Freedom and Tenure: *ACADEME* Reports[1]

I. Introduction

This investigation was authorized by the Association's general secretary in October 1991, following correspondence between the staff of the Association and the administration of Loma Linda University regarding actions taken that summer to dismiss three members of the faculty. The undersigned were designated as an *ad hoc* committee to investigate the circumstances surrounding the dismissals and also the general condition of academic freedom and tenure at Loma Linda University.

The university's president, although earlier she had been responsive to communications from the Association's staff, regrettably refused to meet with the investigating committee. She wrote in a letter of January 22, 1992, as follows: "Our attorneys continue to advise us that the university's interests in possible litigation are jeopardized by communication with your committee. The individuals who invited you here also obviously neglected to tell you that membership in a union like the AAUP violates the tenets of the Seventh-day Adventist Church which sponsors Loma Linda University and to which these individuals claim to belong. . . . Your organization is not welcome on university premises. University facilities are not open for the use of your committee."

It should not be necessary to say that the Association, in launching the investigation, was not functioning as a union. It does need to be said that responsible faculty members who were interviewed by the investigating committee rejected the notion that membership in a union, whether like or unlike the AAUP, violates the tenets of the modern church.

The investigating committee, having examined extensive documentation, visited the Loma Linda area and met at an off-campus location on February 13 and 14, 1992, with fifteen present or former faculty members of Loma Linda University and two from La Sierra University, in neighboring Riverside, which had been joined with Loma Linda University from 1967 to 1990.

The president and the chair of the board of trustees submitted a seventeen-page response to a draft of this report that was sent to them prior to publication. Their comments were taken into account in preparing the final text.

II. Background

Loma Linda University, located in the California town of that name lying some sixty miles east of Los Angeles, was founded by the Seventh-day Adventist Church in 1905 as the College of Medical Evangelists. In 1960 and 1961 it gained accreditation by the Western Association of Schools and Colleges and acquired its current name. A nearby four-year Adventist baccalaureate institution, La Sierra College, merged with Loma Linda University in 1967, becoming its college of arts and sciences. The merger was dissolved in 1990, leaving the Loma Linda campus with a Medical Center and Schools of Medicine, Dentistry, and Public Health, as well as undergraduate Schools of Nursing and of Allied Health Professions. There is also a School of Religion, which provides religious and/or ethical instruction to all students (about 2,500 in all, 60 percent of them Seventh-day Adventists).

Among the dozen Adventist postsecondary institutions in North America, Loma Linda is one of two universities (the other being Andrews in Michigan) receiving financial support from the church's international headquarters and serving a worldwide church constituency. The Medical Center and the School of Medicine are central to the functioning of over 150 Adventist hospitals and medical facilities around the world, providing most of their doctors and dentists and many of their nurses while attracting the students who will be the practitioners for the next generation. Of the full-time-equivalent School of Medicine faculty numbering more than six hundred, over 80 percent are clinicians. The full-time clinicians are paid through a practice-plan structure that provides them with a substantially higher income than that of faculty members who are paid by the university, namely, those in basic sciences and in the schools other than Medicine and Dentistry.

The president of Loma Linda University since June 1990, succeeding Dr. Norman J. Woods, is Dr. B. Lyn Behrens. Born and medically trained in Australia, she first came to Loma Linda University in 1966 for advanced pediatric education and a subsequent faculty position in the Department of Pediatrics. She was appointed dean of the School of Medicine in 1986 and served in that capacity until a successor was selected after she became the university's president.

Dr. David B. Hinshaw, who was dean of the School of Medicine for

approximately fifteen years, is currently president of the Loma Linda University Medical Center and is also, among other titles he holds, president of the Loma Linda University Faculty Medical Group, Inc., and the university's vice president for medical affairs. As a young dean, Dr. Hinshaw had a key role in 1962 in bringing the clinical side of the medical school from downtown Los Angeles to the new Medical Center. He left Loma Linda University for a few years in the 1980s to serve as dean of the School of Medicine at Oral Roberts University.

Dr. George M. Grames, Professor of Medicine and a member of the faculty for twenty years when the administration acted to dismiss him, had been director of the Internal Medicine Residency Program until the administration removed him from that position late in 1990. Dr. Stewart W. Shankel, Walter E. Macpherson, Professor of Internal Medicine and a member of the faculty for twenty-one years when the administration acted to dismiss him, had been chair of the Department of Medicine from 1986 until early in 1990, when the administration removed him from that position. Dr. Lysle W. Williams, Jr., Assistant Professor of Emergency Medicine, was a member of the faculty for thirteen years when the administration acted to dismiss him. The dismissals, which will be central to this report, occurred in July and August 1991.

