

Academic Freedom and Tenure: University of Virginia¹

I. Introduction

This report is concerned with the dismissal on February 8, 1999, of Dr. James S. McCarthy, who was then the W. L. Lyons Brown Professor of Physics at the University of Virginia and the director of the university's Institute of Nuclear and Particle Physics. Among his professional achievements, Professor McCarthy was instrumental in the creation of the Thomas Jefferson Laboratory in Newport News, Virginia, formerly known as the Continuous Electron Beam Accelerator Facility (CEBAF). He led a large research group of faculty, postdoctoral researchers, and research associates, and his work, like that of many other scientists, was supported by federal funds. He also did collaborative work with researchers at the University of Basel, which was partly funded by that university (the "Basel funds"). The total annual budget for his grants was approximately \$1.7 million.

In acting to dismiss him, the administration charged Professor McCarthy with misusing grant monies under his control or failing to exercise appropriate control of those funds. The dismissal followed discussions between Professor McCarthy and the university administration, including the university auditors, that extended over more than a year. Following his dismissal, Professor McCarthy filed a grievance with the Faculty Senate Grievance Committee, seeking reinstatement. Concurrent with pursuing his grievance, Professor McCarthy sought the advice and assistance of the American Association of University Professors, and correspondence ensued between the Association's staff and the university administration. With no satisfactory resolution of the case having been achieved, the AAUP's general secretary authorized an investigation. The Association's staff so informed President John T. Casteen III by letter of August 28, 2000, and the next day similarly informed the ninety AAUP members at the University of Virginia.

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, the report was subsequently sent to the faculty member at whose request the investigation was conducted, to the administration of the university, and to other persons directly concerned in the report. In light of the responses received and with the editorial assistance of the staff, this final report has been prepared for publication.

The undersigned investigating committee visited the University of Virginia on January 25 and 26, 2001, and is grateful for the courtesies extended to it by the administration and the local AAUP chapter. During its visit, the committee met with Peter W. Low, the vice president and provost; Melvyn P. Leffler and Richard Sundburg, the dean and associate dean, respectively, of the university's College and Graduate School of Arts and Sciences; Richard C. Kast, associate general counsel; Barbara Deily, director of audits; Michael Fowler, Blaine Norum, Donald Day, and Dinko Pocanic, professors in the Department of Physics; Patricia Werhane, chair of the Faculty Senate; James G. Clawson, chair of the Grievance Committee; Charles W. McCurdy, chair of the Grievance Committee's hearing panel; Carl Trindle, chair of a second hearing panel; J. David Deck, president of the AAUP chapter; Joseph J. Murray, Peter W. Holloway, and Bradley B. Cox, AAUP members active in the local chapter; and Francis McQ. Lawrence, counsel for Professor McCarthy. During the 2000-01 academic year, Professor McCarthy taught at the University of the Virgin Islands, and the investigating committee interviewed him by telephone conference call on January 26, 2001.

The University of Virginia, founded by Thomas Jefferson in 1819, is one of the nation's foremost comprehensive research institutions. With a faculty of over 1,800 and a student body of over 18,000, the university offers bachelor's and advanced degrees in a multitude of undergraduate, graduate, and professional programs. President Casteen has been in his position since 1990, having served previously as president of the University of Connecticut (1985-90). Professor McCarthy received his B.A. degree in physics from Occidental College (1961), and the M.S. (1963) and Ph.D. (1968) degrees in physics from Stanford University. He joined the University of Virginia faculty in 1970 as an assistant professor of physics, was awarded tenure in 1975, and was promoted to the rank of full professor in 1981.

II. History of the Case

FALL 1997 TO FEBRUARY 8, 1999

In fall 1997 Professor McCarthy informed Vice President Charles T. Gillet that his then-estranged wife had apparently made many unauthorized calls that were charged to a telephone credit card and debited to one of his federal grants. He was told to contact the university auditors, which he did, and

he later asked about the procedures for reimbursing the charges. In December, the university auditors, who report to the state auditor in Richmond, Virginia, began an investigation that came to focus on possibly improper expenditures by Professor McCarthy himself, apparently because of the auditors' concerns about internal controls over Professor McCarthy's expenditures and his answers to their questions about some of those expenditures.

On July 10, 1998, Dean Leffler met with Provost Low; Associate General Counsel Kast; Professor Fowler, who was then chair of the Department of Physics; and several others to review the allegations and the evidence. According to Dean Leffler's later account of this meeting, those assembled agreed that he "should meet with Professor McCarthy, describe the charges, listen to his responses, and provide him with ample opportunity to respond in writing. . . . Our desire was to ensure due process. We wanted Professor McCarthy to have full opportunity to explain his side of the story."

The dean met with Professor McCarthy on July 15. Earlier that day, however, the dean had personally delivered a letter to Professor McCarthy, informing him that the administration had evidence that he "may have misappropriated funds or failed to exercise due diligence over the expenditures of funds in [his] account," that the charges were "very serious," that he was immediately suspended from his position as director of the Institute of Nuclear and Particle Physics, and that his authority to "exercise discretion over any account that heretofore had been within [his] control" was also suspended. The letter raised the possibility that Professor McCarthy might be dismissed from the faculty and warned him that "[s]tate and federal authorities may also examine the evidence and take appropriate action." He was asked to reply by July 31 to a July 14 memorandum that accompanied the letter.

The memorandum, prepared by Barbara Deily, the director of audits, identified three issues: "personal phone calls charged to a federal grant" in the amount of \$10,859.61; "personal items charged to a federal grant" in the amount of \$4,924; and "questionable items charged to a federal grant" in the amount of \$1,517.92. These items totaled \$17,301.53. With respect to the "personal telephone calls," the memorandum stated that, "[w]hile Mr. McCarthy did not make all of these calls himself, allowing them to be charged to a federal grant (either through negligence or deliberate intent) jeopardizes the University's reputation in our ability to handle Federal funds."

Professor McCarthy replied on July 31 through a letter signed by his attorney, Mr. Lawrence. The letter addressed each of the issues presented in the July 14 memorandum and included Professor McCarthy's acknowledgment that his wife was primarily responsible for making personal telephone calls that were improperly charged to a federal grant. Professor McCarthy asked the administration to "respond immediately," to reinstate him as director of the institute, to reinstate his

authority to exercise financial discretion over his accounts, and to withdraw the allegation that he might have misappropriated funds. "At best[,] and at most," the letter concluded, "any issue raised here over funding could only involve a possible failure to exercise diligent oversight."

