

1953?

CENSURE BY THE AAUP

An assistant professor of history on a three-year appointment expiring in June, 1953, and an associate professor of physics and mathematics, with tenure, at Rutgers University invoked the Fifth Amendment, and the former also invoked the First Amendment, in hearings of the Senate Internal Security Subcommittee on March 28, 1952, and September 24, 1952, respectively. On September 26, a seven-member committee of trustees, faculty, and alumni was appointed by the President of the University to advise as to the course of action he should pursue. This committee found that under all the circumstances the faculty members' refusals to answer questions of the Subcommittee "raise a real question as to their fitness to continue as teachers on the University faculty," and it recommended that a special faculty Committee of Review of five members, to deal with the cases, be established. The President approved this recommendation and the committee was selected by the Committee on Committees. Formal charges against the men were not filed.

After elaborate hearings the Committee of Review, which had secured an agreement from the President that a decision on its part adverse to the faculty members would not be a final one but would be followed by charges, concluded unanimously that no further disciplinary action should be taken. The Board of Trustees, meeting on December 12, 1952, expressed appreciation of the report, but disagreed with it and adopted a statement which read in part as follows:

"The Faculty Committee of Review has urged that to plead the protection of the Fifth Amendment is a recognized constitutional right, and that it carries with it no implication of guilt. However, there is here no question of the legal right of professors . . . as citizens to refuse to answer on the grounds of the Fifth Amendment. The question here concerns their special obligations as members "of a learned profession, and as representatives of this University."

The refusal of a faculty member, on the grounds of possible self-incrimination, to answer questions as to his present or past membership in the Communist Party, put to him by a properly constituted investigatory body, impairs confidence in his fitness to teach. It is also incompatible with the standards required of him as a member of his profession. He has the privilege of freedom to search out and to teach the truth. This University will protect him in the exercise of this freedom, but he has corresponding obligations.

It is therefore

RESOLVED, that this Board considers that it is cause for the immediate dismissal of any member of the faculty or staff of the University that he refuse, on the ground of the Fifth Amendment to the Constitution of the United States, to answer questions propounded by any duly constituted

investigatory body, or in any judicial proceeding, relating to whether he is, or has been, a member of the Communist Party....

The Board, therefore, directed that each man be dismissed from his position, effective December 31, 1952, unless in the meanwhile he should "have tendered himself ready to answer the questions of the Senate Committee...." The dismissals took place at the designated time, with one year's severance pay to the faculty member on tenure and salary for the balance of the contractual period to the other man.

On September 11, 1953, an associate professor of law at Rutgers University resigned from the faculty as an alternative to dismissal because of his invocation of the Fifth Amendment before the House of Representatives' Committee on Un-American Activities in 1953. He was granted a year's severance pay. Before the final action of the Board of Trustees in the case, the President of the University referred to the established Committee of Review of the Law faculty the question whether any unusual circumstances existed, "on account of which the fixed policy of the Board of Trustees should not be applied." The Committee concluded that no such circumstances existed.

This Committee recommends that the Administration of Rutgers University be placed on the list of censured Administrations of the American Association of University Professors. The adoption by that Administration of the view that invocation of the Fifth Amendment is in itself a ground of dismissal, violated the right of a faculty member to a meaningful hearing in which his fitness to remain in his position would be the issue, and attempted to turn the exercise of a constitutional privilege into an academic offense, without reference to other relevant considerations. The policy of the Administration in this regard remains substantially unchanged. The suggestion of some mitigation of the previous policy, which arose in the most recent case at Rutgers University, did not materially diminish the evil involved. The American Association of University Professors cannot acquiesce in such a view and is under a duty to exert its influence to secure a more acceptable policy.