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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. DAR-

Appeals Court No. 2023-P-0584

Henry H. Wortis, Amy S. Yee, Theoharis C. Theoharides, Ana M. Soto, Emmanuel N. Pothos, Michael H. Malamy, David J. Greenblatt and Brent H. Cochran,

Plaintiffs-Appellants

v.

The Trustees of Tufts College,

Defendant-Appellee.

ON APPEAL FROM THE SUPERIOR COURT FOR MIDDLESEX COUNTY

PLAINTIFFS'-APPELLANTS' APPLICATION FOR DIRECT APPELLATE REVIEW

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REQUEST FOR DIRECT APPELLATE REVIEW

Plaintiffs/Appellants Amy S. Yee, Theoharis C. Theoharides, Ana M. Soto, Emmanuel N. Pothos, Michael H. Malamy, David J. Greenblatt, and Brent H. Cochran (collectively, "the Professors") are tenured members of the Basic Science Faculty at Tufts University School of Medicine, which is one of several schools comprising Defendant/Appellee The Trustees of Tufts College ("Tufts"). Tufts' award of tenure to each of the Professors came with two fundamental guarantees: academic freedom and economic security.

Despite there being no requirement or expectation that the Professors would cover a percentage of their salary through external grant funding when they obtained tenure, Tufts unilaterally enacted a compensation plan and research space guidelines in 2017 which required tenured basic science faculty to cover 50 percent of their salary through external grant funding. Faculty who did not comply with this requirement – even those who had been tenured for decades – were subject to consequences. Tufts has reduced the Professors' lab space, slashed their base compensation, and cut their full-time status ("FTE") in an obvious effort to force the Professors to focus on research issues attractive to

funding sources, like the NIH, that carry 65 percent indirect cost reimbursement. The pillars of academic freedom and economic security that the Professors relied on as tenured faculty have been eroded – in violation of Tufts' contractual obligations. Tufts has forced the Professors to choose between pursuing research that will be attractive to the NIH and other funding sources with high indirect cost reimbursement or pursuing the research less profitable to Tufts and risk of crippling economic consequences.

Direct appellate review is appropriate on two bases. First, the questions presented by the appeal are "questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court." Mass. R. App. P. 11(a). Second, this appeal presents "questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Mass. R. App. P. 11(a).

STATEMENT OF PRIOR PROCEEDINGS

The Professors initially sought to resolve their issues with Tufts through Tufts' internal grievance proceedings. After these efforts were unsuccessful, the Professors filed their Complaint on December 5, 2019. They thereafter filed an Amended Complaint on December

20, 2019. The Professors brought claims for breach of contract (Count I), breach of the implied covenant of good faith and fair dealing (Count II), declaratory judgment (Count III), equitable estoppel (Count IV), and violations of the Massachusetts Wage Act, M.G.L. c. 149 § 148 (Count V).

Following the close of discovery, the parties filed cross-motions for summary judgment. The Court held a hearing on the Rule 56 motions on October 6, 2022 and issued a Memorandum of Decision and Order denying the Professors' motion for summary judgment and allowing Tufts' motion for summary judgment on February 17, 2023. Judgment thereafter entered for Tufts on February 21, 2023.

In brief, the Superior Court found that the Compensation Plans and Research Space Guidelines did not breach the Professors' tenure contracts because they did not impair academic freedom or economic security. As to academic freedom, the Superior Court determined that "even if [the policies] do effectively require tenured faculty members to obtain NIH grants in order to maintain a certain salary and amount of laboratory space, the [policies] do not restrict the content of their

research," thus there is no violation of academic freedom. Addendum ("Add."), p. 53.

As to economic security, the Superior Court found that "permanent or continuous *employment*" in and of itself was sufficient to provide the Professors with economic security. Add., pp. 53-54. That the Compensation Plans permit a reduction of a tenured faculty members FTE to .50 – part-time status – does not, according to the Superior Court's assessment, violate economic security "because the status of tenure and its related 'permanent or continuous' employment is not affected." Add., p. 55.

Based on its erroneous determination that the Compensation Plans and Research Space Guidelines do not violate academic freedom or economic security, the Superior Court disposed of the balance of the Professors' claims in favor of Tufts.

The Professors filed their notice of appeal on February 17, 2023, followed by an amended notice of appeal on February 24, 2023.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

The Professors are faculty members who have been tenured for years in the basic science department at Tufts University School of Medicine (TUSM). Throughout

their distinguished careers, they have received numerous prestigious accolades both within Tufts and outside of Tufts, and have conducted extensive, well-respective research. Professor Wortis, tenured at Tufts for nearly fifty years, is a recipient of the TUSM Distinguished Professor Award and has published over 80 peer-reviewed articles on vaccines, antibodies, and the effects of various cures on infectious diseases. Professor Yee, tenured for twenty-four years, is a past recipient of Tufts' prestigious Zucker Research Prize and has made significant contributions in the field of epilepsy. Professor Theoharides, tenured at Tufts for over 30 years, is the most cited author in pharmacology and immunology and an inductee into the Rare Diseases Hall of Fame. Professor Soto, tenured at Tufts for nearly 30 years, received the City of Paris's highest honor – the Grand Vermeil Medal – in July 2019 for her pioneering role in the discovery of endocrine disruptors and their deleterious health effects, and was awarded the Blaise Pascal Chair 2013 for her contributions to theoretical biology. Professor Pothos, tenured for almost 15 years, was instrumental in implementing Tufts' Master of Science program in Pharmacology and Drug Development, is a recipient of Tufts' Innovation in Education Award, and

has published over 60 peer-reviewed articles on the neural basis of addictive, metabolic, and neurodegenerative disorders. Professor Malamy, tenured at Tufts for over fifty years, is a recipient of the TUSM Distinguished Professor Award and has been inducted into the American Academy of Microbiology. Professor Greenblatt, tenured at Tufts for thirty years, is a renowned expert in the fields of molecular and clinical pharmacology and a recipient of the Oscar B. Hunter Career Award in Therapeutics from the American Society for Clinical Pharmacology and Therapeutics. Professor Cochran, tenured at Tufts for almost thirty years, has made a profound impact on the study of cancer stem cells and directs TUSM's Cancer Genetics course.

Implementation of the Compensation Plans

Years after Tufts awarded the Professors tenure, Tufts unilaterally enacted a series of policies which condition a tenured faculty member's compensation and lab space on arbitrary financial goal, unilaterally established by Tufts. Under the 2017 Compensation and the revised 2019 Compensation Plan ("the Comp Plans"), and the TUSM Research Space Guidelines ("Research Space Guidelines") (collectively "the Policies"), tenured professors are required to obtain 50 percent of their

salary through external grant funding from sources that also award substantial indirect cost recovery ("ICR"). ICR belongs to the institution – in this case, Tufts – and the money is generally used to fund overhead, at the institution's discretion. To be considered compliant with the Comp Plans, the Professors must obtain grants sufficient to meet salary percentage threshold that also provide Tufts with an ICR of at least 65 percent. In other words, compliance requires not only supporting 50 percent or more of your salary, but also paying Tufts an ICR at a minimum rate of 65 percent.

Professors who do not obtain 50 percent of their salary through grant funding, or who do not obtain sufficient ICR, are out of compliance with the Comp Plans, and are subject to mandatory salary cuts, reductions to lab space, and the halving of their tenure appointments. Add., pp. 76-89. Under the newest iteration of the Policies, a tenured faculty member who is unable to meet these standards may risk losing his or her tenure status entirely. Add., pp. 82-89.

When Tufts granted each Professor tenure, maintaining one's position was not conditioned upon the level of funding he or she was able to secure. Indeed, funding requirements were not part of their tenure

contracts at all. Notably, non-tenured faculty who are on a separate "research track" at Tufts *are* contractually obligated to support their salaries with extramural funding through explicit language in their contracts with Tufts. This language is nonexistent in the Professors' contracts.

Nonetheless, all of the Professors received reductions to their salaries under the Comp Plans, totaling roughly $1.6 million in lost wages, for noncompliance. See Add., pp. 70-73, ¶¶20–27. Most of the Professors also received reductions to their full-time status (FTE), which has reduced their compensation proportionally. Through the application of the Comp Plans and Research Space Guidelines, the lab space of Professor Theoharides was reduced, and the labs of Drs. Greenblatt and Pothos have been closed.

STATEMENT OF THE ISSUES OF LAW RAISED BY THE APPEAL

The Professors seek appellate review on the following issue of law: whether the Superior Court erred in allowing Tufts' motion for summary judgment on Counts I through V of the Amended Complaint.

The Professors properly preserved this issue in the Superior Court by briefing this issue in their motion for summary judgment and reasserting this argument

during the hearing on the parties' cross-motions for summary judgment.

BRIEF ARGUMENT ON ISSUES RAISED ON APPEAL

The Superior Court erred as a matter of law in its determination that the Policies do not deprive the Professors of academic freedom and economic security, which Tufts contractually guaranteed by awarding tenure. Conditioning the Professors' compensation and FTE on their success at securing research funding from specific funding sources infringes upon the Professors' contractual right to academic freedom and economic security.

More specifically, requiring the Professors to obtain funding sufficient to cover 50 percent of their salary from institutions that will provide a minimum ICR to Tufts puts the Professors in an untenable position. They can choose research paths that are likely to lead to funding from these sources in an effort to stave off salary and FTE cuts. Or, they can choose research paths based on their intellectual curiosities and decades of experience – and suffer corresponding cuts to their salary and FTE. Neither scenario provides the Professors with the academic freedom and economic security to which they are contractually entitled.

I. The Policies Breach Tufts' Contracts with the Professors

Tenure serves a paramount purpose. Justice Frankfurter put it this way:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Sweezy v. State of New Hampshire, 354 U.S. 234, 250 (1957). Through the Policy on Academic Freedom, Tenure and Retirement of the Board of Trustees of Tufts University ("AFTR Policy"), Tufts promised the Professors academic freedom and economic security. By applying the Policies to the Professors, Tufts has broken its promise and breached its contracts with them.

A. The AFTR Policy Obligates Tufts To Provide the Professors with Academic Freedom and Economic Security

It is undisputed that the AFTR Policy is part of the Professors' contracts with Tufts. The AFTR Policy states

> Tenure is a means to certain ends, especially: (1) Freedom of teaching and research of extramural activities, and (2) A sufficient degree of economic security to make the profession attractive to men and women of ability.

Add., p. 90. This language is taken directly from the 1940 Statement on Academic Freedom ("1940 Statement"), a policy statement promulgated by the American Association of University Professors ("AAUP") and adopted by many institutions of higher learning to safeguard tenured professors' right to intellectual independence. While the Superior Court acknowledged that the AFTR Policy "explains the concepts of academic freedom and tenure," the Court fundamentally misapplied these terms of the AFTR Policy. Add., p. 49.

B. The Policies Infringe the Professors' Academic Freedom

The AFTR policy explains that academic freedom is

> essential to the free search for truth and its free exposition and applies to both teaching in research. Freedom in research is fundamental to the advancement of truth.

Add., p. 90. The Superior Court erroneously concluded that the Policies

> do not restrict the content of [the Professors'] research, thus that requirement does not impose 'institutional censorship or discipline' on their research in violation of their right to academic freedom.

Add., p. 53. This analysis is incorrect.

The Comp Plans require the Professors to obtain funding from limited sources – i.e. the NIH or other funding sources that provide ICR at Tufts' negotiated rate of 65 percent. Add., pp. 263, 274 n. 20. By Tufts' own admission, Professors who obtain funding from sources with lower ICR do not comply with the Comp Plans. Add., pp. 258-259. Research grants from private donors, foundations, state governments, and other non-federal sources of research funds that do not carry 65 percent ICR are now irrelevant to job security, as is the novel and often nascent research they tend to fund. Both Professors Greenblatt and Soto have funding sufficient to (or greater than) the requisite percentages of their salaries; because their funding does not come with the 65 percent ICR, Professors Greenblatt and Soto have been financially penalized under the Comp Plans. Add., pp. 140-256.

Practically speaking, the only way Professors can keep their jobs is to focus almost exclusively on federal grant applications. Federal funding for biomedical

research is extraordinarily competitive; less than 22 percent of grant applications are federally funded.[1] Success depends on the marketability (to the federal government) of an idea and volume – having enough federal applications in the pipeline so that at least one of them will eventually be funded. The impact is predictable, indeed engineered. Professors are pressured to limit their research foci to those the federal sources will fund. This conflicts directly with the promises of economic security and academic freedom.

C. The Policies Infringe the Professors' Economic Security

The Superior Court concluded that the promise of economic security was satisfied by "the mere fact of 'permanent or continuous tenure – i.e., permanent or continuous *employment*." Add., pp. 53-54. Because the Comp Plans do not permit a reduction of full-time status to below .50 FTE, the Superior Court reasoned, FTE reductions "[do] not violate the 'promise' of economic stability because the status of tenure and its related

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[1] NIH, Extramural Research Overview for Fiscal Year 2020 (May 19, 2021), https://www.niaid.nih.gov/grants-contracts/fy-2020-award-data#:~:text=Extramural%20researchers%20submitted%2036%2C250%20applications,a%2021.4%20percent%20success%20rate.

‘permanent or continuous’ employment is not affected.” Add., p. 55. This analysis is flawed for several reasons.

First, the requirement of economic security is not satisfied by the “mere fact” of permanent employment. The AFTR Policy describes the concept as “[a] sufficient degree of economic security to make the profession attractive to men and women of ability.” Add., p. 90. In practice, economic security is the ability to fund one’s life sufficiently to facilitate opted rather than coopted research and teaching interests. It is analogous to the economic security that protects the independence of Article III judges. Knowing that one’s salary could be abruptly slashed based on one’s choice of research pursuits or teaching interests does not make the profession “attractive to men and women of ability.” Unvarnished, “economic security” when read in conjunction with the contractual right to “academic freedom” should be understood to mean that one’s financial security cannot be used as a cudgel to enforce compliance with a policy that violates the Professors’ academic freedom.

Second, this analysis is predicated on the Superior Court’s erroneous assessment that the AFTR Policy does not guarantee 1.0 FTE; it does. Add., pp. 83, 91, 261.

Once a professor is awarded tenure, he or she cannot simply elect to work part-time, and indeed Tufts understands that tenure means "full-time employment." Add., p. 261. The 2019 Comp Plan specifically codifies this right, stating "faculty members are expected to engage in work sufficient to qualify for a full-time appointment." Add., p. 83. Moreover, the Professors' appointment and promotion letters memorialize this contractual right and obligation. Professors Soto's and Pothos' appointment and promotion letters, for example, explicitly state that their positions are full-time. Add., p. 106 ("[Y]our ***full-time faculty appointment*** has been changed" to one with tenure) (emphasis added), Add., p. 114 ("[A]s ***a full time faculty member***, you are eligible to continue to participate in the benefit plans offered by the University") (emphasis added). In the case of Professors Theoharides and Greenblatt, who had secondary appointments at Tufts, the appointment letters for the secondary appointments clearly stated that those appointments were "part-time." Add., pp. 100, 130. No such limitations exist in the Professors' appointment letters for their primary (tenured) positions.

Third, the Superior Court ignores the language in the 2019 Compensation Plan which permits a tenured

faculty member's employment status to be reviewed under Tufts' tenure revocation policy, solely for a failure to meet the arbitrary financial goals of the Comp Plans. Add., p. 86. Although the AFTR Policy states that tenured faculty members will only "be terminated for adequate cause, or under extraordinary circumstances because of *bona fide* financial exigencies or program discontinuance or resignation or retirement" Add., p. 91, Tufts has invented a new ground – failure to be financially productive.

II. The Superior Court Erred in Granting Tufts' Motion for Summary Judgment on Counts II, III, and IV of the Amended Complaint

Based solely on its erroneous conclusion that Tufts did not violate any guarantee to the Professors of academic freedom and economic security, the Superior Court entered judgment in Tufts' favor on Counts II (breach of the implied covenant of good faith and fair dealing) and IV (equitable estoppel) of the Amended Complaint and entered the following declaratory judgment in resolution of Count III of the Amended Complaint:

> [T]he Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security.

Add., pp. 59-60. As discussed in section I, *supra*, Tufts contractually assured the Professors academic freedom

and economic security. Through the application of the Policies to the Professors, Tufts has breached its contracts with the Professors. Therefore, the Superior Court's rulings on Counts II, III, and IV of the Amended Complaint were erroneous.

III. The Superior Court Erred in Finding Tufts did not violate the Massachusetts Wage Act

The Superior Court provided two bases for its erroneous determination that Tufts' reduction of the Professors' compensation through salary and FTE cuts did not violate the Wage Act. First, the Superior Court found there were no "earned" wages, because the Professors' salary reductions under the Comp Plans were prospective, not retrospective. Add., p. 60. Second, the Superior Court found Tufts did not promise the Professors full-time employment; thus, reducing the Professors to part-time status did not violate the Wage Act. Id. Neither of these analyses is correct.

First, the prospective nature of the wage reduction is irrelevant in the present context. Tufts sets the institutional base salary (IBS) for the Professors based on full-time work. As discussed in section I(C) *supra*, the promise of full-time employment is included in the Professors' tenure contracts. Moreover, it was not until

the 2019 Plan that Tufts clarified Professors with a reduced FTE had reduced work obligations. In other words, at least between 2017 and 2019, the Professors were expected to work full-time for a percentage of their full-time compensation. They earned their full IBS when they performed their full-time work. Once an employee's wages have been set and earned, they must be paid. Elec. Data Sys. Corp v. AG, 454 Mass. 63, 69–70 (2009).

Further, the Policies are special contracts in violation of the Wage Act. Special contracts are those pursuant to which the employee "receive[s] lower pay under [the employer's] policy, directly as a consequence of the policy's provisions." Camara v. AG, 458 Mass. 756, 761 (2011). Because the Policies permit Tufts to cut a professor's appointment, and in turn his wages, they are special contracts. The Policies ostensibly permit Tufts to withhold some of a Professor's IBS by cutting the tenure appointment - something Tufts never contemplated when tenure was awarded. Moreover, because the Policies violate the Professors' tenure contracts, then paying the Professors less than that to which they were entitled before the Policies were implemented gives rise to a wage claim not prospectively, as the Superior Court found, but retrospectively – Tufts has denied the

Professors compensation they would have earned but for the contractual breach.

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate for two reasons. First, this appeal raises "questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court." Mass. R. App. P. 11(a). Second, this appeal presents "questions of such public interest that justice requires a final determination by the full Supreme Judicial Court." Id.

As to the novelty of the questions presented, this case presents an issue of first impression in the Commonwealth. While the concept of tenure and its guarantees of academic freedom and economic security are not novel, no Court in the Commonwealth has, to the Professors' knowledge, undertaken the analysis of whether a university breaches a contract with its tenured faculty – to whom it promised academic freedom and economic security by virtue of the award of tenure – when it condition's a tenured professor's job status and salary on achieving the university's after-added financial goals. Neither the parties nor the Superior

Court have identified a case in the Commonwealth that addresses this issue.

As to the public interest, there are over 100 higher education institutions in the Commonwealth of Massachusetts. The bedrock principles of tenure - academic freedom and economic security - are universal across these institutions. Moreover, the AAUP, the organization which promulgated the 1940 Statement on Academic Freedom from which Tufts' derives its own definition of tenure, has reviewed *and renounced* the policies at issue in this case as violative of academic freedom and economic security, writing

> Loss of salary or full-time appointment status certainly are a loss of economic security … we view the [2017] compensation plan as severely deficient relative to widely-observed principles of academic freedom, tenure, and due process.

Add. p. 351.

Moreover, the Superior Court's ruling – if permitted to stand – gives colleges and universities in the Commonwealth *carte blanche* to unilaterally modify the terms of a contract with their professors, years (or even decades) after the parties enter into the contract. Such precedent would substantially alter contract law in Massachusetts.

CONCLUSION

For the foregoing reasons, the Professors respectfully request that the Court grant their application for direct appellate review.

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By their attorneys,

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CERTIFICATE OF COMPLIANCE

I, Jennifer A. Henricks, certify pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16(b), 16(e), 16(f), 16(h), 18, and 20. The brief complies with Rule 20 because it is written in Size 12 Courier font in Microsoft Word and contains 10 or less pages of argument.

/s/ Jennifer A. Henricks

CERTIFICATE OF SERVICE

I, Jennifer A. Henricks, hereby certify this 9th day of June, 2023, that I have served a copy of the Petition for Direct Appellate Review of Plaintiffs-Appellants Henry H. Wortis, Amy S. Yee, Theoharis C. Theoharides, Ana M. Soto, Emmanuel N. Pothos, Michael H. Malamy, David J. Greenblatt and Brent H. Cochran by causing it to be delivered by eFileMA.com to counsel for The Trustees of Tufts College.

/s/ Jennifer A. Henricks

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Events

Date	Session	Location	Type	Event Judge	Result
04/23/2020 02:00 PM	Civil C Rm 740	Courtroom 610	Motion Hearing		Canceled
06/22/2020 02:00 PM	Civil C Rm 740	Courtroom 610	Motion Hearing	Sarrouf, Camille	Held as Scheduled
11/09/2021 02:00 PM	Civil C Rm 740	Courtroom 740	Motion Hearing to Compel	Hogan, Hon. Maureen	Held via Video/Phone
09/19/2022 02:00 PM	Civil C Rm 740		Rule 56 Hearing	Ellis, Hon. Sarah Weyland	Rescheduled
10/06/2022 02:00 PM	Civil C Rm 740	Courtroom 740	Rule 56 Hearing	Hogan, Hon. Maureen	Decision rendered

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	12/05/2019	03/04/2020	90	
Answer	12/05/2019	08/19/2020	258	
Rule 12/19/20 Served By	12/05/2019	04/03/2020	120	02/21/2023
Rule 12/19/20 Filed By	12/05/2019	05/04/2020	151	02/21/2023
Rule 12/19/20 Heard By	12/05/2019	06/02/2020	180	02/21/2023
Rule 15 Served By	12/05/2019	04/03/2020	120	02/21/2023
Rule 15 Filed By	12/05/2019	05/04/2020	151	02/21/2023
Rule 15 Heard By	12/05/2019	06/02/2020	180	02/21/2023
Discovery	12/05/2019	12/27/2021	753	02/21/2023
Rule 56 Served By	12/05/2019	05/16/2022	893	02/21/2023
Rule 56 Filed By	12/05/2019	07/11/2022	949	02/21/2023
Final Pre-Trial Conference	12/05/2019	08/29/2022	998	02/21/2023
Judgment	12/05/2019	12/06/2022	1097	02/21/2023
Under Advisement	06/22/2020	07/22/2020	30	07/09/2020
Under Advisement	10/06/2022	11/05/2022	30	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Henry H Wortis		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Amy S Yee		
12/05/2019	Case assigned to: DCM Track F - Fast Track was added on 12/05/2019		Image
12/05/2019	Original civil complaint filed.	1	Image
12/05/2019	Civil action cover sheet filed.	2	Image
12/05/2019	Demand for jury trial entered.		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Theoharis C Theoharides		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Theoharis C Theoharides		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Henry H Wortis		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Amy S Yee		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Ana M Soto		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Ana M Soto		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Emmanuel N Pothos		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Emmanuel N Pothos		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Michael H Malamy		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Michael H Malamy		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff David J Greenblatt		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff David J Greenblatt		
12/05/2019	Attorney appearance On this date Kevin Thomas Peters, Esq. added for Plaintiff Brent H Cochran		
12/05/2019	Attorney appearance On this date Jennifer Henricks, Esq. added for Plaintiff Brent H Cochran		
12/05/2019	Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's MOTION for appointment of Special Process Server. to appoint Boston Process Service LLC. Dated: 12/05/2019, Motion ALLOWED. Copy given in hand on 12/05/2019	3	Image
12/16/2019	Service Returned for Defendant The Trustee of Tufts College: Service made in hand; on 12/6/19	5	Image
12/20/2019	Amended: amended complaint filed by Henry H Wortis, Amy S Yee, Theoharis C Theoharides and Jury Demand Applies To: Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	4	Image
12/26/2019	Defendant's Notice of intent to file motion to dismiss Applies To: The Trustee of Tufts College (Defendant)	6	Image
12/26/2019	Attorney appearance On this date Daryl J Lapp, Esq. added as Private Counsel for Defendant The Trustee of Tufts College		Image
12/26/2019	Attorney appearance On this date Elizabeth H Kelly, Esq. added as Private Counsel for Defendant The Trustee of Tufts College		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/21/2020	Defendant The Trustee of Tufts College's Motion to dismiss the amended complaint	7	Image
01/21/2020	The Trustee of Tufts College's Memorandum in support of defendant's motion to dismiss the amended complaint	7.1	Image
01/21/2020	Opposition to motion to dismiss complaint pursuant to rules 8 and 10. (Ref. P#7) filed by Applies To: Wortis, Henry H (Plaintiff); Yee, Amy S (Plaintiff); Theoharides, Theoharis C (Plaintiff); Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	7.2	Image
01/21/2020	Defendant The Trustee of Tufts College's Motion for transfer to business litigation session	8	Image
01/21/2020	The Trustee of Tufts College's Memorandum in support of defendant's motion for transfer to business litigation session	8.1	Image
01/21/2020	Opposition to motion for transfer to business litigation session (Ref. P#8) filed by Applies To: Wortis, Henry H (Plaintiff); Yee, Amy S (Plaintiff); Theoharides, Theoharis C (Plaintiff); Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	8.2	Image
01/21/2020	Defendant The Trustee of Tufts College's Motion to change track designation	9	Image
01/21/2020	The Trustee of Tufts College's Memorandum in support of defendant's motion to change track designation	9.1	Image
01/21/2020	Opposition to defendant's motion to change track designation. (Ref. P#9) filed by Applies To: Wortis, Henry H (Plaintiff); Yee, Amy S (Plaintiff); Theoharides, Theoharis C (Plaintiff); Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	9.2	Image
02/07/2020	The following form was generated: Notice to Appear Sent On: 02/07/2020 13:34:59		
02/07/2020	The following form was generated: Notice to Appear Sent On: 02/07/2020 13:36:54		
04/23/2020	Event Result:: Motion Hearing scheduled on: 04/23/2020 02:00 PM Has been: Canceled For the following reason: By Court due to Covid-19 Camille Sarrouf, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
05/01/2020	The following form was generated: Notice to Appear Sent On: 05/01/2020 09:34:33		
06/22/2020	Matter taken under advisement: Motion Hearing scheduled on: 06/22/2020 02:00 PM Has been: Held - Under advisement Camille Sarrouf, Presiding Appeared: Plaintiff Kevin Thomas Peters, Esq., Jennifer Henricks, Esq., Defendant Daryl J Lapp, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
07/09/2020	ORDER: . ON THE DEFENDANT'S MOTION: ORDER on defendant, the Trustees of Tufts College ("Tufts") motions to dismiss the amended complaint (Paper#7), motion for transfer to business litigation session (Paper #8), and motion to change track designation (Paper #9). The motions were addressed through pleadings of the parties and a remote hearing held on June 22, 2020. (Which See 2 papers) Dated: July 3, 2020 (See Scan) Judge: Sarrouf, Camille	10	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/17/2020	Defendant The Trustee of Tufts College's Assented to Motion to Extend Time to Answer	11	Image
07/27/2020	Endorsement on Motion to extend time (#11.0): ALLOWED ALLOWED (Doolin , J .) 7/27/20 Judge: Doolin, Hon. Michael		Image
07/29/2020	Plaintiff Henry H Wortis's Joint Motion for Entry of Scheduling Order	12	Image
08/10/2020	Plaintiff, Defendant Henry H Wortis, Theoharis C Theoharides, Amy S Yee, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Joint Motion for Protective Order	13	Image
08/12/2020	Endorsement on Motion for Entry of Scheduling Order (#12.0): ALLOWED Dated: August 10, 2020 and notices mailed 8/12/20 Judge: Doolin, Hon. Michael		Image
08/18/2020	Received from Defendant The Trustee of Tufts College: Answer with claim for trial by jury;	14	Image
02/16/2021	Plaintiffs, Defendant Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Motion to Extend Scheduling Order	15	Image
03/29/2021	Endorsement on Motion to extend the scheduling order. (#15.0): ALLOWED Judge: Doolin, Hon. Michael		Image
05/26/2021	Plaintiffs, Defendant Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Joint Motion to extend scheduling order.	16	Image
06/04/2021	Endorsement on Motion to Extend Scheduling Order (#16.0): ALLOWED After review and by agreement, Motion Allowed. Dated: June 2, 2021 and notices mailed 6/4/21 Judge: Hogan, Hon. Maureen		Image
06/30/2021	Plaintiff Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Motion for Protective Order	17	Image
06/30/2021	Affidavit of compliance with Superior Court Rule 9A Applies To: Heath, Esq., Mckenna K (Attorney) on behalf of Wortis, Henry H (Plaintiff)	17.1	Image
06/30/2021	Opposition to plaintiffs' motion for protective order filed by The Trustee of Tufts College	17.2	Image
06/30/2021	Plaintiff Henry H Wortis's Reply in further support of motion for protective order	17.3	Image
07/14/2021	Endorsement on Motion for Protective Order (#17.0): DENIED After review and consideration. Dated: July 9, 2021 Judge: Doolin, Hon. Michael		Image
08/12/2021	Plaintiffs(s) Henry H Wortis, Amy S Yee, Theoharis C Theoharides's Motion for a Commission and Letter Rogatory Applies To: Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	18	Image
08/12/2021	Affidavit of compliance with Superior Court Rule 9A Applies To: Heath, Esq., Mckenna K (Attorney) on behalf of Cochran, Brent H, Wortis, Henry H (Plaintiff)	18.1	Image
08/17/2021	Endorsement on Motion for a commission and letter rogatory (#18.0): ALLOWED Judge: Doolin, Hon. Michael		
08/17/2021	ORDER: OF ISSUANCE OF COMMISSION (Copy): Re: American Association of University Professors, 1133 Nineteenth Street, NW, Suite 200, Washington, D.C. 20036. Original mailed to Jennifer Henricks, Esq. on 8/17/21. Judge: Doolin, Hon. Michael	19	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/17/2021	Letters Rogatory (Copy) Re: American Association of University Professors, 1133 Nineteenth Street, NW, Suite 200, Washington, D.C. 20036. Original mailed to Jennifer Henricks, Esq. on 8/17/21. Judge: Doolin, Hon. Michael	20	
09/27/2021	Plaintiffs, Defendant Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Joint Motion to Extend scheduling order	21	Image
09/30/2021	Endorsement on Motion of parties to extend scheduling order (#21.0): ALLOWED (*dated 09/28/2021) Judge: Doolin, Hon. Michael		Image
10/06/2021	Plaintiffs Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Motion to Compel Production of Documents	22	Image
10/06/2021	Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Memorandum in support of Motion to Compel Production of Documents	22.1	Image
10/06/2021	Opposition to Plaintiffs' Motion to Compel filed by The Trustee of Tufts College	22.2	Image
10/06/2021	Reply/Sur-reply Reply In Further Support of Motion to Compel Production of Documents Applies To: Wortis, Henry H (Plaintiff); Yee, Amy S (Plaintiff); Theoharides, Theoharis C (Plaintiff); Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	22.3	Image
10/29/2021	The following form was generated: Notice to Appear Sent On: 10/29/2021 10:55:59 Notice Sent To: Jennifer Henricks, Esq. Gesmer Updegrove LLP 40 Broad St, Boston, MA 02109 Notice Sent To: Mckenna K Heath, Esq. Gesmer Updegrove LLP 40 Broad St, Boston, MA 02109 Notice Sent To: Daryl J Lapp, Esq. Locke Lord LLP 111 Huntington Ave Prudential Center, Boston, MA 02199-7613 Notice Sent To: Elizabeth H Kelly, Esq. Locke Lord LLP 111 Huntington Ave, Boston, MA 02199		
11/09/2021	Event Result:: Motion Hearing to Compel scheduled on: 11/09/2021 02:00 PM Has been: Held via Video/Teleconference Hon. Maureen Hogan, Presiding Appeared: Plaintiff Jennifer Henricks, Esq., Mckenna K Heath, Esq., Private Counsel Defendant Elizabeth H Kelly, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
12/22/2021	Plaintiffs(s) Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran Assented to motion filed to Take the Deposition of a Third Party After the Close of Discovery	23	Image
12/29/2021	Endorsement on Motion to take the Deposition (#23.0): ALLOWED After review, motion ALLOWED. Dated: December 27, 2021 Judge: Hogan, Hon. Maureen		Image
02/07/2022	Plaintiffs, Defendant Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Joint Motion to Extend Summary Judgment Deadlines	24	Image
02/10/2022	Endorsement on Motion of parties to extend summary judgment deadlines (#24.0): ALLOWED Judge: Hogan, Hon. Maureen		Image
04/01/2022	Plaintiffs, Defendant Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, The Trustee of Tufts College's Joint Motion to Extend Summary Judgment Deadlines and Enlarge Page Limits	25	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/13/2022	Endorsement on Motion of parties to extend summary judgment deadlines and enlarge page limits (#25.0): ALLOWED Deadlines on page 2 adopted (*dated 04/12/2022) Judge: Barry-Smith, Hon. Christopher K		Image
07/11/2022	Plaintiffs Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Motion for summary judgment, MRCP 56	26	Image
07/11/2022	Defendant The Trustee of Tufts College's Motion for summary judgment, MRCP 56	28	Image
07/11/2022	Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Memorandum in support of Motion for Summary Judgment	26.1	Image
07/11/2022	Opposition to Plaintiffs' Motion for Summary Judgment filed by The Trustee of Tufts College	26.2	Image
07/11/2022	Reply/Sur-reply Plaintiffs' Reply In Further Support of motion for summary judgment Applies To: Wortis, Henry H (Plaintiff); Yee, Amy S (Plaintiff); Theoharides, Theoharis C (Plaintiff); Soto, Ana M (Plaintiff); Pothos, Emmanuel N (Plaintiff); Malamy, Michael H (Plaintiff); Greenblatt, David J (Plaintiff); Cochran, Brent H (Plaintiff)	26.3	Image
07/11/2022	Plaintiffs Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Statement of Undisputed Material Facts and Defendant's Responses	26.4	Image
07/11/2022	Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Appendix of Exhibits	26.5	Image
07/11/2022	Defendant(s) The Trustee of Tufts College motion filed to strike	27	Image
07/11/2022	The Trustee of Tufts College's Memorandum in support of Motion to Strike	27.1	Image
07/11/2022	Opposition to Defendant's Motion to Strike filed by Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran	27.2	Image
07/11/2022	Affidavit of compliance with Superior Court Rule 9A Applies To: Heath, Esq., Mckenna K (Attorney) on behalf of Cochran, Brent H, Greenblatt, David J, Malamy, Michael H, Pothos, Emmanuel N, Soto, Ana M, Theoharides, Theoharis C, Wortis, Henry H, Yee, Amy S (Plaintiff)	27.3	Image
07/11/2022	The Trustee of Tufts College's Memorandum in support of Motion for summary judgment, MRCP 56	28.1	Image
07/11/2022	Opposition to Defendant The Trustees of Tufts College Motion for summary judgment, MRCP 56 filed by Applies To: Henricks, Esq., Jennifer (Attorney) on behalf of Wortis, Henry H (Plaintiff)	28.2	Image
07/11/2022	The Trustee of Tufts College's Reply Memorandum in support of Motion for summary judgment, MRCP 56 Applies To: Henricks, Esq., Jennifer (Attorney) on behalf of Wortis, Henry H (Plaintiff)	28.3	Image
07/11/2022	Plaintiff Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Response to defendant's statement of material facts in support of defendant's motion for summary judgment, MRCP 56 Applies To: Henricks, Esq., Jennifer (Attorney) on behalf of Wortis, Henry H (Plaintiff)	28.4	Image
07/11/2022	Joint appendix for Summary Judgment motion package filed. Applies To: Henricks, Esq., Jennifer (Attorney) on behalf of Wortis, Henry H (Plaintiff)	28.5	Image
07/14/2022	The following form was generated: Notice to Appear Sent On: 07/14/2022 09:02:59		
07/20/2022	Event Result:: Rule 56 Hearing scheduled on: 09/19/2022 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. Sarah Weyland Ellis, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/06/2022	Matter taken under advisement: Rule 56 Hearing scheduled on: 10/06/2022 02:00 PM Has been: Held - Under advisement Comments: Event conducted by ZOOM conference. Hon. Maureen Hogan, Presiding Appeared: Plaintiff Kevin Thomas Peters, Esq., Jennifer Henricks, Esq., Defendant Daryl J Lapp, Esq., Private Counsel Elizabeth H Kelly, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
12/29/2022	Attorney withdrawal of appearance electronically filed. Applies To: Heath, Esq., Mckenna K (Attorney) on behalf of Cochran, Brent H, Greenblatt, David J, Malamy, Michael H, Pothos, Emmanuel N, Soto, Ana M, Theoharides, Theoharis C, Wortis, Henry H, Yee, Amy S (Plaintiff)		Image
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Henry H Wortis		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff Amy S Yee		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff Theoharis C Theoharides		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff Ana M Soto		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff Emmanuel N Pothos		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff Michael H Malamy		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn for Plaintiff David J Greenblatt		
12/29/2022	Attorney appearance On this date Mckenna K Heath, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Brent H Cochran		
02/14/2023	Plaintiffs Henry H Wortis, Ana M Soto, Theoharis C Theoharides, Michael H Malamy, David J Greenblatt, Brent H Cochran's Motion for expedited trial (MEMORANDUM INCORPORATED).	29	Image
02/14/2023	Opposition to plaintiff's motion for expedited trial. filed by The Trustee of Tufts College	29.1	Image
02/14/2023	Affidavit of compliance with Superior Court Rule 9A Applies To: Peters, Esq., Kevin Thomas (Attorney) on behalf of Cochran, Brent H (Plaintiff)	29.2	Image
02/17/2023	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S AND DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT: ORDER: For the foregoing reasons, the plaintiffs' motion for summary judgment is DENIED, and Tufts's cross motion for summary judgment is ALLOWED. The court DECLARES that the Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security. Dated: February 6, 2023 Judge: Hogan, Hon. Maureen	30	Image
02/17/2023	NOTICE OF APPEAL: Appeal the order dated February 17, 2023 allowing the Trustees of Tufts College Motion for Summary Judgment. Applies To: Peters, Esq., Kevin Thomas (Attorney) on behalf of Cochran, Brent H (Plaintiff)	31	Image
02/21/2023	SUMMARY JUDGMENT for Defendant(s), The Trustee of Tufts College against Plaintiff(s), Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran, without statutory costs.It is ORDERED and ADJUDGED: That the plaintiffs' complaint be and hereby is dismissed. Judge: Hogan, Hon. Maureen Applies To: The Trustee of Tufts College (Defendant)	32	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/24/2023	Amended NOTICE OF APPEAL: Plaintiffs Henry H. Wortis, Amy S. Yee, Theoharis C. Theoharides, Ana M. Soto, Emmanuel N. Pothos, Michael H. Malamy, David J. Greenblatt, and Brent H. Cochran ("Plaintiff's") appeal the order dated February 17, 2023, allowing The Trustees of Tufts College motion for summary judgment. Applies To: Peters, Esq., Kevin Thomas (Attorney) on behalf of Wortis, Henry H (Plaintiff)	33	Image
03/02/2023	Plaintiffs Henry H Wortis, Henry H Wortis, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran's Notice of Transcript Order	34	Image
03/09/2023	CORRECTED DECLARATORY JUDGMENT G.L. c. 231A for Defendant(s) The Trustee of Tufts College against Plaintiffs(s) Henry H Wortis, Amy S Yee, Theoharis C Theoharides, Ana M Soto, Emmanuel N Pothos, Michael H Malamy, David J Greenblatt, Brent H Cochran. It is ORDERED, ADJUDGED, AND DECLARED: That the Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security.	35	Image
05/05/2023	CD of Transcript of 10/06/2022 02:00 PM Rule 56 Hearing received from Lisa Marie Phipps. 1	36	
05/05/2023	Notice of assembly of record sent to Counsel	37	Image
05/05/2023	Notice to Clerk of the Appeals Court of Assembly of Record	38	Image
05/05/2023	Appeal: Statement of the Case on Appeal (Cover Sheet).	39	Image
05/24/2023	Appeal entered in Appeals Court on 05/19/2023 docket number A.C. No.: 2023-P-0584	40	Image

Case Disposition

Disposition	Date	Case Judge
Judgment after Finding on Motion	02/21/2023	

30

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2019-03561

HENRY H. WORTIS & others[1]

vs.