In a letter of August 12 to Mr. Lawrence, Associate General Counsel Kast stated that, because the university was still reviewing the matters discussed in the July 31 letter, it would be "premature" to reinstate Professor McCarthy as director of the institute. "Rather," Mr. Kast stated, "the decision had been made to assign Mr. McCarthy to research leave for the fall semester to allow sufficient time to conclude all aspects of the current inquiry into the issues currently under review." This decision, like those previously announced by Dean Leffler in his letter of July 15, was apparently made without forewarning of any sort to Professor McCarthy. As a result of the decision, Professor McCarthy did not teach courses that he had been assigned for the fall semester.

In a letter of November 18, Dean Leffler notified Professor McCarthy that the investigation by the university's audit department was complete and recommended that a meeting be held "as soon as possible" to discuss the issues. The meeting took place on December 7. Five days earlier, the dean, under cover of a letter dated December 2, provided Professor McCarthy with a list prepared by the audit department of "transactions involving funds under your control which appear to constitute improper use." There were fifteen categories of expenditures. These included the alleged misuse of telephone credit cards in the amount of \$11,055.74 and the alleged unauthorized purchase of a CD player, a television, and a VCR valued at \$2,444.

In addition, eleven of the fifteen categories dealt with Professor McCarthy's handling of the Basel funds. The allegations involving the Basel funds included "undocumented payments for management fees" (\$20,938.20), "undocumented cash withdrawals" (\$4,000), and "undocumented expenditures" (\$10,502.40). According to the audit department, the total of Professor McCarthy's "unauthorized expenses" was \$156,364.42. The dean asked for a written explanation by December 9—the date was later extended to January 18, 1999, upon request by Professor McCarthy—of the "appropriateness" of these expenditures. He also notified Professor McCarthy that he had suspended a salary increase for him that was scheduled to take effect on November 25. The dean's December 2 letter concluded as follows:

If you are unable to satisfactorily explain the appropriateness of these expenditures, I intend to recommend your termination. . . . In lieu of termination, I will accept your resignation and restitution of the inappropriate expenditures.

Should you be terminated, you are entitled to file a grievance under the procedures set out in the Faculty Grievance Policies and Procedures.

Professor McCarthy, through his attorney, provided the requested response to the December 2 letter. He repeated what he had said in his reply of July 31 to the dean and, with respect to the Basel funds, stated that documentation available to the university showed that it lacked any authority over these funds. Dean Leffler replied to Professor McCarthy on February 4 and gave him two choices: he could resign effective February 8 and make restitution to the university for an amount now identified as \$19,870.33, or face dismissal. The dean also insisted that all funds entrusted to Professor McCarthy by the University of Basel "be immediately transferred to the university." The dean's letter gave no explanation for why the money allegedly at issue was significantly less than the total amount identified by the audit department in early December.

On February 8 Professor McCarthy notified Dean Leffler that the terms of the resignation were "completely unacceptable to me. I have committed no wrongdoing." He stated, "I intend to vigorously challenge any adverse action taken against me by the University. I would request within twenty-four hours all University of Virginia documents pertaining to dismissal of tenured faculty members, and the burden of proof requirements for such a dismissal."

That same day, Leonard W. Sandridge, Jr., executive vice president and chief financial officer, notified Professor McCarthy that he had been dismissed "effective 5 P.M. today." Professor McCarthy's salary ceased as of that date. Also on February 8, Virginia's commonwealth attorney notified Mr. Lawrence that he had prepared two felony counts against Professor McCarthy, but that he would drop one of the counts if Professor McCarthy entered a plea agreement to make restitution to the university of \$23,019.74. Professor McCarthy rejected the proposal. On February 22 Professor McCarthy was arrested for embezzlement and telephone fraud. The university's governing board voted to approve the dismissal on March 27. Nearly eight months later, on November 5, the commonwealth attorney proposed dropping the felony charges if Professor McCarthy would plead guilty to the misdemeanor of misusing a telephone and reimburse the University of Virginia \$7,000. There would be a suspended jail sentence of thirty days. Professor McCarthy accepted this proposal.

After he was dismissed, Professor McCarthy's federal grants reverted to the control of the university. He has retained control, however, of the Basel funds. At one point, the university, through litigation, sought control of these funds, but a court ruled that the funds were subject to a contract between the University of Basel and Professor McCarthy, to which the University of Virginia was not a party.

FEBRUARY 19, 1999, TO MAY 22, 2000

On February 19, two weeks after he was dismissed, Professor McCarthy submitted a grievance to Professor Clawson, chair of the university's Faculty Senate Grievance Committee. He

claimed that the university "has steadfastly denied me due process [and] has declined any hearing concerning [the] allegations" against me. He asked to be reinstated to his faculty position and all his other duties, with his salary restored (the latter including the raise which was to have taken effect the previous November). He reiterated his requests on March 5 and added, "I am . . . put in the position of demonstrating why I should be reinstated; this is no more than the University's assuming I am guilty and forcing me to prove my innocence." Replying on March 11, Professor Clawson informed Professor McCarthy that a subcommittee of the Grievance Committee had been established to determine whether the process that led to his dismissal was "unfair and inadequate." Professor Clawson stated further that the committee "will not consider the adequacy of the substantive grounds for your dismissal at this time." On this latter point, Professor Clawson later explained in a May 24 letter to Professor McCarthy that the rules of the Grievance Committee precluded consideration of a matter being heard or litigated before agencies or courts outside the university, as was then the case with respect to the proceeding pending against Professor McCarthy in state court.

The chair of the subcommittee wrote to both Professor McCarthy and Dean Leffler seeking information about the process that had led to the dismissal. In his reply of April 2, Professor McCarthy stated that he was "never given an opportunity to present evidence," that he had been afforded no opportunity to "gather and present witnesses on [his] behalf," that the "allegations were never clearly and precisely stated to [him]," and that he had not been given "any hearing." Dean Leffler, in his reply of April 9, noted that he would "focus more on process than on substance, although the two become intertwined." He continued:

Substance and process become intertwined because the allegations against Mr. McCarthy concerned financial improprieties. I want to stress that there were no issues of academic freedom or quality involved in this case. If the substance of the charges related to academic freedom or academic quality, we might have been inclined to follow a different procedural approach, more akin to the AAUP guidelines. (As I note subsequently in this letter, however, any election to use the AAUP guidelines as a model would be strictly elective because the University has adopted only that portion of the guidelines which address academic freedom.) But since academic freedom and academic quality were not involved, we used a more straightforward approach consistent with our procedures and due process. Our aim, throughout, was to provide Professor McCarthy with every opportunity to know what conduct was being questioned. We followed our University *Faculty Handbook* and sought to provide due process, as stipulated by our own rules.