Some of the facts summarily recorded above require further brief explanation. The Accrediting Commission of Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC), after a site visit in 1988, placed Loma Linda University on "public probation." Prominent among the stated reasons for the imposition of probation were financial instability and deficient faculty participation in governance. The board and administration responded in part by splitting off La Sierra College in 1990, and in the process dissolved a faculty senate that had served the combined institutions. New faculty advisory bodies, created for Loma Linda University, will be described in Section V of this report.

The School of Medicine understandably overshadows the university's other components, about which this report has little to say. Of the School of Medicine's twenty-five departments, the Department of Medicine, with more than one hundred members, is by far the largest. Surgery is a significant second. All of the episodes to be discussed took place within the Department of (Internal) Medicine, except for the case of Dr. Williams in Emergency Medicine.

About two-thirds of the whole faculty are Seventh-day Adventists. Only one of the faculty members interviewed by the investigating committee is not an Adventist. The church is manifestly influential in the mission of the university, and in the lives of the members of its faculty. The faculty and staff constitute, by and large, a remarkably close-knit community: four father-and-son pairs have held positions in the School of Medicine. Faculty members are subject to discipline for "personal conduct which is incompatible with the standards of morality and propriety of the Seventh-day Adventist Church." The Faculty Handbook, which includes a "Sexual Standards Policy" as well as a "Tobacco and Alcohol Policy," lists twenty-one Adventist churches and seven schools in the environs.

Although almost all of the persons who met with the investigating committee considered themselves dissenters from the administration's policies, there was no mistaking their devotion to the institution and its Christian mission. They were without exception open, friendly, and apparently serene in the face of reproofs and anxiety for their own futures and that of the university.

The medical practice program at Loma Linda University, through which the full-time clinicians are paid, is similar to those at many medical schools that have discovered the financial benefit of having the clinical faculty paid all or most of their salaries from the "private practice" income that they generate. The program currently in place has an umbrella organization, the Loma Linda University Faculty Medical Group, Inc. (LLUFMGI), which is a California nonprofit corporation. The three "members" of the corporation, who appoint the executive committee of LLUFMGI, are the president of the university, the vice president for medical affairs, and the dean of the School of Medicine. Vice President Hinshaw presides. The large board of directors includes all department chairs, division and section heads, one to three appointed

Members of Committee A on Academic Freedom and Tenure

Elizabeth Bartholet (Law), Harvard University; **William P. Berlinghoff** (Mathematics), Farmington, Maine; **Thomas D. Morris** (History), Portland State University; **James E. Perley** (Biology), College of Wooster; **Robert C. Post** (Law), University of California, Berkeley; **Joel T. Rosenthal** (History), State University of New York at Stony Brook; **Margaret W. Rossiter** (History of Science), Cornell University; **Carol Simpson Stern** (Performance Studies), Northwestern University; **Ernst Benjamin** (Political Science), Washington Office, *ex officio*; **Barbara R. Bergmann** (Economics), American University, *ex officio*; **Jordan E. Kurland** (History and Russian), Washington Office, *ex officio*; **Bertram H. Davis** (English), Florida State University, *consultant*; **Matthew W. Finkin** (Law), University of Illinois, *consultant*; **Mary W. Gray** (Mathematics), American University, *consultant*; **Judith J. Thomson** (Philosophy), Massachusetts Institute of Technology, *consultant*; **Walter P. Metzger** (History), Columbia University, *senior consultant.*

faculty members from each entity, and, finally, six members "appointed from a panel selected by and from the faculty at large."

Each department and designated division or section in turn has a Faculty Practice Corporation, usually with three members who select a board of directors from the faculty. The practice corporations employ the clinical science faculty members who do the work at a rate of compensation determined annually within each group. In order "to assure maximum effectiveness of the program, all practice and academic activities will be coordinated and supervised by the vice president for medical affairs (president of LLUFMGI) and the dean of the School of Medicine (vice president of LLUFMGI) within policies established by the board of directors of LLUFMGI and the executive committee of the School of Medicine."[2] The executive committee of the School of Medicine consists of two vice presidents, the dean, several lesser deans, and the department chairs (who are appointed by the president and the board of trustees).