THE TRUSTEES OF TUFTS COLLEGE

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' AND DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

The plaintiffs, tenured professors, commenced this action against their employer, defendant Trustees of Tufts College ("Tufts"), contending that Tufts implemented compensation plans that violated their employment contracts. The plaintiffs have alleged claims of breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory judgment, equitable estoppel, and violation of G.L. c. 149, § 148. This case is before the court on the plaintiffs' motion for summary judgment and Tufts's cross motion for summary judgment. For the following reasons, the plaintiffs' motion is **DENIED**, and Tufts's motion is **ALLOWED**.[2]

BACKGROUND

The court takes the following facts from the summary judgment record.[3] The court reserves additional facts for later discussion.

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[1] Amy S. Yee, Theoharis C. Theoharides, Ana M. Soto, Emmanuel N. Pothos, Michael H. Malamy, David J. Greenblatt, Brent H. Cochran

[2] Tufts also moved to strike certain of the plaintiffs' exhibits. For the reasons set forth in note 13, supra, the court has not relied on the exhibits Tufts identified, thus the court takes no action on that motion.

[3] Although the parties filed separate statements of material facts in support of their separate summary judgment motions, there is considerable overlap among the factual recitations and submitted evidence. Accordingly, this court considers the facts together. Citations are to the joint appendices in support of the Tufts's and the plaintiffs' motions; where the evidence appears in both appendices, the court cites only to one copy.

Tufts[4] is comprised of several schools, one of which is Tufts University School of Medicine ("TUSM"). TUSM consists of two categories of faculty, the Basic Science Faculty and the Clinical Faculty. The plaintiffs are tenured members of TUSM's Basic Science Faculty. The document titled Basic Science Faculty Appointment, Promotion, and Separation ("Basic Science Policy") provides that the role of Basic Science Faculty "is to participate in the teaching programs of the professional schools, to direct graduate-training programs, to serve as a source of expertise within the Tufts community, and to conduct original research." Tufts's Exhibit 20, at 1. The Basic Science Policy is part of the TUSM Faculty Handbook.

Tufts's Academic Freedom and Tenure Policy ("AFTR Policy")[5] is also part of the TUSM Faculty Handbook.

In July 2009, Tufts adopted the Faculty Salary Modification Plan ("2008 Salary Plan") for full-time tenured faculty. With the 2008 Salary Plan, Tufts required Basic Science Faculty members to generate enough external funding to cover a significant percentage of their base salary. The 2008 Salary Plan explained the plan as follows:

> "Operating metric: 3-year rolling average of salary fraction accounted for by funds acquired from grant sources. If the average is less than or equal to 15%, a review process is initiated. Factors evaluated in the course of the review may include: a. Dollar amount of non-TUSM support; b. Source(s) of non-TUSM support; c. Ongoing efforts to attract additional extramural funds (number and quality of applications, NIH priority scores, etc.); d. Publications: number, quality, journals, authorship position.
>
> "Based on the outcome of this review, a 75% salary base plan may be initiated. Faculty entering this category will be provided from hard funds a base salary corresponding to 75% of their current salary, plus whatever additional fraction is

[4] "The Trustees of Tufts College is the formal, corporate name of Tufts University." Tufts's Exhibit 53 (Affidavit of Thomas Malone), par. 2.

[5] When relevant, the court will set out in the Discussion section, below, the express terms of the documents referenced in the Background section.

> available from extramural funds (total salary not to exceed 100% of current salary).
>
> "Faculty in the 75% base category are eligible for annual merit increases based on the component of their salary for teaching and service, and for an immediate or timely restoration of annual salary to a higher level (not exceeding 100% relative to the 75% base) if new extramural funds are acquired. If 15% or greater extramural support is sustained for 3 or more years, the faculty member 'escapes' from the 75% base plan, and the 3-year clock is reset."

Tufts's Exhibit 22, at 010400. The 2008 Salary Plan further explained the plan by applying it in three scenarios.

If a faculty member was going to be "subject to salary-base reduction for the ensuing fiscal year[,]" Tufts would notify that faculty member "at least 3 months before the end of the [current] fiscal year" and provide for a review period, at the conclusion of which the TUSM dean would "make the final decision on implementation of the salary modification plan." Id. at 010402. Full-time tenured TUSM members had a "base salary" and "a faculty member subjected to a salary reduction under the salary modification plan will not have their salary reduced below" that base salary. Id. "Therefore, a salary reduction would result in either 75% of the individual's current salary, or the base salary, whichever is greater." Id. at 010402-010403. Tufts set the base salary at $90,000 for associate professors and $118,000 for full professors. Plaintiffs Michael Malamy and Amy Yee experienced salary reductions under the 2008 Salary Plan. The plaintiffs did not challenge the 2008 Salary Plan.

TUSM formed a committee in 2016 to develop a new compensation plan. In November 2016, TUSM provided the proposed plan to faculty and sought feedback. The plaintiffs asked the American Association of University Professors ("AAUP") to review the proposed plan and received back from the AAUP a letter describing the deficiencies it found in the proposed plan. In part, the AAUP wrote:

"The [proposed] compensation plan is in essence a post-tenure review program with two components: guidelines for the setting of base salaries and guidelines for adjustments to faculty appointments on the basis of performance reviews. The plan provides for the regular modification of faculty base salaries every three to four years and ties evaluation categories to targeted salaries. . . . [and] provides for adjustments to faculty appointments . . . .

. . . .

"Plainly, the unilateral imposition of a salary reduction or reduction in appointment status to less than full-time are severe sanctions. . . . [A]ssurance of continued salary is basic to tenure and thus to the academic freedom that tenure protects . . . .

> "'Tenure is a means to certain ends; specifically, (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. . . .

"Loss of salary or full-time appointment status certainly are a loss of economic security. Action to reduce a faculty member's salary or appointment status, if taken because of displeasure with the faculty member's performance or activities and designed to punish the individual and perhaps force a resignation, are tantamount to a severe sanction, subject to imposition only after the administration has demonstrated adequate cause through a duly constituted hearing and other requisites of academic due process.

. . . . The opportunity to appeal the reduction in appointment status to a committee of department chairs is not an adequate substitute for the procedural safeguards [the AAUP] outlined in . . . [its recommended regulations for institutions].

"Consequently, [the AAUP] view[s] the [proposed] compensation plan as severely deficient relative to widely-observed principles of academic freedom, tenure, and due process."

Exhibit 26 to Amended Complaint, at 1-3.[6]

[6] Tufts argues that the views in this letter are hearsay. The court does not consider the views within the AAUP letter for their truth, however, but rather for purposes of background.

TUSM adopted an updated version of the draft compensation plan, titled Compensation Plan for Tenured Basic Science Faculty ("2017 Comp Plan"), effective July 1, 2017. The 2017 Comp Plan replaced the 2008 Salary Plan.

In the meantime, in 2016, TUSM adopted the Tufts University School of Medicine Research Space Guidelines ("Research Space Guidelines"). The Research Space Guidelines "serve to document the criteria that guide the School's Dean in the distribution of wet branch research space within the school." Tufts's Exhibit 23, at 1.

In July 2017, the plaintiffs and other TUSM Basic Science Faculty filed a grievance challenging the 2017 Comp Plan and the Research Space Guidelines. A faculty panel heard the grievance and submitted proposed findings and recommendations to Tufts's president, Anthony Monaco ("Monaco"). Monaco issued his decision in October 2018. With respect to the Research Space Guidelines, he concluded that they

> "do not violate the AFTR or the Basic Science policies in that they (1) are within TUSM's authority to implement; (2) do not compromise academic freedom; (3) provide lab space commensurate with needs as extramural research funding ebbs and flows; and (4) do not violate the principles of economic security in the AFTR Policy because the Grievants are not entitled to a particular amount of space, or any space at all."

Tufts's Exhibit 27, at 0007284. With respect to the 2017 Comp Plan, Monaco disagreed with the faculty panel's findings that the 2017 Comp Plan violated the AFTR Policy, concluding:

> "[J]ust as the AFTR Policy does not provide any entitlement to laboratory space, it also does not provide any entitlement to a specific salary. While tenure should afford a sufficient degree of economic security to men and women of ability, it does not guarantee Grievants a salary at the AAMC [Association of American Medical Colleges] 25th percentile. If TUSM were to adopt the [faculty panel's] view, all full professors would be entitled – **regardless of performance factors and contributions to the tripartite**[7] **mission of the School** – to an annual salary in FY19 to $164,250, and all associate professors would be entitled to an

[7] TUSM's "tripartite mission" appears to be the training of young scientists, service to the profession through meaningful teaching and service activities, and research.

> annual salary in FY19 of $123,187. This is inconsistent with AFTR Policy. The [2017 Comp] Plan is consistent with the AFTR Policy as it provides all faculty, regardless of rank, the ability to earn salary commensurate with their performance (their demonstrated 'ability,' in AFTR terms), guarantees a salary and benefits to faculty at a reduced FTE [full-time equivalent] status, and provides opportunities for faculty operating at the highest levels of performance and in full FTE status to earn salaries of $250,000, or more. Therefore, [Monaco] [did] not void the [2017 Comp] Plan and [he] reject[ed] the recommendation that TUSM revert to the 2008 [Salary] Plan with any associated salary adjustment for the Grievants."

Id. at 0007285 (bold in original). Monaco directed TUSM "to revise the [2017 Comp] Plan in line with [the] comments" set forth in his decision, including, in pertinent part:

> "TUSM has the authority to reduce faculty institutional base salary below the AAMC 25th percentile for 1.0 FTE and to implement FTE cuts below .75 FTE.
>
> "TUSM should clarify in the [revised] Plan that an FTE reduction will have a corresponding reduction of work commitment. . . . A faculty member's tenure would not automatically be at risk in these situations and a faculty member is not precluded from increasing his or her FTE status as circumstances change.
>
> . . . .
>
> "TUSM should clarify the level of importance that peer reviewed extramural research support holds in evaluating faculty performance in relation to other factors given the School's expectations that its tenured faculty operate as independent investigators, and the School's research focus. Relatedly, the [revised] Plan should further explain that it simply is not enough to merely make *efforts* to obtain grants to support their research programs; rather, to meet expectations and maintain a full salary and FTE status, tenured faculty are expected to *actually compete for and obtain* peer reviewed extramural research support consistent with the [revised] Plan's expectations."

Id. at 0007285-0007286 (emphasis in original).

In response to Monaco's decision, TUSM revised the 2017 Comp Plan, implementing the new version – the 2019 Comp Plan – on July 1, 2019. The 2019 Comp Plan applies to all tenured faculty in the Basic Science departments and its purpose "is to foster faculty excellence through rational, equitable and transparent criteria for faculty compensation and to encourage

excellence and productivity in the key areas of faculty performance – research, teaching and service. Central to the Plan is the expectation that tenured basic scientists at TUSM be, and operate as, independent investigators." Tufts's Exhibit 25, at 1.

Applying the 2017 Comp Plan and the 2019 Comp Plan to the plaintiffs, Tufts determined:

> Brent Cochran's four-year average grant funding was 34.5% of his base salary in 2017, and 22.7% in 2020.
>
> David Greenblatt's four-year average grant funding was 17% of his base salary in 2017, and 17.5% in 2020.
>
> Michael Malamy's three-and-a-half-year average grant funding was 3% of his base salary in 2017, and his four-year average was 18.8% in 2020.
>
> Emmanuel Pothos's four-year average grant funding was 3% of his base salary in 2017, and 4% in 2020.
>
> Ana Soto's four-year average grant funding was 36% of her base salary in 2017, and 25.2% in 2020.
>
> Theoharis Theoharides's four-year average grant funding was 12% of his base salary in 2017, and less than 1% in 2020.
>
> Henry Wortis's four-year average grant funding was 13% of his base salary in 2017, and 8.2% in 2020.
>
> Amy Yee's four-year average grant funding was 17% of her base salary in 2017, and less than 1% in 2020.

As a result, Tufts has reduced each plaintiff's institutional base salary every fiscal year since 2017.[8] Tufts has also reduced the FTE status of each plaintiff as follows: Brent Cochran, from

[8] As Tufts points out, Tufts implemented a wage freeze in 2020, resulting in compensation in fiscal year 2021 being essentially the same as in fiscal year 2020.

1.0 to .65; Emmanuel Pothos, from 1.0 to .75;[9] Ana Soto, from 1.0 to .95; Theoharis Theoharides, from 1.0 to .75; Henry Wortis, from 1.0 to .60; and Amy Yee, from 1.0 to .50. Finally, Tufts reduced the amount of laboratory space available to Theoharis Theoharides;[10] Tufts closed David Greenblatt's and Emmanuel Pathos's laboratories; and Tufts reduced then closed Henry Wortis's laboratory.[11] Tufts has not altered Michael Malamy's, Amy Yee's, Ana Soto's, or Brent Cochran's laboratory spaces.

DISCUSSION

I. Standard of Review

Summary judgment is granted where there are no genuine issues of material fact and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); Cassesso v. Commissioner of Corr., 390 Mass. 419, 422 (1983); Community Nat'l Bank v. Dawes, 369 Mass. 550, 553 (1976). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the summary judgment record entitles the moving party to judgment as a matter of law. Flesner v. Technical Commc'ns Corp., 410 Mass. 805, 808-809 (1991); Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989); see Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Where the plaintiff is the moving party, he has "'the burden of demonstrating affirmatively the absence of a genuine issue of material fact on every relevant issue . . . .'" Khalsa v. Sovereign Bank, N.A., 88 Mass. App. Ct. 824, 829 (2016) (citation omitted).

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[9] In February 2022, Tufts restored Emmanuel Pothos's FTE status to 1.0.

[10] Tufts disputes that this reduction resulted from the application of the Research Space Guidelines.

[11] The plaintiffs do not dispute that Tufts bases the decision to reduce or close laboratory space on whether the faculty member is able to support a robust research program, and that Tufts makes this determination by analyzing the faculty member's publications, grants submitted, and grants awarded over a period of time.

The court considers the evidence presented in the light most favorable to the nonmoving party. Mass. R. Civ. P. 56(c); Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991); Parent v. Stone & Webster Eng'g Corp., 408 Mass. 108, 113 (1990); Flynn v. Boston, 59 Mass. App. Ct. 490, 491 (2003). The nonmoving party, however, cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. LaLonde v. Eissner, 405 Mass. 207, 209 (1989). "[B]are assertions and conclusions . . . are not enough to withstand a well-pleaded motion for summary judgment." Polaroid Corp. v. Rollins Envtl. Servs., Inc., 416 Mass. 684, 696 (1993).

II. **Analysis**

According to the plaintiffs, tenure entitles them to full-time employment, economic security, and academic freedom.[12] The plaintiffs allege that, with the requirement in the 2017 Comp Plan and the 2019 Comp Plan ("Comp Plans") and the Research Space Guidelines that tenured Basic Science Faculty cover part of their salary and laboratory costs with external grants and the concomitant consequence of reduced salary, full-time status, and laboratory space if the faculty member fails to satisfy that requirement, Tufts has "reinvented" the concept of tenure. In doing so, they claim, Tufts has breached its contracts with the plaintiffs, denied the plaintiffs the benefit of their bargain with Tufts, and violated G.L. c. 149, § 148. The plaintiffs have moved for summary judgment on these claims, and Tufts has cross-moved for summary judgment, denying not only that it was contractually obligated never to alter the manner in which tenured professors earned their salaries, but also that the Comp Plans and the Research Space Guidelines violated any aspect of their contracts with the plaintiffs.

[12] The plaintiffs do not dispute that tenure may be terminated or altered "for cause."

A. Breach of Contract

Although Tufts disputes that the language at issue in the AFTR Policy constitutes an enforceable contractual term, the parties agree that the AFTR Policy, the Basic Science Policy, and Tufts's letters to the plaintiffs awarding them with tenure comprise their employment contract with Tufts. The parties' cross motions for summary judgment on the plaintiffs' breach of contract claim hinge on whether Tufts is contractually obligated to provide the plaintiffs with "academic freedom," "economic stability," and full-time employment, and if so, whether the 2017 Comp Plan, the 2019 Comp Plan, and the Research Space Guidelines violate those contractual obligations by unilaterally modifying the employment contracts to condition salary and laboratory space on research funding.

A close reading of the relevant documents indicates that the unambiguous terms of the documents do not support the plaintiffs' position. See Southern Union Co. v. Department of Pub. Utils., 458 Mass. 812, 820 (2011) (holding that "court interprets a contract that is free from ambiguity according to its plain meaning" and that "[c]ontract language is ambiguous 'only if it is susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one'" (citation omitted)); see also Ferri v. Powell-Ferri, 476 Mass. 651, 654 (2017) ("In deciding whether there is ambiguity, 'the court must first examine the language of the contract by itself, independent of extrinsic evidence . . . .'" (citation omitted)).[13]

[13] Given this conclusion, extrinsic evidence to aid in the interpretation of the contract is not necessary. See Seaco Ins. Co. v. Barbosa, 435 Mass. 772, 779 (2002) (holding that if contract is unambiguous, "its interpretation is a question of law appropriate for a judge to decide on summary judgment"); see also Massachusetts Mun. Wholesale Electric Co. v. Danvers, 411 Mass. 39, 48 (1991) ("As a general principle, a court considers extrinsic evidence to discern intent only when a contract term is ambiguous.").

1. *AFTR Policy*

The AFTR Policy consists of six sections: I. Academic Freedom and Tenure; II. Academic Freedom; III. Academic Tenure; IV. Nonreappointments Not Involving Tenure; V. Academic Year; and VI. Emeritus Status. The language at issue appears in the first section, Academic Freedom and Tenure:

> "*Academic freedom is essential to the free search for truth and its free exposition and applies to both teaching and research.* Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental, not only to the advancement of truth but for the protection of the rights of the teacher in teaching and of the student to freedom in learning as well. It carries with it duties correlative with rights.
>
> "Tenure is a means to a certain ends, especially:
>
> "(1) Freedom of teaching and research and of extramural activities, and
>
> "(2) A sufficient degree of *economic security to make the profession attractive to men and women of ability.*"

Tufts's Exhibit 21, at 1 (emphasis added).[14] The second and third sections of the AFTR Policy explain the concepts of academic freedom and tenure.

a. Academic Freedom

The second section further describes academic freedom as "full freedom in research and in the publication of the results," and "freedom in the classroom in discussing his/her subject," with few limitations and without "institutional censorship or discipline . . . ." Id. The concept of academic freedom thus ensures faculty members that Tufts will not control the content of their research or teaching. See Southern Union Co., 458 Mass. at 820. The question, then, is whether

[14] The parties agree that Tufts borrowed this language from the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure. They also agree that Tufts is not a member of the AAUP.

by requiring faculty members to support their salary and laboratory space with research funding, Tufts is, in essence, controlling the research.

Grants from external sources fund scientific research at TUSM. It is undisputed that the majority of United States medical schools condition salary for Basic Science Faculty at least in part on success in generating external research funding. External sources include state agencies, pharmaceutical or biomedical companies, private donors, and federal agencies such as the National Institutes of Health ("NIH"). Securing federal funding for biomedical research is highly competitive.

With respect to research requirements, the 2017 Comp Plan provided, in pertinent part:

> "Tenured basic science faculty members at TUSM are expected to have an established track record of scientific achievement resulting in peer-reviewed scholarship and extramural grant funding. As a measure of this success, TUSM expects that all tenured basic science faculty members will seek financial support for their research activities. *These expectations include that faculty will obtain support for at least 50% of their salary through extramural funding, direct cost support, facility and administrative cost support and/or other sources to support an active laboratory.*
>
> . . . .
>
> "As set forth above, tenured basic science faculty are expected to support a minimum of 50% of their institutional base salary (IBS) through extramural research funds. Based on a full-time appointment, the remainder of a faculty member's appointment should be dedicated to teaching and service activities unless otherwise approved by the faculty member's chair. . . ."

Tufts's Exhibit 24, at 1, 2 (emphasis added). The 2019 Comp Plan requires, in pertinent part, that:

> "To remain in good standing as a tenured basic science faculty member at TUSM, faculty members must demonstrate their ability to operate as an independent investigator and to maintain an independent research program. Principal factors that will be evaluated to determine whether a faculty member is operating as an independent investigator and maintaining an independent research program include:

1. Proof of an ongoing extensive peer reviewed research and scholarship record as evidenced by quality publications, presentations, and collaborations, among other evidence.

2. *Ongoing financial support for research activities, including a minimum of 50% support for Institutional Base Salary (IBS) from peer reviewed extramural research funds* and obtaining direct cost support, facility and administrative cost support and/or other sources to support an active laboratory. *When underfunded, faculty must demonstrate greater and meaningful efforts to annually seek and obtain competitive, peer reviewed extramural research support, such as grants sponsored by NIH or the equivalent.* And, while efforts to obtain support are important, tenured faculty are expected to obtain peer reviewed extramural research support consistent with this Plan.

3. When not engaged in research activities – which are central to a faculty member's appointment – remaining actively engaged in other efforts supporting the tripartite mission of the School such as active engagement in the training of young scientists and in service to the profession through meaningful teaching and service activities. Given the School's research focus and the fact that there are limited teaching and service opportunities available for basic science faculty, those faculty wishing to dedicate more than 50% of their time to research activities may do so with the approval of their Chair."

Tufts's Exhibit 25, at 1-2 (emphasis added) (footnote omitted). Additionally, the Research Space Guidelines established the following metrics for determining assignment of research space:

> "Extramurally funded sponsored research will be given highest priority for assignment of research laboratory and research-related space.
>
> . . . .
>
> "Laboratories are primarily assigned to support the research activity of faculty based on their funding and the type of research being conducted.
>
> "Associate and Full Professors are expected to maintain at a minimum, direct cost funding equivalent to one NIH R01 [National Institutes of Health Research Project Grant] award with indirect cost recovery equivalent to the University's full negotiated rate.

"The $ per square feet ratio is evaluated in two ways:

- Dividing modified total direct costs (MTDC) by wet square feet.
- Dividing indirect costs recovery (ICR) by wet square feet.

"Based on MTDC, faculty should be generating $250 sq/ft. Therefore, a faculty with a 1,000 sq/ft lab should be generating $250,000 annually in MTDC. Space that is consistently funded below $250 sq/ft. based on a three year average will be classified in the following categories and may lead to laboratory space being reduced or closed.

- Underfunded: Between $200 sq/ft and $249 sq/ft
- At Risk: Between $100 sq/ft and $199 sq/ft
- Not Funded Less than $100 sq/ft

"Based on ICR, faculty should be generating $150 sq/ft. Therefore, a faculty with a 1,000 sq/ft lab should be generating $150,000 annually in ICR. Space that is consistently funded below $150 sq/ft. based on a three year average will be classified in the following categories and may lead to laboratory space being reduced or closed.

- Underfunded: Between $120 sq/ft and $149 sq/ft
- At Risk: Between $60 sq/ft and $119 sq/ft
- Not Funded Less than $60 sq/ft

"A lab may be reduced in size or closed using either the criteria for MTDC or ICR. However, both calculations are considered to ensure a high quality research program is evaluated based on merit and not space productivity alone.

. . . .

"Faculty members potentially at risk for lab reductions or closure will have the opportunity to verify with their chair the square footage of their assigned laboratory space and their history of ICR and MTDC.

"*Laboratory space will be made available and/or adjusted to accommodate faculty who are major contributors to NIH supported grants*, but do not serve as the lead PI [principal investigator].

. . . .

"A senior investigator whose space is underfunded or at risk using the criteria outlined above for more than 3 years or a new (NIH early career) investigator for more than 5 years is subject to space reduction. Space that is not funded using the criteria outlined above for more than 3 years can be reassigned to another

> investigator. Decisions concerning reduction or loss of space will be made by the Dean. Prior to a lab closure decision, the TUSM administration will review with the Department Chair any factors related to a faculty member's ability to maintain an independent research program including grant submission efforts, scores received on NIH submissions and recent publications."

Tufts's Exhibit 23, at 1-3 (emphasis added).

While the Comp Plans and Research Space Guidelines reference NIH grants and encourage faculty to secure federal funding, they do not limit tenured faculty members such as the plaintiffs to seeking only NIH grants. Regardless, even if these documents do effectively require tenured faculty members to obtain NIH grants in order to maintain a certain salary and amount of laboratory space, the documents do not restrict the content of their research, thus that requirement does not impose "institutional censorship or discipline" on their research in violation of their right to academic freedom.

b. Economic Security

The third section of the AFTR Policy explains the process of attaining academic tenure. Parties *eligible* for tenure must be a full-time faculty member. There is no express provision, however, that "[p]ermanent or continuous tenure" entitles the faculty member to full-time status or, relatedly, a full-time salary. This third section also does not explain – or, indeed, include – the phrase "economic security." Assuming for purposes of this decision that Tufts is contractually obligated to provide tenured faculty members with "economic security,"[15] the court concludes that the plain meaning of this phrase is that the mere fact of "permanent or continuous tenure" – i.e., permanent or continuous *employment* – carries with it "[a] sufficient degree of

[15] The court finds persuasive the New York Appellate Division's description of an identical phrase as "mere prefatory language succinctly explaining why tenure is desirable" and that "'economic security,' standing alone, simply does not confer any contractual rights or obligations." Monaco v. New York Univ., 164 N.Y.S. 3d 87, 95 (2022).

economic security to make the profession attractive to men and women of ability." See Southern Union Co., 458 Mass. at 820.

The language in the Comp Plans is not to the contrary. First, with respect to full-time status, the 2017 Comp Plan provided, in pertinent part:

> "[T]enured Basic Science faculty are expected to maintain a full-time appointment (1.0 FTE). For Associate Professors who have been in rank for more than 7 years and Full Professors who have been in rank for more than 4 years, the annual review conducted by the Chair will include an evaluation of the faculty member's appointment, and will evaluate whether the faculty member is meeting the expectations of a full time appointment. A faculty member who is not actively engaged in peer-reviewed research, teaching, and service as defined in this Plan and sufficient to support a full time appointment will be advised by their chair that they are not meeting expectations. The faculty member will be advised of the need to meet institutional and departmental expectations and asked to engage in specific activities to meet those expectations. If the faculty member does not heed the chair's directive and/or does not meet expectations again in the next performance cycle, the chair may recommend a reduction in the faculty member's appointment commensurate with the deficiency in the faculty member's ability to meet expectations. In any case, faculty will be given at least a one-year notice of a possible reduction in appointment and a faculty member's appointment will not be reduced by more than 0.25 FTE per year and never lower than 0.50 FTE in total. A faculty member's FTE can be restored to 1.0 upon achieving the expectations outlined by their chair.
>
> . . . .
>
> "The faculty member may appeal this decision to an appeals committee."

Tufts's Exhibit 24, at 4-5. Pursuant to the 2019 Comp Plan, for tenured professors to maintain a full-time appointment:

> "Basic Science faculty are expected to meet expectations consistent with this Plan. For Associate Professors who have been in rank for more than 7 years and Full Professors who have been in rank for more than 4 years, the annual review conducted by the Chair will include an evaluation of the faculty member's appointment and will evaluate whether the faculty member is meeting the expectations of a full-time appointment. During these time periods, IBS may be adjusted consistent with performance, but FTE will not be subject to adjustment. However, a faculty member beyond these time periods who is not acting as an

> independent investigator actively engaged in extramural funded peer-reviewed research, teaching, and service to support a full-time appointment will be advised by their Chair that they are not meeting expectations. The faculty member will be advised of the need to meet institutional and departmental expectations and asked to engage in specific activities to meet those expectations. If the faculty member does not heed the Chair's directive and/or does not meet expectations again in the next performance cycle, the Chair may recommend a reduction in the faculty member's appointment commensurate with the deficiency in the faculty member's ability to meet expectations.
>
> "In the case that a faculty member's appointment is reduced, the expected work commitment will be reduced proportionately. Faculty will be given at least a one-year notice of a possible reduction in appointment and a faculty member's appointment will not be reduced by more than 0.25 FTE per year and never lower than 0.50 FTE in total. Given the limited teaching and service obligations at TUSM, any faculty member whose FTE is reduced to .5 is expected to be able to continue to engage in teaching and service duties, and basic research activities (e.g., writing grants, writing manuscripts, presenting at a conference, conducting basic experiments or design). A faculty member's FTE can be restored to 1.0 upon achieving the expectations outlined by their chair.
>
> "If after 4 consecutive years a faculty member remains below a 0.75 FTE and is consistently not meeting performance plans and/or other information exists to support that the faculty member is not meeting the expectations of tenure, a Chair may refer the faculty member's performance for review under the University's tenure revocation policy."

Tufts's Exhibit 25, at 5 (footnote omitted). The 2019 Comp Plan also provides for an appeal process when a Chair reduces a faculty member's appointment. See id. at 6.

The Comp Plans do provide for the reduction in full-time status if the faculty member does not satisfy certain parameters, but it does not allow for a reduction to lower than .50 FTE. This reduction, then, does not violate the "promise" of economic stability because the status of tenure and its related "permanent or continuous" employment is not affected.

c. Conclusion

The Comp Plans and the Research Space Guidelines therefore do not violate the AFTR Policy.

2. *The Basic Science Policy*

The Basic Science Policy sets out the criteria for appointment to and promotion within this faculty, as well as the criteria for granting tenure:

> "Tenure reflects a long-term commitment by the University to the academic freedom and security of faculty members. It should be granted to individuals who are likely to maintain a high level of excellence for an extended period. A successful candidate should show a sustained level of substantial contributions, and have the potential for long-range, continuous productivity in an area of biological importance. The candidates should also be recognized as experts in their fields. Their teaching programs should have developed to the point that they have recognized areas of expertise. While national or international recognition of the candidate's research or scholarly activities is not essential, it could be taken as a reasonable indicator of the scope of their accomplishments."

Tufts's Exhibit 20, at 3. The "Tenure and Promotion Policy" section of the Basic Science Policy provides:

> "A major purpose of evaluating personnel for tenure is, over the long term, to secure and maintain the best possible faculty for each of the departments in the University. The administration and faculties shall continue to develop and maintain procedures and criteria for appointments with tenure that will insure a comprehensive and critical assessment of each candidate.
>
> "In making a tenure decision, the most important factor is the quality of the candidate including the following aspects, among others: quality of mind, intellectual force, teaching effectiveness, scholarship, and contributions to department objectives and those of the whole University. Evaluation of such quality shall include a comparison of the candidate with others in his or her field, whether or not at Tufts. In order to insure the flexibility required to meet changing conditions and needs of the University, consideration should also be given to the ratio of tenured to non-tenured faculty in his or her department, provided however that such ratio shall not preclude the granting of tenure to exceptionally qualified persons.
>
> "Details on the tenure policy can be found in the [AFTR Policy] . . . ."

Id. To be eligible for tenure,

> "a candidate must:

1. Be employed by the University full-time as a faculty member in a Basic Science Department;
2. Have the unmodified rank of Professor, Associate Professor, or Assistant Professor."

Id. at 4. The Basic Science Policy also sets out the procedures for the Basic Science Faculty Appointment, Promotion, and Tenure Committee.

Other than requiring *candidates* for tenure to be full-time faculty members, the Basic Science Policy does not promise tenured faculty members full-time employment or laboratory space. See Southern Union Co., 458 Mass. at 820. The Basic Science Policy also does not contain any promises relating to salary for tenured faculty members. See id. The court is hard-pressed to discern the manner in which the Plans and Research Space Guidelines violate the Basic Science Policy.

3. *Employment Letters*

The plaintiffs received letters at each stage of their employment history with Tufts. The letters granting tenure are relevant to the question of whether, in granting tenure, Tufts made any promises that the Comp Plans or Research Space Guidelines violate.

> Brent Cochran – letter of June 3, 1993: "The Basic Sciences Appointments, Promotions and Tenure Committee made a favorable recommendation [to award him tenure] based on [his] past research accomplishments, [his] demonstrated commitment to teaching and to the training of students and postdoctoral fellows, [his] consistent record of grant support from NIH, and [his] potential for future growth as a scientist and teacher." Tufts's Exhibit 13, at 000194.
>
> David Greenblatt – letter of May 27, 1992: "The Basic Sciences Appointment, Promotions and Tenure Committee made [its] recommendation [to award tenure] based on [his] outstanding research accomplishments, dedication to teaching and training, and service to the university." Tufts's Exhibit 17, at 0001805.
>
> Michael Malamy – undated letter appointing Malamy "to the position of Associate Professor of Molecular Biology and Microbiology, Without Limit of Time, from January 1, 1970, at the Schools of Medicine and Dental Medicine." Tufts's Exhibit 16, at 000160.

Emmanuel Pothos – letter of May 6, 2009: "The Basic Science Faculty Appointment, Promotion, and Tenure Committee made a favorable recommendation [to award tenure] based on demonstrated excellence in research, teaching and service to the university." Tufts's Exhibit 15, at 0001851.

Ana Soto – letter of May 27, 1994: "Tenure was awarded based on [her] scientific accomplishments, [her] contributions to teaching, and [her] service to the university. They were pleased to note [her] national and international reputation as a reproductive toxicologist." Tufts's Exhibit 14, at 0001861.

Theoharis Theoharides – letter of November 6, 1991: "The Basic Sciences Appointments, Promotions and Tenure Committee made its recommendation [to award him tenure] based on [his] solid record of funding, good publications, a well-developed research program and the prospect of continued productivity." Tufts's Exhibit 10, at 0001869.

Henry Wortis – letter of June 1976, appointing Wortis as "Associate Professor of Pathology, Without Limit of Time, at [TUSM] . . . to be effective July 1, 1976." Tufts's Exhibit 12, at 000223.

Amy Yee – letter of June 30, 1998: "The Basic Sciences Appointments, Promotions, and Tenure Committee recommended the awarding of tenure based on (1) [her] ability to publish innovative studies and to obtain research funding in a highly competitive area, (2) high recognition as a contributor to the field of developmental transcription factors, as evidenced by invitations to present [her] work at highly selective scientific meetings and at major institutions and the invitation to serve on the Molecular Biology Study Section of NIH, (3) a strong commitment to and success in teaching, and, (4) active participation in important committees at the [TUSM] and the Sackler School of Graduate Biomedical Sciences." Tufts's Exhibit 11, at 000211.

In these letters, TUSM did not contractually obligate itself to provide the plaintiffs with permanent full-time status, permanent laboratory space, or a certain salary. See Southern Union Co., 458 Mass. at 820. The Comp Plans and the Research Space Guidelines therefore do not violate any "promises" in the employment letters.

4. *Conclusion*

Accordingly, as to Count I for breach of contract, the plaintiffs' motion for summary judgment is **DENIED**, and Tufts's cross motion for summary judgment is **ALLOWED**. Further, given that the implied covenant of good faith and fair dealing does not create rights and duties not otherwise provided for in the contract, see Chokel v. Genzyme Corp., 449 Mass. 272, 276 (2007), the plaintiffs' motion for summary judgment as to Count II is **DENIED**, and Tufts's cross motion is **ALLOWED**.

B. Declaratory Judgment

In Count III, the plaintiffs seek a declaration that the Comp Plans and the Research Space Guidelines violate the grant of academic freedom and economic security. Based on the conclusion above that there is no such violation, the court makes the following declaration: the Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security. See Boston v. Massachusetts Bay Transp. Auth., 373 Mass. 819, 829 (1977) ("[W]hen an action for declaratory relief is properly brought, even if relief is denied on the merits, there must be a declaration of the rights of the parties."); Vergato v. Commercial Union Ins. Co., 50 Mass. App. Ct. 824, 829 (1996) ("'As the action is one for declaratory relief, the [Superior] Court judge [is] required to make a declaration of the rights of the parties.'" (first alteration in original) (citations omitted)).

