instructor rank as probationary service. The 1940 *Statement of Principles*, on the other hand, refers to the probationary period as "beginning with appointment to the rank of full-time instructor or a higher rank."

1979, in private consultations with Dr. Booth of his displeasure with his performance and was aware of the discussions relative to the University's intentions not to reappoint him for another year," and that "these faculty members were told by Dr. Booth on several occasions in the spring of 1979 that he was dissatisfied with their performances and they understood that he would be recommending their nonreappointment in compliance with University policy." He offered no evidence in support of these assertions.

Professor Booth stated in this response that he did not recommend Mr. Altschuler and Mr. Hoover for reappointment for the following reasons:

1. The two faculty members allegedly "gave more attention to their free-lance, commercial art commissions and contracts than to their teaching duties" and consequently were frequently absent, "particularly on Fridays," missing scheduled classes and office hours. (Three enclosed exhibits were cited in support of this reason. The first, a statement signed by the departmental secretary, stated that the two faculty members "on a fairly regular basis...were not available to students on Fridays"; it did not refer to classes or office hours. The second, a statement signed by the professor who was a party to the dispute over the hanging of the paintings in the gallery, made no mention of absences by Mr. Altschuler or Mr. Hoover. The third, the minutes of an art faculty meeting on September 7, 1979, after the two faculty members had joined in the grievance against Professor Booth, indicate that absences, outside employment, class schedules, and office hours were among a number of topics discussed at that meeting but make no reference to Mr. Altschuler or Mr. Hoover in that regard.)

2. Mr. Hoover allegedly declined to fulfill his art gallery responsibilities, refusing to supervise the scheduled installation or dismantling of exhibits and on one occasion refusing in order to be free to attend a three-day horse show in Lexington. (Two enclosed exhibits were cited pursuant to this reason. The first was the departmental secretary's statement with its remark about unavailability to students on Fridays. The second was the statement by the party to the art gallery dispute with Mr. Hoover, who stated that Mr. Hoover told him he had to remove his work from the gallery exhibit and that he did so.)

3. There were alleged student complaints about Mr. Altschuler's attitude towards a black student, to whom Mr. Altschuler made "racially motivated and demeaning remarks." (One enclosed exhibit was cited, a six-line statement from a student that he had given a deposition to the University attorney in the summer of 1979 about "racially motivated and demeaning remarks" allegedly made to him by Mr. Altschuler. Professor Booth did not submit the alleged 1979 deposition, and he said nothing about its purpose or its context or about anything in connection with its having been communicated to Mr. Altschuler then or subsequently.)

4. There were allegedly frequent student complaints about Mr. Altschuler having come to class "under the influence," and Mr. Hoover also is "alleged to have been under the influence on several occasions"; Mr.

Hoover had once been observed by Professor Booth on campus "under the influence" and had then told Professor Booth that he and others had been drinking and that after they left they were going to drink some more. (One enclosed exhibit was cited in support of this reason. It was, again, the statement by the party to the art gallery dispute with Mr. Hoover. He stated that "from hearsay evidence only, I believe it is accurate to say" that Mr. Altschuler and Mr. Hoover occasionally taught their classes "under the influence." There is an additional statement in the exhibits, signed by the building custodian, who asserted that he had never seen Mr. Altschuler or Mr. Hoover "drinking on the job. However, I have smelled it on the breath of Mr. Hoover.")

Professor Booth's response also included some three pages of sharply negative statements about the personal conduct and professional conduct of Professor Douglas Adams. Professor Booth wrote that he was making these statements "in order to demonstrate Professor Adams's motivation and that his credibility be properly considered."

The Association's staff, with the consent of Professor Booth's attorney, sent copies of Professor Booth's response to Professors Altschuler, Hoover, and Adams for their comments. Replies were received from Mr. Hoover on May 24 and from Mr. Altschuler on June 18. Professor Adams also provided comments. Mr. Hoover declared in his reply that the reasons alleged by Professor Booth for not recommending his reappointment were without substance, that absences were always cleared in advance with Professor Booth, that he had carefully performed all his gallery duties and much more, and that he had never mixed drinking with his teaching. He reiterated that prior to the art gallery dispute and the resulting grievance, no one had ever told him that he was in danger of not being reappointed or that there was any fault with his performance, that on the contrary he had received consistent praise for his work. Mr. Altschuler's reply, submitted by his attorney, likewise took strong issue with Professor Booth's response and the enclosed exhibits. His reply emphasized that "there is not one document submitted showing a reprimand, criticism, or comment on the professional integrity of Franz Altschuler or his then colleagues antedating August 22, 1979," the date of Professor Booth's memorandum which led to their grievance. Professor Adams's reply was in a similar vein.

The investigating committee finds the assertions by President Norfleet and Professor Booth, about deciding not to reappoint the two faculty members prior to the art gallery incident, to be unsupported by any convincing evidence. The committee sees nothing in the responses from the president and the department head, including the alleged reasons for recommending nonreappointment belatedly stated by the latter, to lead the committee to modify any of its conclusions as set forth earlier in this report. The committee believes that this case testifies abundantly to the desirability of institutional policies which require, in accordance with the Association's recommended standards, that reas-

ons for nonreappointment be provided when faculty members request them and that there be timely opportunity to subject to full faculty review allegations

of violation of academic freedom in a decision against reappointment.

VI. CONCLUSIONS

1. A strong *prima facie* case has been established that the administration of Morehead State University denied reappointment to Mr. Franz Altschuler and Mr. Gerry A. Hoover for a reason violative of academic freedom under the 1940 *Statement of Principles on Academic Freedom and Tenure*, a case which was not dispelled in any institutional proceeding.

2. The administration, in declining to provide Mr. Altschuler and Mr. Hoover with reasons for its decision not to reappoint them and to provide appropriate procedures for review of their allegation that the decision violated their academic freedom, denied them the academic due process to which they were entitled under the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*.

3. The administration's specific actions against other faculty members manifest disregard for academic freedom and tenure, for academic due process, and for a meaningful faculty role in academic government.

J. W. PATTERSON (Speech)
University of Kentucky, *chairman*

AMY L. VANDERSALL (Art History)
University of Colorado

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

MATTHEW W. FINKIN (Law), Southern Methodist University, *chairman*

MEMBERS: BERTRAM H. DAVIS (English), Florida State University; ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; WALTER P. METZGER (History), Columbia University; JACK L. NELSON (Education), Rutgers University; THOMAS M. SCANLON, JR. (Philosophy), Princeton University; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology; WILLIAM W. VAN ALSTYNE (Law), Duke University; JORDAN E. KURLAND (History and Russian), Washington Office, *ex officio*; IRVING J. SPITZBERG, JR. (Education and Policy Studies), Washington Office, *ex officio*; VICTOR J. STONE (Law), University of Illinois, *ex officio*; RALPH S. BROWN (Law), Yale University, *Consultant*; CLARKE BYSE (Law), Harvard University, *Consultant*; PETER O. STEINER (Law), University of Michigan, *Consultant*; CAROL SIMPSON STERN (Interpretation), Northwestern University, *Consultant*.