Professor Clawson wrote to Professor McCarthy and Dean Leffler on April 27 to inform them that the subcommittee had completed its preliminary investigation, that it had reported its findings to the full committee, and that the latter body had decided to establish a hearing panel to consider the following question: "Was the process by which Mr. James McCarthy was terminated from his employment as a tenured full professor at UVA on February 8, 1999, fair and adequate?" So that there would be no doubt concerning the hearing panel's jurisdiction, Professor Clawson added, "This question intentionally precludes consideration of the substantive merits of the termination and focuses just on the process of termination."

The hearing panel, chaired by Professor McCurdy, heard testimony on August 23. The witnesses for the administration included Mr. Kast and Provost Low. Mr. Kast's opening statement included the following:

This is not a grievance that concerns tenure, or the privileges that come with . . . that status. It's not a grievance that concerns what one would generally consider to be . . . the types that more typically come before a panel of this nature; academic freedom, scholarship, teaching excellence, that sort of thing. This is a grievance that concerns theft, misuse of funds, and fraud that typically would be resolved in another forum. It's important to make this distinction, I think, because tenure is not designed to protect the type of conduct that led to the procedures at issue in this grievance. The specialized expertise that a faculty panel brings to the type of termination of a tenured faculty member is not essential to this case. You're not here to decide an issue of whether or not a tenured faculty member was terminated in violation of his or her academic freedom, or terminated because of an issue that is at the core of what tenure and being a tenured faculty member is about; rather the issue here concerns numerous alleged misuses of telephone credit cards, university credit cards, and research funds over a long period of time.

I submit to you that the most constant but fair way to proceed in these circumstances with these types of facts is to conduct an audit by specialized people with expertise to do it, to give the results of that audit to the person suspected of the misconduct and misuse of resources; to give that person a full and fair opportunity to consider and review every aspect of that audit; and to give him a full and fair opportunity to respond to every alleged misuse of financial resources. That's exactly what was done here.

In their meetings with the investigating committee, Provost Low and Dean Leffler suggested another reason why a faculty hearing did not precede Professor McCarthy's dismissal: it would be wrong to provide faculty members with a procedure—a hearing before a body of their peers—that is not

available to other employees of the University of Virginia accused of financial wrongdoing.

As for the provost's testimony before the Grievance Committee, he had this exchange with Professor McCurdy:

McCurdy: Does it concern you that the notice having been given that there were alleged financial improprieties and opportunity given to respond, that the burden of proof for disproving the allegations lay on the faculty member?

Low: I would not describe the process that led to the termination as involving such a burden of proof.

McCurdy: How would you describe it?

Low: As an effort by us to determine through the auditors and discussion that we had what the facts were and to give the respondent in this case an opportunity to understand what the facts were, to understand the consequence of an adverse [finding of fact], which I believe were made known to him seven or eight months ago, and give that person an adequate opportunity to respond on the merits to the charges that were made. It was not an adversary proceeding in a sense [of] which a burden of proof was a relevant part of the discussion.

The report of the hearing panel, dated October 8, 1999, dealt with several issues. It pointed out that the faculty handbook "provided no description, no notice, of the administrative procedure in cases involving termination for financial misconduct or for any other cause; Mr. McCarthy took it for granted that he would get a pre-termination hearing." The report noted, "We sympathize with Mr. McCarthy's frustration with the *Faculty Handbook*. In our judgment, it is a disgrace that this University's procedures for terminating faculty members with cause are not spelled out with the same clarity and specificity as the Faculty Senate's procedures for handling grievances." The report questioned Mr. Kast's statement that the "specialized expertise" of the faculty was "not essential to this case." "Whether in a pre-termination hearing or a post-termination hearing," the report stated, "the faculty members on the panel would have to learn by listening and studying the record just as jurors do in the Commonwealth's courts." The report addressed the central issue of a pretermination hearing in Professor McCarthy's case as follows:

Why does the professor accused of financial misconduct have to wait until after being terminated before he gets an opportunity to tell his story to a faculty panel, to cross-examine witnesses, and to contest the meaning and/or sufficiency of the evidence against him? Why, in other words, does the University adhere to minimal standards of constitutional due process? We offer two reasons. First, the university is anxious to disassociate itself as fast as it can from faculty members who cannot, or will not, satisfactorily

answer charges of serious financial misconduct in a reasonable period of time. Second, the University wants to signal [to] both the faculty and the grantors who sponsor their research that the University of Virginia has zero tolerance for financial misconduct. These are substantial university interests. Yet the faculty member who professes his innocence of wrongdoing, as Mr. McCarthy did from the beginning, has a substantial interest in his continuing employment. And that interest can be preserved most effectively with a pre-termination hearing that is adversarial in form.

Despite the last sentence just cited, the hearing panel concluded that the process that led to Professor McCarthy's dismissal was fair and adequate: "It complied with standards of constitutional due process, albeit at a minimum level." In particular:

Mr. Leffler provided Mr. McCarthy with adequate notice of the charges and an adequate opportunity to respond. The pre-termination charging and response processes occurred, moreover, within the context of an administrative procedure that was not unfair. Mr. McCarthy had an opportunity to tell his story to the university auditors and to his Dean. He declined to answer some charges of financial misconduct, he answered others unsatisfactorily, and he was terminated.

But the hearing panel also concluded that Professor McCarthy's "right to contest the University's grounds for terminating him was not extinguished." He has a "right to a post-termination hearing, and he already has waited nine months to present his side of the case." The panel recommended that there be a post-termination hearing after the full Grievance Committee had determined whether Dean Leffler had the right to question Professor McCarthy's use of the Basel funds. The panel also recommended that the Grievance Committee take the initiative to discuss with the administration ways to revise the university's procedures for dismissing faculty members. "The absence of a pre-termination hearing for some causes of action will undoubtedly evoke animated debate," the panel's report noted, "[b]ut administrators should not view this as a reason to avoid full and open discussion."