C. Equitable Estoppel

In Count IV, the plaintiffs allege that they relied to their detriment on Tufts's guarantee of academic freedom and economic security. See Reading Co-Op. Bank v. Suffolk Constr. Co., 464 Mass. 543, 556 (2013) ("To establish estoppel, a party must show '(1) a representation intended to induce reliance on the part of a person to whom the representation is made; (2) an act

or omission by that person in reasonable reliance on the representation; and (3) detriment as a consequence of the act or omission.'" (citation omitted)). Given the conclusion, above, that the Comp Plans and the Research Space Guidelines do not violate the plaintiffs' entitlement to academic freedom and economic security, Tufts is entitled to judgment as a matter of law on this claim as well. The plaintiffs' motion for summary judgment on Count IV is therefore **DENIED**, and Tufts's cross motion is **ALLOWED**.

D. Wage Act

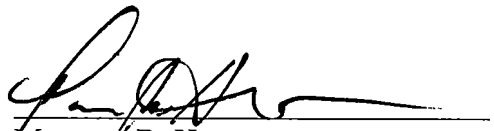
The Wage Act precludes a person, "by a special contract with an employee or by any other means [from] exempt[ing] himself from this section . . . ." G.L. c. 149, § 148. In Count V, the plaintiffs contend that the Comp Plans are "special contracts" that deprive them of earned wages by reducing their salaries. This claim fails for two reasons.

First, as Tufts points out, the reduction in the faculty members' salaries pursuant to the Comp Plans is prospective only, therefore the wages at issue have not been "earned." See Massachusetts State Police Commissioned Officers Ass'n v. Commonwealth, 462 Mass. 219, 226 (2012) ("[A] prospective reduction in the number of days to be worked does not deprive the plaintiffs of any wages 'earned.'"); Awuah v. Coverall N. Am., Inc., 460 Mass. 484, 492 (2011) (explaining that, for purposes of G.L. c. 149, § 148, "[w]here an employee has completed the labor, service, or performance required of him, . . . he has 'earned' his wage."). Second, as concluded above, Tufts has not promised the plaintiffs permanent and continuous full-time employment; it follows, then, that the plaintiffs may work at less than full time, thereby reducing their salary. The Comp Plans therefore do not deprive the plaintiffs of any wages to which they are contractually entitled.

The plaintiffs' motion for summary judgment on Count V is accordingly **DENIED**, and Tufts's cross motion is **ALLOWED**.

ORDER

For the foregoing reasons, the plaintiffs' motion for summary judgment is **DENIED**, and Tufts's cross motion for summary judgment is **ALLOWED**. The court **DECLARES** that the Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security.



Maureen B. Hogan
Justice of the Superior Court

DATE: February 6, 2023

32

SUMMARY JUDGMENT MASS. R. CIV. P. 56	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 1981CV03561	Michael A. Sullivan, Clerk of Court Middlesex County
CASE NAME Henry H Wortis et al vs. The Trustee of Tufts College	COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801

JUDGMENT FOR THE FOLLOWING DEFENDANT(S) (See page two for additional parties)

The Trustee of Tufts College

JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S)

Wortis, Henry H
Yee, Amy S
Theoharides, Theoharis C
Soto, Ana M
Pothos, Emmanuel N
Malamy, Michael H

This action came before the Court, Hon. Maureen Hogan, presiding, upon Motion for Summary Judgment of the defendant named above, pursuant to Mass. R. Civ. P. 56. The parties having been heard, and/or the Court having considered the pleadings and submissions, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law.

It is ORDERED and ADJUDGED:

That the plaintiffs' complaint be and hereby is dismissed.

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
02/21/2023	X

Date/Time Printed: 02-21-2023 11:39:39

SCV061: 03/2016

SUMMARY JUDGMENT MASS. R. CIV. P. 56 *ADDITIONAL PARTIES TO THE JUDGMENT*	DOCKET NUMBER 1981CV03561	Trial Court of Massachusetts The Superior Court

ADDITIONAL DEFENDANT(S) TO THE JUDGMENT

ADDITIONAL PLAINTIFF(S) TO THE JUDGMENT:

Greenblatt, David J
Cochran, Brent H

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
02/21/2023	X

Date/Time Printed: 02-21-2023 11:39:39

SCV061: 03/2016

35.

DECLARATORY JUDGMENT	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 1981CV03561	Michael A. Sullivan, Clerk of Court Middlesex County
CASE NAME Henry H Wortis et al vs. The Trustee of Tufts College	COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801

JUDGMENT FOR THE FOLLOWING DEFENDANT(S)

The Trustee of Tufts College

JUDGMENT AGAINST THE FOLLOWING PLAINTIFFS(S) (See page two for additional parties)

Wortis, Henry H
Yee, Amy S
Theoharides, Theoharis C
Soto, Ana M
Pothos, Emmanuel N
Malamy, Michael H

This action came on before the Court, Hon. Maureen Hogan, presiding, and the court having rendered its decision pursuant to G.L. c. 231A,

It is ORDERED, ADJUDGED, AND DECLARED:

That the Comp Plans and the Research Space Guidelines do not violate the grant of academic freedom or economic security.

DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK
03/09/2023	Arthur J. Hughes

Date/Time Printed: 03-09-2023 09:51:17

SCV066: 06/2016

DECLARATORY JUDGMENT *ADDITIONAL PARTIES TO THE JUDGMENT*	DOCKET NUMBER 1981CV03561	Trial Court of Massachusetts The Superior Court

ADDITIONAL DEFENDANT(S) TO THE JUDGMENT:

ADDITIONAL PLAINTIFFS(S) TO THE JUDGMENT:

Greenblatt, David J
Cochran, Brent H

DATE JUDGMENT ENTERED	CLERK OF COURTS/ASST. CLERK
03/09/2023	X

Date/Time Printed: 03-09-2023 09:51:17

SCV066: 06/2016

26.4

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

MIDDLESEX, SS. SUPERIOR COURT

HENRY H. WORTIS, AMY S. YEE, THEOHARIS C. THEOHARIDES, ANA M. SOTO, EMMANUEL N. POTHOS, MICHAEL H. MALAMY, DAVID J. GREENBLATT, BRENT H. COCHRAN, Plaintiffs, v. THE TRUSTEES OF TUFTS COLLEGE, Defendant.	CIVIL ACTION NO. 1981CV03561-C

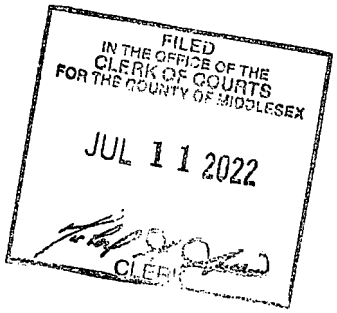
PLAINTIFF'S RULE 9A(B)(5) STATEMENT OF UNDISPUTED MATERIAL FACTS AND DEFENDANT'S RESPONSES

Pursuant to Superior Court Rule 9A(b)(5), Plaintiffs Henry Wortis, Amy Yee, Theoharis Theoharides, Ana Soto, Emmanuel Pothos, Michael Malamy, David Greenblatt, and Brent Cochran (collectively, "the Plaintiffs" or "the Professors") hereby submit the following Statement of Undisputed Material Facts in support of their Motion for Summary Judgment.

The Trustees of Tufts College hereby responds as follows to the Plaintiffs' Statement of Undisputed Material Facts in support of their Motion for Summary Judgment:

1. The Plaintiffs are tenured faculty members of the Basic Science Faculty of the Tufts University School of Medicine ("TUSM"). Exhibit 1, Defendant's Answer and Jury Demand ("Answer"), ¶ 1.

RESPONSE: Undisputed.



2. Tufts implemented the "TUSM Compensation Plan for Tenured Basic Science Faculty" ("2017 Comp Plan") effective July 1, 2017. A true and accurate copy of the 2017 Comp Plan is attached hereto as Exhibit 2.

RESPONSE: Undisputed.

3. At the time Tufts implemented the 2017 Comp Plan, each of the Plaintiffs already had tenure. Exhibit 3, Defendant's Responses to Plaintiff Amy S. Yee's First Request for Admissions ("Def.'s Resp. to Admissions"), ¶¶ 7–14.

RESPONSE: Undisputed.

4. Tufts implemented "Tufts University School of Medicine Research Space Guidelines" ("2017 Lab Guidelines"). A true and accurate copy of the 2017 Lab Guidelines is attached hereto as Exhibit 4.

RESPONSE: Undisputed.

5. At the time Tufts implemented the 2017 Lab Guidelines, each of the Plaintiffs already had tenure. Ex. 3, Def.'s Resp. to Admissions, ¶¶ 19–26.

RESPONSE: Undisputed.

6. Tufts implemented the "TUSM Compensation Plan for Tenured Basic Science Faculty" ("2019 Revised Comp Plan") effectively July 1, 2019. A true and accurate copy of the 2019 Revised Comp Plan is attached hereto as Exhibit 5.

RESPONSE: Undisputed.

7. At the time Tufts implemented the 2019 Revised Comp Plan, each of the Plaintiffs already had tenure. Ex. 3, Def.'s Resp. to Admissions, ¶¶ 7–14.

RESPONSE: Undisputed.

8. The 2017 Comp Plan and 2019 Revised Comp Plan (collectively, "the Comp Plans") encourage tenured faculty to secure federal funding. Ex. 3, Def.'s Resp. to Admissions, ¶ 28.

RESPONSE: Undisputed.

9. The process to secure federal funding for biomedical research is highly competitive. Ex. 3, Def.'s Resp. to Admissions, ¶ 35.

RESPONSE: Undisputed.

10. If a tenured basic science faculty member does not meet the funding requirements of the Comp Plans, the faculty member's base salary for the upcoming year may be reduced as compared to the previous year. Ex. 3, Def.'s Resp. to Admissions, ¶ 29.

RESPONSE: Undisputed.

11. The Basic Science Faculty Appointment, Promotion, and Separation Policy ("Basic Science Policy") is part of the Plaintiffs' contract with Tufts. Exhibit 6, Defendant's Supplemental Response to Plaintiff Henry H. Wortis's First Set of Interrogatories (Def.'s Supp. Resp. to First Ints."), No. 18. A true and accurate copy of the Basic Science Policy is attached hereto as Exhibit 7.

RESPONSE: Undisputed that definite and specific promises contained in the Basic Science Policy are part of the plaintiffs' contract with Tufts; disputed that indefinite or merely prefatory language have contractual effect, as a matter of law. *Id.*

12. The Basic Science Policy does not state that professors must obtain or maintain a certain funding level to be eligible for tenure, to be considered for tenure, to receive tenure, or maintain tenure. Ex. 1, Answer, ¶ 99.

RESPONSE: Undisputed that the Basic Science Policy does not specify "a certain funding level." Otherwise disputed. Exhibit 7, Basic Science Policy at 5 (for promotions, CV "must have a description of current research and funding"), 15 (for tenure promotions, CV includes "grant/funding information..." including "amount per year (list Direct and Indirect Costs separately"), 18 (sample CV lists funding for research support); *see also* pp. 2, 3 (requiring candidate to be "independent investigator").

13. The Basic Science Policy does not provide any contingencies that must be satisfied for a faculty member to occupy lab or office space. Ex. 1, Answer, ¶ 100.

RESPONSE: Disputed. Exhibit 7, Basic Science Policy at 2 (for appointment and promotion, candidate should be "directing his/her own laboratory").

14. None of the Plaintiffs' letters granting them tenure include a requirement to obtain a specific amount of extramural funding. Exhibit 8, Yee Tenure and Promotion Letters; Exhibit 9, Wortis Tenure and Promotion Letters; Exhibit 10, Theoharides Tenure and Promotion Letters; Exhibit 11, Soto Tenure and Promotion Letters; Exhibit 12, Pothos Tenure and Promotion Letters; Exhibit 13, Malamy Tenure and Promotion Letters; Exhibit 14, Greenblatt Tenure and Promotion Letters; Exhibit 15, Cochran Tenure and Promotion Letters.

RESPONSE: Undisputed that the letters did not require a "specific amount" of extramural finding. Otherwise Disputed. Exhibit 8, Yee Letter of March 28, 1989 at 2 ("until your grant is funded"); Exhibit 9, Wortis Letter of December 15, 1969 at 1 ("support of faculty and research is, like everywhere else, dependent to some extent on availability of funds. We expect to support our new faculty with a laboratory and to under-write is salary until he is able to seek and obtain research support from a grant.") ; Exhibit 10, Theoharides Letter of March 7, 1983, at 1 ("once your grants are funded"); Exhibit 11, Soto Letter of May 7, 1992 ("Dr. Soto is will-funded and will derive 69% of her salary from grant funds."); Exhibit 12, Pothos Letter of June 16, 2000 at 1 ("For the third year, you will be expected to carry at least 50% of your salary on grant/sponsored funding. Thereafter, subject to your renewal, you will be expected to meet or exceed the sponsored funding target set for all Medical School faculty. This is anticipated to increase to 60% by 2003."); Exhibit 13, Malamy Letter of May 2, 1964 ("Tufts has a policy of exceptional support for those individuals and departments which demonstrate growth and superior scholarship. As you develop in this position, personal advancement and increased space to meet your needs would naturally follow."); Exhibit 15, Cochran Letter of May 5, 1992 at 1 ("In the event you are not successful in a given round of grant applications...").

15. Tufts Academic Freedom and Tenure Policy ("AFTR Policy") is part of the Plaintiffs' contract with Tufts. Ex. 6, Def.'s Supp. Resp. to First Ints., No. 18. A true and accurate copy of the AFTR Policy is attached hereto as Exhibit 16.

RESPONSE: Undisputed that definite and specific promises contained in the AFTR Policy are part of the plaintiffs' contract with Tufts; disputed that indefinite or merely prefatory language have contractual effect, as a matter of law.

16. The AFTR Policy was in effect before the 2017 Comp Plan and the 2019 Revised Comp Plan were implemented. Ex. 3, Def.'s Resp. to Admissions, ¶ 2.

RESPONSE: Undisputed.

17. The AFTR Policy was in effect before the 2017 Lab Guidelines were implemented. Ex. 3, Def.'s Resp. to Admissions, ¶ 4.

RESPONSE: Undisputed.

18. The Basic Science Policy was in effect before the 2017 Comp Plan, the 2019 Revised Comp Plan, and the 2017 Lab Guidelines were implemented. Ex. 7, Basic Science Policy.

RESPONSE: Undisputed.

19. The University was not experiencing a financial exigency when either of the Comp Plans or the Laboratory Guidelines were implemented. Exhibit 17, Defendant's Response to Plaintiff Henry H. Wortis's First Set of Interrogatories ("Def.'s Resp. First Ints"), Nos. 11 and 12.

RESPONSE: Undisputed, as the term "financial exigency" is defined in Exhibit 17, Defendant's Response to Plaintiff Henry H. Wortis's First Set of Interrogatories, Nos. 11 and 12.

20. Under the Plans, Tufts has reduced Professor Yee's institutional base salary every fiscal year since 2017. Professor Yee's institutional base salary for fiscal year 2022 is $76,887

less than Professor Yee's institutional base salary was prior to Tufts' application of the Plans to Professor Yee. Exhibit 18, Yee Salary Letters.[1]

RESPONSE: Undisputed that Yee's institutional base salary was reduced in 2017 and that she has received further institutional base salary reductions in some other years since then. Undisputed that her institutional base salary in 2022 was $76,887 less than her 2017 institutional base salary. Disputed that her institutional base salary was reduced in 2020, when there was a wage freeze. *Id.*

21. Under the Plans, Tufts has reduced Professor Wortis's institutional base salary every fiscal year since 2017. Professor Wortis's institutional base salary for fiscal year 2022 is $107, 376 less than Professor Wortis's institutional base salary was prior to Tufts' application of the Plans to Professor Wortis. Exhibit 19, Wortis Salary Letters.

RESPONSE: Undisputed that Wortis's institutional base salary was reduced in 2017, and that he has received further institutional base salary reductions in some other years since then. Undisputed that his institutional base salary in 2022 was $107, 376 less than his 2017 salary. Disputed that his institutional base salary was reduced in 2020, when there was a wage freeze. *Id.*

22. Under the Plans, Tufts has reduced Professor Theoharides's institutional base salary every fiscal year since 2017. Professor Theoharides's institutional base salary for fiscal year 2022 is $148,431 less than Professor Theoharides's institutional base salary was prior to Tufts' application of the Plans to Professor Theoharides. Exhibit 20, Theoharides Salary Letters.

RESPONSE: Undisputed that Theoharides's institutional base salary was reduced in 2017 since then, and that he has received further institutional base salary reductions in some other years since then. Undisputed that his annual salary in 2022 was $107,034 less than

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[1] Exhibits 18-25 contain the Plaintiffs' salary letters for FY 2017-2022. The salary letters for Plaintiffs' FY 2017-2021 salary letters were introduced as exhibits in each of their respective depositions. The Plaintiffs' salary letters for FY 2022 were appended to the end of the deposition exhibits for purposes of this motion, and are not part of the original deposition exhibits.

his 2017 salary. Disputed that his institutional base salary was reduced in 2020, when there was a wage freeze. *Id.*

23. Under the Plans, Tufts has reduced Professor Soto's institutional base salary every fiscal year since 2017. Professor Soto's institutional base salary for fiscal year 2022 is $ 57,819 less than Professor Soto's institutional base salary was prior to Tufts' application of the Plans to Professor Soto. Exhibit 21, Soto Salary Letters.

RESPONSE: Undisputed that Soto's institutional base salary was reduced in 2017 and that she has received further institutional base salary reductions in some other years since then. Undisputed that her annual salary in 2022 was $57,819 less than her 2017 salary. Disputed that her institutional base salary was reduced in 2020, when there was a wage freeze. *Id.*

24. Under the Plans, Tufts has reduced Professor Pothos's institutional base salary every fiscal year since 2017. Professor Pothos's institutional base salary for fiscal year 2022 is $53,669 less than Professor Pothos's institutional base salary was prior to Tufts' application of the Plans to Professor Pothos. Exhibit 22, Pothos Salary Letters.

RESPONSE: Undisputed that Pothos's institutional base salary was reduced in 2017, and that he has received further institutional base salary reductions in some other years since then. Undisputed that his annual salary in 2022 was $37,419 less than his 2017 salary. Disputed that his institutional base salary was reduced in 2020, when there was a wage freeze, or in 2021 when it was increased. *Id.*

25. Under the Plans, Tufts reduced Professor Malamy's institutional base salary every year from 2017 to 2021. Professor Malamy's institutional base salary for 2021 was $4,524 less than Professor Malamy's institutional base salary was prior to Tufts' application of the Plans to Professor Malamy.[2] Exhibit 23, Malamy Salary Letters.

RESPONSE: Undisputed that Malamy's institutional base salary was reduced in 2017. Undisputed that his annual salary in 2021 was $4,524 less than it was in 2017. Undisputed

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[2] Professor Malamy's institutional base salary increased slightly in fiscal year 2022. Exhibit 23, Malamy Salary Letters.

that his annual salary in 2022 is $5,176 more than it was in 2017. Disputed that his institutional base salary was reduced after 2017. ***Id.***

26. Under the Plans, Tufts has reduced Professor Greenblatt's institutional base salary every fiscal year since 2017. Professor Greenblatt's institutional base salary for fiscal year 2022 is $42,299 less than Professor Greenblatt's institutional base salary was prior to Tufts' application of the Plans to Professor Greenblatt. Exhibit 24, Greenblatt Salary Letters.

RESPONSE: Undisputed that Greenblatt's institutional base salary was reduced in 2017, and that he has received further institutional base salary reductions in some other years since then. Undisputed that his annual salary in 2022 was $42,299 less than his 2017 salary. Disputed that his institutional base salary was reduced in 2020, when there was a wage freeze.

27. Under the Plans, Tufts has reduced Professor Cochran's institutional base salary every fiscal year since 2018. Professor Cochran's institutional base salary for fiscal year 2022 is $ 61,800 less than Professor Cochran's institutional base salary was prior to Tufts' application of the Plans to Professor Cochran. Exhibit 25, Cochran Salary Letters.

RESPONSE: Undisputed that his annual salary in 2022 was $53,896 less than his 2017 salary. Otherwise disputed. ***Id.***

28. Under the Plans, Tufts has reduced Professor Yee's FTE status from 1.0 to .50 FTE. Ex. 18, Yee Salary Letters.

RESPONSE: Undisputed.

29. Under the Plans, Tufts has reduced Professor Wortis's FTE status from 1.0 to .60 FTE. Ex. 19, Wortis Salary Letters.

RESPONSE: Undisputed.

30. Under the Plans, Tufts has reduced Professor Theoharides's FTE status from 1.0 to .75 FTE. Ex. 20, Theoharides Salary Letters.

RESPONSE: Undisputed.

31. Under the Plans, Tufts has reduced Professor Soto's FTE status from 1.0 to .95 FTE. Ex. 21, Soto Salary Letters.

RESPONSE: Undisputed.

32. Under the Plans, Tufts has reduced Professor Pothos's FTE status from 1.0 to .75 FTE. Ex. 22, Pothos Salary Letters.

RESPONSE: Undisputed.

33. Under the Plans, Tufts has reduced Professor Cochran's FTE status from 1.0 to .65 FTE. Ex. 25, Cochran Salary Letters.

RESPONSE: Undisputed.

34. Through its application of the 2017 Lab Guidelines, Tufts has threatened to rename and shut down Professor Malamy's Lab. Exhibit 26, Plaintiff Michael H. Malamy's Answers to Defendant's First Set of Interrogatories ("Malamy's Answers First Ints.").

RESPONSE: Disputed. Def. J.A. Ex.[3] 41, Malamy Dep. Vol. I at 122-23; Def. J.A. Ex. 51, Malone Dep. Vol. II at 77.

35. Through its application of the 2017 Lab Guidelines, Tufts has reduced the laboratory space available to Professor Theoharides. Ex. 20, Theoharides Salary Letters.

RESPONSE: Undisputed that Tufts has reduced the amount of lab space specifically assigned to Theoharides. Otherwise disputed. Def. J.A. Ex. 51, Malone Dep. Vol. II at 77; Def. J.A. Ex. 44, Theoharides Dep. at 144-45; Def. J.A. Ex. 47, Genco Dep. at 155-58.

36. Through its application of the 2017 Lab Guidelines, Tufts has closed Professor Greenblatt's and Pothos's laboratories. Ex. 22, Pothos Salary Letters; Ex. 24, Greenblatt Salary Letters.

RESPONSE: Undisputed that Greenblatt and Pothos received notices that their assigned lab spaces would be closing, but dispute that they are actually closed for any use. Def. J.A. Ex. 40, Greenblatt Dep. at 111-14; Def. J.A. Ex. 42, Pothos Dep. at 77.

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[3] "Def. J.A. Ex." refers to the exhibits contained in the Appendix submitted with the Defendant's Motion for Summary judgment.

HENRY H. WORTIS, AMY S. YEE, THEOHARIS C. THEOHARIDES, ANA M. SOTO, EMMANUEL N. POTHOS, MICHAEL H. MALAMY, DAVID J. GREENBLATT, BRENT H. COCHRAN

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As to Responses,

TRUSTEES OF TUFTS COLLEGE,

/s/Elizabeth H. Kelly
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111 Huntington Avenue
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617.230.0100

June 21, 2022

CERTIFICATE OF SERVICE

I certify that I caused a true copy of the above document to be served upon counsel for the plaintiff by email on June 21, 2022.

/s/Elizabeth H. Kelly
Elizabeth H. Kelly

TUSM Compensation Plan for Tenured Basic Science Faculty

Introduction

The Tufts University School of Medicine ("TUSM" or "the School") Compensation Plan for Tenured Basic Science Faculty (the "Plan") applies to all tenured faculty in the departments of Developmental, Molecular, & Chemical Biology ("DMCB"), Integrative Physiology & Pathobiology ("IPP"), Molecular Biology & Microbiology ("Micro") and Neuroscience ("Neuro"). The purpose of this Plan is to foster faculty excellence through rational, equitable and transparent criteria for faculty compensation and to encourage excellence and productivity in the key areas of faculty performance - research, teaching and service. This Plan specifically recognizes the important contributions made by tenured basic science faculty who operate as independent investigators, maintain active research labs and establish superior records of impactful scholarship and competitive and successful peer reviewed grant submissions. The extramural funding received by the basic science faculty provides financial support for quality research and meaningful scholarship that supports the faculty member and furthers the mission of the School as well as the reputation of both as leaders in the field of basic science research.

This Plan shall replace all other prior compensation plans, policies or practices at TUSM, and will go into effect beginning July 1, 2017.[1] This Plan will be reviewed periodically to ensure it is supporting the mission of the School and properly reflects TUSM's expectations of its faculty.

Tenured basic science faculty members at TUSM are expected to have an established track record of scientific achievement resulting in peer-reviewed scholarship and extramural grant funding. As a measure of this success, TUSM expects that all tenured basic science faculty members will seek financial support for their research activities. These expectations include that faculty will obtain support for at least 50% of their salary through extramural funding, direct cost support, facility and administrative cost support and/or other sources to support an active laboratory.[2]

To remain in good standing as a tenured basic science faculty member at TUSM, faculty members must demonstrate their ability to maintain an independent research program. Principal factors that will be evaluated to determine whether a faculty member is thriving as an independent investigator include:

1. Proof of an extensive scholarship record such as through quality publications, presentations, collaborations.
2. Ongoing financial support for research activities, including salary support from extramural research funds and indirect cost recovery to support an active laboratory

Exhibit

6

[1] *See* Appendix A for implementation information.

[2] Salary support expectations will begin at 40% at the time of implementation on July 1, 2017 and increase to 50% on July 1, 2020. *See* Appendix A.

3. Continual efforts made to secure research funding, with an emphasis on peer reviewed NIH grant submissions; when underfunded, faculty must demonstrate greater efforts to submit competitive, peer reviewed NIH proposals annually.

Faculty Requirements

To maintain TUSM's reputation as a top-tier medical school, it is critical that tenured basic science faculty members are provided clear performance objectives and that their efforts align with the School's mission and goals. It is the responsibility of the department chairs to evaluate whether the quality and quantity of a faculty member's research, teaching and service activities meets TUSM's high standards for faculty performance. At a minimum, faculty members are expected to engage in work sufficient to qualify for a full-time appointment at the School and to meet with their department chair annually to review and establish additional performance expectations.

TUSM's faculty performance standards will be reviewed periodically and adjusted over time to align with the expectations of individual departments, the School itself and the University as a whole.

As set forth above, tenured basic science faculty are expected to support a minimum of 50% of their institutional base salary (IBS) through extramural research funds. Based on a full-time appointment, the remainder of a faculty member's appointment should be dedicated to teaching and service activities unless otherwise approved by the faculty member's chair. Teaching and service activities shall be performed with a high degree of excellence and in furtherance of the associated missions of the School, the faculty members' departments, the professional schools (which includes the MBS program), the Sackler School, and the University as a whole.

Compensation Guidelines

Upon promotion to the rank of Associate Professor with Tenure (or higher, if hired at a higher rank), a faculty member will enter this Compensation Plan. Faculty salaries at the time of hire and throughout the path to Associate Professor shall also be guided by this Plan. Tenured faculty members will have their appointment and associated salary level reviewed on an annual basis by their department chair using a process that will take into account the totality of a faculty member's contributions. Factors that will be considered in determining faculty salaries may include but will not be limited to: research productivity over the last 3-4 years, long-term contributions to the tripartite mission of the School, service in significant administrative roles, retention and promotion, actual performance against expectations, and the overall quality of the faculty member's work performance and productivity over extended periods of time (e.g., more than five years).

The annual salary for basic science faculty will be defined as the IBS which is the annual compensation paid by the University for a faculty member's annually defined appointment whether the faculty member's time is spent on research, instruction, administration and/or other approved activities. Regardless of the source of funding, IBS is set and documented on an annual basis and is based on a full-

time workload. The IBS excludes bonuses, secondary base salary, honoraria and any other non-benefit eligible payments made to the faculty member.

Faculty compensation will be benchmarked using the AAMC annual salary survey for Northeast private medical schools. Based on these benchmarks, recommended ranges will be provided to the chairs to use in setting faculty salaries. Faculty consistently meeting expectations (for a period of three or more consecutive years) should receive an IBS near the AAMC median. Faculty consistently above or below expectations should likewise see their IBS adjusted to be closer to the AAMC 75th or 25th percentiles, respectively. The IBS will reflect faculty productivity over several years and is not expected to fluctuate rapidly over time or after it has been set in a particular year.

Recommended Guidelines for Setting Institutional Base Salary Based on Performance

Evaluation Category	Review Period	Targeted Salary
Consistently Exceeds Expectations	3 years	AAMC 75th Percentile +/- 10%
Meets Expectations	3 years	AAMC Median +/- 10%
Below Expectations	4 years	AAMC 25th Percentile +/- 10%
Consistently Does Not Meet Expectations	4 years	75% of AAMC 25th Percentile

Recommended IBS salary ranges for associate professors will be set according to these guidelines or at 75% of the full professor range for each evaluation category, whichever is higher.

Productivity Incentives

Each chair will establish a mechanism by which high performance by faculty in all areas (research, teaching and service) will be recognized through: (1) bonuses, and/or (2) additional secondary base salary which shall be paid by the School and which shall have a defined begin and end date of payment. For tenured Basic Science faculty, high performance may be defined as achieving salary support from extramural grants well in excess of 50%, significant generation of indirect costs, and/or national or international recognition of their work. Chairs will set and publicize expectations that may lead to productivity incentives, consistent with the metrics of outstanding performance in their respective departments.

Annual Review and Annual Compensation Setting

Faculty have the primary responsibility for ensuring that they are meeting expectations. Chairs are responsible for making efforts to support that the quality and totality of available teaching, service and research work, all to the extent possible and appropriate, is reasonably available and equitable across departments.

The chair's review of the faculty is expected to take place each year during the month of May, and each individual faculty member will provide their chair with a portfolio of their research, teaching and service contributions through which they will describe whether and how they are meeting expectations. The chair will review and evaluate a faculty member's portfolio for sufficiency in meeting expectations as well as for quality of performance. In so doing, chairs may also review student or other evaluations, syllabi, research proposals and/or research related materials (e.g., papers, presentations, etc.), grant funding success and associated salary support, commendations or critiques of the faculty members' performance and other feedback about the faculty members' performance. The chair will meet with faculty members individually to review the performance evaluation and based on that review, set the following year's IBS and performance expectations associated with the faculty member's appointment.

Faculty will receive increases in annual compensation based on consistently meeting, or exceeding, performance expectations in the areas of research, teaching and service. Consistent high achievement will see a faculty member's IBS set upward toward the AAMC 75th percentile based on rank. If performance declines and expectations are not met for prolonged periods of time without significant progress towards rectifying the situation, a faculty member's IBS will be adjusted downward.

In the event that at the end of an academic year, a faculty member does not meet established performance expectations, they must be informed of the need to correct these deficiencies. They should also be informed that if their performance does not improve, adjustments in their assignments and appointments may occur, including a reduction in their appointment.

Equity Review

TUSM is committed to the equitable compensation of its faculty. To ensure that its compensation practices are equitable under this Plan, TUSM will conduct an annual monitoring of pay practices for the previous fiscal year to be performed by an independent third-party. Consistent with all applicable privacy requirements, the School will provide a summary of the analysis and any corrective steps adopted in conjunction with the analysis.

Adjustments to Faculty Appointments

As set forth above, tenured Basic Science faculty are expected to maintain a full-time appointment (1.0 FTE). For Associate Professors who have been in rank for more than 7 years and Full Professors who have been in rank for more than 4 years, the annual review conducted by the Chair will include an evaluation of the faculty member's appointment, and will evaluate whether the faculty member is meeting the expectations of a full time appointment. A faculty member who is not actively engaged in peer-reviewed research, teaching, and service as defined in this Plan and sufficient to support a full time appointment will be advised by their chair that they are not meeting expectations. The faculty member will be advised of the need to meet institutional and departmental expectations and asked to engage in specific activities to meet those expectations. If the faculty member does not heed the chair's directive and/or does not meet expectations again in the next performance cycle, the chair may recommend a reduction in the faculty member's appointment commensurate with the deficiency in the faculty member's ability to meet expectations. In any case, faculty will be given at least a one-year notice of a

possible reduction in appointment and a faculty member's appointment will not be reduced by more than 0.25 FTE per year and never lower than 0.50 FTE in total. A faculty member's FTE can be restored to 1.0 upon achieving the expectations outlined by their chair.

Appeals for Reduction in Appointments

If a department chair determines that a reduction in a faculty member's appointment is appropriate, the chair must first obtain approval from the Dean of the School, or his or her designee. Documentation that includes annual reviews and efforts the department made to support improvements in the faculty member's performance shall be provided to the Dean in support of the recommendation.

The faculty member may appeal this decision to an appeals committee. The committee will be comprised of six members – three faculty and three basic science chairs not from the affected faculty member's department. The faculty member from each department serving on the appeals committee will be selected by their chair with preference for full professors not previously subjected to a reduction under this plan. The faculty member must solicit a letter from an outside, impartial colleague and her/his Chair will solicit another letter from another impartial colleague. The letter writers will be asked to describe the impact in the field of the three most significant, peer-reviewed papers that the faculty member has published in the last three years. The committee of chairs will make a recommendation to the Dean. The Dean's decision will be final.

This Plan does not address other aspects of employment available to faculty such as university approved leaves of absence, legally required accommodations, or sabbaticals, which are discussed in other documents such as the Faculty Handbook or determined by University policy and/or by applicable law. Faculty with questions about how these various aspects of employment will be handled under this plan should consult the appropriate Chair.

Appendix A

Implementation

This plan will phase into full effect from July 1, 2017 to July 1, 2020. During this implementation phase, tenured faculty should expect the following:

- Faculty compensation may reflect changes as early as July 2017. Changes may result in an increase, decrease, or no change in a faculty member's institutional base salary (IBS).
- Any decrease in IBS for faculty will be limited to 10% per year. There will be no limitations on increases to IBS.
- Starting July 1, 2017, tenured faculty will be expected to support 40% of their salary through extramural research funding. Faculty who do not meet this expectation may be subject to appointment reductions starting July 1, 2018. The salary support requirement will increase to 50% as of July 1, 2020. As set forth in the plan, salary support from extramural research funding will be one of many factors taken into account in setting salaries and appointments.
- Any appointment adjustments consistent with the plan will not take place until July 1, 2018, will be limited to 0.25 FTE annually, and will never go below 0.50 FTE in total.

TUSM Compensation Plan for Tenured Basic Science Faculty (rev. 7/1/2019)

Introduction

The Tufts University School of Medicine ("TUSM" or "the School") Compensation Plan for Tenured Basic Science Faculty (the "Plan") applies to all tenured faculty in the basic science departments. As of the date of the copy of this Plan, these departments include: Developmental, Molecular, & Chemical Biology ("DMCB"), Immunology (formerly Integrative Physiology & Pathobiology), Molecular Biology & Microbiology ("Micro") and Neuroscience ("Neuro"). The purpose of this Plan is to foster faculty excellence through rational, equitable and transparent criteria for faculty compensation and to encourage excellence and productivity in the key areas of faculty performance - research, teaching and service. Central to the Plan is the expectation that tenured basic scientists at TUSM be, and operate as, independent investigators. Markers of an independent investigator include the ability to maintain an active research lab and program, to establish a superior record of impactful scholarship and other research accomplishments such as competitive and successful peer-reviewed grant submissions on an ongoing basis, as well as a demonstrated ability to broaden research interests and to remain at the forefront of research in the applicable field. Independent investigators recognize the critical importance of peer reviewed extramural funding to their status which provides the financial support to conduct quality research and meaningful scholarship, to participate in the training of young scientists, and they understand that overall success in those areas also further the tripartite mission and goals of the School and the University. [1]

To remain in good standing as a tenured basic science faculty member at TUSM, faculty members must demonstrate their ability to operate as an independent investigator and to maintain an independent research program. Principal factors that will be evaluated to determine whether a faculty member is operating as an independent investigator and maintaining an independent research program include:

1. Proof of an ongoing extensive peer reviewed research and scholarship record as evidenced by quality publications, presentations, and collaborations, among other evidence.
2. Ongoing financial support for research activities, including a minimum of 50% support for Institutional Base Salary (IBS) from peer reviewed extramural research funds and obtaining direct cost support, facility and administrative cost support and/or other sources to support an active laboratory.[2] When underfunded, faculty must demonstrate greater and meaningful efforts to annually seek and obtain competitive, peer reviewed extramural research support, such as grants sponsored by NIH or the equivalent. And, while efforts to obtain support are important, tenured faculty are expected to *obtain* peer reviewed extramural research support consistent with this Plan.
3. When not engaged in research activities -- which are central to a faculty member's appointment -- remaining actively engaged in other efforts supporting the tripartite

[1] Nothing in this Plan is intended to limit or otherwise interfere with the academic freedom afforded to tenured faculty pursuant to School and University policy.

[2] Salary support expectations will begin at 40% at the time of implementation on July 1, 2017 and increase to 50% on July 1, 2020. *See* Appendix A.

Exhibit 7

mission of the School such as active engagement in the training of young scientists and in service to the profession through meaningful teaching and service activities. Given the School's research focus and the fact that there are limited teaching and service opportunities available for basic science faculty, those faculty wishing to dedicate more than 50% of their time to research activities may do so with the approval of their Chair.

Faculty Requirements

It is the responsibility of the department chairs to evaluate whether the quality and quantity of a faculty member's research, teaching and service activities meets TUSM's high standards for faculty performance. At a minimum, faculty members are expected to engage in work sufficient to qualify for a full-time appointment at the School consistent with the above referenced expectations and to meet with their department chair annually to review and establish performance expectations. TUSM's faculty performance standards will be reviewed periodically and adjusted over time to align with the expectations of individual departments, the School itself and the University as a whole.

Compensation Guidelines

Upon promotion to the rank of Associate Professor with Tenure (or higher, if hired at a higher rank), a faculty member will enter this Compensation Plan. Faculty salaries at the time of hire and throughout the path to Associate Professor shall also be guided by this Plan. Tenured faculty members will have their appointment and associated salary level reviewed on an annual basis by their Chair using a process that will take into account the totality of a faculty member's contributions to the tripartite mission of the School. Factors that will be considered in determining faculty salaries may include but will not be limited to: the ability to demonstrate independent investigator status in a variety of ways including a demonstrated ability to manage and sustain an active and thriving research program; research productivity from all peer reviewed extramural funding (federal, foundation, industry) over the last 4 years; the ability to obtain direct cost support, facility and administrative cost support and/or other sources to support an active laboratory; long-term contributions to the tripartite mission of the School; service in significant administrative roles; retention, promotion and other merit based assessments such as actual performance against expectations, and the overall quality of the faculty member's work performance and productivity over extended periods of time (e.g., more than five years).

