

"Report of Committee A, 1962-63"

The Illinois-Koch Case

Few cases have aroused such widespread interest as the Koch case at the University of Illinois. It had all the ingredients of an attention-gathering case. Committee A was in disagreement, on a crucial point, with the very able members of the *ad hoc* investigating committee, and members of Committee A were in disagreement among themselves. As a result, the published reports on this case took an unprecedented form: there was a report by the *ad hoc* committee which Committee A accepted; a supplementary report was filed by the *ad hoc* committee which a majority of Committee A could not accept, and to which it prepared a rebuttal; a dissenting opinion was written by a member of Committee A disagreeing with his colleagues who made up the majority; and a brief concurring opinion was submitted by a member of the Committee A majority. In addition, the case arose in a distinguished institution where AAUP has its largest single chapter. And to top it all, the dereliction that started all this intellectual activity was a letter published in a student newspaper dealing with that old devil, sex.

Committee A and the Washington Office have received many letters on this case. We are criticized for coming to Koch's defense at all, and also for not going far enough in defending him. My own mail has come from both sides of the controversy. Some letters take Committee A to task for saying anything in defense of the author of such a letter as Koch's. Others criticize us for accepting the concept of academic responsibility as a standard which an administration may utilize as a basis for disciplinary proceedings against a professor. Some letters declare that the case involves only a question of freedom of speech, which ought to be construed to extend to all subjects, including highly unorthodox views on sex, and still others argue that Koch's letter was an incitement to immorality and crime which no educational community has any obligation or right to condone or defend or even tolerate. I am resigned to the fact that, as in most hard cases, we cannot hope to please everyone, and that any position will run into opposition. If I may paraphrase Tom Paine, this is the sort of case that tries men's souls.

The argument over the substantive issue in the Koch case raises very basic questions about the very nature of our Association and the assumptions upon which Committee A must operate. Just what is Committee A supposed to do when it is asked to cast up the accounts in a case where a serious allegation has been made that an educational institution of higher learning has violated accepted principles of academic freedom and tenure? Specifically, whose principles supply the standard for judgment? I do not understand how anyone can seriously dispute the point that we do not operate in a vacuum. We are not free to decide each case, as the lawyer would say, *ex aequo et bono*. We do not start

from scratch in dealing with a case. We start with the 1940 Statement of Principles. I know it is a brief document couched in general terms, and that such a document permits, indeed it invites, interpretation. In dealing with the question of whether a particular administration violated acceptable principles in a concrete case, however, Committee A must proceed on the assumption that it can find warrant for the relevant principle or principles in the 1940 Statement. For example, could we ask the Association to put an administration on the censure list because it declined to give an instructor tenure after six years of probationary service? Obviously, whatever our private inclinations may be, we cannot declare ourselves in favor of a six-year period of probationary service because the 1940 Statement stipulates seven years. We are not free to decide, as an abstract question, that six years should suffice, because in the Statement we agreed that the maximum probationary period of service should be seven years.

The 1940 Statement of Principles was not a unilateral declaration of the American Association of University Professors. It was the result of lengthy and detailed negotiations between us and the Association of American Colleges which extended over a period of some six years. Like all such statements, the 1940 Statement was in many ways a compromise, or a series of compromises, between those who engaged in the negotiations. It derives its moral force from the fact that it was agreed to by the chief spokesmen for college and university administrations as well as by the chief spokesmen for the professors of the country. It derives additional moral strength from the fact that it has, since its original adoption, been endorsed by thirteen important learned societies. Perhaps I should point out that these learned societies endorsed the 1940 Statement of Principles, and not a blank check authorizing us to go ahead and do whatever we think is right in the light of our best judgment. We seek to do what is right, of course, but always in the context of the 1940 Statement.

Following three introductory paragraphs, the 1940 Statement includes three paragraphs dealing with academic freedom and five dealing with academic tenure. Paragraph (c) of the section on academic freedom reads as follows:

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(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

At a conference of representatives of the American Association of University Professors and the Association of American Colleges on November 7-8, 1940, three official interpretations of the 1940 Statement of Principles were agreed upon. The third interpretation reads as follows:

3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on *Academic Freedom* and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on *Academic Tenure*. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

A substantial majority of the members of Committee A—if I understand and report their views accurately, as I seek to do—takes the position that Interpretation 3 of the 1940 agreement means what it says, namely, that charges may be filed by an administration on the basis of extramural utterances of a faculty member. Our *ad hoc* committee has chosen to use the phrase "academic responsibility" to describe the substance of Paragraph (c) and Interpretation 3, and for purposes of convenience of discussion, we accept the phrase. But we believe that the plain language of the document makes it clear that the concept of academic responsibility is not a mere admonition addressed to the consciences of the teacher and of the guild of which he is a member. As I read the history of the events of 1940, and of the negotiations which preceded adoption of the document, with its interpretations, our Association was reluctant to go along with the decision that was finally agreed to, and did wish to avoid putting such a powerful weapon in the hands of administrators and governing boards. But our views did not prevail, and we agreed to something else.

I think, and I think a majority of Committee A think, that we are bound by our agreements. Whether the concession we made in 1940 was a wise one or not is most assuredly a debatable question, but that we made

the concession is not. No case in recent years has been given more painstaking consideration than this one; a staggering number of man-hours of intellectual labor have been devoted to this problem. I think and hope that much good will come from an open and frank debate of the issues involved. But until the rules are changed Committee A feels bound to decide cases in the light of principles to which we gave our consent.

As I understand the situation, we have three courses open to us. The first is to continue to try to live with the present rule as Committee A understands it. I do not believe that this is a counsel of despair, for we insist upon a very large measure of faculty participation in any decision adverse to a professor rendered on the ground of violation of the principle of academic responsibility. One of our main criticisms of the President of the University of Illinois is that he refused to follow the advice given to him by the University's Senate Committee on Academic Freedom, which was unanimously opposed to discharging Professor Koch. To be sure, the concept of academic responsibility is a vague one, but so is the concept of academic freedom, and most other general concepts with which we must live, including that of academic competence. But I also note that the Senate Committee on Academic Freedom of the University of Illinois concluded that Professor Koch "committed a breach of academic responsibility" and recommended that he be "reprimanded" and "admonished."

A second possible course is to try to modernize where necessary the 1940 Statement, accompanying this effort by consultation with other educational associations, which might yield us the unquestionable valued element of multiple adoption. It is within the proper scope of the problem for the Association to reopen the question and renegotiate it with the Association of American Colleges and other educational groups. Whether this should be done will depend upon the desires of those organs of our Association who have the authority to make such decisions.

A third possible course is to proceed on our own power to frame and seek to enforce whatever body of principles we regard as appropriate. This course of action is not without merit. We are today a much stronger group, certainly a much larger group, than we were in 1940. Undoubtedly the Association has greater prestige than it had 23 years ago; its procedures and committees are well-known as part of the academic scene of the country; and certainly our formal pronouncements carry more weight than previously. On the other hand, it is unquestionably true that the 1940 Statement derives a great deal of its moral force from the fact that the leading spokesmen for college and university administrations, "the other side," agreed to it. In striking out upon a unilateral course of action, we

may well lose more than we gain. Again, this is a decision which will have to be taken by the Association's appropriate organs.

What our course of action should be in the future, in relation to the vexing issue of academic responsibility, is now under study in the Washington Office and in Committee A. We are not now ready to make concrete recommendations, but we shall do so as soon as we are fully prepared to offer something concrete to the Association for its consideration.