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Introduction: Academic Freedom and Tenure Symposium

Burton M. Leiser

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Introduction

Burton M. Leiser

The symposium for which these papers were prepared was held at the Association of the Bar of the City of New York on March 8, 1994, under the joint sponsorship of the Association and its Committee on Education and the Law, and *Pace Law Review*. The Association and *Pace Law Review* are most grateful to all the participants whose papers contributed so significantly to the discussion, and to Professor Randolph Scott-McLaughlin of Pace University School of Law, whose lively and provocative questions challenged the wits of the audience as well as the participants.

Early in this century, the American Association of University Professors (AAUP) was founded to combat threats to academic freedom. The AAUP's founding members perceived those threats as emanating primarily from university and college administrations. They were particularly concerned about arbitrary firings by administrators and trustees who disapproved of their views on political, scientific, religious, or social issues. Their livelihoods were at risk whenever they said or published anything that might be construed as Communistic, atheistic, or immoral, or simply if it was deemed to be offensive or detrimen-

tal to the university's reputation and its ability to raise money from alumni and other donors.

The AAUP's policies on academic freedom and tenure were promulgated and ultimately accepted by most institutions of higher learning in the United States in order to provide some protection to academics who spoke out on controversial issues. After a reasonable probationary period, faculty members were to be given tenure—in effect, a lifetime contract under which they would serve until retirement without interference on ideological or doctrinal grounds. The university could dismiss a faculty member only under the most extraordinary circumstances—for criminal misconduct, for nonfeasance, or for actions involving moral turpitude. With the shield of tenure, the faculty member was to be free to pursue the search for truth wherever it might lead, and to teach, lecture, and write without fear or interference.

Tenure can work as it was intended to only if faculty members are willing and able to police their own ranks. It is alleged, however, that in recent years, most faculties have been neither willing nor able to discipline those within their ranks who have taken advantage of their academic positions to engage in irresponsible behavior. Some faculty members, it is said, are charlatans who engage in sexual harassment, racism, anti-Semitism, and the indoctrination and corruption of their young charges. They can do all of this with impunity because if they are threatened with any kind of discipline, there is an instant outcry from colleagues, students, the AAUP, the ACLU, and the liberal press. Even the most egregiously irresponsible faculty members, it is said, can count on this combination of forces to defeat any effort to remove them from the positions that have been entrusted to them.

An apt comparison may be drawn to a primitive creature of the sea. According to marine biologists, the juvenile sea squirt, which is born with a rudimentary nervous system, wanders through the ocean looking for a suitable rock or chunk of coral to which it may cling and make its home for life. Once it has taken root on its chosen spot, as it has no further need for its brain, it digests and metabolizes it. There are those who would suggest that some university professors unconsciously emulate the sea squirt once they have acquired tenure.

Every university has faculty members who are regarded by their colleagues as "deadwood," people who ceased to be productive the instant their tenure was confirmed. If they had been employed anywhere else, with the possible exception of the civil service, they would have been long gone; but in our institutions of higher learning, they draw their salaries from their universities as the sea squirt draws its sustenance from the waters that surround it for year after unproductive year.

The purpose of this symposium is to re-examine the premises upon which academic tenure is based. Is it an experiment that has failed? Should it be abandoned, or can it be saved? Or are the charges its critics have leveled against it so spurious as to be self-evidently false? Must universities accommodate academic frauds and charlatans in order to maintain their reputations as reputable institutions of free research and robust inquiry? If not, what criteria can be applied to weed them out?

For the insights they provide into the issues surrounding these questions, we are most grateful to the distinguished panelists who have graciously contributed to this symposium.