The Institutional Base Salary (IBS) for basic science faculty will be the annual compensation paid by the University for a faculty member's annually defined appointment whether the faculty member's time is spent on research, instruction, service, administration and/or other approved activities. Regardless of the source of funding, IBS is set and documented on an annual basis and is based on a full-time workload. The IBS excludes bonuses, secondary base salary, honoraria and any other non-benefit eligible payments made to the faculty member.

Faculty IBS will be benchmarked using the AAMC annual salary survey for Northeast private medical schools. Based on these benchmarks, recommended ranges will be provided annually to the Chairs to use in setting the IBS. Although the various factors described in this Plan will be evaluated in the setting of the annual IBS, a faculty member's research productivity over the last 3 to 4 years (whichever benefits

the faculty member most) will be central to the analysis given the research focus of the basic science programs and the expectations for tenured faculty to maintain independent investigator status. Also, teaching and service opportunities and responsibilities at TUSM are limited. Thus, while still important to the work of basic scientists at TUSM, these obligations will have a lesser impact on compensation than will research productivity. Faculty performing these teaching and service functions effectively and consistent with established expectations should expect that their IBS will be enhanced consistent with their performance. For instance, a faculty member engaged in outstanding teaching and service will receive an IBS closer to the higher range of IBS band associated with the faculty members' research productivity, and those engaged in outstanding teaching and service may receive additional compensation at the discretion of the Chair in recognition of the individual's overall contributions. Those whose teaching and service are lacking or non-existent will see their compensation set at the lower range of the IBS band associated with a faculty members' research productivity.

Faculty consistently meeting expectations (for a period of three or more consecutive years) should receive an IBS near the AAMC median. Faculty consistently above or below expectations should likewise see their IBS adjusted to be closer to the AAMC 75th or 25th percentiles, respectively. The IBS will reflect faculty productivity over 3-4 years and is not expected to fluctuate rapidly over time or after it has been set in a particular year.

Recommended Guidelines for Setting Institutional Base Salary Based on Performance

Evaluation Category	Review Period	Targeted Salary
1	3-4 years[3]	AAMC 75th Percentile +/- 10%
2	3-4 years	AAMC Median +/- 10%
3	3-44 years	AAMC 25th Percentile +/- 10%
4	3-4 years	75% of AAMC 25th Percentile

Recommended IBS salary ranges for associate professors will be set according to these guidelines or at 75% of the full professor range for each evaluation category, whichever is higher. Each year during the performance review period, Department Chairs will share annual AAMC values with faculty as well as the specific IBS that will apply to the faculty member for the upcoming year.

Productivity Incentives

Each Chair will establish a mechanism by which high performance by faculty in all areas (research, teaching and service) may be recognized through School supported: (1) bonuses, and/or (2) supplements, and/or (3) School supported research activities (e.g., funding to support specific work or positions for a defined amount of funding and for a defined period of time). For tenured basic science faculty, high performance may be defined, for example, as achieving salary support from peer reviewed extramural grants well in excess of 50%, significant generation of indirect costs, and/or national or international recognition of their work. High performance may also mean engaging in teaching or

[3] A look-back of 3-4 years (whichever best benefits the faculty member) will be applied

service activities that provide a significant contribution to the School's and/or the University's goals. Chairs will set and publicize expectations that may lead to productivity incentives not part of the IBS, consistent with the metrics of outstanding performance in their respective departments.

Supplemental Pay

Supplements apart from the IBS will be paid to TUSM tenured faculty who hold major roles in the Sackler School programs, a Vice-Chair appointment for their department, and/or a course directorship in the MD program, for example. These supplements are paid on top of the IBS and are not subject to reduction in the event of a reduction of appointment. Should a faculty member step down from a role during an academic year, their supplement will end at that time. If a role is added during an academic year, an appropriate supplement will be added at a prorated amount for the remainder of the fiscal year.

Annual Review and Annual Compensation Setting

Faculty have the primary responsibility for ensuring that they are meeting expectations. Chairs are responsible for making efforts to support that the quality and totality of available teaching, service and research work, all to the extent possible and appropriate, is reasonably available and equitable across departments.

Chairs will endeavor to review the faculty in their respective programs each year during the month of May, and in preparation each individual faculty member will provide their Chair with a portfolio of their research, teaching and service contributions through which they will describe whether and how they are meeting expectations. The Chair will review and evaluate a faculty member's portfolio for sufficiency in meeting expectations as well as for quality of performance. In so doing, Chairs may also review student or other evaluations, syllabi, research proposals and/or research related materials (e.g., papers, presentations, etc.), grant funding efforts and success as well as associated salary support, commendations or critiques of the faculty members' performance and other feedback about the faculty members' performance. The Chair will meet with faculty members individually to review the performance evaluation and based on that review, set the following year's IBS and performance expectations associated with the faculty member's appointment and consistent with this plan.

Faculty may receive increases in annual compensation based on consistently meeting, or exceeding, performance expectations in the areas of research, teaching and service. Consistent high achievement in the area of research productivity will generally see a faculty member's IBS set upward toward the AAMC 75th percentile based on rank. If performance declines and expectations are not met without significant progress towards rectifying the situation, a faculty member's IBS will be adjusted downward.

If at the end of an academic year, a faculty member does not meet established performance expectations, they must be informed of the need to correct these deficiencies. They should also be informed that if their performance does not improve, adjustments in their assignments and appointments may occur, which may include a reduction in their appointment.

Equity Review

TUSM is committed to the equitable compensation of its faculty. To ensure that its compensation practices are equitable under this Plan, TUSM will conduct an annual monitoring of pay practices for the previous fiscal year to be performed by an independent third-party. Consistent with all applicable privacy requirements, the School will provide the faculty a summary of the analysis and any corrective steps adopted in conjunction with the analysis.

Adjustments to Faculty Appointments

In order to maintain a full-time appointment, Basic Science faculty are expected to meet expectations consistent with this Plan. For Associate Professors who have been in rank for more than 7 years and Full Professors who have been in rank for more than 4 years, the annual review conducted by the Chair will include an evaluation of the faculty member's appointment and will evaluate whether the faculty member is meeting the expectations of a full-time appointment. During these time periods, IBS may be adjusted consistent with performance, but FTE will not be subject to adjustment. However, a faculty member beyond these time periods who is not acting as an independent investigator actively engaged in extramural funded peer-reviewed research, teaching, and service to support a full-time appointment will be advised by their Chair that they are not meeting expectations. The faculty member will be advised of the need to meet institutional and departmental expectations and asked to engage in specific activities to meet those expectations. If the faculty member does not heed the Chair's directive and/or does not meet expectations again in the next performance cycle, the Chair may recommend a reduction in the faculty member's appointment commensurate with the deficiency in the faculty member's ability to meet expectations.

In the case that a faculty member's appointment is reduced, the expected work commitment will be reduced proportionately. [4] Faculty will be given at least a one-year notice of a possible reduction in appointment and a faculty member's appointment will not be reduced by more than 0.25 FTE per year and never lower than 0.50 FTE in total. Given the limited teaching and service obligations at TUSM, any faculty member whose FTE is reduced to .5 is expected to be able to continue to engage in teaching and service duties, and basic research activities (e.g., writing grants, writing manuscripts, presenting at a conference, conducting basic experiments or design). A faculty member's FTE can be restored to 1.0 upon achieving the expectations outlined by their chair.

If after 4 consecutive years a faculty member remains below a 0.75 FTE and is consistently not meeting performance plans and/or other information exists to support that the faculty member is not meeting the expectations of tenure, a Chair may refer the faculty member's performance for review under the University's tenure revocation policy.

[4] All faculty, including those with reduced FTE, who wish to work outside of TUSM may do so provided they adhere to the University's Conflict of Commitment Policy: https://access.tufts.edu/conflict-of-interest-and-conflict-of-commitment-policy

Process and Appeals for Reduction in Appointments

If a Chair determines that a reduction in a faculty member's appointment is appropriate, the Chair must first obtain approval from the Dean of the School, or his or her designee. Documentation that includes annual reviews and efforts the department made to support improvements in the faculty member's performance shall be provided to the Dean in support of the recommendation.

The faculty member may appeal this decision to an appeals committee. The committee will comprise six members – three faculty and three basic science chairs not from the affected faculty member's department. The faculty member from each department serving on the appeals committee will be selected by their chair with preference for full professors not previously subjected to a reduction under this plan. The faculty member must solicit a letter from an outside, impartial colleague and her/his chair will solicit another letter from another impartial colleague. The letter writers will be asked to describe the impact in the field of the three most significant, peer-reviewed papers that the faculty member has published in the last three years. The committee of chairs will make a recommendation to the Dean. The Dean's decision will be final.

Note on Exclusions:

This Plan does not address other aspects of employment available to faculty such as university approved leaves of absence, legally required accommodations, or sabbaticals, which are discussed in other documents such as the Faculty Handbook or determined by University policy and/or by applicable law. Faculty with questions about how these various aspects of employment will be handled under this plan should consult the appropriate Chair.

Note on Implementation:

Implemented on July 1, 2017, this Plan replaced all other prior compensation plans, policies or practices at TUSM. This Plan will be reviewed periodically to ensure clarity, and that it is supporting the mission of the School and properly reflects TUSM's expectations of its faculty. This Plan was last updated on July 1, 2019. See Appendix A for implementation information.

Appendix A

Implementation

This Plan will phase into full effect from July 1, 2017 to July 1, 2020. During this implementation phase, tenured faculty should expect the following:

- Faculty compensation may reflect changes as early as July 2017. Changes may result in an increase, decrease, or no change in a faculty member's institutional base salary (IBS).
- Any decrease in IBS for faculty will be limited to 10% per year. There will be no limitations on increases to IBS.
- Starting July 1, 2017, tenured faculty will be expected to support 40% of their IBS through peer reviewed extramural funding. Faculty who do not meet this expectation may be subject to appointment reductions on an annual basis starting July 1, 2018. The salary support requirement will increase to 50% as of July 1, 2020. As set forth in the Plan, various factors are considered in determining faculty salaries. However, given the central importance of a basic science faculty member's ability to remain engaged as an independent investigator with demonstrated research productivity, a faculty member's research and the support they have obtained for it will be of central importance to the School's salary evaluation process.
- Any appointment adjustments consistent with the plan will not take place until July 1, 2018, will be limited to 0.25 FTE annually, and will never go below 0.50 FTE in total.

Policy on Academic Freedom, Tenure and Retirement
of the Board of Trustees of Tufts University
Revised Policy

Academic Affairs, February 7, 2014
Board of Trustees, February 8, 2014

I. Academic Freedom and Tenure

Academic freedom is essential to the free search for truth and its free exposition and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental, not only to the advancement of truth but for the protection of the rights of the teacher in teaching and of the student to freedom in learning as well. It carries with it duties correlative with rights.

Tenure is a means to a certain ends, especially:

(1) Freedom of teaching and research and of extramural activities, and

(2) A sufficient degree of economic security to make the profession attractive to men and women of ability.

II. Academic Freedom

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his/her other academic duties; but no regular activity for pecuniary return shall be engaged in without the approval of the university.

(b) The teacher is entitled to freedom in the classroom in discussing his/her subject, but should be careful not to introduce into his/her teaching controversial matter which has no relation to the subject.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline, but the teacher's special position in the community imposes special obligations. As a person of learning and an educational officer, he/she should remember that the public may judge the profession and the institution by his/her utterance. Hence, he/she 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/she is not an institutional spokesman.

Exhibit
3

III. Academic Tenure

(a) Initial appointments of faculty members in schools in which tenure appointments may be given are ordinarily made for successive terms in a probationary period. At the end of such probationary period a full-time faculty member will, subject to the provisions of paragraph (d) of this section III, be granted an appointment with permanent or continuous tenure, unless he/she is notified in writing to the contrary prior to the beginning of the last year of the probationary period. Thereafter the services of the faculty member will be terminated only for adequate cause, or under extraordinary circumstances because of bona fide financial exigencies or program discontinuance or resignation or retirement.

(b) The probationary period is hereby defined as seven (7) years of full-time service for the Faculties of Liberal Arts and Jackson, and Engineering, the Friedman School of Nutrition and Policy, and the Fletcher School of Law and Diplomacy provided, however, that it may be extended for a period not exceeding three years for a faculty member who at the time of employment did not have his/her Ph.D. or its equivalent, if the university and the faculty member agree in writing at the time of employment to such an extension; and the Friedman School of Nutrition Science and Policy. For the Dental School and the Basic Science Departments (i.e., Developmental, Molecular and Chemical Biology, Integrative Physiology and Pathobiology, Molecular Biology and Microbiology, and Neuroscience), of the School of Medicine, the probationary period is hereby defined as ten years of full-time service. In all schools in which tenure appointments may be given, except the Fletcher School of Law and Diplomacy, there may be credited as a part of such probationary period full-time service as a faculty member in all other institutions of higher education not exceeding three years in the aggregate unless the university and the faculty member agree in writing at the time of employment that a longer period of such service will be so credited.

(c) Permanent or continuous tenure may be awarded by the university prior to the expiration of the probationary period.

(d) In order to be eligible for permanent or continuous tenure a faculty member must:

(i) Be serving the university full-time as a faculty member.

In the School of Medicine, this is interpreted to mean strict full-time faculty members whose major professional commitment is to the Basic Science Departments of the School of Medicine and, where appropriate, to an affiliated institution, whose locus of

professional activity is at the school or affiliated institution and whose salary is guaranteed by the school.

(ii) Have the unmodified rank of professor, associate professor, assistant professor, or instructor (except that of assistant professors and instructors in the Basic Science Departments of the School of Medicine, and assistant professors and instructors in the School of Dental Medicine shall not be eligible.) A faculty member whose title includes the words "of the Practice" will not be considered to have an unmodified rank.

(iii) Have a full-time appointment on the faculty of any of the following:

(1) Liberal Arts and Jackson, and Engineering.

(2) Fletcher School of Law and Diplomacy.

(3) The Basic Science Departments (i.e., Developmental, Molecular and Chemical Biology, Integrative Physiology and Pathobiology, Molecular Biology and Microbiology, and Neuroscience), of the School of Medicine.

(4) School of Dental Medicine, unless the university and the faculty member of that School agree in writing that he/she is not eligible for permanent or continuous tenure.

(5) Friedman School of Nutrition Science and Policy.

(e) During the probationary period a faculty member shall not be denied the academic freedom that all members of the faculty have.

(f) In the case of a termination for a cause of appointment with permanent or continuous tenure, or a dismissal for cause prior to expiration of a term appointment, the faculty member concerned will be entitled to a hearing upon request. In such event, the faculty member shall be informed in writing before the hearing of the charges against him/her and shall have the opportunity to be heard in his/her own defense by all bodies that pass judgment upon the case. He/she will be permitted to have with him/her an advisor of his/her own choosing who may act as counsel. There shall be a full stenographic record of the hearing available to both the university and faculty member unless both the university and the faculty member waive the requirement. In the hearing of charges of incompetence, the testimony should include that of teachers and other scholars, either from his/her own or from other institutions. A faculty member having an appointment with permanent or continuous tenure who is dismissed for reasons not

involving moral turpitude shall receive his/her salary for one year from the date of notification of dismissal whether or not he/she is continued in his/her duties at the institution.

IV. Nonreappointments Not Involving Tenure

(a) In all cases not involving Tenure where a full-time faculty member is not to be reappointed following one year or more of service, the university shall give written notice to the faculty member that he/she is not to be reappointed as follows:

(i) not later than March 1 of the first academic year of service in the university if the appointment terminates at the end of that year or, if the initial one-year appointment terminates during the academic year, not later than three months prior to the date of its termination.

(ii) not later than December 15 of the second academic year of service in the university if the appointment terminates at the end of that year or, if an initial two-year appointment terminates during an academic year, not later than six months prior to the date of its termination; or

(iii) not later than twelve months prior to the date of termination of an appointment if the appointment terminates subsequent to the completion of more than two years of service in the university.

(b) Continuous term appointments for clinical faculty may be made in the Cummings School of Veterinary Medicine for periods of up to three years for Associate Professors and up to five years for Professors. Continuous term appointments are automatically extended each year for a period of one year. If a decision is made not to extend the appointment, the university shall give written notice to the faculty member that the term is not to be extended further not later than two years before the expiration of the term in the case of three year appointments and not later than four years before the expiration of the term in the case of five year appointments.

(c) The provisions of this policy with respect to non-reappointment will apply to research faculty members, except that in each research faculty members' appointment letter, it will be specified that the individual is expected to obtain his or her full compensation and associated indirect costs through external grant or contract support. The appointment terminates at any time the full external support terminates or is reduced to a level which is insufficient to provide full compensation and associated indirect costs.

V. Academic Year

The academic year of the Faculty of Arts, Sciences, and Engineering, the College of Special Studies, the School of Dental Medicine, and the Friedman School of Nutrition Science and Policy is from September first through August thirty first. The academic year for the School of Medicine, the Fletcher School of Law and Diplomacy, and the Cummings School of Veterinary Medicine is from July first through June thirtieth.

VI. Emeritus Status

A faculty member who has retired may be considered for emeritus status upon recommendation of the respective dean, concurrence by the provost and president, and with approval by the Board of Trustees.

TUFTS UNIVERSITY
School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

Department of Biochemistry
and Pharmacology

file

March 7, 1983

Dr. Theoharis Theoharides
Yale University School of Medicine
Department of Internal Medicine,
Section of Clinical Immunology
333 Cedar Street
New Haven, CT 06510

Dear Dr. Theoharides:

It is a pleasure to be able to offer you a faculty position as Assistant Professor in our Department. As we had discussed, this is a tenure track, eleven month appointment starting in early Fall with an initial salary of $30,000 per annum. We also plan to provide you with $15,000 for seed money. We can start the appointment prior to your arrival so that your moving expenses will be covered.

I understand your concern (as a brand-new M.D.), about the salary level, but simply don't have the funds to offer you more at this time. However, it should be possible to augment this sum once your grants are funded by using soft money. We are planning to have you put up for promotion during the 1986-1987 academic year. I understand that you are interested in pursuing some aspects of your clinical training and will do whatever I can to further this.

I will be flying to Europe on April 5 and will be there for a month. It would be helpful if you and your wife could make another visit to Boston before that time. We will try to make arrangements so that you can meet some members of the School Administration at that time.

Everybody is very excited at the prospect of your joining us.

With all best wishes, also to my numerous ex-colleagues,

Sincerely,

Henry G. Mautner
Professor and Chairman

HGM:efg

cc: H. Banks, R. Levy

136 Harrison Avenue
Boston, Massachusetts 02111
(617) 956-6867, 6868

Exhibit
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TUFTS UNIVERSITY
School of Medicine

Office of the Dean

September 12, 1983

Theoharis C. Theoharides, M.D., Ph.D.
Dept. of Biochemistry/Pharmacology
Stearns 7, TUSM Campus Mail

Dear Dr. Theoharides:

I am pleased to inform you that your Tufts University School of Medicine Appointment to the title of Assistant Professor in the Department of Biochemistry and Pharmacology has been approved, effective September 1, 1983.

I look forward to your continued participation as we plan for the future progress of the Medical School.

Sincerely,

Henry H. Banks, M.D.
Dean

CC: Chairman,
Department of Biochemistry and Pharmacology

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6565

TUSM0005356

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

February 15, 1995

Theoharis C. Theoharides, M.D., Ph.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Theo:

We are pleased to inform you that your promotion from Associate Professor to Professor in the Department of Pharmacology and Experimental Therapeutics at the health sciences schools has been approved, effective February 10, 1995. In 1991 you were awarded tenure.

The Basic Sciences Appointments, Promotions and Tenure Committee made its recommendation based on your outstanding accomplishments in research with demonstrated excellence in teaching and service to the university.

Tufts University is fortunate in having faculty with your expertise and qualities, attributes fundamental for developing further our scientific and educational programs.

Congratulations! We look forward to your participation as we plan for the future progress of the schools of medicine, dental medicine and veterinary medicine.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

MAM:ns
cc: Dr. David Greenblatt

TUSM0005357

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

November 6, 1991

Theoharis C. Theoharides, M.D., Ph.D.
Department of Pharmacology
and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Theoharides:

We are pleased to inform you that the President and Board of Trustees of Tufts University have voted to award you tenure in the Department of Pharmacology and Experimental Therapeutics in the health sciences schools, effective November 2, 1991. Your primary faculty title remains Associate Professor in the Department of Pharmacology and Experimental Therapeutics. You also have secondary appointments as Associate Professor in the Departments of Biochemistry and Psychiatry.

The Basic Sciences Appointments, Promotions and Tenure Committee made its recommendation based on your solid record of funding, good publications, a well-developed research program and the prospect of continued productivity.

Congratulations on your outstanding progress. We look forward to your continued participation as we plan for the future progress of the schools of medicine, dental medicine and veterinary medicine.

Sincerely,

Richard M. Ryan, Jr., D.Sc.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate
Biomedical Sciences

RMR:ns
cc: Dr. Richard I. Shader

136 Harrison Avenue
Boston, Massachusetts 02111

TUSM0001869

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

February 15, 1995

Theoharis C. Theoharides, M.D., Ph.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Theo:

We are pleased to inform you that your promotion from Associate Professor to Professor in the Department of Pharmacology and Experimental Therapeutics at the health sciences schools has been approved, effective February 10, 1995. In 1991 you were awarded tenure.

The Basic Sciences Appointments, Promotions and Tenure Committee made its recommendation based on your outstanding accomplishments in research with demonstrated excellence in teaching and service to the university.

Tufts University is fortunate in having faculty with your expertise and qualities, attributes fundamental for developing further our scientific and educational programs.

Congratulations! We look forward to your participation as we plan for the future progress of the schools of medicine, dental medicine and veterinary medicine.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

MAM:ns
cc: Dr. David Greenblatt

TUSM0001870

Boston, MA 02111 | TEL: 617-636-6631 | FAX: 617-636-6879

TUFTS UNIVERSITY

School of Medicine

Office of the Dean

February 15, 1995

Theoharis C. Theoharides, M.D., Ph.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Theo:

It is my pleasure to inform you that your appointment to the rank of Professor in the Department of Medicine at Tufts University School of Medicine has been approved, effective February 10, 1995. This is a secondary (part-time) appointment without compensation. You have two other secondary appointments as Associate Professor in the Departments of Psychiatry and Biochemistry. Your primary appointment remains Professor of Pharmacology and Experimental Therapeutics with tenure.

The Clinical Appointments and Promotions Committee made its recommendation based on your reputation as a distinguished scientist and teacher within the health sciences community. It is anticipated that your collaborative efforts with the Department of Medicine will enhance research projects on both sides of the street.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean

MAM:ns
cc: Dr. Jeffrey Gelfand
Dr. David Greenblatt
Dr. B. David Stollar
Dr. Marshall Folstein

136 Harrison Avenue

TUSM0001871

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

March 19, 2002

Theoharis C. Theoharides, Ph.D., M.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Theo:

I am pleased to inform you that your promotion to the rank of Professor in the Department of Biochemistry at Tufts University School of Medicine has been approved, effective July 1, 2002. This is a secondary (non-tenure track) appointment without compensation. Your primary appointment remains Professor WLT in the Department of Pharmacology and Experimental Therapeutics. Your other secondary appointments remain Professor in the Department of Medicine and Associate Professor in the Department of Psychiatry.

Your expertise in the area of biochemical pharmacology and your relationship with Biochemistry's graduate program enhances the collaborative research efforts for both the Sackler School of Graduate Biomedical Sciences and the School of Medicine.

The School of Medicine is most grateful for all your efforts in the health science community.

Sincerely,

John

John T. Harrington, M.D.
Dean
School of Medicine

JTH:ns
cc: Dr. David Greenblatt, Chair, Pharmacology and Experimental Therapeutics
Dr. Brian Schaffhausen, Chair, Biochemistry

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 636-6565
Fax: 617 636-0375

TUSM0001872

Tufts UNIVERSITY
SCHOOL OF MEDICINE
Office of Faculty Affairs

May 16, 2011

Theoharis C. Theoharides, Ph.D., M.D.
Molecular Physiology and Pharmacology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Theoharides,

I am writing to share an important departmental update. During the fall of 2010, the Department of Pharmacology and Experimental Therapeutics merged with the Department of Physiology. Subsequently, the combined departments were renamed as the Department of Molecular Physiology and Pharmacology.

As a result, this letter confirms your faculty appointment is now Professor, with tenure, in the Department of Molecular Physiology and Pharmacology, effective September 9, 2010. Please make note of this change in your curriculum vitae and whenever you use your academic title publicly.

Thank you for your ongoing contributions to the department and to Tufts University School of Medicine. If you have any questions regarding the merged department, please contact Dr. Eric Frank, Professor and Chair, Department of Molecular Physiology and Pharmacology.

Regards,

Kathleen E. Lowney, M.H.S.
Assistant Dean
Office of Faculty Affairs
Tufts University School of Medicine

KEL:cc

cc: Dr. Eric Frank

136 Harrison Avenue, Boston, MA 02111 | TEL 617.636.6631 | FAX 617.636.6679

TUFTS UNIVERSITY
School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

Department of Anatomy and
Cellular Biology

March 22, 1983

Dr. Ana Soto
Research Associate
Department of Anatomy and Cellular Biology
Tufts University School of Medicine

Dear Dr. Soto:

I am pleased to offer you (subject to the approval of the Dean of the School of Medicine and the Vice President for Health Sciences) the position of Research Assistant Professor in the Department of Anatomy and Cellular Biology, to be effective July 1, 1983. This is a non-tenure track appointment and your salary, to be generated from grant monies (Grant Number 5 R01-CA-13410-09), will be $27,231 per annum.

While no additional laboratory space can be provided at present, I will, as we have discussed, make every attempt to locate a suitable office space for you.

Enclosed is a copy of the benefits available to full-time employees of the University. The employee's contribution to the benefit program is also to be derived from grant monies (Grant Number 5R01-CA-13410-09).

In addition to your own research program, we look forward to your membership in our graduate program faculty (subject to the approval of the Executive Council of the Sackler Graduate School of Biomedical Sciences).

If this offer is acceptable to you, please let me know at your earliest convenience. We look forward to your new role in our departmental activities.

Sincerely,

Karen R. Hitchcock

Karen R. Hitchcock, Ph.D.
Professor and Chairman

KRH/md

cc: Dr. Henry Banks

136 Harrison Avenue
Boston, Massachusetts 02111
617-956-6685

Exhibit
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TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

Department of Anatomy and
Cellular Biology

May 7, 1992

Dean Richard Ryan
Tufts University
School of Medicine
145 Harrison Avenue
Sackler 8
Boston, MA 02111

Dear Dean Ryan:

I have enclosed the curriculum vitae and P.E.F. for Dr. Ana Soto. Dr. Soto is a Research Associate Professor whose appointment I request be transferred from the research track position of Associate Professor to a tenure track position, also as Associate Professor, with no credit toward tenure. Dr. Soto is well-funded and will derive 69% of her salary from grant funds. Her teaching responsibilities will be in the area of histology for Dental students.

There are several reasons that prompt me to request this transfer of Dr. Ana Soto from the research track position to a tenure track position. First, Dr. Soto has been in this department for 13 years. Since 1979 she has contributed to our teaching program, teaching Histology to Dental students. As part of the Histology team, she has contributed to the training of younger Assistant Professors who lack experience in teaching Histology. In addition, Dr. Soto became a facilitator in the problem based learning program in 1986 and has continued to function in this capacity.

In the Department, Dr. Soto has served in preliminary examination committees, has participated in supervising predoctoral students as well as postdoctoral fellows.

Finally, in her research program, Dr. Soto has maintained an independent active program funded by NIH and NSF since 1986. Although her research position was in association with Dr. Carlos Sonnenschein, Ana has developed research programs that are independent from Carlos's interest, such as the estrogenic activity of environmental agents, such as common, large volume-released chemicals.

Mailing address:
Tufts University Health Science Schools
Department of Anatomy and Cellular Biology
136 Harrison Avenue
Boston, Massachusetts 02111

Telephone: (617) 956-6685
Fax: (617) 956-6536

TUSM0001858

Dr. Soto is a member of an NSF program committee on diversity in biological research and is an ad hoc reviewer for many journals, including Endocrinology and Science.

Dr. Soto, together with Dr. Damassa, designed and developed the ImmunoAssay and Protein Probe Core. She was invaluable in this process as her knowledge of the gel analysis system developed by Millipore was critical to the development of this core. She was chosen by Millipore as a tester and collaborator due to the demands of her complex analyses, such as the simultaneous analyses of 12 two-dimensional gels. Using this approach, Dr. Soto was able to identify a group of proteins that were induced following treatment with estradiol.

I am delighted that a person with Dr. Soto's research interests, capabilities and characteristics as group participant and caring person has remained a member of our department. She is truly deserving of the position as Associate Professor, tenure track.

Respectfully,

Joan C. King

Joan C. King, Ph.D.
Professor and Chair

TUSM0001859

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

August 17, 1992

Ana Soto, M.D.
Department of Anatomy
and Cellular Biology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Soto:

It is our pleasure to inform you that your full-time faculty appointment has been changed from Research Associate Professor (non-track) to Associate Professor (tenure track) in the Department of Anatomy and Cellular Biology in health sciences schools, effective September 1, 1992. This is your primary appointment with no prior credit towards tenure.

The Basic Sciences Appointments, Promotions and Tenure Committee unanimously approved of the switch in tracks based on your outstanding contributions not only in research but teaching and service to the university.

We look forward to your continued participation as we plan for the future progress of the schools of medicine, dental medicine, and veterinary medicine.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

MAM:ns
cc: Dr. Joan C. King
Chairman

TUSM0001860

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

May 27, 1994

Ana Soto, M.D.
Department of Anatomy and Cellular Biology
Tufts University
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Soto:

It is our pleasure to inform you that the Board of Trustees of Tufts University have awarded you tenure in the Department of Anatomy and Cellular Biology at the health sciences schools, effective July 1, 1994. Your rank of Associate Professor remains the same.

Tenure was awarded based on your sciantific accomplishments, your contributions to teaching, and your service to the university. They were pleased to note your national and international reputation as a reproductive toxicologist.

Congratulations! We look forward to your continued participation as we plan for the future progress of the schools of medicine, dental medicine, and veterinary medicine.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate
Biomedical Sciences

NAM:ns
cc: Dr. Joan C. King

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6685

TUSM0001861

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

June 28, 2000

Ana Soto, M.D.
Department of Anatomy and Cellular Biology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Ana:

I am pleased to inform you that the Board of Trustees of Tufts University School of Medicine approved your promotion to the rank of Professor in the Department of Anatomy and Cellular Biology at Tufts University School of Medicine, effective July 1, 2000.

The Basic Science Faculty Appointment, Promotion and Tenure committee recommended promotion based on a consistent record of scientific accomplishments in an area of biological importance and the effective training of young scientists.

Ana, I look forward to your participation as we plan for the future of the School of Medicine.

Congratulations and best wishes for a pleasant summer.

Sincerely,

John

John T. Harrington, M.D.
Dean
Professor of Medicine

JTH:ns
cc: Dr. James Schwob, Chair
Dr. Nicolaos E. Madias, Executive Academic Dean
Dr. John Castellot, Chair, Basic Science Appointment, Promotion and Tenure Committee

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 636-6565
Fax: 617 636-0375

TUSM0005221

UNIVERSITY

SCHOOL OF MEDICINE

Office of Faculty Affairs

January 2, 2014

Ana M. Soto, M.D.
Integrative Physiology and Pathobiology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA TUSM

Dear Dr. Soto:

This letter confirms your faculty appointment is now Professor of Integrative Physiology and Pathobiology at Tufts University School of Medicine, effective July 1, 2013. Please make note of this change in your *curriculum vitae* and whenever you use your academic title publicly.

If you have any questions regarding the new department, please contact your chair.

On behalf of Tufts University School of Medicine, I want to thank you for your commitment to medical education and to furthering Tufts medical education, research, and service missions. If we can be of further assistance, please do not hesitate to contact the Office of Faculty Affairs at 617.636.6631 or via e-mail at med-ofa@tufts.edu.

Sincerely,

Kathleen E. Lowney

Kathleen E. Lowney, M.H.S.
Assistant Dean for Faculty Affairs
Tufts University School of Medicine

KEL/sa

136 Harrison Avenue, Boston, MA 02111 | TEL: 617.636.6631 | FAX: 617.636.6879

TUFTS UNIVERSITY

Department of Pharmacology and
Experimental Therapeutics

David J Greenblatt, M.D.
Louis Lasagna Chair in Pharmacology and
Experimental Therapeutics
Professor and Chairman

June 16, 2000

Exhibit
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Emmanuel N. Pothos, Ph.D.
Columbia University-Depts. of Neurology and Psychiatry
William Black Building-Room 305
650 W.168th Street
N.Y., N.Y. 10032

Dear Dr. Pothos:

It is our pleasure to offer you an appointment to the tenure-track position of Assistant Professor in the Department of Pharmacology and Experimental Therapeutics at Tufts University School of Medicine. The period of this appointment is for three years, commencing October 1, 2000 and renewable thereafter. Your salary, paid in equal bi-monthly installments, will be $65,000 per year, subject to adjustment at the discretion of the University from year to year. In addition, the University maintains a benefits plan for all full-time faculty members. In order to take full advantage of the benefits for which you may be eligible, you will want to attend one of the orientation sessions held by Human Resources once you begin employment.

It is understood that you do not have any credit towards full-time teaching experience at the college or university level to be credited toward your tenure probationary period. Your appointment and continued employment are subject to your fulfillment of all obligations and conditions in accordance with University policies and practices. Your major teaching responsibility will be in the graduate Pharmacology Program of the Sackler School. In addition, you will be expected to participate in faculty affairs, serve on committees, and accept other assigements from time to time at the request of the Dean or your Department Chair.

We understand that you will be transferring certain current grants you have, and in order to assist you in building a new lab here at Tufts and effectively bringing in new grants, we have agreed that your salary will be wholly paid by the Medical School in the first year and 60% in the second. For the third year, you will be expected to carry at least 50% of your salary on grant/sponsored funding. Thereafter, subject to your renewal, you will be expected to meet or exceed the sponsored funding target set for all Medical School faculty. This is anticipated to increase to 60% by 2003.

We have identified appropriate laboratory and office space in M&V 201/203. Funds of up to $150,000 will be provided to help defray the cost of equipping your laboratory (this expenditure should be spread out over your 3-year initial term as much as possible). In addition, $100,000 will be provided for personnel and supplies for your lab, the expenditure of which must be spread out over your initial 3-year term.

136 Harrison Avenue
Boston, Massachusetts 02111

(617) 636-6997
Fax: (617) 636-6738
E-Mail: dgreenblatt@infonet.tufts.edu

In addition, the Medical School will reimburse you for costs up to $5,000 towards your expenses in obtaining a U.S. green card; reimburse you up to $1,500 for personal moving expenses; and reimburse you for reasonable costs associated with moving laboratory equipment and supplies (you must show evidence of obtaining at least three quotes from moving companies).

This agreement is contingent on your providing verification of your identity and eligibility to work in the United States. In addition, Massachusetts State Law requires provision of evidence of a negative skin test for tuberculosis or a negative chest X-ray if the skin test results are positive. This testing must occur not more than 90 days prior to the date of hire.

No modification of the provisions hereof may be made except as consented in writing signed by the Dean of the School of Medicine. Please indicate your acceptance of the terms of this appointment by signing the original letter below.

We are all looking forward to the prospect of years of fruitful research and collegial scholarship.

Sincerely,

David J. Greenblatt, M.D.

John T. Harrington, M.D.
Dean
Tufts University School of Medicine

I have read the letter of appointment and understand and accept all the conditions of my appointment in the Department of Pharmacology and Experimental Therapeutics in the Tufts University School of Medicine.

Signature

EMMANUEL N. POTHOS, PH.D.
Printed name

6-21-00
Date

TUFTS UNIVERSITY

CONFIDENTIAL

Department of Pharmacology and
Experimental Therapeutics

David J Greenblatt, M.D
Louis Lasagna Chair in Pharmacology and
Experimental Therapeutics
Professor and Chairman

Emmanuel N. Pothos, Ph.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
Medical and Veterinary Building, Rooms 201-203
136 Harrison Avenue
Boston, MA 02111

September 29th, 2003

Dear Dr. Pothos:

It is our pleasure to renew your appointment to the tenure-track position of Assistant Professor in the Department of Pharmacology and Experimental Therapeutics at Tufts University School of Medicine and the Sackler School of Graduate Biomedical Sciences. The period of your appointment is for three years, commencing October 1, 2003, and renewable thereafter. Your salary, paid in equal bi-monthly installments, will be $76,160 per year, effective July 1, 2003 and subject to annual increases at the discretion of the University from year to year. In addition, the University maintains a benefits plan for all full-time faculty members and you are entitled to participate in this plan.

Your appointment and continued employment are subject to your fulfillment of all obligations and conditions in accordance with University policies and practices. Your major teaching responsibility will be in the graduate Pharmacology Program of the Sackler School. In addition, you will be expected to participate in faculty affairs, serve on committees, and accept other assignments from time to time at the request of the Dean or your Department Chair. You will be expected to carry 50% of your salary on sponsored grants.

Your laboratory and office space will continue to be located in the Medical and Veterinary Building, Rooms 201-203, 136 Harrison Avenue. Your startup aid accounts (M270222 for supplies and personnel and EB0681 for equipment) will be renewed for the period October 1, 2003-September 30, 2006. In addition, the Medical School will reimburse you for net costs up to $5,000 towards your expenses in renewing your H1-B visa and obtaining a U.S. green card.

136 Harrison Avenue
Boston, Massachusetts 02111

(617) 636-6997
Fax: (617) 636-6238
E-Mail: dgreenblatt@tufts.edu

No modification of the provisions hereof may be made except as consented in writing signed by the Dean of the School of Medicine. Please indicate your acceptance of the terms of this appointment by signing the original letter below.