The physicians at Loma Linda University thus earn their living in medical practice, almost entirely through the departmentally organized practice groups. For the most part, they receive no salary from the university. Yet they also teach, they do research, they train interns and residents—conventional functions of university professors. Their manner of subsistence, formalized by their contracts with the practice groups, may be a familiar pattern in medical schools. At Loma Linda University, however, it is accompanied by a strained attempt to detach the physicians from any employment relationship with the university. This artificial separation has been formally imbedded in the Faculty Handbook, as follows: "Each 'full time' faculty of a Clinical Science Department of the School of Medicine is an employee of a School of Medicine practice corporation and not an employee of Loma Linda University. The terms and conditions of employment are defined in the employment contract with the practice corporation." The conditions allow the corporation to terminate the contract, without need to demonstrate cause, upon sixty days of notice.

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The practice corporations as well as the educational program are creations of the university, and they are interdependent. Participation in the corporations and membership on the faculty must coexist. The loss of one is the loss of both. For the parent university to say that "these five hundred people do not work for us" borders on the absurd. Indeed, it is belied by another significant (and odd) document, the "acknowledgement" that every faculty member was obliged to sign before receiving the new 1991 Handbook. It first adjures the recipient to declare "that I understand that I am to promptly read its contents which set forth the terms and conditions of my faculty appointment, including development of intellectual properties and where applicable my employment," and it concludes as follows: "I further understand that a grievance procedure and binding arbitration is provided for any dispute or claim (including those based upon a statute, tort or public policy) that I have with the university regarding the terms and conditions of my faculty appointment and employment by the university."

Perhaps there is a wish here to drive a wedge between "appointment" and "employment," but such a wish does not break the obvious ties between the university and a person appointed to serve on its faculty.

President Behrens, in an August 23, 1991, letter to AAUP's associate general secretary, said of the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (adopted jointly by AAUP and the Association of American Colleges):

> the standards appear to have been drafted for a general application in higher education, but clearly do not meet the specific challenges and standards of a medical school involving clinical employment and compensation. There are also unique issues presented by the close relationship of the university to the Seventh-day Adventist Church and its mission which are not addressed by the guidelines. The university procedures have been prepared with faculty input and support to meet these special challenges.

In a reply dated August 27, the associate general secretary wrote:

> You state that the procedural standards governing dismissals which are generally applicable in higher education "clearly do not meet the specific challenges and standards of a medical school involving clinical employment." On the contrary, these standards are deemed by their framers to apply to, and indeed are in force in the large preponderance of, medical schools and their clinical faculties as well as all other segments of our accredited institutions of higher learning. You also refer to "unique issues" stemming from the university's relationship to the Seventh-day Adventist Church. The procedural standards have always been considered to be equally applicable at church-related colleges and universities, and we are not aware of what there is about Loma Linda University's church relationship that would justify not affording fundamental safeguards of academic due

process.

The investigating committee is in complete accord with the preliminary appraisal of the associate general secretary that the university's religious mission entitles it to no special exemption from affordance of due process. Indeed, none of the current disputes or issues at Loma Linda University in the cases of concern suggests possible involvement of those "limitations of academic freedom because of religious or other aims of the institution" to which the 1940 *Statement of Principles on Academic Freedom and Tenure* cryptically refers. This report can avoid any such entanglements because nothing by way of religious considerations in the stated goals of the university appears to stand in the way of full recognition of academic freedom and due process in the cases of the dissenting professors.

III. The Three Dismissals
A. Stewart W. Shankel

Dr. Shankel was the most senior of the three faculty members who were dismissed. Their support of Dr. Shankel helped to bring down the other two. His case will accordingly be dealt with first.

He received the M.D. degree from Loma Linda University in 1958 and joined its faculty in 1962. His career there was interrupted in 1980, when he went to the University of Nevada at Reno as chief of its medical school's Nephrology Division. He returned to Loma Linda in 1986, to chair the Department of Medicine. Severe financial problems were surmounted while he served as chair, but other differences developed with Dean Behrens and with Dr. Hinshaw.