The Grievance Committee, in its report of November 12, concurred with the finding of the hearing panel that Professor McCarthy was "treated at a minimally fair level." Because Professor McCarthy had pled guilty to a misdemeanor charge in a Virginia court, the report stated, there was no impediment under the university's policies to convening a second hearing panel to consider the substance of the administration's charges against him. The Grievance Committee also accepted the hearing panel's recommendation that it seek revision of the university's dismissal procedures: "It is intended that these recommendations include a pre-termination hearing for all

tenured professors for whom termination is contemplated for whatever reason."

As for the matter of the Basel funds, the Grievance Committee reported that Dean Leffler, in his testimony before the hearing panel, had stated that the "disposition of the fund w[as] not the reason for Mr. McCarthy's termination." The Grievance Committee concluded that because Professor McCarthy's dismissal was not based on the use or disposition of the Basel funds, "no briefs or testimony regarding them are necessary." Dean Leffler promptly took issue with the committee's account of his testimony: "I tried to stress that the disposition or location of the Basel funds was not of critical importance to me, but the misuse of the funds was one of many factors leading me and others to our final decision."

A second hearing panel was formed, and its chair, Professor Trindle, wrote to Professor McCarthy on December 2, asking that he provide the panel with a "statement of charges." Replying on behalf of Professor McCarthy, Mr. Lawrence declined to provide the requested statement because of the "ongoing confusion" concerning the university's reasons for the dismissal. He asked the hearing panel to require the administration to state its grounds for dismissing Professor McCarthy by "filing a statement of charges first." He also asked that Mr. Kast acknowledge to the panel that the university bore the burden of proof.

In letters of January 10 and 20, 2000, to Professor Trindle, Mr. Kast stated and restated the administration's position that the questioned expenditures from the Basel funds "clearly were relevant" to the decision to dismiss Professor McCarthy, and that he, "not the university, clearly has the burden of proof in this grievance pursuant to the Faculty Senate's own rules." Further correspondence ensued between Professor Trindle and Professor McCarthy. Mr. Lawrence, in a letter of May 17, notified Professor Trindle that, until the administration provided "at least a clear statement of the charges" for dismissing Professor McCarthy and accepts the burden of proving those charges, Professor McCarthy would "take no further action with the Grievance Committee." Writing to Mr. Lawrence on May 22, Professor Trindle thanked him for "making Mr. McCarthy's stance so unmistakable" and informed him that the "business of the Hearing Panel is now concluded."

III. Issues and Findings

The actions against Professor McCarthy culminating in his dismissal present issues of manifest importance to the American Association of University Professors. The Association, it should be noted, "is not—and *a fortiori* its Committee A and investigating committees are not—a court of law."² Professor McCarthy's case raises several legal issues, key among them whether and to what extent the actions of the university that led to the dismissal were consistent with standards of constitutional due process.

2. "Academic Freedom and Tenure: The University of California at Los Angeles," *AAUP Bulletin* (Autumn 1971): 394.

But the interest of the AAUP in Professor McCarthy's case, as in all cases, is whether appropriate professional standards have been respected, apart from whether or not those standards have the force of law.

The 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, both of which were issued jointly by the AAUP and the Association of American Colleges and Universities, set forth procedural standards in dismissal cases that are widely known and recognized in the community of higher education. Further specification is found in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The AAUP appreciates that colleges and universities adapt these standards to their own institutional circumstances, but the Association has long held that the core elements of the standards are applicable to all accredited institutions of higher learning.

1. THE ADMINISTRATION'S ACTIONS IN 1998

Before the administration of the University of Virginia dismissed Professor McCarthy on February 8, 1999, it notified him, on July 15, 1998, that it had removed him as director of the Institute of Nuclear and Particle Physics and had suspended his authority over any accounts within his control. On August 12, it notified him that it had placed him on research leave for the fall semester, and on December 2, that it had frozen his salary increase. The investigating committee offers these comments on the events in 1998.

The 1958 *Statement on Procedural Standards* provides that "suspension of a faculty member during the [dismissal] proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance." Moreover, Regulation 5(c) of the Association's *Recommended Institutional Regulations* states that the administration, before suspending a faculty member, will consult with an appropriate faculty committee concerning the "propriety, the length, and other conditions of the suspension." The University of Virginia faculty handbook is silent with regard to suspension.

The administration's actions of July 15, 1998, were clearly serious, for they deprived Professor McCarthy of an assignment and responsibilities that were central to carrying out his research. The administration gave no reason for its actions, but, arguably, having accused Professor McCarthy of financial misconduct, it acted as it did to prevent what it believed would be "immediate harm" to research funds under his control. But although the administration obtained what it considered sufficient information to take action against Professor McCarthy, it gave him no opportunity to comment on what it planned to do and did not consult with any faculty body about its intended actions.

The administration acted in the same way in August, when Mr. Kast notified Professor McCarthy through his attorney that he had been placed on research leave and thus removed from classroom teaching. It offered no explanation for the suspension,

but, unlike the actions in July, the investigating committee can see no reason for the removal from teaching. Moreover, the harm done to Professor McCarthy in August added to the penalty imposed on him in July, for it left him without any of his principal duties as a tenured professor at the University of Virginia. The administration's unilateral action in December to freeze his salary increase followed the pattern it had set in July and August.

The investigating committee believes that the actions taken against Professor McCarthy in July, August, and December 1998 should not be seen in isolation from each other or from his dismissal in February 1999. The administrative officers who met on July 10, 1998, to discuss Professor McCarthy's case agreed, according to Dean Leffler's account of what occurred, to give Professor McCarthy a "full opportunity to explain his side of the story." But before the dean met with Professor McCarthy on July 15, he notified him of the actions described above with respect to his research. In his letter of August 12, Mr. Kast stated that it would be "premature" to reinstate Professor McCarthy as director of the institute, but immediately informed him that he would have no teaching responsibilities for the fall semester. Dean Leffler, in his letter of December 2, asked Professor McCarthy for a written explanation by a definite time of his allegedly improper expenditures, but stated that his salary increase had been frozen.

The information available to the investigating committee leaves no doubt that Professor McCarthy was given no opportunity to "explain his side of the story" before the administration acted as it did in 1998, but under AAUP principles these were decisions that required academic due process. The situation was one where Professor McCarthy should have been notified by the administration of each pending action in 1998 and afforded the opportunity to formulate a response. The cumulative effect of these decisions was to present Professor McCarthy with the daunting task of persuading the administration not to dismiss him after it had already, to a significant extent, separated him from his duties as a tenured faculty member at the University of Virginia. The dismissal in February 1999 was not a foregone conclusion, but its foundation was well laid in 1998.