We are all looking forward to the prospect of years of fruitful research and collegial scholarship.

Sincerely,

David J. Greenblatt, M.D.
Chair
Department of Pharmacology and Experimental Therapeutics

Nicolaos Madias, M.D.
Dean
Tufts University School of Medicine

I have read the letter of appointment renewal and understand and accept all the conditions of my appointment in the Department of Pharmacology and Experimental Therapeutics in the Tufts University School of Medicine and Sackler School of Graduate Biomedical Sciences.

Signature

EMMANUEL N. PAPHES M.D.
Printed Name

10/14/03
Date

TUSM0001848

CONFIDENTIAL

TUFTS UNIVERSITY

School of Medicine

Office of the Dean

August 28th, 2006

Emmanuel Pothos, Ph.D.
Department of Pharmacology
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Pothos,

It is our pleasure to renew your appointment to the tenure-track position of Assistant Professor in the Department of Pharmacology and Experimental Therapeutics at Tufts University School of Medicine and the Sackler School of Graduate Biomedical Sciences. The period of your appointment is for one year, commencing October 1, 2006, renewed annually thereafter. Effective July 1, 2006, your annual salary, paid in equal bi-monthly installments, will be $85,000. Your salary is subject to adjustment at the discretion of the University from year to year. As a full-time faculty member, you are eligible to continue to participate in the benefit plans offer by the University.

Your appointment and continued employment are subject to your fulfillment of all obligations and conditions in accordance with University policies and practices. Your major teaching responsibility will be in the graduate program in Pharmacology. In addition, you will be expected to participate in faculty affairs, serve on committees, and accept other assignments from time to time at the request of the Dean and/or your Department Chair. You will be expected to carry 60% of your salary on sponsored grants.

No modification of the provisions hereof may be made except as consented to in writing and signed by the Dean of the School of Medicine. Would you please indicate your understanding and acceptance of this appointment by signing the original letter where indicated and returning it to me. A copy of this letter is included for your files.

Going forward, your appointment will be renewed automatically unless otherwise expressed to you in writing. If there are other matters that need clarification or if you have any questions, please let me know.

Sincerely,

Michael Rosenblatt, M.D.
Dean
Professor of Physiology and Medicine

David J. Greenblatt, M.D.
Chair
Department of Pharmacology

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 636-6565

I have read the letter of offer dated 8/28/06 and understand and accept all the conditions of my appointment in the Department of Pharmacology and Experimental Therapeutics at Tufts University School of Medicine. I understand this agreement is contingent on my providing the appropriate identification(s) listed on the attached Employment Eligibility Verification Form.

Date 9/8/06

(Emmanuel Pothos, Ph.D.)

TUSM0001850

Tufts University
School of Medicine

Michael Rosenblatt, M.D.
Dean

May 6, 2009

Emmanuel N. Pothos, M.A., Ph.D.
Department of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear ~~Emmanuel~~ Manos:

I am pleased to inform you that your promotion to the rank of Associate Professor WITH TENURE in the Department of Pharmacology and Experimental Therapeutics at Tufts University School of Medicine has been approved by the Trustee Committee on Academic Affairs, effective July 1, 2009.

The Basic Science Faculty Appointment, Promotion, and Tenure Committee made a favorable recommendation based on demonstrated excellence in research, teaching and service to the university. I am confident you will remain a valuable and highly respected member of the Tufts community.

Congratulations and best wishes, Emmanuel! I look forward to your participation as we plan for the future progress of the School of Medicine and its students.

Sincerely,

Mike

Congratulations!

Michael Rosenblatt, M.D.
Dean
Professor of Physiology and Medicine

MR:ms
cc: Dr. David Greenblatt, Professor and Chair, Pharmacology and Experimental Therapeutics
Dr. Naomi Rosenberg, Dean, Sackler School of Graduate Biomedical Sciences
Dr. F. Rob Jackson, Chair, Basic Science Faculty AP&T Committee

136 Harrison Avenue, Boston, MA 02111-1800 | TEL 617.636.6565 | FAX 617.636.0375

TUSM0001851

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

May 5, 1992

Brent Cochrane, Ph.D.
Massachusetts Institute of Technology
Center for Cancer Research, E 17-517
77 Massachusetts Avenue
Cambridge, MA 02139

Dear Dr. Cochrane:

There is great interest in having you join the faculty of the Department of Physiology at Tufts. I share in this objective and will do everything possible to make your transition easy and joyful. Thus, I am responding to your specific requests as follows:

Dr. Arias will submit your name for appointment as Associate Professor of Physiology with tenure. As had been explained to you, the major academic hurdle at Tufts is promotion to Associate Professor. Tenure invariably follows shortly thereafter. However, all final appointments are subject to approval of a Medical School committee, University administration, and the Board of Trustees. Meanwhile, you have my commitment to provide stability to your appointment. In the event that you are not successful in a given round of grant applications and on recommendation of your Chairman, salary and research support will be provided, if necessary. It is the philosophy of this institution to support its outstanding faculty to the best of our ability.

Your starting salary will be $70,000 with half being provided by Tufts, including fringe benefits.

Start-up funds not to exceed $100,000 will be made available to you and Dr. Arias who will assist in providing instrumentation and other facilities.

I am informed that your Program Project ($100,000/year) will be funded from MIT until June 1993 and that you plan to submit grant requests to replace these funds by the fall of 1992. If needed, we will provide up to $100,000 for one year or until you receive grant support to replace the Program Project funding.

The laboratory and office space occupied by Dr. Cantley will be cleaned, painted, and generally updated for you. It is our intent to obtain additional space for the Department within the near future at which time your location and facilities will be reviewed by Dr. Arias.

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 956-6565
617 956-0375 (FAX)

Exhibit
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PLAINTIFFS000192

If necessary, we will support your graduate student for one year at $14,000.

I look forward to meeting you. Many members of our faculty have communicated with me to encourage your recruitment to Tufts. I am pleased to do all I can to facilitate your move and a productive career at Tufts.

Sincerely yours,

Richard M. Ryan, Jr., D.Sc.
Dean

Irwin M. Arias, M.D.
Chairman, Physiology

Brent Cochran, Ph.D.

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

June 3, 1993

Brent Cochran, Ph.D.
Department of Physiology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Cochran:

We are pleased to inform you that your promotion to the rank of Associate Professor With Tenure in the Department of Physiology at the health sciences schools as been approved by Board of Trustees of Tufts University, effective July 1, 1993.

The Basic Sciences Appointments, Promotions and Tenure Committee made a favorable recommendation based on your past research accomplishments, your demonstrated commitment to teaching and to the training of students and postdoctoral fellows, your consistent record of grant support from NIH, and your potential for future growth as a scientist and teacher.

Congratulations! We look forward to your continued participation as we plan for the future progress of the schools of medicine, dental medicine, and veterinary medicine.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

NS:MAM
cc: Dr. Irwin Arias
Dr. Abraham L. Sonenshein

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6685

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

May 21, 2002

Brent H. Cochran, Ph.D.
Department of Physiology
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Brent:

I am pleased to inform you that your promotion to the rank of Professor in the Department of Physiology at Tufts University School of Medicine has been approved, effective July 1, 2002.

The Basic Science Faculty Appointment, Promotion and Tenure Committee recommended promotion based on international recognition as an accomplished scientist publishing in high profile journals. The committee also noted demonstrated excellence in service to the School of Medicine and the Sackler School of Graduate Biomedical Sciences.

Congratulations, Brent!

Sincerely,

John

John T. Harrington, M.D.
Dean
Professor of Medicine

JTH:ns
Cc: Dr. Irwin Arias

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 636-6565
Fax: 617 636-0375

TUFTS UNIVERSITY
SCHOOL OF MEDICINE

DEPARTMENT OF MICROBIOLOGY
TEL. 426-4620

136 HARRISON AVENUE
BOSTON, MASSACHUSETTS 02111

May 2, 1964

Dr. Michael Malamy
Service Biochemie Cellulaire
Institut Pasteur
25, Rue du Docteur Roux
(XV Arrond') Paris, France

Dear Dr. Malamy,

I am pleased to offer you an appointment as Assistant Professor of Microbiology at Tufts University School of Medicine beginning the summer of 1965 with an annual salary of $12,000. If you would like to visit us (at our expense) before making a decision, we would welcome the opportunity to have you for a seminar and to show you the department, Tufts, and Boston. I'd like you to meet Elio Schaechter, Vas Aposhian, and Rusty Rustigian in order to really appreciate the department.

Tufts has a policy of exceptional support for those individuals and departments which demonstrate growth and superior scholarship. As you develop in this position, personal advancement and increased space to meet your needs would naturally follow.

You would be responsible for up to 6 lectures to the medical students and a fair share of student contact in the medical microbiology laboratory which is currently about 3 mornings a week for 6 weeks.

I think we discussed our graduate program which is small, growing, and quite flexible. I am confident we will have a good program with good students within about 3 years. At present, we are oversupplied with post-doctoral fellows which removes the temptation to accept unexciting students. Most of our current applicants fall in this category which is to be expected until we become better known. Our first 3 students are quite acceptable, however.

It was a pleasure to talk with you March 31st and learn about your present work and interests.--I really believe you are ready for an independent research position now but it is also clear that you have many exciting things to do and will profit by another year with Dr. Monod.

If you have any questions, please do not hesitate to write. I hope to hear from you soon.

With best regards.

Yours sincerely,

James T Park

James T. Park

Exhibit
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PLAINTIFFS000159

TUFTS UNIVERSITY
SCHOOL OF MEDICINE

DEPARTMENT OF MICROBIOLOGY
TEL. 426-4820

136 HARRISON AVENUE
BOSTON, MASSACHUSETTS 02111

January 14, 1966

Dr. Michael Malamy
Princeton University
Program in Biochemical Sciences
Princeton, New Jersey 08540

Dear Dr. Malamy:

It's a pleasure to offer you an appointment as Assistant Professor of Microbiology beginning in July or August, 1966. The salary would be $12,500. An additional $1,350 or so would be placed directly in your TIAA retirement fund.

I will not review the policies and teaching responsibilities of the department since I think you are familiar with them from our discussions and from my letter of May 2, 1964 which still correctly reflects them. You are also familiar with the possibilities for laboratory space. The laboratory next to Eddie Goldberg is definitely available but does not have an office near it. The new laboratory on the 6th floor is available if spoken for soon, but is not very practical unless it connects with our 6th floor. I will see Dean Calisti about this next week and we should also know something more definite about our projected expansion into the 5th floor of the Arnold Bldg. next week. I will write you again soon about the Arnold Bldg. situation.

I have requested that a check covering your expenses, including food and car use, be sent to you. Let me assure you that everyone here was very favorably impressed and would welcome you in the department.

Yours sincerely,

James T. Park

James T. Park

JTP:sk

TUSM0001827

JOHN F. MITCHELL
SECRETARY
MARIE M. DONNELLY
ASSISTANT SECRETARY

TRUSTEES OF TUFTS COLLEGE

BALLOU HALL
MEDFORD, MASS.

JUN 26 1967

Dr. Michael H. Malamy
325 Pearl Street
Reading, Massachusetts 01867

We are pleased to notify you that you have been appointed subject to the provisions of the Bylaws, to the position of:

Title(s) Assistant Professor of Microbiology

&

Duration 1 Year - 7/1/67 - 6/30/68

Division Schools of Medicine and Dental Medicine

Salary period 7/1/67 - 6/30/68 Salary $13,100.

Salary payable from sponsored research .....

..... subject to the availability of funds

Salary Corollaries

TIAA Retirement Annuity	1,470.
Social Security	290.40
Group Life Insurance	60.
Group Major Medical Insurance	26.
Total	$14,946.40

Please sign and return promptly the attached copy for our files.

TRUSTEES OF TUFTS COLLEGE
By: John F. Mitchell
Secretary

Trustees' Meeting, 4/20/67

TUSM0005082

TRUSTEES OF TUFTS COLLEGE

BALLOU HALL

MEDFORD, MASSACHUSETTS

DR. MICHAEL H. MALAMY

Trustees of Tufts College take pleasure in notifying you of your appointment, subject to the provisions of the applicable bylaws and University policies, to the position of Associate Professor of Molecular Biology and Microbiology, Without Limit of Time, from January 1, 1970, at the Schools of Medicine and Dental Medicine.

Secretary of the Corporation

Trustees' Meeting 11/1/69

PLAINTIFFS000160

Trustees of Tufts College
Ballou Hall
Medford, Massachusetts

MICHAEL H. MALAMY, Ph.D.

Trustees of Tufts College take pleasure in notifying you of your appointment, subject to the provisions of the applicable bylaws and University policy, to the position of Professor of Molecular Biology-Microbiology, Without Limit of Time, at the School of Medicine, from July 1, 1978.

Secretary of the Corporation

TUFTS UNIVERSITY
School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

March 28, 1988

David J. Greenblatt, M.D.
New England Medical Center Hospital
Department of Psychiatry - Box 1007
Boston, Massachusetts 02111

Dear Dr. Greenblatt:

I am pleased to inform and congratulate you on your secondary appointment at the rank of Professor of Pharmacology at Tufts University School of Medicine, effective July 1, 1988.

Your scientific ability and the efforts you are making to further the research objectives of the University are clearly a most welcomed asset to our schools.

Congratulations once again. Tufts is fortunate in having attracted faculty with your expertise and qualities which are fundamental for developing our scientific and educational programs.

Sincerely,

Henry H. Banks, M.D.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

cc: Dr. Louis Shuster

HHB:ms

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6685

Exhibit
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VOTED BY FULL BOARD 5/10/92

APR - 8 1992

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

GREENBLATT
effective 7/1/92
Provost office

April 2, 1992

Dr. Sol Gittleman
Senior Vice President and Provost
Tufts University
Medford, MA 02155

Dear Sol:

Dr. Richard I. Shader, Professor and Chairman of the Department of Pharmacology and Exprimental Therapeutics, has requested that Dr. David Greenblatt's secondary appointment as Professor of Pharmacology and Experimental Therapeutics be changed to a primary appointment and WITHOUT LIMITATION OF TIME. His appointment as Professor of Psychiatry will become secondary. Dr. Greenblatt also has a secondary appointment as Professor of Medicine.

Since 1979, Dr. Greenblatt's primary appointment has been in the Division of Clinical Pharmacology - Department of Psychiatry at New England Medical Center Hospital. He is known throughout the world as an expert in the area of pharmokinetics and was recently sited among the world's twenty most prolific researchers. We are extremely fortunate to have Dr. Greenblatt's expertise in creating a stronger Clinical Pharmacology Department at the health sciences schools.

Therefore, we concur with the recommendation of the Basic Sciences Appointments, Promotions and Tenure Committee recommending that David J. Greenblatt, M.D. be appointed Professor of Pharmacology and Experimental Therapeutics WITH TENURE.

Sincerely,

Richard M. Ryan, Jr., D.Sc.
Dean ad interim, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

I Concur
4/8/92

Approved
7/10/92

RMR:ns
cc: Dr. Joan C. King
why?

TUSM0005015

TUFTS UNIVERSITY

Health Science Campus
Department of Pharmacology and
Experimental Therapeutics

Richard I. Shader, M.D.
Professor and Chairman

May 18, 1992

To: David J. Greenblatt, M.D.
From: Richard I. Shader, M.D.
Subject: Tenure

I am pleased to report to you that the Executive Council of the Tufts University School of Medicine voted unanimously on 18 May 1992 to forward your tenure status to the Trustees. The action of the Promotions Committee is reproduced below. Unfortunately, the Trustees do not meet again until the Fall of 1992. I have requested that the Dean ask them to make the tenure action retroactive to 1 July 1992; he will do so but is not sure if they will agree. So, it will be accomplished reasonably soon. I know that this is more symbolic than of substance, but you deserve it and it is long over due. Congratulations!

x.c.: Louis Shuster, Ph.D.
Ms. Grace Doherty

136 Harrison Avenue
Boston, Massachusetts 02111
(617) 956-6897
Fax: (617) 956-6738
Telex: 94-0195 TNMC BSN

PLAINTIFFS000169

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

May 27, 1992

David J. Greenblatt, M.D.
Department of Pharmacology
and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Greenblatt:

We are pleased to inform that on May 16, 1992 the Board of Trustees voted approval of your appointment to the rank of Professor with Tenure in the Department of Pharmacology and Experimental Therapeutics at the health sciences schools, effective July 1, 1992.

The Basic Sciences Appointment, Promotions and Tenure Committee made recommendation based on your outstanding research accomplishments, dedication to teaching and training, and service to the university.

Congratulations! We look forward to your continued participation as we plan for the future progress of the schools of medicine, dental medicine, and veterinary medicine.

Sincerely,

Richard M. Ryan, Jr., D.Sc.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Sciences

RMR:ns
cc: Dr. Richard I. Shader
Dr. Arthur Mutter
Dr. Sheldon Wolff
Dr. Joan C. King

TUSM0001805

TUFTS UNIVERSITY

School of Medicine

Office of the Dean

February 10, 1995

David J. Greenblatt, M.D.
Professor and Chairman
Dept. of Pharmacology and Experimental Therapeutics
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear David:

It is my pleasure to inform you that your appointment to the rank of Professor in the Department of Anesthesiology at Tufts University School of Medicine has been approved, effective February 1, 1995. This is a secondary (part-time) appointment without compensation. Your primary appointment remains the same and you have two other secondary appointments as Professor in the Departments of Medicine and Psychiatry.

The Clinical Appointments and Promotions Committee recommended this appointment with the anticipation that continued collaboration will enhance research efforts on both sides of the street.

Congratulations and best wishes.

Sincerely,

Morton A. Madoff, M.D., M.P.H.
Dean

MAM:ns
cc: Dr. W. Heinrich Wurm
Dr. Jeffrey Gelfand
Dr. Marshal Folstein
Dr. Stephen Pauker

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 956-6565
617 956-0375 (FAX)

TUSM0005019

December 15, 1969

Dr. Henry Wortis
Division of Experimental Biology
National Institute for Medical Research
Mill Hill, London N.W. 7
England

Dear Henry:

This is to confirm and extend our conversation during your recent visit to the Pathology Department at Tufts.

We would like to offer you a position as Assistant Professor in our department at a salary of about $20-22,000 per year. Your principle responsibilities would be the teaching of medical and graduate students and post-doctoral fellows. We fully expect with the assistance of an immunology group in medicine, biochemistry and physiology, to be able to offer a graduate degree in immunology or immunopathology.

Support of faculty and research is, like everywhere else, dependent to some extent on availability of funds. We expect to support our new faculty with a laboratory and to under-write his salary until he is able to seek and obtain research support from a grant. We, of course, will eventually bring enough money to the department so that this need will progressively decrease.

The school is still small enough to enable one to get to know and collaborate with almost anyone on campus and avoid getting lost in the mass. With a group headed by Dr. Robert Schwartz in medicine and others, we hope to create a stimulating environment for immunology.

If any specific questions or problems arise, please don't hesitate to communicate with me or with Dr. Leskowitz.

Sincerely yours,

Martin H. Flax, M.D., Ph.D.
Professor and Chairman
of Pathology
Tufts University School of Medicine

MF:lk

Exhibit
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TUSM0001877

TRUSTEES OF TUFTS COLLEGE

BALLOU HALL

MEDFORD, MASSACHUSETTS

HENRY H WORTIS, MD

TRUSTEES OF TUFTS COLLEGE TAKE PLEASURE IN NOTIFYING YOU OF YOUR APPOINTMENT, SUBJECT TO THE PROVISIONS OF THE APPLICABLE BYLAWS AND UNIVERSITY POLICY, TO THE POSITION OF ASSISTANT PROFESSOR OF PATHOLOGY (FULL TIME) AT THE SCHOOL OF MEDICINE FOR THE PERIOD JULY 1, 1971 TO JUNE 30, 1972. THE UNIVERSITY EXTENDS ITS APPRECIATION FOR YOUR TIME AND SERVICES RENDERED.

JULY 1, 1971

Carolyn B. Anderson
SECRETARY OF THE CORPORATIC

PLAINTIFFS000222

IF THE IMAGE IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

J[illegible], 1976

Henry H. Wortis, M.D.
Department of Pathology
Tufts University School of
Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Wortis:

I am pleased to inform you that your appointment as Associate Professor of Pathology, Without Limit of Time, at Tufts University School of Medicine has been approved by the Educational Policy Committee of Trustees of Tufts College, to be effective July 1, 1976.

Sincerely,

Lauro F. Cavazos, Ph.D.
Dean

LFC:dt
cc: Martin H. Flax, M.D., Ph.D.
Chairman, Dept. of Pathology

PLAINTIFFS000223

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

March 11, 1986

Henry H. Wortis, M.D.
106 Berkshire Street
Cambridge, MA 02141

Dear Dr. Wortis:

I am pleased to inform you that your promotion to the rank of Professor of Pathology at Tufts University Schools of Medicine, Dental and Veterinary Medicine and the Sackler School of Graduate Biomedical Sciences has been approved, to be effective July 1, 1986.

Your outstanding qualifications as an excellent teacher of immunology and genetics to medical students were clear to the Basic Sciences Faculty Appointments, Promotions and Tenure Committee. Your quality and quantity of contributions to the Medical School as a teacher and administrator and the excellent reputation you have established as a research scientist in cellular immunology clearly mark you as a valuable asset to the Tufts community and deserving of the promotion to professorial rank.

Congratulations! I look forward to your continued participation as we plan for the future progress of the School of Medicine and its students.

Sincerely,

Henry H. Banks, M.D.
Dean

HHB:dl
cc: Dr. Martin H. Flax
Dr. Eugene A. Foster

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6565

PLAINTIFFS000224

IF THE IMAGE IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

TUFTS UNIVERSITY

Health Sciences Campus
Department of Biochemistry

Mar 28, 1989.

Dr. Amy S. Yee,
Lab of Molecular Cell Biology,
The Rockefeller University,
Box 279,
1230 York Avenue,
New York, NY 10021-6399.

Dear Amy,

With the enthusiastic support of our faculty, I am pleased to offer you a tenure-track position as Assistant Professor in our Department of Biochemistry. We serve the Schools of Medicine, Dental Medicine, and Veterinary Medicine and you will be a member of the faculty of these Schools; your salary will be provided by the Medical School. With formal approval of the Programs and Faculty Committee of the Sackler School of Graduate Biomedical Studies, you will also be a member of the faculty of the Graduate School.

The appointment, which is subject to approval by the University's Board of Trustees, will become effective during the 1989-1990 academic year, when you will be ready to make the move. It will come with a 12-month salary of $41,000. The University contributes an additional amount, 23% of salary, toward fringe benefits; faculty members also contribute toward them. They include a TIAA-CREF retirement plan, health care insurance, and life insurance. Additional life insurance and a disability insurance plan are also available at low cost.

We will provide you with approximately 700 sq. ft. of lab space and start-up funds to help you establish your laboratory. This will be $50,000 for the first year and $35,000 for the second year. This money can be used for equipment, supplies, technical help, or other purposes in support of your research. We have some major pieces of equipment that should meet many of your needs.

Last year the Department bought a new ultracentrifuge and two rotors, and a new high speed centrifuge (Beckman J21) with two rotors. We have another of each of these centrifuges also available in the shared instrumentation room, and a selection of rotors for them. We have purchased a new Beckman scintillation counter to add to the LKB counter in the instrument room, and a

136 Harrison Avenue
Boston, Massachusetts 02111
(617) 956-6867/6868
Fax: (617) 956-6409
Telex: (617) 94-0195 TNMC BSN

Exhibit
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CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY
OF THE DOCUMENT.

Packard counter is available for general used in George Brawerman's lab. As you have seen, we have two tissue culture room , a warm room and a bacterial culture incubator.

The Department has for shared use, a Polaroid copy stand with camera, a UV light box, and an automatic autorad processor. We have a Beckman tabletop centrifuge, a microwave oven, a lyophilizer, and liquid nitrogen storage. We have two -70° freezers. We have a Perkin Elmer Lambda 5 Spectrophotometer and an LKB laser scanner-densitometer for shared use. Our central dishwashing and sterilizing equipment and distilled water source have just been renovated.

Faculty members have individual PC's and the Department would provide some funds for that. In addition, available shared computer equipment includes both IBM-compatible and Macintosh computers, with laser printers for both, a scanner for text or graphic input, and a Dayna box for translation and interconversion of IBM-DOS and Macintosh files.

We have an excellent NMR spectrometer, the power of which has been felt even more since we installed a new Sun computer. A Silicon Graphics workstation for molecular modeling is in place. We shared with the Department of Molecular Biology in the purchase of a DNA synthesizer, which provides us with oligonucleotides. The Physiology Department has a peptide sequencer, with service available for a fee. Bruce and Barbara Furie's lab has a peptide synthesizer and, as colleagues in our Graduate Program, they make its service available at cost.

As major equipment items cannot be purchased within the limits of the startup money, the shared Departmental equipment will be available to you. It is also possible to use Departmental funds for some new items that can be available for shared use. Further, several labs in the Department use equipment you may need, and the atmosphere in the Department is an open and sharing one. This should ease the making of choices over which items you should buy with the start-up funds and which can wait until your grant is funded.

As I have mentioned, we want to build our strength in studies of gene expression and replication, the molecular manipulation of gene products, and the functional testing of molecular structure. We would like you to be a part of our growth, and hope you will see this setting as one in which your research and your own scientific growth can flourish. We would be delighted to have you join our faculty and help us to build a first rate Biochemistry Department.

Because of the timing of our discussions with other candidates, we hope you will be able to let us know your decision during April, and hope it will be a positive one. Please call if you have questions about any aspects of the position.

Sincerely,

B. David Stollar, MD,
Professor & Chairman.

PLAINTIFFS000209

CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY
OF THE DOCUMENT.

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Biomedical Sciences

December 5, 1989

Amy S. Yee, Ph.D.
Tufts University School of Medicine
Department of Biochemistry, M & V 615
136 Harrison Avenue
Boston, MA 02111

Dear Dr. Yee:

We are pleased to inform you that your tenure-track faculty appointment at the rank of Assistant Professor in the Department of Biochemistry at Tufts University School of Medicine has been approved, effective December 1, 1989. It is understood that you do not have any credit for full-time teaching experience at the college or university level to be credited toward your tenure probationary period.

Your salary will be $41,000 per year, subject to adjustment at the discretion of the University from year to year by mutual agreement between you and the University. In addition, the University maintains a benefits plan for full time faculty members. In order to take full advantage of the benefits for which you may be eligible, be sure to attend one of the Benefits Orientations which are held for new employees.

Your appointment and continued employment are subject to your fulfillment of all obligations and conditions in accordance with University policies and practices. In addition, you will be expected to participate in faculty affairs, serve on committees, and accept other assignments from time to time at the request of the Dean or department chair.

We are excited at the prospect of having you as part of our faculty and look forward to a fruitful association in future years.

Sincerely,

Henry H. Banks, M.D.
Dean, School of Medicine

Erling Johansen, D.M.D., Ph.D.
Dean, School of Dental Medicine

Franklin M. Loew, D.V.M., Ph.D.
Dean, School of Veterinary Medicine

Louis Lasagna, M.D.
Dean, Sackler School of Graduate Biomedical Science

HHB:ms
cc: Dr. B. David Stollar

136 Harrison Avenue
Boston, Massachusetts 02111
617 956-6685

PLAINTIFFS000210

TUFTS UNIVERSITY

School of Medicine
School of Dental Medicine
School of Veterinary Medicine
Sackler School of Graduate Biomedical Sciences

June 30, 1998

Amy S. Yee, Ph.D., Associate Professor
Department of Biochemistry
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Amy:

We are pleased to inform you that the Board of Trustees granted you tenure in the Department of Biochemistry at the health science schools, effective July 1, 1998.

The Basic Science Appointments, Promotion, and Tenure Committee recommended the awarding of tenure based on: (1) your ability to publish innovative studies and to obtain research funding in a highly competitive area, (2) high recognition as a contributor to the field of developmental transcription factors, as evidenced by invitations to present your work at highly selective scientific meetings and at major institutions and the invitation to serve on the Molecular Biology Study Section of NIH, (3) a strong commitment to and success in teaching, and, (4) active participation in important committees at the School of Medicine and the Sackler School of Graduate Biomedical Sciences.

Tufts University is fortunate in having faculty with your expertise and qualities, attributes fundamental for developing further our scientific and educational programs.

We look forward to your participation as we plan for the future progress of the schools of medicine, dental medicine and veterinary medicine.

Congratulations!

Sincerely,

John T. Harrington, M.D.
Dean
School of Medicine

Lonnie H. Norris, D.M.D., M.P.H.
Dean
School of Dental Medicine

Philip Kosch, D.V.M., Ph.D.
Dean
School of Veterinary Medicine

Louis Lasagna, M.D.
Dean
Sackler School of Graduate
Biomedical Sciences

JTH:ns
cc: Dr. B. David Stollar

PLAINTIFFS000211

TUFTS UNIVERSITY
School of Medicine

Office of the Dean

July 7, 2005

Amy Yee, Ph.D.
Department of Biochemistry
Tufts University School of Medicine
136 Harrison Avenue
Boston, MA 02111

Dear Amy:

I am pleased to inform you that your promotion to the rank of Professor in the Department of Biochemistry at Tufts University School of Medicine, was approved by the Board of Trustees, effective July 1, 2005.

The Basic Science Faculty Appointment, Promotion and Tenure Committee recommended the promotion based on demonstrated excellence as a scholar with effectiveness in the training of young scientists. They were also pleased to note a collaborative leadership role in the areas of nutrition and cancer within the Tufts community. It is anticipated that you will maintain a high level of excellence and continue to make substantial contributions.

Congratulations, Amy! My best wishes for a very pleasant summer.

Warm Congratulations!

Sincerely,

Mike

Michael Rosenblatt, M.D.
Dean
Professor of Physiology and Medicine

MR:ns
cc: Dr. Brian Schaffhausen, Chair, Biochemistry
Dr. Naomi Rosenberg, Dean, Sackler School of Graduate Biomedical Sciences

136 Harrison Avenue
Boston, Massachusetts 02111-1800
617 636-6565
Fax: 617 636-0375

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

MIDDLESEX, SS. SUPERIOR COURT

HENRY H. WORTIS, AMY S. YEE, THEOHARIS C. THEOHARIDES, ANA M. SOTO, EMMANUEL N. POTHOS, MICHAEL H. MALAMY, DAVID J. GREENBLATT, BRENT H. COCHRAN, Plaintiffs, v. THE TRUSTEES OF TUFTS COLLEGE, Defendant.	CIVIL ACTION NO. 1981CV03561-C

PLAINTIFFS' SUPPLEMENTAL ANSWERS TO DEFENDANT THE TRUSTEES OF TUFTS COLLEGE FIRST SET OF INTERROGATORIES

Plaintiff Ana M. Soto hereby supplements her answers to Defendant the Trustees of Tufts College First Set of Interrogatories.

INTERROGATORY NO. 1

Identify each person whom you expect to call as an expert witness at trial and with respect to each such person state:

a) the subject matter on which the expert is expected to testify;

b) the substance of the facts and opinions to which the expert is expected to testify; and

c) a summary of the grounds for each such opinion.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

Notwithstanding and without waiving their previous objections to Interrogatory No. 1, Plaintiff will call the following experts:

1. Todd Miller, Ph.D.

Dartmouth-Hitchcock Medical Center
One Medical Center Drive
HB-7936
Lebanon, NH 03756

A disclosure containing Dr. Miller's opinions and a copy of Dr. Miller's CV are attached hereto as Exhibit B and incorporated herein by reference.

2. Steven Brint, Ph.D.
University of California, Riverside
Department of Sociology
900 University Avenue
1334 Watkins Hall
Riverside, CA 92521

A disclosure containing Dr. Brint's opinions and a copy of Dr. Brint's CV are attached hereto as Exhibit C and incorporated herein by reference.

3. Linda Pifer, Ph.D.
University of Tennessee Health Science Center
930 Madison Avenue, Suite 680
Mephis, TN 38163

A disclosure containing Dr. Pifer's opinions and a copy of Dr. Pifer's CV are attached hereto as Exhibit D and incorporated herein by reference.

In addition, Plaintiff will call the following expert witness who is expected to testify consistent with the following disclosure:

Dr. Ana Soto
Tufts University
Department of Immunology
136 Harrison Avenue
Boston, MA 20111

Dr. Soto is a Plaintiff in this action, and a Professor of Immunology at Tufts University School of Medicine ("TUSM"), with over twenty-eight years of experience as a tenured faculty member. A copy of Dr. Soto's CV is attached hereto as Exhibit A. She received her Bachelor of Science at the Colegio Elizalde in Buenos Aires, Argentina in 1964, and went on to receive her doctorate from the University of Buenos Aires, Argentina in 1970. Dr. Soto began at TUSM in

1982 as a Research Assistant Professor in the Department of Anatomy and Cellular Biology. In 1992, Dr. Soto was promoted to a tenure-track Associate Professor and was awarded tenure in 1994. Shortly thereafter, Dr. Soto was promoted to Professor in 2000. Additionally, Dr. Soto has been a visiting professor at various institutions all over the world, from 1989 to present.

In sum, based on her education, training, and experience, Dr. Soto is expected to opine to a reasonable degree of professional certainty that the Plans[1] the Defendant adopted impair her academic freedom because they curtail research innovation by forcing faculty to choose research topics that may gain a certain amount of funding, rather than focusing on original work in order to comply with the new rules about salary and FTE. Dr. Soto is additionally expected to opine to a reasonable degree of professional certainty that the Plans impair her economic security because the Plans forced her to choose between her academic freedom and economic security, as detailed further in the disclosure below. Dr. Soto also expected to opine consistent with the following disclosure that the Plans will continue to infringe on her academic freedom and economic security into the future.

In connection with preparation of this disclosure, Dr. Soto relies on the following documents:

(a) The 2017 Compensation Plan, Greenblatt Dep. Ex. 6;

(b) The 2019 Compensation Plan, Greenblatt Dep. Ex. 7;

(c) Research Space Guidelines, Theoharides Dep. Ex. 5;

(d) Policy on Academic Freedom, Tenure and Retirement of the Board of Trustees of Tufts University ("AFTR Policy"), Theoharides Dep. Ex. 3;

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[1] The Plans include: TUSM Compensation Plan for Tenured Basic Science Faculty ("2017 Compensation Plan"), TUSM Compensation Plan for Tenured Basic Science Faculty ("2019 Compensation Plan"), and the Research Space Guidelines.

(e) Ana Soto's Answers to Interrogatories, Soto Dep. Ex. 71;

(f) The testimony given by Dr. Soto during her deposition on May 20, 2021;

(g) Amended Complaint, Greenblatt Dep. Ex. 13;

(h) Soto Appointment and Promotion Letters, Soto Dep. Ex. 72;

(i) Soto Salary Letters, Soto Dep. Ex. 74.

Based on Dr. Soto's experience as a tenured professor at TUSM for almost thirty years, and her personal experience as a researcher and principal investigator, Dr. Soto is expected to testify that prior to the implementation of the Plans, TUSM previously believed in funding novel or risky projects in science to help emerging concepts in science. Dr. Soto's career is that of a novel researcher. Dr. Soto discovered the first estrogen in plastics which led to the new field of endocrine disruptors and described the syndrome of fetal exposure to BPA in females. Though groundbreaking, Dr. Soto's initial discovery of estrogens in plastics did not immediately result in federal funding. While she was able to obtain a small grant from a foundation and a small contract from the intramural branch of the NIEHS, Dr. Soto relied on TUSM's support to fund and progress her novel research on endocrine disruptors (she was funded by NSF and NIH to perform research on control of cell proliferation by estrogens and androgens, respectively). She did not secure federal funding on endocrine disruptors for until 1996 -- five years after she published her discovery -- when the NIH finally acknowledged the existence and importance of endocrine disruption by soliciting grant applications and funding grants in this new field of research.

Dr. Soto is expected to testify that after the implementation of the Plans administrators push tenured faculty to focus on research that will result in funding, instead of developing original work that may take time be recognized. More specifically, Defendant's implementation

of the Plans force faculty into researching topics for the sake of meeting an arbitrary funding requirement, which violates the academic freedom guaranteed by the award of tenure. While Dr. Soto has not changed her current research path, she is facing pressure to do so both from the administration and from the Plan itself. In Dr. Soto's experience as a principal investigator, the grant application process is highly competitive. Given the highly competitive nature of the process, funding is never guaranteed. In Dr. Soto's experience, to receive funding applicants must make their project attractive to funding agencies. When Dr. Soto made her novel discovery, funding agencies were originally disinterested. TUSM provided Dr. Soto with funding to continue her research, and by the time funding agencies were beginning to approach this new issue, Dr. Soto already had results ready to make her application competitive. Due to the funding provided by TUSM, Dr. Soto's application was successful, and she received NIH funding.

Dr. Soto is also expected to testify that the implementation of the Plans has infringed on her economic security. As described in Dr. Soto's salary letters and Answers to Interrogatories, the Plans resulted in salary and FTE cuts, for Dr. Soto's salary for FY2021 was $149,943, $64,626 less than when the Plans went into effect. From Fiscal year 2017 to fiscal year 2021, Dr. Soto has lost earnings of over $180,000. The impact of the salary reduction has not been insignificant on Dr. Soto. As tenure guarantees economic security, Dr. Soto assumed financial obligations consistent with her income. In order to compensate for her decreased salary, Dr. Soto has been forced to withdraw social security funds to supplement her salary. In order to make repairs to her condominium (a property she purchased before the salary plans were implemented), she had to draw from her retirement savings. As a result of the salary reduction under the Plans, Dr. Soto's contributions to her retirement account, which are based on a percentage of income, have also decreased.

Based on Dr. Soto's experience, the threat of salary reduction or FTE cuts, which have the practical effect of reducing compensation, do not make the position attractive to men and women of ability. Dr. Soto's testimony is supported by her experience as a tenured professor for almost thirty years, her analysis of the AFTR Policy, and the 1940 Statement. Dr. Soto is expected to testify that being a person of ability and having spoken with many others, it is her view to a reasonable degree of professional certainty that Plans which permit the reduction of a tenured professor's salary to a percentage of his or her base salary and permit the reduction of full-time work to part-time work disincentivize persons of ability.