The principal trouble-spots (there were many) resulted from (1) Dr. Shankel's resistance to having the section of cardiology split off from his department for income-dividing purposes; and (2) his opposition to what he viewed as shabby treatment by the administration of two researchers, each of whom had been dismissed following a dispute over control of a clinical invention, had sued, and had received a substantial settlement. There was a more general unease relating to two projects that many in the department thought were costing too much—an infant heart transplant venture, and the construction of a proton accelerator for tumor treatment.[3]

These and other issues festered, until on February 14, 1990, Dean Behrens, after consulting the board of trustees, removed Dr. Shankel from his position as chair. The next major rift opened on August 8, 1990. Twenty faculty members, almost all in the Department of Medicine and all of them sympathetic with Dr. Shankel's concerns, sent a letter to the board of trustees which was distributed to others as well. This document, five and a half single-spaced pages in length, expressed concerns about finances, about ethical problems (the cases of the two researchers and other matters), and about the integrity of Dean Behrens, who was by then also president-elect, as evidenced in their view by varying and inconsistent explanations of certain episodes. These last charges bluntly challenged her fitness for her office.

The chair of the board, Dr. Calvin B. Rock (a minister with a Ph.D. degree), replied rather mildly, suggesting that financial questions should be addressed to the administration, procedural questions to the appropriate department chairs, grievances to the grievance procedures, and questions about pending litigation not at all. Thereafter relations among all parties deteriorated, with the executive committee of the School of Medicine taking a stance sharply critical of the twenty signers. The president held lengthy interviews (sometimes lasting two to three hours or even longer) with each of the signers. These discussions were not rancorous, the investigating committee was told, but they led to nothing.

On December 19, 1990, Dr. Grames, who was prominent in his support of Dr. Shankel, was removed by the acting chair of the Department of Medicine from his post as Director of Residencies in the department, and the same day (coincidentally, according to President Behrens) his wife was dismissed from an administrative position at the medical center.

In July 1991, President Behrens and other key administrative officers moved rapidly to dismiss Drs. Shankel, Grames, and Williams. The charges against Dr. Shankel were set forth in a letter of July 23 from the chair of the Department of Medicine, Dr. Roy Jutzy, after Dr. Shankel had declined a July 19 request from President Behrens that he resign. The July 23 letter asserted several breaches of confidentiality, unwarranted accusations against colleagues, and divisive conduct. It imposed an immediate suspension from all academic duties and offered him an opportunity to meet on July 26 with the executive committee of the Faculty Medical Group—not an academic body. Dr. Shankel asked for a postponement of that meeting because he was about to leave on a scheduled vacation, but the request was denied. At the executive committee meeting, according to President Behrens and Dr. Rock, the faculty members who were present voted unanimously by secret ballot to support the recommendation for dismissal. On August 27 the president wrote to inform him that the board of trustees had voted to dismiss him, effective on September 27. In the following month the practice group terminated his employment.

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Loma Linda University's post-termination grievance procedure, which all three professors declined to utilize, will be discussed after the circumstances of the other two dismissals are recounted.

B. George M. Grames

A letter from President Behrens (to "Dear George" from "Lyn") invited Dr. Grames and his family to the annual Employee Recognition Ceremony on May 21, 1991, marking the twenty years of service he would have completed by August 30, 1991. But by the time the anniversary date arrived, he had been dismissed.

Exacerbating circumstances in his case, in addition to his support of Dr. Shankel (the two were associated in the nephrology unit of the department, where they were recognized as outstanding teachers), included a dispute with the chair of the Clinical Science Faculty Advisory Council who demanded that Dr. Grames surrender tape recordings he had made of meetings of the council. Dr. Grames insisted that the tapes were made openly, and he pointed out that in any event a transcript of the meeting would be accessible. Next, he was charged with communicating with the accrediting association (WASC) and with the Health Care Financing Administration. At a department meeting on July 9, 1991, Dr. Grames denied having had any such contacts.

Dr. Jutzy's charges against Dr. Grames, conveyed by letter of July 16, referred to "inappropriate contacts with accrediting bodies," "other disruptive and unsupportive conduct," taping "confidential sessions" of the Faculty Advisory Council, using his position "to destabilize and undermine university training programs," and so on. After stating that he was recommending dismissal and imposing immediate suspension, Dr. Jutzy invited Dr. Grames to address the executive committee of the Faculty Medical Group at a meeting on the following day, July 17. Dr. Grames vainly requested more time to prepare for the meeting. The president's letter notifying him that the board had voted dismissal, dated July 19, concluded: "This action is taken with regret, but was taken on the basis that you have engaged in a continuing course of conduct which was not in the best interests of the School of Medicine." The whole process of dismissal, from chair's recommendation to board action, was accomplished in 72 hours. It was followed in due course by separation from the Faculty Medical Group.