2. RIGHT TO A PREDISMISAL FACULTY HEARING

The 1940 *Statement of Principles* and the 1958 *Statement on Procedural Standards* provide as an integral element of academic due process that the faculty member is entitled, before dismissal, to have a hearing on the charges before a duly elected faculty body. Even earlier, the AAUP's 1915 *Declaration of Principles* stated that "[e]very university or college teacher should be entitled, before dismissal or demotion," to a "fair trial . . . before a special or permanent judicial committee chosen by the faculty senate or council, or by the faculty at large." (Emphasis added.) The University of Virginia administration did not challenge this fundamental aspect of academic due

in Professor McCarthy's case. Rather, it contended that, because the charges against Professor McCarthy concerned financial irregularities, the requirements of due process in this case were satisfied with a postdismissal faculty hearing.

The University of Virginia's faculty handbook states that termination of a faculty member before the end of a specified term or a faculty member elected without term, is possible but only for adequate cause. . . . Any such case would invoke the procedures for handling 'a dispute of particular significance' as specified by the Senate Committee on Faculty Affairs." The Senate Committee's procedures are set forth in the rules for the university's Faculty Senate Grievance Committee. These rules call for a formal hearing if the committee determines that a hearing is appropriate because the issues are serious and the facts so unclear that live testimony and judicial procedures are appropriate to resolve the dispute . . ." Both the faculty handbook and the rules of the Grievance Committee are silent with respect to a predismissal hearing for any reason. It was presumably under these policies that the administration stressed that it had the power to determine what kinds of charges against a faculty member were not subject to a pretermination faculty hearing.

In Professor McCarthy's case, the administration gave several reasons for its position that a post-termination faculty hearing was not needed. Foremost among those reasons, trenchantly expressed by Provost Low and Dean Leffler when they met with the investigating committee, was that issues of academic freedom or academic quality were not involved in the charges of financial wrongdoing, and thus the "specialized expertise" of the faculty was not "essential to this case." The administration's other reasons were that (a) the procedure that was afforded to Professor McCarthy—he was given notice of the charges and availed himself of the opportunity to meet with Dean Leffler, other members of the administration, and the university auditors—was consistent with the university's past practices for handling cases and with relevant court decisions; and (b) it would have been unfair to other, nonfaculty employees at the University of Virginia to provide Professor McCarthy with a postdismissal hearing before his peers when a similar procedure was not available to them in financial misconduct cases.

In its report of October 8, 1999, the Grievance Committee noted that "none of the witnesses at our hearing provided a justification for the University's custom of withholding a postdismissal hearing involving financial misconduct." Still, the committee went on to identify what it described as possible justifications for the administration's position, which, the committee said, implicated "substantial University interests": the university is "anxious to disassociate itself as fast as it can from faculty members who cannot, or will not, satisfactorily resolve charges of serious financial misconduct within a reasonable period of time"; and the university wants to "signal to both the faculty and the grantors who sponsor their

research that the University of Virginia has zero tolerance for financial misconduct."

None of the reasons advanced by the administration or the Grievance Committee can be sustained under the Association's recommended standards.

A. The faculty's "specialized expertise." The Grievance Committee itself gave no credence to the administration's position, pointing out that faculty members serving in a pre- or a post-termination hearing would each "have to learn by listening and studying the record just as jurors do in the Commonwealth courts." The administration's position in this regard lacked persuasiveness in several other respects, too. Faculty members at research universities, including the University of Virginia, have long been responsible for obtaining and administering research grants. Indeed, success with this responsibility is often a key criterion in the review of a scientist's candidacy for tenure and continuing professional work. The investigating committee does not find it plausible that faculty members should be called upon to compete for research grants, obtain them, and administer them, but be seen as not competent to consider a case regarding their alleged misuse.

Moreover, it seems to this committee that an attempt to distinguish between a pre- and a postdismissal hearing on the basis of faculty expertise represents a narrow and inappropriate interpretation of academic due process. The expertise of faculty members is not only their expertise in particular fields of study, but also their expertise to interpret procedural and substantive issues that arise under their own faculty handbooks. Whether the stated cause for dismissal is the true cause for termination, whether the stated cause exists in fact, and whether demonstrated wrongdoing in a given case is sufficiently grave to warrant the extreme sanction of dismissal, are all matters that call for the expert judgment of faculty members, who are not only competent to make these judgments, but also expected to do so as officers of their institutions.

B. The procedures that were afforded to Professor McCarthy. The administration claimed that its giving notice to Professor McCarthy of the charges against him and its meetings with him were consistent with the university's practices in dealing with alleged financial misconduct. From what the investigating committee has been able to determine, Professor McCarthy may well have been the first tenured faculty member in the history of the University of Virginia to be dismissed on stated grounds of financial improprieties. If that is true, then it is fair to suggest that the university's past practices for dealing with financial irregularities had little, if any, relevance to Professor McCarthy's case. The issues and considerations in his case were different from those likely to be encountered in the case of a faculty member with few years of service at the university or of an administrator without teaching and research responsibilities. That is especially so when, as in Professor McCarthy's case, there was clear disagreement between the faculty member

and the administration on the matters in question. Indeed, the effect of the reliance on past practices may have been to invite misunderstanding of the respective factual and judgmental elements in Professor McCarthy's case.

The administration further claimed that the predismissal procedures that it followed were consistent with relevant court decisions. The Grievance Committee described these procedures as minimally consistent with standards of constitutional due process. Even if they were, the investigating committee rejects the premise of the administration's position: that it need not have done more for Professor McCarthy than what the law requires for public employees. The University of Virginia administration was not required by law to reject a vital element of academic due process, and it certainly had the authority, had it wanted to exercise it, to provide Professor McCarthy with a faculty hearing before he was dismissed.

C. Due process for faculty members and others. According to the administration, as its position was described by Provost Low and Dean Leffler to the investigating committee, it would have been unfair, if not wrong, for Professor McCarthy to have had a hearing by his peers prior to his dismissal, because other members of the university community who face charges of financial misconduct do not have a similar opportunity. It should be noted that this position does not appear to depend on the fact that faculty members, like other employees at the University of Virginia, can be dismissed, but instead on the nature of the charges in a dismissal case. Any employee at the University of Virginia can face charges of financial wrongdoing, and thus the procedures, so the argument seems to run, should be essentially the same in every case. In the event that the charges are such that they can be brought against only certain groups of employees, different procedures might apply. The investigating committee understands this perspective to be the meaning of statements by Dean Leffler and Mr. Kast with respect to a faculty case involving (in the dean's words) "academic freedom or academic quality" where the individual "might be afforded a procedure more akin to the AAUP guidelines."