Dr. Soto is also expected to testify that after the implementation of the Plans, she had to choose whether to prioritize her academic freedom and economic security, which is contrary to the guarantees of tenure which promise both. Dr. Soto's lab relies on the assistance of two research technicians who perform some of her lab's most critical functions. In general, Dr. Soto's research technicians are trained by her to conduct her research, which permits Dr. Soto to engage in tasks that the research technicians cannot, such as designing experiments, analyzing and interpreting results, diagnosing lesions, developing new techniques and assays, writing papers and scientific reports, and writing grant applications. In addition to performing the routine work that keeps Dr. Soto's lab operational (such as ordering supplies, washing labware, maintaining animal colonies, and maintaining and propagating the cell line collection of the lab) Dr. Soto's research technicians also conduct specialized work that requires a high skill level. For example, Dr. Soto uses a specialized technique that was developed abroad, the microdissection of fetal mammary glands to do ex vivo explants. After one of Dr. Soto's post-doctoral fellows traveled abroad to learn this technique in Finland, Dr. Soto and her fellow adapted the technique to Dr. Soto's projects and trained others in the lab on this technique. To Dr. Soto's knowledge,

her lab is the only lab that uses this particular modified assay. Given the highly technical and specialized nature of this assay, the technician performing the dissections must run the assay at least once per week, ideally 2-3 times per week, in order to maintain the skill. A portion of Dr. Soto's grant funding is currently allocated to cover the salary for her research technicians. If Dr. Soto instead used the part of funding allocated for her technicians to cover her own salary, she would be in compliance with the Plan, however, that would result in having to dismiss one of her two technicians. In Dr. Soto's experience, the loss of a research technician would seriously affect her research ability, her ability to apply for grants, and thus her academic freedom. Dr. Soto continued to cover her technician's salary, resulting in a salary cut and forcing her to prioritize her academic freedom over her economic security.

Dr. Soto is expected to testify that these infringements will continue, leading her to have to choose a research topic to meet the funding requirements of the plan, instead of pursing the research she desires. Dr. Soto's testimony is supported by her review of the Plans, and her current experience under the Plans. Dr. Soto is further expected to testify that the continued implementation of the Plans will only make it more challenging for herself and other tenured faculty to continue to pursue novel areas of research, potentially leading others to have to choose between academic freedom and economic security as well.

Signed under penalties of perjury this 27th day of January 2022.

Dr. Ana Soto

As to objections,

Kevin T. Peters, BBO#550522
kevin.peters@gesmer.com
Jennifer A. Henricks, BBO#694635
jennifer.henricks@gesmer.com
McKenna Heath, BBO#707283
mckenna.heath@gesmer.com
GESMER UPDEGROVE LLP
40 Broad Street
Boston, MA 02109
Telephone: (617) 350-6800
Facsimile: (617) 350-6878

Dated: January 27, 2022

CERTIFICATE OF SERVICE

I, Jennifer A. Henricks, hereby certify that on January 27, 2022 I served a true and accurate copy of the foregoing via email on all counsel of record.

Jennifer A. Henricks

EXHIBIT A

CURRICULUM VITAE

Ana M. Soto, M.D., Professor
Tufts University, School of Medicine
Department of Immunology
136 Harrison Avenue, Boston, MA 02111

Phone: +1(617) 636-6954
Email: ANA.SOTO@TUFTS.EDU
web: http://sotosonnlab.

EDUCATION

1970 M.D. University of Buenos Aires, Argentina.
1964 B.S. Colegio Elizalde, Buenos Aires, Argentina.

POSTDOCTORAL TRAINING

Internship
1970-1971 Intern in Medicine, Italian Hospital, Buenos Aires, Argentina.

Research Fellowships
1977-1982 Research Associate, Department of Anatomy and Cellular Biology, Tufts University School of Medicine
1976-1977 Research Fellow, Fondation de l'Industrie Pharmaceutique INSERM Unité 33, Hopital Debrousse, Lyon, France
1973-1976 Research Associate, Cancer Research Center, Tufts University School of Medicine
1971-1973 Postdoctoral Fellow, Department of Biological Chemistry, School of Biochemistry, University of Buenos Aires, Argentina

ACADEMIC APPOINTMENTS

2017 Professor, Department of Immunology, Tufts University School of Medicine
2014 Professor, Department of Integrative Physiology and Pathobiology, Tufts University School of Medicine
2000- Professor, Department of Anatomy and Cellular Biology, Tufts University School of Medicine
1992-2000 Associate Professor, Department of Anatomy and Cellular Biology, Tufts University School of Medicine, tenured in 1994
1990-1992 Research Associate Professor, Department of Anatomy and Cellular Biology, Tufts University Health Science Schools
1982-1990 Research Assistant Professor, Department of Anatomy and Cellular Biology, Tufts University Health Science Schools
1968-1973 Instructor in Physiology, University of Buenos Aires School of Medicine, Argentina

OTHER PROFESSIONAL POSITIONS AND MAJOR VISITING APPOINTMENTS

2021-2022 Fellow, Institute for Advanced Studies, Nantes, France
2015- Foreign Correspondent Member, Centre Cavaillès, École Normale Supérieure, Paris, France
2013-2015 Blaise Pascal Chair, École Normale Supérieure, Paris, France

2012-2012	Visiting Professor, Muséum Nationale d'Histoire Naturelle, Paris, France (host: Prof. B. Demeneix)
2011-	Fellow of the Ramazzini College, Carpi, Italy
2008-2008	Visiting Professor, Department of Computer Sciences, École Normale Supérieure, Paris, France (host: Prof. G. Longo)
2007-2014	Professor, University of Ulster, Coleraine, U.K.
2005	Visiting Professor, University of Montpellier, France.
2003-2013	Associated Member, Centre Cavaillès, École Normale Supérieure, Paris, France.
2003	Visiting Professor, University of Rennes, France.
1995-1996	Visiting Professor, Department of Radiology and Nuclear Medicine and Department of Nutrition and Bromatology, University of Granada, Spain.
1989	Visiting Professor, The Institute of Pathology, Medical School, University of Oslo, Norway; Astri og Birger Torsteds Legat/Norwegian Cancer Society Fellowship.
1989	Visiting Professor, Department of Nutrition and Bromatology, University of Granada, Spain.

AWARDS AND HONORS

2019	Grand Vermeil Medal of the City of Paris
2017	Recognized in "The Top 50 Women in STEM" (https://thebestschools.org/features/50-top-women-in-stem/)
2012	Jacob Heskel Gabbay Award, Brandeis University
2011	Elected Member, Ramazzini College, Bologna, Italy
2004	The Breast Cancer Fund Hero Award, presented by the Breast Cancer Fund of San Francisco
1999	Faculty Recognition Award, Tufts University.
1998-2000	Member, Sigma Xi, 61st College of Distinguished Lecturers.
1995	The Marla Frazin Award, presented by the Massachusetts Breast Cancer Coalition.

MAJOR COMMITTEE ASSIGNMENTS/PROFESSIONAL SERVICE

International, National and Regional Committees

2020	Member of the Search Committee for the Director of the Institute of Advanced Studies of Nantes, France
2016-present	Ad-hoc member of NIH study sections
2013-	Member of the Scientific Advisory Board, Food Packaging forum, Zurich, Switzerland.
2007-2008	Member, Strategy Team of the California Breast Cancer Research Program's Special Research Initiatives.
2007-2011	Member, ICER Study Section, NIH.
2001-2007	Member, Advisory Panel, Breast Cancer Watch, Marin County, CA.
2000-2006	Swiss National Science Foundation, Member of the Stirring Committee, National Research Program "Endocrine Disrupting Chemicals in the Environment".
1998-2001	National Science Foundation, Division of Biological Sciences: Member of the Neuroendocrinology Panel.
1997-1998	Environmental Protection Agency, Endocrine Disrupter Screening and Testing Advisory Committee. Member of the Screening and Testing Work Group appointed by Dr. Lynn Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances at the U.S. Environmental Protection Agency, Washington, D.C.

1995-1999 National Academy of Sciences, National Research Council. Member of the Committee on Hormone-Related Toxicants in the Environment. The U.S. EPA requested that the NAC Board on Environmental Studies and Toxicology to study the problem and recommend research, monitoring and testing priorities. The NRC appointed this committee to undertake this task.

1995-1998 U.S. Department of Health and Human Services. Member of the National Action Plan on Breast Cancer (NAPBC), a panel appointed by the Secretary of Health and Human Services, Donna Shalala, to improve the diagnostic procedures, treatment and prevention of breast cancer.

1995-1998 National Action Plan on Breast Cancer (NAPBC). Member, Etiology Working Group. Among the tasks of this committee is to identify areas of research that need to be addressed. This committee has organized workshops and reviewed grant proposals.

1991 National Science Foundation, Physiological Processes Program. Member, Committee on Diversity in Biological Research. A report summarizing the recommendations of this committee was published by NSF in 1991.

Professional Service

2019 Assemblée Nationale (French Republic) Testified before a committee on the health effects of chemicals in plastics at the request of a committee of legislators about endocrine disruptors present in plastics (committee presided by Representative. Mr. Michel Vialay, rapporteurs: Representatives Ms. Laurianne Rossi and Ms Claire Pitollat)

2018 Assemblée Nationale (French Republic). Testified before a committee on the health effects of chemicals in food contact materials at the request of the Representative Ms Laurianne Rossi.

2016- Associated editor and co-founder of the journal ORGANISMS.

2014 Senate (French Republic). Public presentation and round table on cancer and endocrine disruptors organized by Senator Chantal Jouanno.

2014 Assemblée Nationale (French Republic). Testified before a committee on the health effects of bisphenol-A, at the request of M. G. Bapt and M. JL Roumégas.

2014 Member, Editorial Board of Progress in Biophysics and Molecular Biology

2010- Assemblée Nationale (French Republic). Testified before a committee on the health effects of bisphenol-A, at the reqest of M. G. Bapt and Mme B. Paoletti

2007-2011 Member, Integrative and clinical endocrinology and reproduction study section, NIH.

2004- 2007 Member, Editorial Board of Environmental Health Perspectives

1997 Massachusetts Legislature. Testified about estrogenic xenobiotics in food containers and wraps

1995 Louisiana Legislature. Testified about estrogenic xenobiotics and breast cancer

1995-2005 Member, Editorial Board of Biomarkers

1993 U.S. House of Representatives; Committee on Energy and Commerce. Testified about estrogenic xenobiotics and breast cancer before the Subcommittee on Health and the Environment

1988- NSF. Ad-hoc reviewer, Cell Biology Program

1983- Ad-hoc Reviewer for Science, Endocrinology, Cancer Research, J. of Pathology, The Cancer Journal, Environmental Health Perspectives, etc.

Convener/Organizer of Conferences and Symposia

2017 Honorary president and co-organizer of the conference: "Where are the biological sciences going?" October 25-27, Rome.

2017 Conference co-organizer: SJ Gould's legacy fifteen years after the publication of his opus magna, The Structure of Evolutionary Theory. Centre Cavaillès, Ecole Normale Supérieure, Paris, February 22, 2017

2017 Conference co-organizer: Endocrine disruptors: a bumpy road to regulation. Centre Cavaillès, Ecole Normale Supérieure, April 21, 2017.

2015 Closure conference of the Blaise Pascal Chair of Biology 2013: Biological complexity and organization: theoretical approaches and applications (co-organizers: Giuseppe Longo, Barbara Demeneix, Nicole Perret), National Museum of Natural History, May 5-6, Paris, France.

2015 Symposium on Development, Evolution and Cancer honoring Carlos Sonnenschein on his 80th birthday (Co-organizer Al Gustafson), Tufts University, School of Medicine, Feb 3, Boston.

2014 Symposium on Biological Complexity honoring Carlos Sonnenschein on his 80th birthday (co-organizers: Barbara Demeneix and Giuseppe Longo), National Museum of Natural History, December 5, Paris, France.

2012 Workshop on biological organization, National Museum of Natural History (co-organizer: Barbara Demeneix), September 7, Paris, France.

2002 Chair, Gordon Conference on Environmental Endocrine Disruptors, July 14-19, South Hadley, MA.

2002 Co-Organizer, Conference on Endocrine Disruptors sponsored by the Swiss National Science Foundation. Zuerich, April 21-22.

2002 Co-Organizer, Tufts University 150th Anniversary Symposium "The Philosophical Bases of Biological Thought", Boston, April 16.

2000 Vice-Chairperson, Gordon Conference on Environmental Endocrine Disruptors, June 18-23, Plymouth, NH.

1999 Convener, NAPBC-Sponsored Conference on "The role of Tissue Architecture on Breast Cancer." September 16-17, Washington, D.C.

1989 Co- organizer, NCI-Sponsored Conference on the Control of Cell Proliferation, October 12-14, Cambridge, MA.

Lay Press/Public Education

2021 Featured in the documentary "We the Guinea Pigs" (Producer: Louise Unmack Kjeldsen) for the Danish TV chain.

2020 Featured in the documentary "Manufacturing Ignorance"(Producers:Franck Cuveillier and Pascal Vasselin).

2019 Interview about Endocrine Disruptors with Mathieu Vidard Radio France Inter / La Terre au Carré, October 15.

2019 Interview about Endocrine Disruptors, TV program "Escala en París" Radio France International/France 24, July 17.

2014 Featured on a documentary on cancer for the French –German television (Arte). Producers: Anne Laure de Laval and Marie-Pierre Jaury.

2011 Featured in the documentary "The great invasion" (Producer: Stephane Horel).

2008	Featured in the documentary “Males in peril” (Producers: Sylvie Gilman and Thierry de Lestrade).
2006	Featured in the documentary “The war on cancer” (Producers: Sylvie Gilman and Thierry de Lestrade).
2000	Featured in a documentary by the Danish Broadcasting Corporation (Producer: Hans Bulow).
1999-2002	Opinion pieces on science and policy, International Herald Tribune
1997	Featured in a documentary by the Public Television Service of Japan (NHK).
1997	Featured in a documentary about endocrine disruptors, an episode of "The Nature of Things" series produced by David Suzuki for the Canadian Broadcasting Corporation.
1995	Featured in a BBC documentary on the impact of environmental estrogens on male reproduction and breast cancer for "Horizon;" Producer: Deborah Cadbury. Broadcast date on BBC-2: 02/26/96.
1994	Featured in a Canadian Broadcasting Corporation documentary "Sex Under Siege" for the series "Witness." Producer: Jerry Thompson. Broadcast date: 10/21/94.
1994	Featured in a Danish Television documentary on the impact of estrogens on male reproduction
1994	Featured in CBS's "Eye to Eye with Connie Chung." Documentary on estrogens released from plastic into food. Broadcast date: 7/28/94.
1993	Featured in a BBC documentary "Assault on the male" for "Horizon;" Producer: Deborah Cadbury. Broadcast date on BBC-2: 10/31/93.
1993	Interviews about our research on various aspects of hormone-related chemicals in various newspapers and magazines (Science News, The Washington Post, The New York Times, The Boston Globe, Newsday, Geo).

POSTDOCTORAL TRAINING

Postdoctoral Fellows

2012-2014	Tessie Paulose, PhD. University of Illinois, Urbana, IL.
2012-2013	Maël Montévil, PhD, École Normale Supérieure and U. Paris, France
2011-2015	Nicole Acevedo, Ph.D., University of Michigan, Ann Arbor, MI
2010-2017	Lucia Speroni, Ph.D, Quilmes University, Buenos Aires, Argentina
2007-2010	Adeline Cabaton, Ph.D, Université de Dijon, France
2007-2010	Nicolas Cabaton, Ph.D., Université de Dijon, France
2007-2010	Eugen Dhimolea, Ph. D. University of Athens, Greece
2005-2007	Tessa J. Murray, Ph.D., University of Aberdeen, Aberdeen Scotland
2003-2013	Perinaaz R. Wadia, Ph.D., University of Mumbai, India
2001-2003	Noemi Custodia Lora, Ph.D., Boston University, Boston, MA
1999-2004	Maricel Maffini, PhD., University of the Littoral, Santa Fe, Argentina
1998-2003	Caroline M. Markey, Ph.D., University of Western Australia, Australia
1995-1996	Jesus Jimenez, Ph.D., Fellow of the Ramon Areces Foundation, Spain
1994-2000	Peter Geck, M.D., Emelweis University, Budapest, Hungary
1991-1997	Joszef Szelei, Ph.D., Attila University, Szeged, Hungary
1988-1989	Honorato Justicia, Ph.D., University of Granada, Spain

Visiting Professors

2017	Amalia Rubio, Ph.D, Professor, University of Seville, Spain
2005	Mariana Fernandez, University of Granada, Spain
2003	Sandro Rusconi, Ph.D. Professor, Fribourg University, Switzerland
2001-2002	Pat Molinero, Ph.D, Professor, university of Seville, Spain
1995	Wolfgang Körner, Ph.D., Assistant Professor, Tübingen University, Germany
1993-1995	Fatima Olea-Serrano, Ph.D., Professor, University of Granada, Spain
1994	Rosa Pulgar-Encinas, MD., Assistant Professor, University of Granada, Spain
1993	Mercedes Villalobos, MD., Assistant Professor, University of Granada, Spain
1987	Fatima Olea-Serrano, PhD., Professor, University of Granada, Spain

TRAINING OF GRADUATE STUDENTS

Thesis Director

2014- 2019	Nafis Hasan, Ph.D. Tufts University
2013-2018	Michael Sweeney, Ph.D. Tufts University
2007-2011	Steven Pageau, Ph.D. Tufts University
2004-2008	Silva Krause, Ph.D. Tufts University
2003-2007	Laura Vandenberg, Ph.D. Tufts University
2000-2001	Silva Krause DAAD- German Academic Exchange Service- Fellow (M.S. Thesis, Fachhochschule Ostfriesland, Germany. Advisor: Marinus Meiners).
1999-2000	Monika Lusser. (M.S. Thesis, Department of Pharmacology, University of Zurich, Switzerland. Advisor: Margret Schlumpf).
1998-1999	Christian Helbig, M.S. Carl Duisberg Gesellschaft e.V. Fellow (M.S. Thesis, Fachhochschule Ostfriesland, Germany. Advisor: Marinus Meiners).
1996-2000	B. Rey De Castro (Thesis Co-Director: Jack Spengler), Harvard School of Public Health, Boston, MA
1996-1997	Nils Rutsch, M.S. Carl Duisberg Gesellschaft e.V. Fellow (M.S. Thesis, Fachhochschule Ostfriesland, Germany. Advisor: Marinus Meiners).
1993-1999	Mariana Fernandez, M.S. (Ph.D. Thesis Co-Director: Fatima Olea-Serrano, Department of Bromatology, University of Granada, Spain).
1993-1995	Jose Antonio Brotons, Ph.D. (Ph.D. Thesis Co-Director: Fatima Olea-Serrano, Department of Bromatology, University of Granada, Spain).
1985-1986	Jean-Luc Reny, M.D. (M.S. Thesis Co-Director: D.C. Gautheron, Claude Bernard University, Lyon, France).

Thesis Advisor

1999-2006	Danielle Grove-Strawser, (Thesis director: Beverly S. Rubin) Tufts University
1998-2000	Erica Marieb (Ph.D.Thesis Director: Bryan Toole), Tufts University
1993-1996	Blanca Valenzuela, Ph.D. (Thesis Director: Fatima Olea-Serrano), University of Granada, Spain
1993-1996	Beatriz Cabrera, M.D., Ph.D. (Thesis Director: Pablo Torme), University of Granada, Spain
1990-1995	Mimi DeSouza, Ph.D. (Thesis Director: Mary K. Murray), Tufts University.
1990-1995	Jill Sible, Ph.D. (Thesis Director: Noelynn Oliver), Tufts University.
1985-1992	Tien-Min Lin, Ph.D. (Thesis Director: Carlos Sonnenschein), Tufts University.
1980-1985	Robert Schatz, Ph.D. (Thesis Director: Carlos Sonnenschein), Tufts University.

TEACHING RESPONSIBILITIES

Professional Schools

2020-	Course Director, Developmental Origin of Adult Diseases", Master Program on Biomedical Sciences, Tufts University School of Medicine.
2013-	Instructor, Dental Histology course, Department of Integrative Physiology and Pathobiology.
1995-1996	Course Director, Dental Histology course, Department of Anatomy and Cellular Biology.
1985-1990	Facilitator, Problem-based learning program at Tufts Medical School.
1979-	Lecturer on Endocrinology and Female Reproductive System, Dental Histology course, Department of Anatomy and Cellular Biology.
1979-	Instructor, Dental Histology Course, Department of Anatomy and Cell Biology.
1969-1970	Director of the training course for Teaching Assistants in Human Physiology, University of Buenos Aires, Argentina.

Graduate School

1993-1995	Lecturer, Developmental Biology Course (Cell 294B).
1992-2000	Co-Director, Course on Cell Proliferation, Differentiation and Cancer (Cell 251).

MAJOR RESEARCH INTERESTS: My research encompasses theoretical and experimental biology.

Theoretical Biology: While writing a book on cell proliferation and cancer (C. Sonnenschein and A.M. Soto, "The Society of Cells" published in 1999), we realized how little, if any of the theoretical content of research is made explicit by the biologists working in these areas of research. Extracting the hidden assumptions from these research papers was indeed quite difficult. This activity prompted my interest in this subject and during my 2003 sabbatical at the Centre Cavaillès (École Normale Supérieure, Paris, France) I started to work on epistemological issues in cancer research and in organismal biology. From these activities I started a strong collaborative project with Prof. G. Longo (Centre Cavaillès) a mathematician and theoretical biologist, Prof. P.-A. Miquel (Univ. Toulouse, France), a philosopher of science and Dr. C. Sonnenschein.

Principles for a theory of organisms: Since 2013, as incumbent of the Blaise Pascal Chair of Biology my main theoretical goal is to develop a theory of organisms that acknowledges the purposiveness, agency and normativity of organisms. For this purpose, the group previously formed at Cavaillès acquired new members, Drs. Matteo Mossio (philosopher), Dr. Arnaud Pocheville (biologist), and Dr. Maël Montévil (mathematician). The three theoretical principles guiding our research are: 1) the "default state", 2) organization and 3) variation (Soto AM, Longo G, Noble D, editors. Prog Biophys Mol Biol. 2016;122:1-81). These principles provide guidance for our biological experiments and for mathematical modeling of organogenesis and carcinogenesis.

The biological default state: We were inspired by the central role the principle of inertia to the modern scientific revolution. Inertia, the default state in mechanics, represented a major theoretical commitment: we do not need to explain uniform rectilinear motion, rather, we need to explain departures from it. By analogy, we propose a biological default state of proliferation with variation and motility. From this theoretical commitment, what requires explanation is proliferative quiescence, lack of variation, lack of movement.

A new theory of carcinogenesis: The basic premises of the tissue organization field theory of carcinogenesis and neoplasia are: 1) the default state is proliferation and motility, and 2) carcinogenesis and neoplasia are defects of tissue architecture. Carcinogens act by disrupting the normal interactions that take place among cells in the parenchyma and stroma of an organ (the equivalent of the "morphogenetic fields" of developing organisms).

Experimental biology: My research interests have centered on the control of cell proliferation by sex steroids, the developmental origins of adult disease, particularly the role of endocrine disruptors on carcinogenesis, reproduction and obesity, the role of stroma/epithelial interactions on organogenesis and carcinogenesis and the role of biomechanics on morphogenesis**.**

Morphogenesis: We developed 3D culture models of the breast to study the reciprocal cell-cell and cell-matrix interactions that result in normal tissue structure and their breakdown during carcinogenesis, as well as the role of mammotropic hormones in morphogenesis and neoplasia. Additionally, we are studying the role of physical forces as determinants of form and function. We recently developed a mathematical model by which "predictive" *in silico* experiments inform the design of experiments in the *in vitro* 3D-culture model.

Carcinogenesis and normalization: Using a theory-neutral experimental strategy, we observed that the recombination of stroma exposed to a carcinogen with normal epithelial cells resulted in neoplasms. The reverse combination did not. This observation is consistent with the tissue organization field theory and inconsistent with the somatic mutation theory. It suggests that the stroma, rather than individual cells in the epithelium, is the target of the carcinogen, and points to the contextuality of the neoplastic phenotype. Conversely, we found that mammary gland stroma from mature and multiparous rats prevents neoplastic development and encourages normal ductal growth of grafted epithelial cancer cells, while the stroma from rats undergoing puberty developed tumors. The tumor development pattern suggests a parallel to the phenomenon of age- and reproductive state-dependent susceptibility and resistance to chemical carcinogens. As susceptibility to carcinogenesis decreases, the ability of the stroma to normalize neoplastic epithelial cells increases.

Endocrine disruptors and fetal origins of adult disease: This topic was developed because of the accidental finding in our laboratory that plasticware used in routine experimental procedures leached estrogenic chemicals. This initial finding plus the research program they generated has had numerous ramifications, from the very emergence of the concept of ENDOCRINE DISRUPTION and a field of research devoted to it, to legislation banning the use of BPA in baby bottles. Our research is designed to identify the links between the increasing incidence in humans of diseases and conditions like reproductive impairment, cancer, obesity, diabetes and altered behaviors and exposure to environmental endocrine disruptors.

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Invited Reviews, Guest Editorials and Commentary

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51. Bizzarri, M., Soto, A.M., Sonnenschein, C., and Longo, G. Saving Science. And beyond. Organisms 1:11-16, 2017.

52. Sonnenschein, C., and Soto, A.M. Cancer-causing somatic mutations: they are neither necessary nor sufficient. Organisms, 2018, 2:55-62, 2017.

53. Soto, A.M., and Sonnenschein, C. Endocrine disruptors - putting the mechanistic cart before the phenomenological horse. Nat Rev Endocrinol 14(6): 317-8, 2018.

54. Rubin, B.S., Schaeberle, C.M., and Soto, A.M. The case for BPA as an obesogen: Contributors to the controversy. Front Endocrinol (Lausanne) 10:30. 2019.

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Book Chapters

1. Sonnenschein, C. and Soto, A.M. Mechanism of estrogen action: the old and new paradigm. In: Symposium of "Estrogens in the Environment," edited by J. McLachlan, Elsevier/North Holland, Amsterdam, pp. 169-197, 1980.

2. Sonnenschein, C. and Soto, A.M. An overview on cell multiplication: positive or negative control. In: Biological Activities of Alpha-Fetoprotein, edited by G.J. Mizejewski and H.I. Jacobson, CRC Press, Boca Raton, FL, 1987.

3. Sonnenschein, C. and Soto, A.M. Cell proliferation in metazoans: negative control mechanisms. In: Regulatory Mechanisms in Breast Cancer, edited by M.E. Lippman and R.B. Dickson, Kluwer Academic Publishers, Boston, pp. 171-194, 1990.

4. Soto, A.M., Lin, T-M., Justicia, H., Silvia, R.M. and Sonnenschein, C. An "in culture" bioassay to assess the estrogenicity of xenobiotics. In: Chemically Induced Alterations in Sexual Development: The Wildlife/Human Connection, edited by T. Colborn and C. R. Clement, Princeton Scientific Publishing Co. Princeton, NJ, pp. 295-309, 1992.

5. Soto, A.M., Michaelson, C.L., Prechtl, N.V., Weill, B.C., Sonnenschein, C., Olea-Serrano, M.F. and Olea, N. Assay to measure estrogen and androgen agonists and antagonists. In: *In Vitro* Germ Cell Developmental Toxicology: From Science to Social and Industrial Demand, edited by J. del Mazo, Plenum Press Publishing Co., New York, pp. 9-28, 1998.

6. Soto, A.M. and Sonnenschein, C. Estrogens, xenoestrogens and the development of neoplasms. In: Endocrine Disrupters: Effects on the Male and Female Reproductive Systems, edited by R.K. Naz, CRC Press, Boca Raton, FL, pp. 125-163, 1998.

7. Soto, A.M., Sonnenschein, C., Murray, M.K. and Michaelson, C.L. Estrogenic plasticizers and antioxidants. In: Hormonally Active Agents in Food, edited by Eisenbrand, G., WILEY-VCH, Weinhem, Federal Republic of Germany, pp. 142-160, 1998.

8. Soto, A.M., Michaelson, C.L., Prechtl, N.V., Weill, B.C. and Sonnenschein, C. *In vitro* endocrine disrupter screening. In: Environmental Toxicology and Risk Assessment: Standardization of Biomarkers for Endocrine Disruption and Environmental Assessment, Vol. 8, edited by D. Henshel, Published by the American Society for Testing and Materials, West Conschocken, PA. 8:39-58,1999.

9. Soto, A.M. and Sonnenschein, C. Xenoestrogens in the context of carcinogenesis. In: Environmental Endocrine Disrupters: An Evolutionary Perspective, edited by L.J. Guillette, Taylor and Francis, Washington, D.C., pp.291-321, 2000.

10. Sonnenschein, C., and Soto, A.M. Reflections on bioanalytical techniques for detecting endocrine disrupting chemicals, In Nicolopoulou-Stamati P, Hens L, Howard CV (eds): Endocrine Disrupters: Environmental Health and Policies, Dordrecht, pp 21-38, 2001.

11. Markey, C.M., Michaelson, C.L., Sonnenschein, C., and Soto, A.M. Alkylphenols and bisphenol A as environmental estrogens, In: The Handbook of Environmental Chemistry Vol 3. Part L, Endocrine Disruptors - Part I, edited by M. Metzler, Berlin Heidelberg: Springer Verlag, pp. 129-153, 2001.

12. Markey, C.M., Soto, A.M., and Sonnenschein, C. Environmental Disruptors of Sex Hormone Action, In: Encyclopedia of Hormones. H. L. Henry, A. W. Norman, eds. Academic Press, San Diego, CA pp. 523-533, 2003.

13. Soto, A.M. and Sonnenschein, C. Estrogens, xenoestrogens and the development of neoplasms. In: Endocrine Disrupters: Effects on the Male and Female Reproductive Systems, edited by R.K. Naz, CRC Press, Boca Raton, FL, pp. 175-216, 2005.

14. Soto, A.M., Rubin, B.S. and Sonnenschein, C. Endocrine Disruption and the Female. In: Handbook of Endocrine Disrupting Chemicals, edited by Andrea Gore; Humana Press, 2007.

15. Maffini, M.V. Sonnenschein, C. and Soto, A.M. Breast. In: Environmental Impacts on Reproductive Health and Fertility; Woodruff, T. J., Janssen, S. J., Guillette, L. J., Jr., Giudice, L. C., Eds.; Cambridge University Press, Cambridge, Chapter 3.3, 2010.

Books Edited/Authored

1. Soto, A.M., Sonnenschein, C. and Colborn, T. Guest Editor, Special Issue: Endocrine Disruption and Reproductive Effects in Wildlife and Humans. In: Comments on Toxicology, edited by A. Wallace Hayes, Overseas Publishers Association, Amsterdam, 5(4-5): 315-506, 1996.
2. Sonnenschein, C. and Soto, A.M. The Society of Cells: Cancer and the Control of Cell Proliferation. Bios Publishing Co., Oxford, U.K./ Springer-Verlag, New York, 1999.
3. Sonnenschein, C. and Soto, A.M. La Société des Cellules: Nouvelle approche du cancer. Editions Sylepse, Paris, 2006.
4. Sonnenschein, C. and Soto, A.M. La Sociedad de las células. Ediciones EUDEBA, Buenos Aires, 2019.

Patents

1. Sonnenschein, C. and Soto A.M. In-Vitro Methods for Identifying Compositions which are Agonists and Antagonists of Estrogens. Patent Number: 4,859,585, Issued: August 22, 1989.
2. Soto, A.M. and Sonnenschein, C. In-Vitro Methods for Identifying Compositions which are Agonists and Antagonists of Androgens. Patent Number: 5,135,849, Issued: August 4, 1992.
3. Soto, A.M. and Sonnenschein, C. Inhibiting Proliferation in Cells. USSN # 6,274,305 Issued: August 14, 2001.
4. Soto, A.M., Sonnenschein, C., Geck, P. and Szelei, J. A Novel Androgen-Induced Suppressor of Cell Proliferation and Uses Thereof. USSN #6,994,992, Issued February 7, 2006.

Seminars, Symposium Presentations. Workshops (partial list-last 7 years).

2013 NIEHS BPA Consortium, Research Triangle Park, NC, January 28.

2013 Women's Health Working Group, sponsored by NIEHS, Research Triangle Park, NC, January 29.

2013 Session chair, Environmental Health, Boston MA, March 3-6.

2013 Seminar Speaker "Formulating a systems approach to endocrine disruption" National Hospital, Copenhagen, Denmark, April 29.

2013 Speaker, European Society of Endocrinology, Annual Meeting in Copenhagen, Denmark, April 30.

2013 Speaker "Environmental Causes of Cancer: Endocrine Disruptors as Carcinogens" at the mini-symposium on "Developmental Origins of Endocrine Disorders: Impacts of Environmental Exposures" Endocrine Society Annual Meeting, San Francisco, CA June 18.

2013 Symposium co-organizer and speaker "Theory of Organisms", meeting of the International Society for History, Philosophy, and Social Studies of Biology, Montpellier, France, July 7-12.

2013 Seminar speaker "Carcinogenesis as development gone awry", Centre de Recherche des Cordeliers, Paris, France, September 20.

2013 Speaker at the “Endocrine Disruptors and Reproductive Health Across the Lifespan” symposium, American Society for Reproductive Medicine, Boston, MA, October 14.

2013 Speaker at the symposium “Cancer research: a privileged field of investigation on chance, reductionism and holism”, Centre Cavailles, Ecole normale superieure, Paris France, November 7.

2013 Seminar Speaker "Aspects d'une théorie de l'organisme", Department of Philosophy, Université de Toulouse-Mirail, France, November 13.

2013 Seminar speaker “Organisation biologique: l’intégration des paramètres physiques dans la morphogenèse et la carcinogenèse", Seminar Series ".Les Jeudis de l’histoire et de la philosophie des sciences, Ecole normale superieure, Paris France December 5.

2013 Keynote Speaker, Colloque Santé-Environnement, Conseil Régional de Picardie, Amiens, December 6-7.

2014 Seminar Speaker "Toward a theory of organisms" Seminar Series of the Institut d’histoire et de philosophie des sciences et des techniques, Paris, France February 20.

2014 Joint Seminar with Carlos Sonnenscheein «From the cell to cancer: An evolutionary perspective of development and cancer» Institut d'Etudes Avancées de Nantes, March 11.

2014 Seminar Speaker "Toward a theory of organisms", Center for Theoretical Biology, Peking University, China, April 21.

2014 Speaker Environmental Endocrine Disruptor Gordon Research Conference, Il Ciocco, Tuscany, Italy, May 11-16.

2014 Speaker, “Le syndrome d’exposition fetale aux xenoestrogenes” Assemblee Nationale, Paris, France, June 11.

2014 Seminar Speaker, "Toward a theory of organisms", seminar series at the Institut des Hautes Études Scientifiques, bures-sur-Yvette, France, July 4.

2014 Seminar Speaker“Endocrine disruptors: science and policy” School of Medicine, University of Buenos Aires, Argentina. August 13.

2014 Public conference « Cancers hormono-dépendants et Perturbateurs Endocriniens », French Senate, Paris October 29.

2015 Seminar Speaker "Formulating a systems approach to endocrine disruption", University of California at Irvine, January 29.

2015 Seminar Speaker, « L’état par défaut en biologie : prolifération avec variation et Motilité”. University of Nantes, April 10

2015 Joint seminar with Mael Montevil: « Chemins vers une théorie des organismes », université de Nice, April 20.

2015 Joint seminar with Carlos Sonnenschein Seminar speaker "Carcinogenesis as development gone awry", Institute Gustave Roussy, Paris, France June 4

2015 Keynote Speaker ‘ « Bisphénol A et Troubles du comportement » at the colloquium « Les Pathologies Neuro-developpementales et l’Environnement », French Assemblée Nationale, Paris, France, June 18.

2015 Speaker at the workshop “Food packaging and chemical safety: What does the future hold?” Zurich, Switzerland, October 8.

2016 Speaker at the Tata Medical Center Platinum Jubilee Celebration "A conference of New Ideas in Cancer- Challenging dogmas” Mumbai, India, February.

2016 Speaker at the Cell Press/AWIS/MIT meeting: 'The Science of Gender, and the Gender of Science', MIT, Cambridge, MA, May 19.

2016 Speaker at the « Conférence à la Cour de cassation sur la gouvernance des risques incertains, l'exemple des perturbateurs endocriniens » July 7.

2016 Speaker, Conference on Stability and Variation, San Sebastian, Spain, July 4-6,

2016. Session leader, Gordon Research conference on Environmental Endocrine disruptors Sunday River Newry, ME.

2016 Keynote Speaker, Eurotox, Seville Spain, September 4-7.

2016 Speaker, conference "Sciences of life, sciences of information", held at the International cultural Center of Cerisy, Chateau de Cerisy, Cerisy-la-Salle, France, September 17-24.

2016 Seminar Speaker, Cancer Center, Chonnan University, Gwangju, Korea, September 28.

2016 Seminar Speaker, MRC Center, Chosun University, Gwangju, Korea, September 29.

2016 Speaker, 4th International Symposium -Biophysical Aspects of Complexity in Health and Disease. Lugano -Switzerland October 22.

2017 Speaker at the symposium 'ONE HEALTH Epigenomics & Microbiomes: From Soil to People' Symposium, Sheraton Framingham Hotel & Conference Center, March 16-18.

2017 Speaker at the conference Endocrine disruptors: a bumpy road to regulation. Centre Cavaillès, Ecole Normale Supérieure, Paris, April 21.

2017 Speaker at the conference "Chemical Entanglements" UCLA, May 4-7,

2017 Speaker at the symposium: The male mammary gland. Species Differences in Mammary Gland Development and Susceptibility to Environmental Chemicals, Teratology Society, Denver, CO, June 26.

2017 Organizer of the Session: Toward a Theory of Organisms: Two Proposals and Three Aims: Using the Theory to Construct Objectivity, Provide Intelligibility and Frame Observations and Experiments. ISHPSSB, Sao Paulo, Brazil July.