C. Dr. Lysle W. Williams, Jr.

An Assistant Professor of Medicine, Dr. Williams served for thirteen years as a member of the Emergency Medical Group. He wrote to the trustees on April 22, 1991, raising a number of complaints about the administration of the university, the performance of the board of trustees, and the treatment of Dr. Shankel. On May 1, 1991, Dr. Hinshaw wrote to notify the Emergency Medical Group that the Medical Center's contract with that group was being terminated, 120 days later. Dr. Williams contended that his action was in reprisal for his complaints to the trustees and constituted a violation of his academic freedom. President Behrens replied that the practice group contracts had nothing to do with academic affairs, that Dr. Hinshaw was acting as president of the Medical Center. Dr. Williams observed that "Dr. Hinshaw wears too many hats." He concedes that he wrote "angrily" to President Behrens and others. "Angrily" strikes the investigative committee as an understatement. Dr. William's letter drew a sharp response from university counsel, threatening him with dismissal and libel action. Dismissed Dr. Williams was, like Dr. Grames on July 19, while he was in Canada for a meeting. The Emergency Medical Group was indeed disbanded, and several of its members found themselves without positions.

IV. Due Process and Academic Freedom in the Three Dismissals

A. The University's Grievance Procedures

Each of the three dismissed professors, after the termination of his appointment, was offered access to a rather elaborate grievance procedure, somewhat revised while the first two dismissals were occurring. The discussion immediately following refers to the revised form of July 18, 1991. It, and all other university documents relied upon, can be found in the Faculty Handbook.

The president selects a grievance panel of twenty-one full-time faculty members, from nominees put forward by the Clinical Science Faculty Advisory Council (described in Section V below). When a grievance is brought, the chair of the panel (appointed by the president) proposes ten available and eligible members. A hearing panel of five members is then chosen, three by the grievant, two by the president. The regulations for conducting the hearing meet standards of procedural due process. The findings of the hearing committee are described as "advisory only." The president decides the grievance. She must, however, state in writing her reasons for rejecting findings by the panel.

The grievant may then appeal to the board of trustees and have a hearing before a committee of no fewer than three board members. The decision of the board is described as final. The grievant does have, as his or her "sole procedure using legal recourse," access to arbitration binding on both the grievant and the university, but "the arbitrator shall not have the authority to make an opinion or award which has the effect of altering, amending, ignoring, adding to or subtracting from existing university policies and practices." One such policy is the requirement that the grievant establish by clear and convincing evidence that the university administration is in error.

Loma Linda University does not grant tenure to its full-time "clinical science" professors (although tenure is attainable by basic science professors), and Drs. Shankel, Grames, and Williams thus were not recognized as having tenure, despite their respective records of twenty-one, twenty, and thirteen years of service. Tenure status is not at issue in these cases, however, since the actions against the three professors clearly involved the termination of existing appointments.

Whether the appointments were with indefinite tenure or for a limited term, the general academic community's applicable standards for due process are the same: those enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the complementary 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, with further elaboration provided in Regulations 5 and 6 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure.*

Dismissals should be preceded, not followed, by proceedings to determine adequacy of cause for the action. The following steps should be taken before termination. First, as stated in the *Recommended Institutional Regulations*, there should be "discussion between the faculty member and appropriate administrative officers looking toward a mutual settlement." Arguably, such discussions occurred in each case, although none of the professors concede that they were adequate. The next step should be "informal inquiry by a duly elected faculty committee." The only meeting offered to the three professors (and that on excessively or impossibly short notice after they were already notified of their intended dismissal) was with the executive committee of their practice group, dominated by administrators.

Next should come the formal hearing. The hearing committee should be a faculty-elected body of faculty peers. The selection of the Loma Linda University grievance panel, in contrast, is largely controlled by the president, so that it may be of little benefit to an accused faculty member to be able to choose three of the five members of a particular hearing panel. Final disposition, at Loma Linda University and generally, is properly left to the board of trustees, qualified by a seemingly attractive right to binding arbitration. That right, however, apparently precludes any resort to judicial process; and the arbitrator is constrained to follow all "existing University policies and practices." Since there is no assurance that these policies and practices will be protective of academic freedom, the proffered arbitration could be a trap rather than an escape for the faculty member who takes that route.