Whatever procedures might have been used by the University of Virginia in cases involving staff personnel accused of financial misconduct, the investigating committee cannot see why the failure to afford a pretermination hearing to some employees would justify the denial of a predismissal hearing to faculty members. That is not because faculty should have more rights than others, but because the claim of faculty members to a predismissal hearing is not advanced at the expense of denying it to others. Nor is the right of faculty members to a predismissal hearing predicated on whether or not others are afforded such an opportunity. Rather, the right is rooted in the importance of the faculty as a professional body effectively passing judgment upon its members. "A necessary precondition of a strong faculty," as stated in the 1958 *Statement*, "is that it have first-hand concern with its own membership. This is properly

reflected both in appointments to and in separations from the faculty body."

In Professor McCarthy's case, allegations of financial misconduct raised key questions about his professional conduct inasmuch as the performance of his professional duties required him to obtain and administer grants. Faculty members and nonfaculty administrative staff can, of course, face charges which, in their general form, are identical, as in a case involving financial improprieties or, indeed, other kinds of misconduct that occur in the academic world, such as plagiarism or sexual harassment. But the safeguards of academic due process in faculty dismissal cases should not depend on whether the charges against the individual are the same as or different from charges that can be brought against other employees. Rather, the whole concept of the hearing in a faculty case requires that there be available to the administration and the governing board, before they reach a final decision, the judgment of representatives of the faculty who are in a position to provide expert and informed opinion on the issues based on the faculty member's record considered in its entirety. The investigating committee rejects the administration's position that the nature of the charges against Professor McCarthy could justify its judging and penalizing him without having first afforded him a hearing before a faculty body.

D. "Disassociating" from the accused faculty member. This was the first of two reasons suggested by the Grievance Committee for why the administration did not provide Professor McCarthy with a predismissal faculty hearing. Plainly, the administration sought to move with dispatch in separating Professor McCarthy from the university, starting with the actions against him in July 1998 and culminating in his dismissal in February 1999. Undoubtedly, every administration wants to "disassociate itself as fast as it can" from a faculty member who faces dismissal, and the members of this investigating committee would be surprised to encounter an administration otherwise inclined. But can such a motive ever justify dismissal of a faculty member without a faculty proceeding? We do not see how that is reasonable under an academic procedure committed to fairness in the result, and, accordingly, we do not believe that the fact that Professor McCarthy was accused of financial misconduct makes a difference in this regard. The interest the Grievance Committee ascribed to the administration in its wanting to hasten Professor McCarthy's departure may have been real and pressing, but standards of academic due process in general, and faculty hearings in particular, do not exist subordinate to an administration's wish in this regard.

E. A "signal" of "zero tolerance for financial misconduct." This was the second reason suggested by the Grievance Committee to explain the administration's failure to afford Professor McCarthy a predismissal hearing. An administration may have strong reasons for wanting to "signal" to others—members of the governing board, influential alumni, federal agencies, foundations, to name but a few—that it has "zero tolerance" for fac-

ulty misconduct. That intolerance, however, is not likely to be unique to financial wrongdoing. It is far more likely that other kinds of misconduct for which faculty members can be and have been dismissed will elicit the same response. Inasmuch as such attitudes are widespread, reliance on them to deny a faculty member the right to an appropriate faculty hearing invites the possibility of repudiation at any time of safeguards of academic due process in cases of proposed dismissal for cause.

* * *

The investigating committee does not believe that academic standards admit of a residual category of dismissal charges that can be adjudicated unilaterally by an administration. This is especially so when the facts in a case are in dispute, as they were in Professor McCarthy's case. From the outset, Professor McCarthy disputed the facts as they related to his overall handling of his research grants. That these facts were in dispute was demonstrated by the different amounts of money the administration claimed were at issue—an initial figure of approximately \$18,000 in July 1998 rose to more than \$156,000 in December 1998 and fell back to just under \$20,000 in February 1999—and the different judgments by the Grievance Committee and the administration about the role of the Basel funds in the dismissal decision. The facts were also in dispute in the sense of the inferences to be drawn from them. That some degree of improper conduct may have been involved, as Professor McCarthy himself acknowledged in volunteering information about a misused telephone credit card, increased rather than diminished the administration's obligation to adhere to basic standards of academic due process. Was Professor McCarthy's conduct willful? Was his conduct more accurately described as a failure to exercise due diligence? Was his conduct so objectionable as to warrant outright dismissal rather than some lesser sanction, even after taking into account his record at the University of Virginia considered as a whole?

In large part because of issues of this nature, it is imperative under the 1940 *Statement* and the 1958 *Statement* for there to be a predismissal faculty hearing so that the final outcome will be fair and just to all concerned. In a faculty dismissal proceeding, the administration initiates and presents the charges against the individual; therefore, it cannot impartially adjudicate its own allegations. By contrast, the administration of the University of Virginia acted against Professor McCarthy without first having recourse to a faculty hearing. It brought the charges against him, weighed their significance against his responses, determined that he had engaged in financial misconduct, concluded that he should be dismissed, and effected the termination of his appointment on the same day that it was announced. The administration's failure to afford Professor McCarthy the opportunity to present his position to a faculty hearing body before he was dismissed represents, in the judgment of the investigating committee, a flagrant abuse of academic due process.

3. BURDEN OF PROOF

It is unquestionably contrary to the standards set forth in the 1940 *Statement*, the 1958 *Statement*, and the Association's *Recommended Institutional Regulations* for an administration to require a faculty member to carry the burden of proof in a dismissal case. There is no dispute that the University of Virginia administration insisted that the burden of proof rested with Professor McCarthy. The Grievance Committee and the two hearing panels apparently concurred in this opinion. The administration invoked the university's official policies in support of its position. These policies, set forth in the rules of the Grievance Committee, provide that a faculty member who faces dismissal can petition the Grievance Committee for a hearing. The committee's rules state that the "responsibility for producing evidence, and the ultimate burden of proving by a preponderance of the evidence that the complaining party's allegations are true and a remedy is warranted, rests with the complaining party." The administration held that, because Professor McCarthy was the "complaining party," he had the "ultimate burden," which amounted to his having to prove why he should not have been dismissed.³ Presumably, Professor McCarthy would have had the burden of proof even if he had been afforded a predismissal faculty hearing, for in that circumstance, too, he would still have been the "complaining party" under the Grievance Committee's rules.