2017 Speaker at the international society for the history, philosophy and social studies of biology (ISHPSSB): Principles for a Theory of Organisms, Sao Paulo, Brazil, July.

2017 Speaker at the International Workshop « Organization as a Theoretical Principle for the Life Sciences », Institut d'Histoire et de Philosophie des Sciences et des Techniques, Paris, September 27-28.

2017 Speaker at the Conference: where are the biological sciences going? October 25-27, Rome.

2018 Speaker at the Conference "Process Biology" Sponsored by U. Exeter, London, March 21-23.

2018 Speaker at the "Workshop on deep evolutionary roots of cancer' a per invitation only meeting at the "Beyond Center" at Arizona State University, April 23-25.

2018 Keynote Speaker at the Gordon Research Conference on Environmental Endocrine Disruptors, Les Diablerets, Switzerland, June 3-8.

2018 Keynote speaker at the 2nd European Meeting "Villes et Territoires sans Perturbateurs Endocriniens " Paris, September 22.

2018 Speaker at the symposium “Carcinogenesis: Bad Luck, Bad Genes, Bad Environment, or Something Else?” -The 49th annual meeting of the Environmental Mutagenesis and Genomics Society (EMGS) San Antonio, TX, September 22-26.

2019 Seminar Speaker: Principles for a Theory of Organisms, Ecole Normale Superieure, Feb 7.

2019 Speaker at the World Aquaculture Society Conference, New Orleans, March 10.

2019 Speaker at the Symposium “Endocrine Disrupting Chemicals from Top to Bottom, Annual Endocrine Society Conference, New Orleans, March 25.

2019 Keynote Speaker at the conference "Perspectives on Ecological Integrity in Science and Law", Trieste, June 24-29.

2019 Speaker at the session “Precision biology: concepts and measurements”, international society for the history, philosophy and social studies of biology (ISHPSSB), Oslo, July 10.

2019 Seminar speaker: Biology in crisis: is there light at the end of the tunnel? Centro de Estudios Farmacológicos y Botánicos (CEFYBO)-UBA-CONICET, Medical School, University of Buenos Aires, August 13.

2019 Seminar speaker: “The society of cells: cancer and the control of cell proliferation”. Academia de Medicina, Buenos Aires, August 16.

2019 Speaker,“Cancer du Sein et Environnement », Salle de Fêtes, Mairie du 10ème, Paris, October 17.

2019 Speaker at the “Improving the chemical safety of food contact articles: Accelerating science and innovation” workshop, Food Packaging Forum, Zurich, Switzerland, October 24.

2019 Seminar Speaker, Carcinogenesis explained within the context of a theory of organisms, Institute of Neurociences, Universidad de Alicante, Spain, Nov 15.

2019 Keynote Speaker, Public Forum about Endocrine Disruptons, Conseil départemental de la Haute-Garonne, October 28.

2019 Seminar Speaker, Carcinogenesis explained within the context of a theory of organisms, Philosophy in Biology and Medicine, University of Bordeaux, France, Dec 12.

2019 Speaker, Conference on Endocrine Disruptors, Cantine sans plastiques, City Hall Bordeaux, Dec 13.

2019 Speaker “The impoverishment of the scientific mind”, at the conference LES ENTRETIENS DU NOUVEAU MONDE INDUSTRIEL The Centre Pompidou, Dec 17.

2020 Speaker “Theorizing endocrine disruption” lecture at a virtual conference organized by Maël Montévil, Institut de Recherche et d'Innovation, Paris May 20.

2020 “A Combined Morphometric and Statistical Approach to Assess Nonmonotonicity in the Developing Mammary Gland of Rats in the CLARITY-BPA Study.” Virtual seminar series FPF, May 26.

2020 Speaker, at “Data integration, analysis, and interpretation of eight academic CLARITY-BPA studies” a virtual conference organized by Jerry Heindel, Collaborative on Health and the Environment, July 21.

2020 Keynote speaker « Étude Clarity-BPA: approche morphométrique & statistique combinée pour évaluer les réponses non monotones » ARET Rennes October 22-23 (moved to virtual).

2020 Speaker: « Les perturbateurs endocriniens : de la découverte accidentelle d'oestrogènes dans les plastiques au syndrome d'exposition au BPA », Bordeaux, November 13 (moved to virtual).

2020 Speaker "Computational "horror-scopes": from the impoverishment of the biological mind to precision medicine", lecture at a virtual conference organized by G. Longo and M. Montévil, Institut d' Études Avancées, December 4, Nantes.

2020 Speaker, "From experimental carcinogenesis to a theory of organisms… and back" Seminar series of the Centre Cavaillès, École Normale Supérieure, December 9, on line.

2021 Seminar Speaker "Does carcinogenesis start in the womb? Endocrine disruptors and breast cancer" Massachusetts breast Cancer Coalition, March 3, on line.

2021 Panel: "Biological Autonomy: Can Machines Come Alive?" The Royal United Services Institute for Defence and Security Studies" (RUSI) conference, July 2.

2021 Session co-organizer and speaker "Wingspread @30", ISHPSSB Biennial Meeting, July 15 and 19.

2021 Seminar speaker "Carcinogenesis: an organicist perspective, " National Cancer Institute Division of Cancer Epidemiology and Genetics. August 26, on line.

2021 Collegium Ramazzini, Annual meeting of the Ramazzini Fellows Toxicity of fluoride co-chair of the session entitled: "Toxicity of fluoride", October 29 on line.

2021 Speaker "Endocrine Disruptors: from theoretical and experimental biology to a public and environmental health policy", at the « Colloque international -Recherche(s), santé et environnement, xixe-xxie siècle » organisé par le Comité pour l'histoire de l'Inserm en partenariat avec Université de Paris, Sorbonne Université et l'UMR SIRICE, November 16-17, Amphithéâtre Buffon, UP, Paris, France.

2021 Speaker «La transition santé – maladie ». Journée d'études consacrée à Georges Canguilhem, La philosophie et ses dehors, November 20, théâtre des 3 Ponts, Castelnaudary, France.

2021. Speaker « Les perturbateurs endocriniens et les origines développementales du cancer du sein », Journée scientifique "Cancers des Tissus Hormono-dépendants" du Cancéropôle Grand Ouest, l'IRS-UN à Nantes. December 8, Nantes, France.

2021 Speaker "Towards the understanding of biological causality and its application to endocrine disruption", European Network of Scientists for Social and Environmental Responsibility, conference: "Context, Causality and Consequences: from robust evidence to timely action in biology, ecology, law and public policy" November 26 - 27, Bern, Switzerland.

The following conferences have been suspended until the covid-19 pandemic allows meetings in person:

2020 Workshop: Humans and Other Agents, co-organizer and speaker, Institute for Advanced Studies, Paris, May 6 and 7.

2020 Speaker, Workshop "Theoretical aspects of Endocrine Disruption" École Normale Supérieure, May 12.

2020 Speaker "Hindering Metaphors". Homage to Evelyn Fox-Keller, University of Toronto, May 22-23.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

MIDDLESEX, SS. SUPERIOR COURT

HENRY H. WORTIS, AMY S. YEE, THEOHARIS C. THEOHARIDES, ANA M. SOTO, EMMANUEL N. POTHOS, MICHAEL H. MALAMY, DAVID J. GREENBLATT, BRENT H. COCHRAN, Plaintiffs, v. THE TRUSTEES OF TUFTS COLLEGE, Defendant.	CIVIL ACTION NO. 1981CV03561-C

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO DEFENDANT THE TRUSTEES OF TUFTS COLLEGE FIRST SET OF INTERROGATORIES

Plaintiff David J. Greenblatt hereby supplements his answers to Defendant the Trustees of Tufts College First Set of Interrogatories.

INTERROGATORY NO. 1

Identify each person whom you expect to call as an expert witness at trial and with respect to each such person state:

a) the subject matter on which the expert is expected to testify;

b) the substance of the facts and opinions to which the expert is expected to testify; and

c) a summary of the grounds for each such opinion.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

Notwithstanding and without waiving his previous objections to Interrogatory No. 1, Plaintiff will call the following experts:

1. Todd Miller, Ph.D.
Dartmouth-Hitchcock Medical Center
One Medical Center Drive
HB-7936
Lebanon, NH 03756

A disclosure containing Dr. Miller's opinions and a copy of Dr. Miller's CV are attached hereto as Exhibit B and incorporated herein by reference.

2. Steven Brint, Ph.D.
University of California, Riverside
Department of Sociology
900 University Avenue
1334 Watkins Hall
Riverside, CA 92521

A disclosure containing Dr. Brint's opinions and a copy of Dr. Brint's CV are attached hereto as Exhibit C and incorporated herein by reference.

3. Linda Pifer, Ph.D.
University of Tennessee Health Science Center
930 Madison Avenue, Suite 680
Mephis, TN 38163

A disclosure containing Dr. Pifer's opinions and a copy of Dr. Pifer's CV are attached hereto as Exhibit D and incorporated herein by reference.

In addition, Plaintiff will call the following expert witness who is expected to testify consistent with the following disclosure:

Dr. David J. Greenblatt
Tufts University
Department of Immunology
136 Harrison Avenue
Boston, MA 02111

Dr. Greenblatt is a Plaintiff in this action, and a Professor of Psychiatry at Tufts University School of Medicine ("TUSM"), with approximately thirty years of experience as a tenured faculty member. A copy of Dr. Greenblatt's CV is attached hereto as Exhibit A. He received his bachelor's degree at Amherst College in 1966 and received his doctorate from Harvard Medical School in 1970.

Dr. Greenblatt began his career as an Assistant Professor at Harvard Medical School for five years, and then began at TUSM's Department of Psychiatry in 1979. Dr. Greenblatt began a secondary appointment at TUSM's Department of Pharmacology in 1988 and received tenure in 1992. Additionally, Dr. Greenblatt has been a visiting professor at various institutions all over the country, from 1984 to present.

In sum, based on his education, training, and experience, Dr. Greenblatt is expected to opine to a reasonable degree of professional certainty that the Plans[1] adopted by Defendant impair his academic freedom because the Plans functionally require a specific kind of extramural support: funding from the National Institutes of Health ("NIH"). This prevents professors from garnering support elsewhere. Additionally, Dr. Greenblatt is expected to opine that the Plans impair his academic freedom, as they impair his access to lab space sufficient to undertake research.

Dr. Greenblatt is additionally expected to opine to a reasonable degree of professional certainty that the Plans impair his economic security because the Plans caused a substantial decrease to his salary, as detailed below. Dr. Greenblatt also expected to opine consistent with the following disclosure that the Plans will continue to infringe on his academic freedom and economic security into the future.

In connection with this disclosure, Dr. Greenblatt relies on the following documents:

(a) The 2017 Compensation Plan, Greenblatt Dep. Ex. 6;

(b) The 2019 Compensation Plan, Greenblatt Dep. Ex. 7;

(c) Research Space Guidelines, Theoharides Dep. Ex. 5;

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[1] The Plans include: TUSM Compensation Plan for Tenured Basic Science Faculty ("2017 Compensation Plan"), TUSM Compensation Plan for Tenured Basic Science Faculty ("2019 Compensation Plan"), and the Research Space Guidelines.

(d) Policy on Academic Freedom, Tenure and Retirement of the Board of Trustees of Tufts University ("AFTR Policy"), Theoharides Dep. Ex. 3;

(e) David J. Greenblatt's Answers to Interrogatories, Greenblatt Dep. Ex. 30;

(f) The testimony given by David J. Greenblatt during his deposition on April 27, 2021;

(g) Amended Complaint, Greenblatt Dep. Ex. 13;

(h) Greenblatt Appointment and Promotion Letters, Greenblatt Dep. Ex. 29;

(i) Greenblatt Salary Reduction Letters, Greenblatt Dep. Ex. 37.

Dr. Greenblatt is expected to opine that the Plans requiring extramural funding from a specific source violates the academic freedom guaranteed by tenure. In Dr. Greenblatt's experience, extramural support only counts toward the percentage required under the Plans if the funds come from the NIH and bring the full NIH administrative cost (overhead) rate in the range of 65%. Currently, Dr. Greenblatt covers nearly 75% of his salary from sources other than his department's hard money budget. These sources include: an endowed professorship, support for service as journal editor, and teaching activities in the Master of Biomedical Sciences Program. Moreover, all of Dr. Greenblatt's research activities are supported by extramural funds. These sources, however, do not provide the overhead costs that would typically be covered under NIH grants. Therefore, Dr. Greenblatt is deemed not in compliance with or not meeting expectations under the Plans, which has directly resulted in a substantial reduction of his salary and the threatened closure of his lab.

Based on Dr. Greenblatt's experience as a tenured professor at TUSM for almost thirty years, and his personal experience as a researcher and principal investigator, Dr. Greenblatt is expected to testify that prior to the implementation of the Plans, TUSM provided sufficient lab space for him to conduct research. For Dr. Greenblatt, this space was necessary to permit him to

conduct his desired research. Now, under the Plans, if a professor does not meet the funding requirements, TUSM can reduce or close entirely his or her research laboratory space. TUSM began threatening Dr. Greenblatt with lab closure as early as 2019. To prevent the closure of his vital laboratory space, Dr. Greenblatt negotiated with an outside company and arrived at an agreement under which the company and Dr. Greenblatt share the lab space. While this preserved Dr. Greenblatt's access to the lab space, it is no longer his lab (as it had been for decades). Without access to sufficient lab space, Dr. Greenblatt's research simply cannot be completed; thus, reductions of or modifications to his laboratory space impair his academic freedom.

Dr. Greenblatt is expected to testify that ownership of a lab is extremely important when applying for grant funding, particularly grant funding from the NIH. Based on his experience, when a grant applicant does not have guaranteed lab facilities, it is extremely unlikely that the applicant will be awarded funding. In other words, when the granting institution, particularly the NIH, receives applications from principal investigators who do not presently have a designated lab space, or who cannot guarantee that they will occupy a designated lab space for the duration of the grant, the granting institution will more probably than not deny those applications. Inasmuch as the Plans create uncertainty about the longevity of one's laboratory space, this negatively impacts Dr. Greenblatt's ability to secure NIH funding that would bring him into compliance with the plans.

Dr. Greenblatt is also expected to testify that the implementation of the Plans has infringed on his economic security. As described in Dr. Greenblatt's salary letters and Answers to Interrogatories, the Plans resulted in salary and FTE cuts for Dr. Greenblatt; his salary is currently of $42,299 less than when the Plans went into effect. Through fiscal year 2021, Dr.

Greenblatt has lost earnings of $124,898. The impact of the salary reduction has not been insignificant on Dr. Greenblatt. Understanding tenure to be a guarantee of economic security (as well as academic freedom), Dr. Greenblatt planned on his salary remaining the same, or increasing, into the future. Instead, while the cost of living continues to rise Dr. Greenblatt's compensation has decreased significantly. His contributions to his retirement account and any matching contributions thereto, all calculated as a percentage of his income, have also decreased.

Based on Dr. Greenblatt's experience, the threat of salary reduction or FTE cuts, which have the practical effect of reducing compensation, do not make the position of tenured professor attractive to men and women of ability. Dr. Greenblatt's testimony is supported by his experience as a tenured professor for almost thirty years, his analysis of the AFTR Policy, and the 1940 Statement. Dr. Greenblatt is expected to testify that being a person of ability and having spoken with many others, it is his view to a reasonable degree of professional certainty that the implementation of Plans which permit the reduction of a tenured professor's salary to a percentage of his or her base salary and permit the reduction of full-time work to part-time work disincentivize persons of ability.

Dr. Greenblatt is expected to testify that these infringements will continue, leading him to have to choose a research topic to meet the funding requirements of the plan, instead of pursing the research he desires. Dr. Greenblatt's testimony is supported by his review of the Plans, and his current experience under the Plans.

Signed under penalties of perjury this 26th day of January 2022.

Dr. David J. Greenblatt

As to objections,

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Dated: January 26, 2022

CERTIFICATE OF SERVICE

I, Jennifer A. Henricks, hereby certify that on January 26, 2022 I served a true and accurate copy of the foregoing via email on all counsel of record.

Jennifer A. Henricks

EXHIBIT A

C U R R I C U L U M V I T A E

DAVID J. GREENBLATT, M.D.

Current Title:

Louis Lasagna Endowed Professor, Tufts University School of Medicine, Department of Immunology (formerly the Department of Pharmacology and Experimental Therapeutics); Professor of Psychiatry, Medicine, and Anesthesia, Tufts University School of Medicine; Special and Scientific Staff (Research), Tufts Medical Center, Boston MA

Education and Training:

1966	B.A. Amherst College (magna cum laude)
1970	M.D. Harvard Medical School
1970-1971	Medical Intern, Montefiore Hospital and Medical Center, Bronx, NY
1971-1972	Assistant Medical Resident, Harvard Medical Service, Boston City Hospital
1972-1974	Research Fellow in Pharmacology, Harvard Medical School; Fellow in Medicine (Clinical Pharmacology), Massachusetts General Hospital

Professional Appointments:

Harvard Medical School and Massachutte General Hospital

1974-1979	Assistant Professor of Medicine, Harvard Medical School; Assistant in Medicine, Massachusetts General Hospital
1976-1979	Chief, Clinical Pharmacology Unit, Massachusetts General Hospital

Tufts University School of Medicine (TUSM) and Tufts Medical Center (TMC):

1979-present	Professor of Psychiatry, Tufts University School of Medicine, Boston MA (TUSM)
1979-2015	Associate Medical Staff, Tufts Medical Center (TMC)
2015-	Special and Scientific Staff (Research), TMC
1979-1984	Associate Professor of Medicine, TUSM
1983-1996, 2001-2002	Chair, Institutional Review Board, TMC/TUSM
1984-present	Professor of Medicine, TUSM
1988-1991	Professor of Pharmacology, TUSM
1991-present	Professor of Pharmacology and Experimental Therapeutics (with tenure), TUSM
1994-2010	Chairman, Department of Pharmacology and Experimental Therapeutics, TUSM
1995-present	Professor of Anesthesia, TUSM
1995-2002	Program Director, General Clinical Research Center, TMC
1997-present	Louis Lasagna Endowed Professor of Pharmacology and Experimental Therapeutics, TUSM
2002-2010	Associate Program Director, Clinical/Translational Research Center, TMC/TUSM

Awards and Honors:

1972-74	Research Fellow of the Medical Foundation, Inc., Boston
1978-87	Pfizer Lecturer in Clinical Pharmacology (at various institutions)
1980	Rawls-Palmer Progress in Medicine Award and Lecture, American Society for Clinical Pharmacology and Therapeutics
1980	Clinical Pharmacology Unit Developmental Grant, Pharmaceutical Manufacturers' Association Foundation, Washington, D.C.
1981	Wellcome Visiting Professor in the Basic Medical Sciences (the Burroughs Wellcome Fund and Federation of American Societies for Experimental Biology), East Carolina University School of Medicine, Greenville, N.C.
1983	Paul Ehrlich Visiting Professor of Clinical Pharmacology, University of Miami School of Medicine
1984	Sterling Visiting Professor, Boston University School of Medicine
1985	The McKeen Cattell Award, (with Drs. 0. Bellmann, H.R. Ochs, and M. Knüchel) American College of Clinical Pharmacology
1988	T. George Bidder Distinguished Lectureship in Psychopharmacology, University of California at Los Angeles
1997	Pfizer Visiting Professor of Clinical Pharmacology, Morehouse University School of Medicine, Atlanta, GA
2001	Distinguished Service Award, American College of Clinical Pharmacology
2002	Distinguished Investigator Award, American College of Clinical Pharmacology
2005	Research Achievement Award in Clinical Sciences, American Association of Pharmaceutical Scientists
2013	Outstanding Speaker Award, American Association for Clinical Chemistry
2015	Distinguished Faculty Award, Tufts University School of Medicine
2016	Award in Excellence in Clinical Pharmacology, Pharmaceutical Research and Manufacturers of America Foundation
2016	Man of Good Conscience Award, Association of Women Psychiatrists
2022	Oscar B. Hunter Career Award in Therapeutics, American Society for Clinical Pharmacology and Therapeutics

Certification

1991 American Board of Clinical Pharmacology, Inc.

Editorial Boards

Journal of Clinical Psychopharmacology (Co-Editor-in-Chief, 1981-2020)

Clinical Pharmacology in Drug Development (Editor-in-Chief, 2012-)

Journal of Clinical Pharmacology

British Journal of Clinical Pharmacology (2011-2016)

Biopharmaceutics and Drug Disposition

Xenobiotica

Neuropsychopharmacology (1986-1990)

Drug Investigation

Drugs and Aging

Pharmacology and Toxicology

Drugs and Therapy Perspectives

Professional Societies

American Society for Clinical Investigation (Emeritus)

American Society for Pharmacology and Experimental Therapeutics

American Federation for Clinical Research

American Society for Clinical Pharmacology and Therapeutics
Board of Directors, 1983-85

American College of Clinical Pharmacology
Board of Regents, 1981-85, 1987-91;
Honarary Regent, 1994-; President-
Elect, 1994-1996; President,
1996-1998

American College of Neuropsychopharmacology (Fellow) (1974-2011)

International Society for the Study of Xenobiotics

British Pharmacological Society (2011-2016)

ORIGINAL RESEARCH ARTICLES

1. Tursky B, Greenblatt DJ: Local vascular and thermal changes that accompany electric shock. Psychophysiology 3:371-380, 1967.

2. Greenblatt DJ, DiMascio A, Messier M, Stotsky B: Magnesium pemoline and job performance in mentally handicapped workers. Clinical Pharmacology and Therapeutics 10:530-533, 1969.

3. Greenblatt DJ, Tursky B: Local vascular and impedence changes induced by electric shock. American Journal of Physiology 216:712-718, 1969.

4. Tursky B, Greenblatt DJ, O'Connell DN: Electrocutaneous threshold changes produced by electric shock. Psychophysiology 7:490-498, 1970.

5. Greenblatt DJ, Shader RI: Psychopharmacologic management of anxiety in the cardiac patient. Psychiatry in Medicine 2:490-498, 1970.

6. Greenblatt DJ, Shader RI: Meprobamate: a study of irrational drug use. American Journal of Psychiatry 127:1297-1303, 1971.

7. Greenblatt DJ, Shader RI: The clinical choice of sedative-hypnotics. Annals of Internal Medicine 77:91-100, 1972.

8. Greenblatt DJ, Shader RI: On the psychopharmacology of beta adrenergic blockade. Current Therapeutic Research 14:615-625, 1972.

9. Greenblatt DJ, Koch-Weser J: Adverse reactions to spironolactone: a report from the Boston Collaborative Drug Surveillance Program. Journal of the American Medical Association 225:40-43, 1973.

10. Greenblatt DJ, Shader RI: Anticholinergics. New England Journal of Medicine 288:1215-1219, 1973.

11. Greenblatt DJ, Koch-Weser J: Adverse reactions to propranolol in hospitalized medical patients: a report from the Boston Collaborative Drug Surveillance Program. American Heart Journal 86:478-484, 1973.

12. Greenblatt DJ, Koch-Weser J: Adverse reactions to intravenous diazepam: a report from the Boston Collaborative Drug Surveillance Program. American Journal of Medical Sciences 266:261-266, 1973.

13. Greenblatt DJ, Duhme DW, Koch-Weser J, Smith TW: Evaluation of digoxin bioavailability in single-dose studies. New England Journal of Medicine 289:651-654, 1973.

14. Greenblatt DJ, Koch-Weser J: Adverse reactions to beta-adrenergic receptor blocking drugs: a report from the Boston Collaborative Drug Surveillance Program. Drugs 7:118-129, 1974.

15. Greenblatt DJ, Shader RI: Drug abuse and the emergency room physician. American Journal of Psychiatry 131:559-562, 1974.

16. Duhme DW, Greenblatt DJ, Koch-Weser J: Reduction of digoxin toxicity associated with measurement of serum levels: a report from the Boston Collaborative Drug Surveillance Program. Annals of Internal Medicine 80:516-519, 1974.

17. Koch-Weser J, Duhme DW, Greenblatt DJ: Influence of serum digoxin concentration measurements on frequency of digitoxicity. Clinical Pharmacology and Therapeutics 16:284-287, 1974.

18. Greenblatt DJ, Duhme DW, Koch-Weser J, Smith TW: Intravenous digoxin as a bioavailability standard: slow infusion and rapid injection. Clinical Pharmacology and Therapeutics 15:510-513, 1974.

19. Greenblatt DJ, Koch-Weser J: Oral contraceptives and hypertension: a report from the Boston Collaborative Drug Surveillance Program. Obstetrics and Gynecology 44:412-417, 1974.

20. Greenblatt DJ, Duhme DW, Koch-Weser J, Smith TW: Equivalent bioavailability from digoxin elixir and rapid-dissolution tablets. Journal of the American Medical Association 229:1774-1776, 1974.

21. Greenblatt DJ, Shader RI, Koch-Weser J. Pharmacokinetic determinants of the response to single doses of chlordiazepoxide. American Journal of Psychiatry 131:1395-1397, 1974.

22. Greenblatt DJ, Koch-Weser J: Clinical toxicity of chlordiazepoxide and diazepam in relation to serum albumin concentration: a report from the Boston Collaborative Drug Surveillance Program. European Journal of Clinical Pharmacology 7:259-262, 1974.

23. Greenblatt DJ, Duhme DW, Koch-Weser J, Smith TW: Bioavailability of digoxin tablets and elixir in the fasting and postprandial states. Clinical Pharmacology and Therapeutics 16:444-448, 1974.

24. Greenblatt DJ, Shader RI, Koch-Weser J, Franke K: Slow absorption of intramuscular chlordiazepoxide. New England Journal of Medicine 291:1116-1118, 1974.

25. Greenblatt DJ, Duhme DW, Koch-Weser J, Smith TW: Comparison of one- and six-day urinary digoxin excretion in single-dose bioavailability studies. Clinical Pharmacology and Therapeutics 16:813-816, 1974.

26. Greenblatt DJ, Shader RI: Benzodiazepines. New England Journal of Medicine 291:1011-1015, 1239-1241, 1974.

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32. Greenblatt DJ, Shader RI, Koch-Weser J: Flurazepam hydrochloride, a benzodiazepine hypnotic. Annals of Internal Medicine 83:237-241, 1975.

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35. Greenblatt DJ, Allen MD, Koch-Weser J: Accidental poisoning with psychotropic drugs in children. American Journal of Diseases in Children 130:507-511, 1976.

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49. Greenblatt DJ, Koch-Weser J: Intramuscular injection of drugs. New England Journal of Medicine 295:542-546, 1976.

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58. Greenblatt DJ, Pfeifer HJ, Ochs HR, Franke K, MacLaughlin DS, Smith TW, Koch-Weser J: Pharmacokinetics of quinidine in humans after intravenous, intramuscular and oral administration. Journal of Pharmacology and Experimental Therapeutics 202:365-378, 1977.

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62. Shader RI, Greenblatt DJ: Clinical implications of benzodiazepine pharmacokinetics. American Journal of Psychiatry 134:652-656, 1977.

63. Pfeifer HJ, Greenblatt DJ, Koch-Weser J: Adverse reactions to practolol in hospitalized patients: a report from the Boston Collaborative Drug Surveillance Program. European Journal of Clinical Pharmacology 12:167-170, 1977.

64. Allen MD, Greenblatt DJ, Noel BJ: Meprobamate overdosage: a continuing problem. Clinical Toxicology 11:501-516, 1977.

65. Greenblatt DJ, Harmatz JS, Stanski DR, Shader RI, Franke K, Koch-Weser J: Factors influencing blood concentrations of chlordiazepoxide: a use of multiple regression analysis. Psychopharmacology 54:277-282, 1977.

66. Greenblatt DJ, Shader RI, Franke K, MacLaughlin DS, Ransil BJ, Koch-Weser J : Kinetics of intravenous chlordiazepoxide: sex differences in drug distribution. Clinical Pharmacology and Therapeutics 22:893-903, 1977.

67. Shader RI, Greenblatt DJ, Harmatz JS, Franke K, Koch-Weser J: Absorption and disposition of chlordiazepoxide in young and elderly male volunteers. Journal of Clinical Pharmacology 17:709-718, 1977.

68. Greenblatt DJ, Harmatz JS, Shader RI: Sex differences in diazepam protein binding in patients with renal insufficiency. Pharmacology 16:26-29, 1978.

69. Ochs HR, Greenblatt DJ, Bodem G, Smith TW: Sprinolactone. American Heart Journal 96:389-400, 1978.

70. Pfeifer HJ, Greenblatt DJ: Clinical toxicity of theophylline in relation to cigarette smoking: a report from the Boston Collaborative Drug Surveillance Program. Chest 73:455-459, 1978.

71. Greenblatt DJ: Determination of desmethyldiazepam in plasma by electron-capture GLC: application to pharmacokinetic studies of clorazepate. Journal of Pharmaceutical Science 67:427-429, 1978.

72. Gayes JM, Greenblatt DJ, Lloyd BL, Harmatz JS, Smith TW: Cerebrospinal fluid digoxin concentrations in humans. Journal of Clinical Pharmacology 18:177-179, 1978.

73. Greenblatt DJ, Harmatz JS, Shader RI: Factors influencing diazepam pharmacokinetics. International Journal of Clinical Pharmacology and Biopharmacy 16:177-179, 1978.

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75. Ochs HR, Greenblatt DJ, Woo E, Franke K, Pfeifer JH, Smith TW: Single- and multiple-dose pharmacokinetics of oral quinidine sulfate and gluconate. American Journal of Cardiology 41:770-777, 1978.

76. Greenblatt DJ, Shader RI, Weinberger DR, Allen MD, MacLaughlin DS: Effect of a cocktail on diazepam absorption. Psychopharmacology 57:199-203, 1978.

77. Greenblatt DJ, Franke K, Huffman DH: Impairment of antipyrine clearance in humans by propranolol. Circulation 57:1161-1164, 1978.

78. Greenblatt DJ, Allen MD: Intramuscular injection-site complications. Journal of the American Medical Association 240:542-544, 1978.

79. Greenblatt DJ, Shader RI, Franke K, Harmatz JS: Pharmacokinetics of chlordiazepoxide and metabolites following single and multiple oral doses. International Journal of Clinical Pharmacology and Biopharmacy 16:486-493, 1978.

80. Lloyd BL, Greenblatt DJ, Allen MD, Harmatz JS, Smith TW: Pharmacokinetics and bioavailability of digoxin capsules, solution, and tablets after single and multiple doses. American Journal of Cardiology 42:129-146, 1978.

81. Greenblatt DJ, Allen MD: Toxicity of nitrazepam in the elderly: a report from the Boston Collaborative Drug Surveillance Program. British Journal of Clinical Pharmacology 5:407-413, 1978.

82. Ochs HR, Greenblatt DJ, Woo E, Franke K, Smith TW: Effect of propranolol on pharmacokinetics and acute electrocardiographic changes following intravenous quinidine in humans. Pharmacology 17:301-306, 1978.

83. Greenblatt DJ, Shader RI, MacLeod SM, Sellers EM, Franke K, Giles HG: Absorption of oral and intramuscular chlordiazepoxide. European Journal of Clinical Pharmacology 13:267-274, 1978.

84. Ochs HR, Greenblatt DJ, Dengler JH: Absorption of oral tetracycline in patients with Billroth-II gastrectomy. Journal of Pharmacokinetics and Biopharmaceutics 6:295-303, 1978.

85. Ochs HR, Greenblatt DJ, Bodem G, Harmatz JS: Dose-independent pharmacokinetics of digoxin in humans. American Heart Journal 97:507-511, 1978.

86. Greenblatt DJ, Woo E, Allen MD, Orsulak PJ, Shader RI: Rapid recovery from massive diazepam overdose. Journal of the American Medical Association 240:1872-1874, 1978.

87. Greenblatt DJ, Shader RI, MacLeod SM, Sellers EM: Clinical pharmacokinetics of chlordiazepoxide. Clinical Pharmacokinetics 3:381-394, 1978.

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89. Ochs HR, Greenblatt DJ, Woo E, Smith TW: Reduced quinidine clearance in elderly persons. American Journal of Cardiology 42:481-485, 1978.

90. Greenblatt DJ, Franke K, Shader RI: Analysis of lorazepam and its glucuronide metabolite by electron-capture gas-liquid chromatography: use in pharmacokinetic studies of lorazepam. Journal of Chromatography 146: 311-320, 1978.

91. Shader RI, Georgotas A, Greenblatt DJ, Harmatz JS, Allen MD: Impaired absorption of desmethyldiazepam from clorazepate by magnesium aluminum hydroxide. Clinical Pharmacology and Therapeutics 24:308-315, 1978.

92. Woo E, Greenblatt DJ, Ochs HR: Short- and long-acting quinidine preparations: clinical implications of pharmacokinetic differences. Angiology 29:243-250, 1978.

93. MacLeod SM, Sellers EM, Giles HG, Billings BJ, Martin PR, Greenblatt DJ, Marshman JA. Interaction of disulfiram with benzodiazepines. Clinical Pharmacology and Therapeutics 24:583-589, 1978.

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98. Greenblatt DJ, Allen MD, MacLaughlin DS, Harmatz JS, Shader RI: Diazepam absorption: effect of antacids and food. Clinical Pharmacology and Therapeutics 24:600-609, 1978.

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102. Mudge GH, Lloyd BL, Greenblatt DJ, Smith TW: Inotropic and toxic effects of a polar cardiac glycoside derivative in the dog. Circulation Research 43:847-854, 1978.

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115. Allen MD, Greenblatt DJ, Harmatz JS, Shader RI: Single-dose kinetics of prazepam, a precursor of desmethyldiazepam. Journal of Clinical Pharmacology 19:445-450, 1979.

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1 COMMONWEALTH OF MASSACHUSETTS
2 MIDDLESEX, ss SUPERIOR COURT
CA NO. 1981cv03561-c
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4 **********
HENRY H. WORTIS, AMY S. YEE,
5 THEOHARIS C. THEOHARIDES,
ANNA M. SOTO, EMMANUEL N. POTHOS,
6 MICHAEL H. MALAMY,
DAVID J. GREENBLATT, BRENT COCHRAN,
7
Plaintiffs,
8
vs.
9
THE TRUSTEES OF TUFTS COLLEGE,
10
Defendant.
11
****
12
13
14 30(b)(6) DEPOSITION of THOMAS MALONE
15 APPEARING REMOTELY FROM
16 145 Harrison Avenue
17 Boston, Massachusetts 02111
18 Monday, October 4, 2021
19 10:00 a.m.
20
21
22
Kimberley J. Bouzan, CSR**
23 VERITEXT
24 **APPEARING REMOTELY FROM PLYMOUTH COUNTY,
MASSACHUSETTS

1 that research project?
2 So I think it's more of a -- the chairs
3 do a more holistic review in that regard.
4 Q. Does any part of ICR get spent by the
5 university on issues other than medical research?
6 A. Yeah. Depends on -- you know, a grant
7 that goes to the school of engineering, ICR for
8 that grant supports engineering research.
9 Q. I'm -- maybe you've answered my question.
10 I'm wondering whether the ICR we're talking
11 about, which is for medical research, if all of
12 it is used for medical research, or is it used,
13 at least in part, for other academic purposes
14 that have nothing to do with the school of
15 medicine or research?
16 A. No. The ICR that comes to the medical
17 school is utilized to support the research
18 infrastructure within the medical school.
19 Q. And if, again, in my scenario,
20 Professor Theoharides has support for 50 percent
21 of his salary but that does not cover or does not
22 include sufficient ICR from the chairs'
23 perspective, what are the consequences under the
24 2017 plan?

A. Well, I think, taken -- I think they look at other factors in terms of publications, grants, and other grant submissions, teaching and service to arrive at an institutional base salary. So I imagine it could have some impact on the institutional base salary that is determined.

Q. You don't have to imagine. You know what it does -- don't you -- based on conversations you've had with the chairs of the departments.

A. Yeah. I think it's -- yes. It's a factor.

Q. You know that Professor Theoharides' salary was cut radically; right?

A. I do.

MR. LAPP: Objection.

BY MR. PETERS:

Q. Do you know that?

A. I know his salary was reduced.

Q. To about 50 percent?

A. Yes.

Q. And do you know that he had sources to fund his salary from external extramural sources?

A. I don't know whether I recall this

1 COMMONWEALTH OF MASSACHUSETTS
2 TRIAL COURT
3 MIDDLESEX, SS. SUPERIOR COURT
4 _____
5 HENTRY H. WORTIS, AMY S. YEE,
6 THEOHARIS C. THEOHARIDES, ANA M.
7 SOTO, EMMANUEL N. POTHOS, MICHAEL
8 H. MALAMY, DAVID J. GREENBLATT,
9 BRENT H. COCHRAN,
10 Plaintiffs,
11 v. Civil Action No.
12 THE TRUSTEES OF TUFTS COLLEGE, 1981CV03561-C
13 Defendant.
14 _____
15 VIDEOCONFERENCE DEPOSITION OF
16 CAROLINE GENCO
17 DATE: Friday, November 12, 2021
18 TIME: 10:12 a.m.
19 LOCATION: Remote Proceeding - OH
20 Cleveland, OH 44114
21 REPORTED BY: Michael R. Rennillo, Notary Public
22 JOB NO.: 4872823
23
24
25

A Sure.

Q Okay. Do you think cutting a professor's FTE has an impact on the professor's ability to get funded?

A No.

Q Isn't it an obligation to be a full-time professor at Tufts in order to be a tenured professor?

A My understanding is that you have to be full-time to -- to get tenure, but that you don't have to be full-time in the tenured position.

Q Can a professor choose to be a part-time tenured professor at Tufts?

A The expectations are for full-time employment, according to the tenure policy.

Q Right. Do you know whether or not Tufts will permit a tenured professor to choose to be part-time?

A I don't know the answer to that question.

Q Okay. But we do know that it can be imposed on a tenured professor by Tufts. Correct?

A I do know that the TUSM Compensation Plan clearly outlined reduction of FTE.