The burden of demonstrating adequate cause for dismissal, according to the *Recommended Institutional Regulations*, "rests with the institution and will be satisfied only by clear and convincing evidence in the record" of the hearing. Those bringing charges thus bear the burden of proof. It is a complete perversion of this principle to require, as the Loma Linda University regulations do, that the professor establish by clear and convincing evidence that the administration is in error.

There are other discrepancies between Loma Linda University's grievance procedure and applicable AAUP-supported standards. The investigating committee considers them to be of secondary importance, however, compared with the two crucial shortcomings already noted. The committee finds that the three professors were dismissed in disregard of generally accepted standards of academic due process by being denied an adjudicative hearing until after the dismissals were effected and by provisions for that hearing which shift the burden of persuasion from the accuser to the accused, contrary to sound arbitral as well as academic standards.

The hearing procedure offered to the three professors denied them basic safeguards of academic due process by not being available until after the dismissals were effected and by placing the burden on the professors to prove that the administration erred in dismissing them.

Another major defect in the proceedings, the imposition of suspension, warrants comment. Drs. Shankel and Grames were both suspended concurrently with the bringing of charges against them. Dr. Williams was suspended when his impending dismissal was announced to him. They were not suspended for long, but only because their dismissals became final in about one month. Sound academic practice, as reflected in the *Statement on Procedural Standards*, allows for suspension before the outcome of proceedings "only if immediate harm to the faculty member or others is threatened by the faculty member's continuance." Nothing in the substantial documentation available to the investigating committee suggests any threatened harm in these cases, and the committee accordingly finds that the administration imposed the suspensions in disregard of the applicable provisions of the 1958 *Statement on Procedural Standards.* The officials who imposed the suspensions were presumably acting under stated institutional policy that allows suspension if "the continued activity of a faculty member is considered undesirable."

One recent minor improvement in the university's procedures should be recorded. On January 14, 1992, the president transmitted a recommendation of the Council of Deans that "no one will be terminated 'for cause' without the provision of a pre-dismissal meeting." Previous policy said only that a meeting "may" occur. This shift may reflect discomfort with the invitations to the three professors, on too short notice, to meet with the administration-dominated executive committee of the relevant practice groups—an incongruous venue in any event. They were entitled to meet with an academic committee. Separation from the practice plan was not to come until a little later, and the dismissals from academic responsibilities should have been preceded by a hearing before an academic body.

The three professors, shunning the deficient grievance procedures that were offered to them, attempted

unsuccessfully to appeal directly to the board of trustees—which had already voted to dismiss them.

B. Academic Freedom Issues

In the absence of adequate hearing procedures in the cases of concern, the investigating committee can do little more than raise the question whether the charges brought by the administration would, if established, have constituted grounds for dismissal. Put another way, were the complaints, accusations, and questions that the professors directed to the board and the president beyond the bounds of protected conduct under principles of academic freedom? Were their attacks on their administrative superiors and some of their colleagues irresponsible or unethical, and sufficiently so to warrant discipline? Answers to such questions should properly result from a full and fair hearing before an independent tribunal of peers, followed by review on appeal to the governing board. No such hearing has occurred in these cases, nor is it likely to occur. Moreover, the charges were in many instances not specific, and here, too, a hearing could perhaps have given them content. How is one to understand the content of statements to Dr. Shankel that "your conduct towards the current leadership of the Department of Medicine and the administration of the university has been divisive and unsupportive" and "you have engaged in conduct undermining the chairman of the Department of Medicine and dividing the Department of Medicine to the detriment of the School of Medicine and the Residency Program"? Another charge is quite specific, that "You have, without justification, accused Dr. . . . . of a gross breach of medical ethics through malice and deceit." If Dr. Shankel did make such an accusation, falsely, then it might bear on fitness. He has disputed the charge, however, and an appropriate hearing is required to approach the truth.

These cases, if properly adjudicated, would shed light on the limits of faculty freedom of expression in criticizing and condemning administrative officers and faculty colleagues at Loma Linda University.