Academic due process in a case of dismissal requires that the charges against a faculty member become the basis of action only when proven, and that the burden of proof rests with those who bring them. The investigating committee finds that the Grievance Committee's rules concerning the "ultimate burden" in a dismissal case—on their face, and as they were expected to operate in Professor McCarthy's case—are seriously at odds with this basic tenet of due process.

The inherent flaw in the University of Virginia's official policies was further accentuated by developments in Professor McCarthy's case, an accentuation that may have been promoted by the flaw itself. The administration imposed a series of penalties on Professor McCarthy in 1998 and 1999, of which the most severe, of course, was the termination of his appointment. The administration was not required under the university's policies to subject the charges against Professor McCarthy to the test of academic due process before it acted against him. Professor McCarthy, as the complaining party, had the burden of proof at each stage, and, as the penalties grew more severe, his burden increased commensurately. Moreover, he was also required to provide the second hearing panel with a "statement of charges," a request to which he rightly objected because of the "ongoing

3. The elaboration of the 1940 and 1958 *Statements* in the AAUP's *Recommended Institutional Regulations* states that the "burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole" (Regulation 5[c][8]).

confusion" about the reasons for his dismissal (this is a reference to the disagreement between the Grievance Committee and the administration about the role of the Basel funds in the dismissal). Professor McCarthy was thus placed in the position of not only having to prove that his dismissal was wrong, but also of having to identify the specific reasons he had to refute in order to demonstrate the validity of his charges.

4. TERMINAL NOTICE OR SEVERANCE SALARY

The 1940 *Statement of Principles* provides that tenured faculty members whose appointments are terminated for cause will receive at least one year of notice or severance salary unless the grounds for dismissal involve moral turpitude. Interpretive Comment 9 on the 1940 *Statement* defines moral turpitude as conduct that is "so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally." The University of Virginia faculty handbook does not speak to the subject of terminal notice or severance salary.

Professor McCarthy received notice of the termination of his appointment on February 8, 1999, effective on that date, and payment of his salary also ceased on that date. While the administration did not explicitly accuse Professor McCarthy of moral turpitude, there can be little doubt that it saw his conduct as "utterly blameworthy" and that which "would evoke condemnation by the academic community generally." But a judgment about the degree of blameworthiness of Professor McCarthy's conduct, like a judgment about whether the various alleged instances of misconduct had in fact occurred, was properly a matter to be considered by a faculty body. In the absence of such consideration, there could be no valid determination that Professor McCarthy's conduct warranted not only dismissal but also immediate cessation of all his relationships with the university. The investigating committee accordingly finds that Professor McCarthy was denied notice or severance salary as called for in the 1940 *Statement of Principles*.

In sum, on the basis of all the above facts and findings, it is clear to the investigating committee that the University of Virginia administration violated Professor McCarthy's rights under generally accepted standards of academic due process.

5. SUBSTANTIVE CONSIDERATIONS

The 1940 *Statement of Principles* refers to "dismissal for cause" of faculty members. Regulation 5 of the AAUP's *Recommended Institutional Regulations* refers to "adequate cause" and provides that such cause "will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers." The University of Virginia faculty handbook states that dismissal of a faculty member "is possible but rare and only for adequate cause."

The complaints against Professor McCarthy were indeed "related, directly and substantially," to his fitness in his professional capacity as a researcher. Scientific achievements depend not only on the integrity of the research process itself, but also on the honesty of scientists in administering the funds that are the lifeblood of their research activities. Accordingly, Professor McCarthy's handling of his research funds was properly a basis of concern to and inquiry by the administration of the University of Virginia. Professor McCarthy acknowledged that credit cards under his control had been misused by family members and others. A Virginia court eventually required him to repay the university \$7,000.

With respect to other concerns raised by the administration, Professor McCarthy maintained that some personal purchases were mistakenly placed on a federal grant credit card, that other purchases were for legitimate professional reasons, and that still other purchases could be used in both his laboratory and his home. In addition, while the dismissal ended his control of the federal grants that he had supervised as a faculty member at the University of Virginia, he has retained control of the Basel funds.

The perspective of the administration was quite different. The investigating committee was told by administrators whom it interviewed that Professor McCarthy had seriously abused his spending authority, that his misconduct was deliberate, and that his explanations for his actions lacked credibility. That he retained control of the Basel funds was presumably of less consequence to the administration than its judgment that he had abused his spending authority while a tenured professor at the University of Virginia.

In a dismissal-for-cause proceeding where safeguards of due process have been respected, a record of the hearing is available for review. No such record exists in Professor McCarthy's case, and, as this report has recounted, there are major unresolved disputes of fact involving Professor McCarthy, the university administration, and the Grievance Committee. The investigating committee is in no position to conduct a substitute adjudicative proceeding, and therefore is not able to assess the validity of the respective positions of Professor McCarthy and the administration concerning his conduct.

On the one charge about which there is no dispute, the misuse of a telephone, the investigating committee observes that Professor McCarthy himself brought this matter to the attention of the administration and inquired about procedures for reimbursement. He subsequently acknowledged his responsibility in this matter in a Virginia court, but the investigating committee questions whether his conduct with regard to the misuse of the telephone substantially placed in doubt his fitness to continue as a researcher at the University of Virginia. Whatever the merits of the administration's various accusations against Professor McCarthy, the 1940 and 1958 *Statements* are premised on the indispensability of adequate procedural safeguards in reaching substantive judgments on a professor's fit-

ness to continue. The investigating committee believes that the absence of these safeguards precluded an acceptable determination of the validity of the charges against Professor McCarthy by the university administration and by this committee as well.

A comment is also in order about the University of Virginia's official policies with respect to the dismissal of faculty members. The Grievance Committee and the first hearing panel in Professor McCarthy's case each recommended that the university's dismissal procedures be revised to allow for a "pre-termination hearing for all tenured professors for whom termination is contemplated for whatever reason." No changes have been made in the procedures, however, and none appear to be in prospect. Until the dismissal procedures are brought into conformity with the applicable standards of the general academic community as enunciated in the 1940 *Statement of Principles*, academic freedom and tenure are not securely based at the University of Virginia.