The clinical science faculty members in the School of Medicine are denied the protections of tenure and are largely dependent for their livelihood on the senior administrators who control the corporations through with they practice medicine. They are subject to termination from these practices with or without cause, on sixty days notice.

V. Observations on General Conditions for Academic Freedom

The first observation to be made about the state of academic freedom at Loma Linda University is that the clinical faculty lacks the vital underpinning of tenure. As earlier observed, in the School of Medicine the basic scientists (anatomists, biologists, etc.) can achieve formal tenure, but the "clinical science" faculty—the physicians—cannot. Even formal tenure, however, does not protect academic freedom without the assurance that any dismissal will be preceded by the administration's demonstrating adequacy of stated cause in an appropriate faculty hearing. Moreover, those in the basic sciences who do obtain tenure are subject under the university's policies to a searching review of their performance at five-year intervals.

The university's declarations supporting freedom in teaching and research are conventional, except for a heavy infusion of religious expectations. The formal assurances of academic freedom were, however, somewhat modified in the 1991 revision of the Faculty Handbook. The preceding version stated that "the university subscribes to the general concept of academic freedom stated by the Association of American Colleges and the American Association of University Professors, interpreted as follows. . . ."

The "interpretations" did not seriously undercut the general concept, and they included the following statement that should have given some encouragement to the dissidents whose cases have been discussed:

> Academic freedom allows a faculty member to question institutional plans, objectives, or policies. Should informal discussions prove unsatisfactory, the faculty member has recourse to due representation through faculty participation in accord with the provisions of the University Governance Document, without fear of administrative reprisal.

No comparable language is to be found in the revision.

While there is no reason to believe that the central freedoms relating to teaching and research are in jeopardy at Loma Linda University, what the investigating committee does find to be at risk is freedom to criticize freely. The fate of the three dismissed professors has not been lost on others. Many of the "dissidents" whom the committee interviewed expressed the fear that more dismissals might be in prospect, especially if the university was removed from probation by WASC, the accrediting agency.[4] The administration's touchiness in the face of criticism is reflected in the stated grounds for discipline. The handbook is unusually detailed in this regard. In addition to standard shortcoming such as "refusal or neglect of responsibility" and "professional incompetence," it includes engaging in "slanderous or libelous activity" in the same section

with "personal dishonesty, immorality, criminal conduct." Other headings are: "overt disharmony, subversion, or violation of the philosophy, objectives, and policies of the university including those delineated in this handbook," and "contact with accrediting agencies outside the established university process." The established channels were confined to the most senior officers of the university.

The last prescription, "contact with accrediting agencies," was actually included in the charges against Professor Grames and Williams. It aroused considerable opposition from the faculty, and it was rescinded in October 1991 on the eve of another WASC site visit. In its place appeared WASC's own guidelines inviting communications from interested members of the university community.

As this report has observed earlier, dissent and criticism in any setting are not without constraints of accuracy and good faith. At Loma Linda University, however, the dominant attitudes of the community seem to bring in additional constraints. The investigating committee was frequently told, in tones of detached regret, that Adventist upbringing and teaching incline toward a powerful respect for authority. The committee has been assured that acquiescence in authority is not a necessary condition of Adventist fidelity, but it may be an oppressive strain that appears to pervade the institution independently of the particular individuals who may be in authority at a given time. In any event, the investigating committee cannot be sanguine about the level of tolerance at Loma Linda University for the intensity of criticism, even misinformed and galling criticism, that is a crucial component of academic freedom and of the institution's ultimate vitality.

VI. Observations on the Faculty Role in Governance

The unacceptably small role of the faculty in academic governance at Loma Linda University was high among the stated reasons for the probation imposed by WASC in 1989. The university's response included the creation of an impressive-seeming facade of councils and a Faculty Forum, which will be briefly described below. But, lest these instruments raise any false expectations of faculty potency, the Faculty Handbook cautions that "the participation of the faculty in governance is advisory to the administration, which is designated by the board of trustees to administer the operation of the university at its various levels." There is not a suggestion of widely accepted norms like these: "the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which related to the educational process," and "faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal."

As to the advisory faculty bodies, first is the Interschool Faculty Advisory Council, composed of two members from each of seven schools (plus the library), elected by their faculties. It meets at least six times a year. Its functions are consultative and advisory to the administration. It also plans and conducts thrice-yearly meetings of the Faculty Council, described in the Handbook as a "sounding board," in which all faculty members may take part.