We conclude this section with the observation that the adverse effects of a dismissal on a professor's reputation and livelihood are likely to be very grave, and that, therefore, the procedures followed in such a case are of the greatest consequence. The AAUP has consistently held that faculty members should be accountable for the exercise of their professional responsibilities. The Association has just as consistently held that an individual's career should not be placed in jeopardy without the observance of requisite academic due process. The case against Professor McCarthy hinged on allegations of the misuse of research funds. Nothing in this report should be read as condoning any such misuses, had they been clearly demonstrated.

Professor McCarthy pled guilty to the charge of misusing the telephone, but that did not absolve the administration of its responsibility to afford a pretermination hearing about that conduct, nor did the guilty plea speak to all the allegations against Professor McCarthy, which were never addressed, let alone established, in any hearing of record. Professor McCarthy's arrest did not vindicate the administration's position, but rather underscored why a university's commitment to academic due process is indispensable for determining whether a faculty member's alleged professional misconduct warrants dismissal. An arrest (and even a subsequent guilty plea) do not retroactively justify an administration's unilateral action to dismiss a member of the faculty.

For an academic institution, the standards of the academic community must apply. The standards which the Association regards as necessary and appropriate for dismissing a faculty member are meant to preserve, in the words of the 1958 *Statement*, "both institutional integrity and individual human rights." They give emphasis to the judgment of faculty peers, without regard to the nature of the charges against the individual, before a final decision is reached. In so doing, they give recognition to essential concepts of fairness and justice represented by the requirements of academic due process.

IV. Conclusions

The administration of the University of Virginia imposed severe sanctions on Professor James S. McCarthy in 1998 and dismissed him in 1999 without having afforded him basic protections of academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. Professor McCarthy was afforded no opportunity to respond to each action in 1998 before it was imposed on him, and the administration did not consult with any faculty body before it acted as it did. He was dismissed without adequate cause having been demonstrated by the administration before a faculty body. He received no severance salary. The opportunity for a postdismissal hearing could not substitute for an appropriate academic proceeding, and, in any event, would have wrongly required Professor McCarthy to carry the burden of proof.

DANIEL H. POLLITT (Law)

University of North Carolina, Chapel Hill, *chair*

MICHAEL W. FRIEDLANDER (Physics)

Washington University

V. RAMA MURTHY (Geology and Geophysics)

University of Minnesota

Investigating Committee

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

JOAN WALLACH SCOTT (History), Institute for Advanced Study, *chair*

Members: JEFFREY HALPERN (Anthropology), Rider University; LAURA KALMAN (History), University of California, Santa Barbara; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), University of California, Berkeley; LINDA RAY PRATT (English), University of Nebraska-Lincoln; DONALD R. WAGNER (Political Science), State University of West Georgia; JANE L. BUCK (Psychology), Delaware State University, ex officio; MARY A. BURGAN (English), AAUP Washington Office, ex officio; MARTIN D. SNYDER (Classics), AAUP Washington Office, ex officio; BERTRAM H. DAVIS (English), Florida State University, *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; BEULAH M. WOODFIN (Biochemistry), University of New Mexico, *liaison* from Assembly of State Conferences.

Addendum

Comments from President Casteen

The draft text of the preceding report was sent by AAUP associate secretary Jonathan Knight to the administration of the University of Virginia under cover of a letter dated July 16, 2001, to which the university's president, John T. Casteen III, replied on July 31. The full text of his reply follows.

I write in response to your letter of July 16 and its enclosure about the university's disciplinary findings in the case of James S. McCarthy. The university has four points to make in response to the sadly inaccurate and incomplete information embodied in your letter and enclosure (i.e., the draft report).

First, your statement of the facts and the procedures involved in this case is inaccurate and incomplete. I will mention two examples. At our invitation, Mr. McCarthy and his legal counsel met with the auditors on more than one occasion during the six to eight months preceding his dismissal. At these meetings, the auditors reviewed their findings in detail with Mr. McCarthy and his lawyer. Mr. McCarthy had ample opportunity to seek additional information and to respond to the results of the audit. Your letter and enclosure make no mention of these meetings, which are material in every sense to the fairness and accuracy of our findings and actions in this case.

Similarly, your letter and enclosure mischaracterize Mr. McCarthy's initial report to the university of unauthorized phone calls charged to a university telephone credit card issued for his use in conducting university business. Contrary to your inference, Mr. McCarthy made no offer to reimburse the university on that occasion. Rather, he reported the misuse because he wanted the university to take action against an adversary in a personal dispute.

Second, although your draft report contains numerous inaccuracies as to facts and procedures, we do not believe it appropriate to debate the details of Mr. McCarthy's case in a public forum. We will, therefore, not undertake a point-by-point discussion of the statements of fact, inferences, and conclusions in the draft report. We had ample reasons for our actions, which

were taken with notice and a fair opportunity for Mr. McCarthy to respond with the assistance of counsel. Mr. McCarthy was convicted of misuse of a telephone credit card in the Virginia state criminal courts. Within the university, he failed to pursue the grievance process established by our faculty, thereby declining to have the propriety of his dismissal judged by a faculty panel. As far as the university is concerned, the matter is closed.

Third, the draft report assumes that the only fair way to judge cases of faculty misappropriation of public resources is through a pretermination hearing by a faculty panel. We understand that this has been the long-standing policy of your organization. This is not the policy, nor has it ever been the policy, of the University of Virginia. Here, faculty-developed processes allow that a faculty member accused of misappropriation receive notice and a fair hearing with the assistance of counsel. Prior to Mr. McCarthy's termination, the actions eventually taken by the university were reviewed by independent auditors, by our legal staff, and (at the department, dean, and provost levels) by persons who are themselves members of the tenured faculty. Both Dean Leffler (fifteen years) and Provost Low (thirty-seven years) are longtime members of the university's faculty. Both happen to be leaving their administrative posts at the end of August to return to full-time faculty positions. We reject your premise that there is only one way to be fair.

Throughout its history, the University of Virginia has been fully committed to the academic freedom of its students and faculty. Our actions over the course of almost two hundred years amply demonstrate this commitment. Our actions in this case did not undermine it. Indeed, they provide additional evidence of it.

If you choose to publish your draft as presently worded, without revisiting its accuracy, I ask that this letter be published as well. 

—JOHN T. CASTEEN III