Within the School of Medicine, there is a Basic Science Faculty Advisory Council and a Clinical Science Faculty Advisory Council. The latter, CSFAC, was involved in some of the major episodes described in this report, the former not at all. CSFAC is composed of twenty-eight elected faculty members (one or two from each department). They are a few more in number than the chairs of departments and heads of certain sections, who with the dean (who chairs meetings of both councils) are also members of CSFAC. These bodies apparently owe their existence to their having been "endorsed" by the school's executive committee, the composition of which was noted in Section II of this report.

President Behrens attempted an intrusion into the formation of the faculty membership on CSFAC early in 1991. It seems that she simply removed from a list of nominees certain signers of the troublesome August 8, 1990, letter to the board of trustees. This action "had not been supported by CSFAC," according to the minutes of the CSFAC meeting on May 14, 1991. The action was withdrawn, and Dr. Shankel was seated on CSFAC from the Department of Medicine until he was dismissed in July.[5]

On occasion, the faculty has asserted itself. One such instance was the matter of nominations to CSFAC, just recounted. Another occurred when late in 1991 the Department of Medicine proposed to conduct a survey of the attitudes of its members with respect to the dismissals of Drs. Grames and Shankel and related matters. The president and the new dean objected to the project, but the department persisted. With careful protections of anonymity (an outer envelope identified, and an inner blank one containing the ballot), almost 90 percent of the department responded. Up to 20 percent of those who voted claimed no opinion or insufficient information on some key questions, but 76 percent of those expressing an opinion thought that Drs. Grames and Shankel had been treated unfairly, 66 percent thought that they should be "immediately reinstated," and 85 percent voted in favor of the proposition that the members of the department "should work to see that the administrative style and methods that led to these dismissals are changed."

VII. Conclusions

1. The administration of Loma Linda University acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and in disregard of the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* in dismissing Professors Stewart W. Shankel, George M. Grames, and Lysle W.

Williams, Jr., without first having demonstrated adequate cause for dismissal in an adjudicative hearing of record before an elected faculty body. The hearing procedure offered to the three professors denied them basic safeguards of academic due process by not being available until after the dismissals were effected and by placing the burden on the professors to prove that the administration erred in dismissing them. The administration departed additionally from the provisions of the 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards* by suspending the three professors without any threat of immediate harm and by not ensuring them twelve months of severance salary.

2. The clinical science faculty members in the School of Medicine at Loma Linda University are denied the protections of tenure and are largely dependent for their livelihood on the senior administrators who control the corporations through which they practice medicine. They are subject to termination from these practice corporations, with or without cause, on sixty days notice. Termination of clinical employment entails termination of professorial appointment. These circumstances make the state of academic freedom for members of the Loma Linda University faculty insecure and, for the clinical science faculty, precarious.

Ralph S. Brown (Law),
Yale University, *Chair*

Samuel P. Bessman (Pediatrics and Pharmacology),
University of Southern California

Investigating Committee

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

Robert A. Gorman (Law),
University of Pennsylvania,
(*Chair*)

NOTES AND REFERENCES

[1] The 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 then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty members at whose request the inquiry was conducted, to the administration of Loma Linda University, to the AAUP chapter president, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

[2] Loma Linda University Faculty Handbook, 1991 Edition, page 241.

[3] The accelerator has been characterized by one journalist as potentially "the world's most costly medical machine," running to $60 million. Gary Stix, "Beam of Hope," *Scientific American* (December 1990), pp. 24, 25.

[4] Subsequent to its visit and as it was preparing this report, the investigating committee learned that WASC's Accrediting Commission for Senior Colleges and Universities acted at its meeting on February 19-21, 1992, to remove Loma Linda University from probation.

[5] Both quoted passages are from the *Statement on Government of Colleges and Universities*, formulated jointly by AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. The faculty at Loma Linda University may have an effective role in curricular matters. This was not explored.

Responding to the implication in this paragraph that the faculty role in guidance is inadequate, President Behrens and Board Chair Rock stated that existing structures "provide ample opportunity for faculty to participate" and that the WASC team had "found faculty actively engaged in the governance process."

[6] CSFAC, according to President Behrens and Dr. Rock, voted at the May 14 meeting. with only one dissent, to affirm confidence in the administration and to say it had heard no evidence in support of the allegations made by the dissenting faculty members in their letter of August 8, 1990.