Q Right. Would you take a look at Exhibit 7, which is the 2019 plan? You'll see in the last paragraph on page 5, please tell me if you're there,

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

MIDDLESEX, SS. SUPERIOR COURT

HENRY H. WORTIS, AMY S. YEE, THEOHARIS C. THEOHARIDES, ANA M. SOTO, EMMANUEL N. POTHOS, MICHAEL H. MALAMY, DAVID J. GREENBLATT, BRENT H. COCHRAN, Plaintiffs,	)	CIVIL ACTION NO. 1981CV03561-C
v.	)	
THE TRUSTEES OF TUFTS COLLEGE, Defendant.	)	

DEPOSITION OF ANTHONY MONACO, a witness in the above-entitled cause, taken remotely from 161 Packard Avenue, Medford, Massachusetts, before Susan Lozzi, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, pursuant to the Massachusetts Rules of Civil Procedure, on Tuesday, January 18, 2022, commencing at 10:20 a.m.

efficient use of laboratory space.
Q. Okay. Was the university's or medical school's operating budget a variable in deciding to implement these plans?
A. No.
Q. Okay. Would you take a look, please, at the second page of this document which begins "CALCULATION OF $ PER SQUARE FOOT"?
(Reviewing document.)
A. Yes.
Q. The second bullet point reads, "Associate and Full Professors are expected to maintain at a minimum direct cost funding equivalent to one NIH RO1 award with indirect cost recovery equivalent to the University's full negotiated rate." Could you explain that to me?
A. What they're saying is in order to be in good performance, you're expected to maintain a level of funding regardless of the source which has indirect cost recovery equivalent to an NIH grant at the university's negotiated rate.
Q. Do you know what that rate is, sir?
A. It's -- it's 56, but I -- it varies by year. I -- I'm not sure if that's accurate.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
SUPERIOR COURT DEPARTMENT

MIDDLESEX, SS.

DR. HENRY H. WORTIS, et al.,	)	
Plaintiffs	)	
v.	)	Civil Action No. 1981-CV-03561
THE TRUSTEES OF TUFTS COLLEGE,	)	
Defendant	)	

EXPERT REPORT OF LAWRENCE WHITE

March 21, 2022

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INTRODUCTION

This report takes issue with several opinions expressed by eleven witnesses who have been designated by the plaintiffs as expert witnesses. Those witnesses[1] expressed their opinions in supplemental responses to interrogatories served January 27, 2022. I read those responses and all the materials cited or discussed in those responses. I also reviewed materials related to this litigation supplied by counsel for the defendant, a complete list of which is included with this report as Exhibit A.

I have been retained on behalf of the defendant to prepare this written report addressing the witnesses' opinions and conclusions. My report focuses on two specific sets of opinions expressed by the witnesses: (1) one regarding the alleged meaning of the phrase "sufficient degree of economic security to make the profession of teaching attractive to men and women of ability," a phrase that appears once in Tufts University's Board of Trustees' *Policy on Academic Freedom, Tenure and Retirement*; and (2) another purporting to establish a relationship between the concept of academic freedom and the specific requirements in three Tufts University School of Medicine policies: the *Compensation Plan for Tenured Basic Science Faculty* adopted in 2017; the revisions to that policy adopted in 2019; and the *Research Space Guidelines* adopted in 2016. Specifically, my report addresses three interrelated but discrete issues:

(1) whether there is any common understanding in the academic community and at Tufts University about the meaning of the phrase "sufficient degree of economic security to make the profession of teaching attractive to men and women of ability";

(2) if so, whether that purported common understanding embraces the notion that the annual salary of a tenured faculty member cannot be reduced; and

(3) whether a medical school violates commonly understood principles of academic freedom by adopting a compensation policy or a set of research space guidelines for faculty members under which success in obtaining external grant and contract support can be used as a

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[1] Eight of those witnesses – Drs. Henry Wortis, Amy Yee, Theoharis Theoharides, Ana Soto, Emmanuel Pothos, Michael Malamy, David Greenblatt and Brent Cochran – are plaintiffs in this case. All eight are faculty members employed by the defendant. The other three witnesses—Drs. Todd Miller, Steven Brint, and Linda Pifer—are faculty members at other universities. I will refer in this report to these eleven witnesses collectively as the "plaintiffs' witnesses" or the "witnesses" and individually as "Professor Miller," "Professor Brint," "Professor Pifer," "Professor Wortis," and so forth.

factor in setting compensation or allocating laboratory space, and, more specifically, whether any of these policies violates faculty members' "full freedom in research" as that phrase is used in Tufts University's Board of Trustees' *Policy on Academic Freedom, Tenure and Retirement*.

With respect to all three of these issues, some or all of the plaintiffs' witnesses answer yes. For the reasons expressed and supported in this report, I believe that the answer to each question should be no.

I. BASIC TERMINOLOGY AND BACKGROUND INFORMATION

A. Abbreviations and References

In this report, I use the following abbreviations and references.

(1) **"Tufts"** or **"Tufts University"** means the university by that name in Medford and Somerville, Massachusetts. Tufts is the defendant in this proceeding.

(2) **"TUSM"** means Tufts University School of Medicine. TUSM is one of the schools at Tufts and is operated as part of Tufts.

(3) Various conventions are used to refer to pertinent TUSM and Tufts University policies:

- ***"2017 Compensation Plan"*** refers to the document attached as Exhibit 1 to the Amended Complaint in this proceeding: TUSM's *Compensation Plan for Tenured Basic Science Faculty*, adopted in 2017.

- ***"2019 Compensation Plan Revision"*** refers to the document attached as Exhibit 3 to the Amended Complaint: TUSM's *Compensation Plan for Tenured Basic Science Faculty*, adopted in 2019 and amending the *2017 TUSM Compensation Plan* in several respects.

- ***"Research Space Guidelines"*** refers to the document of that name attached as Exhibit 2 to the Amended Complaint.

- ***"APS Policy"*** refers to the document attached as Exhibit 24 to the Amended Complaint: TUSM's policy on *Basic Science Faculty Appointment, Promotion and Separation*.

- ***"AFTR Policy"*** refers to Tufts University's Board of Trustees' revised *Policy on Academic Freedom, Tenure and Retirement*, a copy of which is appended to the Amended Complaint as Exhibit 25.

(4) **"AAUP"** is the American Association of University Professors. The AAUP is a private membership organization of faculty and other academic professionals.[2] Its function is to advocate for university faculty members. Local chapters affiliated with the AAUP serve as certified collective bargaining representatives for faculty at eighty universities around the country, including five in Massachusetts.[3] The AAUP has a chapter at Tufts University, although that chapter does not serve as the collective bargaining agent for faculty members at Tufts or TUSM. Neither the national AAUP nor the Tufts AAUP chapter is a party in this case.

(5) The ***"1940 Statement of Principles on Academic Freedom and Tenure,"*** referred to in this report as the ***"1940 Statement of Principles"*** or the ***"1940 Statement,"*** is an articulation of recommended institutional policy approved in 1940 by two organizations—the AAUP and the Association of American Colleges (today the Association of American Colleges and Universities).[4] The *1940 Statement of Principles* is the source of the two phrases ("a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" and "full freedom in research") that form the basis for the plaintiffs' witnesses' opinions. While some colleges and universities have formally "subscribed to" or "adopted" the *1940 Statement*, Tufts is not among them.[5]

(6) **"AAMC"** refers to the Association of American Medical Colleges. TUSM is a member of the AAMC. Founded in 1876 and headquartered in Washington, D.C., the AAMC is the

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[2] AAUP, *About the AAUP*, https://www.aaup.org/about-aaup.

[3] The full list is reproduced on the AAUP web site at AAUP, *Find a Chapter*, https://www.aaup.org/chapter-resources/find-a-chapter.

[4] The text of the *1940 Statement of Princi*ples is reproduced in full on the AAUP web site at: AAUP, *1940 Statement of Principles on Academic Freedom and Tenure*, https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure.

[5] *See* note 25 and accompanying text on page 11 of this report.

nation's largest and most important nonprofit association dedicated to the support of medical schools and medical education. Its members include all 172 accredited medical schools in the United States and Canada.[6] The AAMC is the nation's most authoritative voice on faculty compensation practices in American medical schools. In the late 1990s, while serving as chief legal officer at Georgetown University in Washington, I participated in conferences and other activities organized by the AAMC to examine compensation policies for medical school faculty members. Through its peer-reviewed monthly journal ACADEMIC MEDICINE, the AAMC regularly commissions and publishes articles on faculty compensation policies, faculty tenure policies, and the financial management of academic medical centers.[7]

B. Medical Education and the Organization of American Medical Schools

Medical school students typically study for four years. The standard M.D. curriculum is divided into two two-year segments. The first two years are devoted to intensive study of basic biomedical subjects: anatomy, physiology, pharmacology, cell biology, and other subjects. First- and second-year medical students also receive an introduction to basic clinical skills, usually in clinical settings (hospitals and outpatient clinics) operated by or affiliated with the medical school. In the second two-year curricular block students receive their clinical educations in

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[6] AAMC, *About the AAMC*, https://www.aamc.org/about.

[7] Patrick Boyle, *Calling all voices* (May 7, 2020), www.aamc.org/news-insights/calling-all-voices ("The main scholarly articles and research reports [in Academic Medicine are] ... rigorously peer-reviewed and, we hope, will be impactful, influential, valuable work"). For examples of AAMC materials pertinent to the relationship between faculty tenure and faculty compensation in American medical schools, *see, e.g.*, Gerald Bodner, *Does Tenure Protect the Salaries of Medical School Faculty?*, 72 ACAD. MED. 966 (1997); Robert F. Jones & Jennifer S. Gold, *AAMC Paper—Faculty Appointment and Tenure Policies in Medical Schools: A 1997 Status Report*, 73 ACAD. MED. 211 (1998); Paul F. Griner & David Blumenthal, *AAMC Paper—Reforming the Structure and Management of Academic Medical Centers: Case Studies of Ten Institutions*, 73 ACAD. MED. 818 (1998); Mandy Liu & William T. Mallon, *Tenure in Transition: Trends in Basic Science Faculty Appointment Policies at U.S. Medical Schools*, 79 ACAD. MED. 205 (2004); Sarah A. Bunton & William T. Mallon, *The Continued Evolution of Faculty Appointment and Tenure Policies at U.S. Medical Schools*, 82 ACAD. MED. 281 (2007); Sarah A. Bunton, *Analysis in Brief: The Relationship between Tenure and Guaranteed Salary for U.S. Medical School Faculty*, https://www.aamc.org/media/5856/download?attachment.

instructional "rotations" under the tutelage of practicing physicians who are members of the medical school's clinical departments (surgery, psychiatry, internal medicine, and so forth). Medical education, then, incorporates a fundamental distinction between "basic sciences," which are taught by dedicated faculty members in the first and second years of medical school, and "clinical sciences," which start with introductory courses taught by practicing physicians and become the principal focus of the curriculum in the third and fourth years.[8]

At virtually every medical school in the United States, including TUSM, the basic unit of academic instruction is the "department." TUSM has 25 academic departments, five of which are "basic science departments."[9] Faculty members who teach primarily in these departments are classified as "basic science faculty." Rather than M.D. degrees, most faculty members in basic science departments hold Ph. D. or other doctoral-level degrees in the fields in which they teach (cell biology, anatomy, and so forth).[10] The remaining departments are "clinical departments," meaning that faculty members in those departments are primarily responsible, not for classroom instruction of students, but for services to patients at affiliated teaching hospitals or in other clinical settings. All the plaintiffs in this case hold appointments in basic science departments in TUSM, and the two compensation policies at issue in this case (the *2017 Compensation Plan* and the *2019 Compensation Plan Revision*) apply only to faculty members in basic science departments.

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[8] *See* AAMC, *Part 1: Medical Education*, in *Policy Priorities To Improve The Nation's Health: From America's Medical Schools And Teaching Hospitals*, p. 1 (2016), www.aamc.org/system/files/c/2/472838-policy-priorities-improve-nations-health.pdf.

[9] *See Clinical Departments*, https://medicine.tufts.edu/about/academic-departments/clinical-departments (listing TUSM's twenty clinical departments) and *Basic Science Departments*, https://medicine.tufts.edu/about/academic-departments/basic-science-departments (listing the five departments classified at TUSM as basic science departments).

[10] According to a data compendium prepared by the AAMC in 2020, more than three-quarters of full-time faculty members in medical school basic science departments have doctoral degrees (primarily Ph.Ds) rather than M.D. degrees. In clinical departments, 83 percent of full-time faculty members have M.D. degrees and only 14 percent have Ph.D. degrees or doctoral degrees other than M.D.s. AAMC, *Table 6: U.S. Medical School Faculty by Degree and Department, 2020*, in FACULTY ROSTER: U.S. MEDICAL SCHOOL FACULTY (2020), https://www.aamc.org/media/8921/download?attachment.

The economics of modern medical school education are enormously complicated.[11] Medical schools generally derive operating revenue from three principal sources: fees for patient care, grants and contracts for research, and tuition paid by students. At most medical schools—but not at TUSM—the largest proportion of revenues comes from patient care fees, either from patients who pay for services out of pocket or through third-party subsidies such as Medicare or private insurance.[12] (TUSM is different from most medical schools in that it derives no revenue from patient care at its affiliated hospital.[13]) The next largest proportion of revenues comes from external grant and contract support, which nationally accounted for 22 percent of all revenues at the nation's medical schools in 2020.[14] (The percentage at TUSM is obviously much higher, since TUSM does not generate revenue from patient care.) Revenues from those two sources—patient care and research—cover 85 percent of the average medical school's operating budget. Tuition accounted for the third largest source of revenue at the nation's medical schools in 2020 (and represents a significantly higher-than-average percentage at TUSM—an issue of concern noted by TUSM's accreditors).[15]

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[11] For a brief introduction to some of the defining issues, *see* Barbara Barzansky, *United States Medical School Financing: Beyond the Black Box*, 12 J. INT'L ASS'N OF MEDICAL SCIENCE EDUCATORS 5 (2002), http://www.iamse.org/wp-content/uploads/2015/08/12_complete.pdf. *See also* AAMC, *Data Snapshot: A Brief Review of U.S. Medical School Finances, Fiscal Years 2011-20* (September 2021), https://www.aamc.org/media/56436/download.

[12] According to the AAMC, almost two-thirds of medical school revenues nationally come from reimbursements for clinical services. In the vernacular of health care economics, clinical revenues "cross-subsidize" the costs of educating medical students, and it is obviously of paramount importance to the financial well-being of a medical school to operate strong clinical departments staffed by faculty members in those departments. AAMC, *Medical Education: U.S. Medical School Revenues* (2020), Table 1 ("Revenue of U.S. Medical Schools by Source, Fiscal Year 2020"), https://www.aamc.org/data-reports/faculty-institutions/report/us-medical-school-revenues.

[13] *Deposition of Thomas Malone*, p. 117, October 4, 2021.

[14] AAMC, *Medical Education: U.S. Medical School Revenues* (2020), Table 1 ("Revenue of U.S. Medical Schools by Source, Fiscal Year 2020"), https://www.aamc.org/data-reports/faculty-institutions/report/us-medical-school-revenues.

[15] *Deposition of Thomas Malone*, pp. 114-15, October 4, 2021.

Basic science faculty typically do not see patients, but they do perform laboratory research as an essential part of their role as members of the medical school faculty. As described in more detail in the next several paragraphs of this report, basic scientists at all medical schools, including TUSM, are expected to compete for grants and contracts from external funders and to use proceeds from those grants and contracts to defray a substantial portion of their compensation and the costs of staffing and operating their laboratories.[16] If a faculty member does not obtain adequate external funding, then the medical school must cross-subsidize non-covered costs by reallocating revenues from other sources, which inevitably affects the quality of educational programs.[17]

It is important to understand, at least on a rudimentary level, how the award of a grant or contract to a basic science faculty member creates a revenue flow that can be used partially to defray salary and operating costs.[18] In order to perform sponsored research and make themselves eligible for external support from major granting agencies, medical schools incur a variety of sunk infrastructure costs. Granting agencies typically pay the medical school's "Facilities and Administrative" costs, commonly called "indirect costs," to defray a portion of the medical school's investment in state-of-the-art laboratories, information technology, hazardous waste

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[16] At TUSM, as at most medical schools, a faculty member is expected to be an "independent investigator"—a term of art in the world of research meaning that the faculty member has sources of grant and contract support independent of the university or medical school itself. *See* Irene Levine, *Making the Leap to Independence*, SCIENCE MAGAZINE (2007), https://www.science.org/content/article/making-leap-independence. Under TUSM's *APS Policy* (the policy establishing criteria for the initial hiring, tenuring, and promotion of faculty members), candidates for tenure and promotion are expected to demonstrate "independence ... as an investigator" as measured by "[t]he specifics of grants received." *APS Policy*, pp. 2, 6.

[17] *See* Michael Lawlor, *Academic Medicine Under Economic Stress: A Case Study of the Institutional Change Transforming American Health Care*, 60 REV. OF SOCIAL ECONOMY 435 (2002).

[18] For a good primer on this topic, *see* Association of Public Land-Grant Universities, *Frequently Asked Questions (FAQs) about the Indirect Costs of Federally Sponsored Research* (2017), https://www.aplu.org/members/councils/presidents/presidentsdocuments/indirect-cost-faq-3-2017.pdf. In the succeeding paragraphs of this report I have borrowed heavily from APLU's very helpful explanation of the indirect cost recovery process.

disposal, and the (often high) costs of compliance with various federal, state, and local rules and regulations.

Indirect cost payments are, in effect, partial reimbursements for costs the medical school has *already* paid for expenses incurred in conducting research. Indirect cost payments are a form of shared allocation of infrastructure costs between medical school and funding agency. Mechanically, the process works as follows. A faculty member determines the "direct costs" associated with a particular experimental course. Direct costs include the salaries of research personnel (including, if permitted by the sponsor, a dedicated portion of the faculty member's own time and the salaries of laboratory assistants and other personnel), equipment, special materials, and allocated laboratory space. To the sum of direct costs, the faculty member calculates an amount based on a pre-negotiated "indirect cost" recovery rate. The total grant request will then be direct costs *plus* a percentage of direct costs awarded for indirect costs.[19]

There is some variation in negotiated indirect cost recovery rates based on the source of funding. The most generous funder is the National Institutes of Health ("NIH"), which on average pays an indirect cost recovery rate of 46 percent.[20] Other federal funding agencies, such as the National Science Foundation and the Department of Veterans Affairs, have an average rate of 35 percent. If funding comes from a source other than a federal agency, the indirect-cost

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[19] For example, after reviewing all of the expected costs and looking at past research projects, a university and [a funding agency] may determine that an amount equal to 50 percent of direct research costs is appropriate for the [funding agency] to contribute toward F&A costs. In that case, if the [funding agency] awards a university $300,000 for the direct research portion of a grant then it also awards $150,000 for F&A costs, for a total of $450,000. These overall institutional indirect cost rates are then applied uniformly to each grant at the university to avoid the very tedious and expensive process of computing the additional costs for individual awards.

Id. at 2.

[20] That is a national average. At Tufts and most research-intensive universities the indirect cost recovery rate is considerably higher than the average. In 2020, Tufts' indirect cost recovery rate was 65 percent for research performed at the TUSM campus. *See* Tufts University, Office of the Vice Provost for Research, *Facilities & Administration (F&A) and Fringe Rates*, https://viceprovost.tufts.edu/policies-forms-guides/facilities-administration-fa-and-fringe-rates.

return is lower, usually by a substantial amount: state and local government agencies pay 13 percent on average, while corporate sponsors and pharmaceutical companies pay 31 percent and philanthropic foundations pay 9 percent.[21]

There are many reasons why NIH funding is the most generous and the most highly sought. NIH grants are competitive, prestigious, and often larger and for longer periods of time than grants from other sources. The NIH grantmaking process is rigorously peer reviewed. NIH regulations are particularly sensitive to potential conflicts of interest. Perhaps most importantly, NIH's funding priorities are determined nationally and reflect what is as close to a national consensus on research priorities as one could imagine.

In sum, basic science faculty members are expected to defray a portion of their salaries and the expenses of operating their laboratories by engaging in research activities. One of the justifications for medical school research is to pay for the extraordinary investment in medical school laboratory infrastructure. *That investment has already been made*. If a given amount of laboratory space is allocated to a faculty member, and if that faculty member uses assigned space to perform generously supported research, the indirect cost subsidy will be substantially greater than if the faculty member used the same space for research supported through grants from state funding agencies or foundations. Nothing, obviously, prohibits a faculty member from engaging in any kind of research, regardless of funding source; but a medical school has every right to

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[21] AAMC, *Academic Medicine Investment in Medical Research: Technical Report*, Figures 18-22 (2015), https://store.aamc.org/downloadable/download/sample/sample_id/406/.

Professor Miller, in his report, offers these examples of differences in indirect cost recovery rates for different funding sources:

> Different grant mechanisms allow different levels of F&A Costs to be included in budgets. The U.S. Department of Health and Human Services negotiates a maximum F&A Cost Rate with an academic institution, which is applied to grant budgets from federal government agencies (e.g., NIH). The TUSM federal maximum F&A Cost Rate was 65% in 2020. Thus, an NIH grant budget of $100,000 of Direct Costs would be accompanied by a request for $65,000 in F&A Costs, yielding a total grant request to NIH for $165,000. In contrast, most non-profit/philanthropic foundations and intramural grant mechanisms allow substantially lower F&A Costs. For example, the American Cancer Society allows a maximum F&A Cost Rate of 20% in its grant mechanisms.

Professor Miller Report, p. 1 (footnotes omitted).

steward its resources and encourage its faculty members to engage in well-funded research. As I show in this report, most medical schools build such values into their compensation plans and laboratory space allocation policies, and TUSM is no exception.

C. The Appropriate Role for AAUP Policy Documents and Reports

Documents promulgated by the AAUP or staff members employed by the AAUP are mentioned frequently in the amended complaint in this action, as well as in the plaintiffs' witnesses' reports and this report. I wish to say a word about appropriate and inappropriate references to AAUP materials.

The AAUP, as its name suggests, is an organization of faculty and for faculty. It articulates the faculty perspective on tenure, academic freedom, and principles of institutional governance. The AAUP has a formal mechanism for drafting and approving policy statements addressing discrete issues related to tenure, academic freedom, and other concerns. Proposed policies are considered initially by one of the AAUP's standing committees, the most important of which for our purposes is Committee A on Academic Freedom and Tenure (referred to in this report as "Committee A"). Like other standing committees, Committee A is made up of faculty members from around the country, all of whom are AAUP members. In a written report on Committee A procedures, Professor David Fellman, a former Committee A Chair and AAUP President, described the workings of Committee A this way:

> ... [I]n the broadest possible sense, it should be noted that the 1940 *Statement of Principles on Academic Freedom and Tenure*, which is our basic constitutional charter, is a very brief document. It does not say much on very many subjects, and what it does say is said in very general terms. We are dealing with a charter that does not give us very explicit directions. We continue to issue derivative documents, but most of our working standards necessarily remain product of construction, developed through the process of dealing with specific cases arising in concrete circumstances.[22]

[22] AAUP, *Committee A Procedures*, www.aaup.org/our-programs/academic-freedom/committee-procedures.

Committee A may draft a proposed policy statement itself; or it may constitute an *ad hoc* subcommittee or working group, as it did in 1996 when a subcommittee prepared *Tenure in the Medical School*, a report discussed in detail in a subsequent section of this report. The proposed policy may be published for membership comment in ACADEME, the AAUP's semi-monthly membership publication.

Written policies come in many forms. The most widely cited are those that have been formally approved by the AAUP's governing body, the Council, and endorsed or co-sponsored by other higher education associations. Principal among these is the *1940 Statement of Principles*, which has been endorsed by more than 200 scholarly societies and is widely viewed as one of the most cogent and most enduring expressions of academic freedom in the canon.[23] Universities do not "endorse" the *1940 Statement of Principles*. Typically academic freedom is one of the subjects addressed in an institution's tenure policy or faculty handbook, which is drafted in the first instance by a faculty committee or faculty members. The drafters may use the *1940 Statement* as a useful starting point.[24] Sometimes specific attribution is made to the *1940 Statement* with language stating that the institution "subscribes to" or "follows" the *Statement* or the principles embodied in the *Statement*.[25] Sometimes the policy or handbook uses the language of the *Statement*, with or without modification, but does not acknowledge the source or refer to the *1940 Statement* explicitly. This is what Tufts did in its *AFTR Policy*, which uses language contained in the *1940 Statement* without citing the source.

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[23] AAUP, *Endorsers of the 1940 Statement*, https://www.aaup.org/endorsers-1940-statement.

[24] *See* W. Todd Furniss, *The Status of "AAUP Policy,"* 56 EDUCATIONAL RECORD 7, 23 (1978).

[25] *E.g.*, *Statement on Academic Freedom*, in *Babson College Faculty Handbook*, p. 84, https://www.babson.edu/media/babson/assets/faculty/Final-Version-2016-Faculty-Handbook-Updated-April-2019.pdf ("Babson College supports the 1940 statement on academic freedom developed by representatives of the American Association of University Professors and The Association of American Colleges"); *Amherst College Statement of Academic and Expressive Freedom*, in *Amherst College Faculty Handbook: Pre-Introduction*, https://www.amherst.edu/academiclife/provost_dean_faculty/fph/fachandbook/preintroduction ("Amherst College subscribes fully to the AAUP statements of principles on academic freedom published in 1940, and assumes that faculty members know their rights and their responsibilities as members of the academic profession").

The incorporation of language from the *1940 Statement* into an institutional policy on tenure and academic freedom is, in Professor Fellman's words, only the incorporation of "a very brief document" phrased in "very general terms" that does "not give us very explicit directions."[26] When an institution uses or paraphrases language from the *1940 Statement of Principles*, the institution is not adopting anything other than the general, non-explicit language in the *Statement* and it is certainly not ceding to the AAUP any role in determining how that language should be interpreted in specific contexts arising at the institution.

The same is truer still of AAUP communications of other sorts. AAUP communications, in fact, come in many shapes and sizes and are published in many different media, some of which have been cited or relied upon by the plaintiffs' witnesses. On December 13, 2016, for example, Dr. Hans-Jorge Tiede, an AAUP staff member, wrote a letter to faculty members at TUSM in which he answered questions concerning AAUP policies. This communication is described in paragraph 193 of the amended complaint as "*the AAUP's* letter" (emphasis added). To the extent that that phrase is intended to freight the letter with special significance, it is misleading. As explained in the AAUP's *Statement of Points and Authorities in Support of [its] Motion To Quash Subpoena*, filed February 3, 2022, in an ancillary proceeding in this case, AAUP staff members have a policy of responding to every inquiry they receive from members—and they receive "dozens of complaints and inquiries concerning academic freedom, tenure, or governance every week."[27] Letters like the one authored by Dr. Tiede serve a limited purpose: such letters, as the AAUP explained in a recent affidavit, "explain the AAUP policy or policies relevant to the inquiry; they do not typically analyze or assess the particular situation that gave rise to the inquiry." They are far more circumscribed in scope than other responses from the AAUP that involve review by Committee A, the issuance of investigative reports, or votes by the

[26] *See supra* note 22 and accompanying text on page 10 of this report.

[27] *Affidavit of Gregory F. Scholtz*, p. 1, attached as Exhibit 3 to AAUP, *Statement of Points and Authori*ties *in Support of Motion To Quash Subpoena*, February 3, 2022.

AAUP's Council on censure.[28] Dr. Tiede's letter, in sum, cannot be characterized as more than an advisory letter, and it does no more than "explain the AAUP policy or policies" cited by the person writing to the AAUP for assistance. Dr. Tiede's letter was not intended to communicate an "analysis" or "assessment" and should not be cited as an "AAUP" position or conclusion.

II. MY CREDENTIALS AND AREAS OF EXPERTISE

A. Education and Employment

A copy of my resumé is reproduced at the end of this report as Exhibit B.

I live in Philadelphia. I grew up in Massachusetts and received my undergraduate degree from Harvard University in 1971.

Following six months of active duty in the U.S. Army Reserve and eight months of employment in Washington, D.C., as a legislative assistant on Capitol Hill, I attended the University of Pennsylvania Law School in Philadelphia. I received my law degree in 1975. After government service and private practice at a Washington law firm, I was appointed Associate Secretary and Assistant Counsel at the AAUP in 1982. I performed legal services on matters relating to academic freedom, tenure, faculty compensation and benefits, gender and race discrimination claims, and related matters. I staffed AAUP and AAUP-affiliated entities, including Committee A on Academic Freedom and Tenure, the Academic Freedom Fund, the Legal Defense Fund, and an advisory committee that oversaw the AAUP's litigation program.

For most of the time between 1984, when I left the AAUP, and my retirement as a full-time lawyer in 2015, I worked as an in-house university attorney. Between 1984 and 1989, I served as counsel to the Board of Regents of the University System of Maryland. I performed substantial legal work for the University of Maryland School of Medicine in Baltimore, the University of

[28] *Affidavit of Dr. B. Robert Kreiser*, p. 7, attached as Exhibit 1 to AAUP, *Statement of Points and Authorities in Support of Motion To Quash Subpoena*, February 3, 2022.

Maryland Hospital in Baltimore, and the Faculty Practice Plan of the University of Maryland School of Medicine.[29]

In 1989, I moved to Charlottesville, Virginia, to become Deputy General Counsel at the University of Virginia. I provided legal services to the University of Virginia School of Medicine, its faculty practice plan, and its network of affiliated teaching hospitals and clinics.

After two years at Virginia, I returned to the Washington, D.C. area to become University Counsel at Georgetown University. My duties included representing the University in civil and administrative proceedings; serving as legal advisor to the President, Board of Directors, and senior administrators; and managing the legal affairs of Georgetown University's School of Medicine, its faculty practice plans, and its affiliated teaching hospital.

My service as Georgetown University's general counsel corresponded to a period of large-scale consolidation in the health care industry. Stand-alone hospitals were absorbed into national or regional hospital networks. Changes in the health care environment impacted Georgetown University's School of Medicine and Georgetown University Hospital, which operated in an intensely competitive health care environment in the Washington metropolitan area.[30] As Georgetown University's general counsel, I was part of a high-level team assembled to manage the sale of the hospital to one of the region's health care chains. It was a transaction of significant complexity. It required me to become an expert on emerging financial models in academic medical centers. It was during this period that I became active in efforts of the AAMC to track changes in academic medicine, as described in the next section of this report.

In 1999, my wife and I moved to Philadelphia. I worked as a grant-maker at the Pew Charitable Trusts, one of the nation's largest philanthropic foundations; as Chief Counsel to the

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[29] "A faculty practice plan is an organized structure within an academic medical center that provides such services as billing, collections, revenue distribution, and financial services to the full-time teaching faculty." Jon Cohen and Susan Fox, *Developing a New Faculty Practice Plan with a Model for Funds Flow between the Hospital and the Plan*, ACADEMIC MEDICINE [AAMC], 78:119-124 (2003), https://journals.lww.com/academicmedicine/fulltext/2003/02000/developing_a_new_faculty_practice_plan_with_a.3.aspx.

[30] *See* Avram Goldstein, *Georgetown U. to Sell Hospital*, WASH. POST, February 18, 2000, https://wapo.st/2YmTEBN.

Pennsylvania Department of Education, the largest state government agency in the Commonwealth of Pennsylvania; and as an independent consultant providing services to colleges, universities, and other nonprofits across the country.

In 2009, I was appointed Vice President and General Counsel at the University of Delaware and worked there as a senior member of University administration until my retirement in 2015.

In the last six years, I have been employed on a part-time basis as Senior Counsel in the Office of General Counsel at the University System of New Hampshire. I have also served as a Consultant at the Association of Governing Boards of Universities and Colleges in Washington, D.C.

B. Areas of Expertise and Pertinent Qualifications

I am an expert on the relationship between tenure, academic freedom, and compensation for university faculty members generally, and for faculty members who have appointments in medical school departments specifically. My expertise is based on the following professional activities and accomplishments:

(1) From 1982 to 1984 I served as a staff attorney in the national office of the American Association of University Professors in Washington, DC. I was responsible during that period for advising AAUP senior officials on academic freedom, tenure, and related issues. I staffed committees of the national AAUP that dealt with issues involving the tenure rights of faculty members and the scope and meaning of academic freedom in higher education.

(2) For fifteen years I served as legal counsel to universities with medical schools and affiliated teaching hospitals. In that capacity I was responsible for interpreting tenure policies and advising medical school leaders on the relationship between academic freedom and tenure. As described below, I have spoken extensively on that subject at higher education conferences and written a law review article on the relationship between tenure and faculty compensation in medical schools.

(3) I was involved in the mid-1990s, while employed as general counsel at Georgetown University, in two AAMC conferences on the relationship between tenure and faculty compensation. In 1997, the AAMC, supported by a grant from the Robert Wood Johnson Foundation, created the “Forum on the Future of Academic Medicine” to provide focused

assistance to university and medical school leaders in coping with market-driven changes in academic medicine. Reports on the Forum's deliberations were published in ACADEMIC MEDICINE (the AAMC periodical) and usefully summarized financial and operational changes in academic medicine.[31] The Forum organized two conferences in Washington attended by university presidents, medical school deans, faculty members, and attorneys representing academic medical centers. The first, convened in 1996, was titled "Tenure, Compensation, and Career Pathways: Reexamining the Faculty Employment Relationship in Academic Medicine." I assisted in organizing the conference, and I attended it. The second conference, held one year later, was titled "Legal Issues in Faculty Tenure and Compensation" and focused on the relationship between tenure and compensation. The 1997 conference featured presentations by four attorneys on legal issues involving academic medical center faculty, including compensation, termination for cause, post-tenure review, and related subjects. I was one of the presenters at the 1997 conference, and I delivered a paper on faculty tenure and compensation that I later converted into the law review article described in the next paragraph of this report.

(4) In 2000 I wrote what was then, and what I believe is still, the only law review article focusing specifically on the relationship between compensation and tenure in medical schools: *Academic Tenure: Its Historical and Legal Meaning in the United States and Its Relationship to the Compensation of Medical School Faculty Members*.[32] The article was part of a symposium conducted by Saint Louis University School of Law in 1999 on legal issues in medical education. My article addressed the issue at the heart of the plaintiffs' witnesses' reports: the asserted relationship between the "sufficient degree of economic security" reference in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the salary entitlement of tenured faculty members.

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[31] *Session I—Setting the Stag*e, 72 ACAD. MED. 595 (1997); *Session Il—Finances and Culture*, 72 ACAD. MED. 754 (1997); *Session III—Getting from Here to There*, 73 ACAD. MED. 146 (1998); *Session IV—The Realities of the Health Care Environment*, 73 ACAD. MED. 956 (1998); *Session V—Implications of Basic and Applied Research for AMCs [Academic Medical Centers]*, 73 ACAD. MED. 1241 (1998). All these reports were written by John K. Iglehart, who was then editor of HEALTH AFFAIRS and national correspondent of THE NEW ENGLAND JOURNAL OF MEDICINE.

[32] 44 ST. LOUIS U. L. REV. 51 (2000).

(5) For almost forty years I was a member of the National Association of College and University Attorneys, a professional association of more than 3,000 practicing attorneys who represent colleges, universities, and higher-education-related organizations in the United States and other English-speaking countries around the world. I served several terms as an officer and director of NACUA. NACUA offers a wide array of continuing legal education programs, including the nation's largest annual conference devoted to legal issues in higher education. I was a frequent speaker at NACUA conferences. In 2010, I wrote a law review article on academic freedom, *Fifty Years of Academic Freedom Jurisprudence*, for NACUA's professional journal, the Journal of College and University Law.[33]

(6) The tenured and tenure-track faculty at the University of Delaware are unionized and belong to a collective bargaining unit affiliated with the AAUP. As general counsel at the University of Delaware, I made presentations at meetings of the University of Delaware's AAUP chapter on several occasions during the 2010s, and I maintained ongoing professional relationships with the national AAUP and the University of Delaware's AAUP chapter. I have kept abreast of AAUP policy developments, and I consider myself to be well versed on AAUP principles and policies.

(7) I served as an expert witness in another litigation, *Monaco v. New York University*, raising many of the same issues that have surfaced in this case. New York University retained me as an expert witness in that case in 2019. I prepared a lengthy expert report, and portions of this report borrow from the one I prepared in that case. The *Monaco* case also is discussed at several points in this report.

III. FACTS OF RECORD PERTINENT TO MY EXPERT OPINIONS

The following factual summary is based on pleadings in this case and other pertinent policies and documents provided to me by attorneys at Locke Lord LLP or available through the Tufts web site or other online sources.

[33] 36 J. COLL. & UNIV. L. 793 (2010).

A. Salary Policies and Practices in the School of Medicine before the Adoption of the *2017 Compensation Plan*

Tufts is an accredited institution of postsecondary education in Medford and Somerville, Massachusetts, and other locations within and outside of Massachusetts. Tufts is comprised of fourteen schools and colleges, of which the School of Medicine—TUSM—is one. Each school at Tufts has its own dean, who is the administrative head of the school and is responsible to the Provost and the President for all aspects of the operation of the school. Deans have all such duties, responsibilities and authority as may be delegated to them by the President.[34]

For many decades going back at least to the mid-1990s if not before, basic science faculty at TUSM have been expected to "generate," "carry," or "derive" a significant proportion of their salaries—50 percent or more—from external funding sources. Those sources were described in faculty appointment letters as "grant funds," "grant support," or "grant/sponsored funding." The obligation to defray substantial proportions of salary through external sources of support "is a common concept in medical schools, particularly for basic science faculty."[35]

Beginning in about 1990, America's medical schools underwent a financial earthquake as health care markets across the country started to consolidate. In 1992, Georgetown University Law Professor Gregory Bloche identified and described what he called "the developing financial squeeze on academic medical centers," attributing it to stinginess in federal health-care

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[34] *Bylaws of Trustees of Tufts Colle*ge, Art. VIII, § 8.2, https://trustees.tufts.edu/bylaws/art8-0/.

[35] *Tufts University School of Medicine—Faculty Grievance Findings and Recommendations of Hearing Board*, August 10, 2018, ¶¶ 24, 25.

The 2000 initial appointment letter of one of the plaintiffs, Dr. Pothos, for example, contains this paragraph:

> ... [W]e have agreed that your salary will be wholly paid by the Medical School in the first year and 60% in the second. For the third year, you will be expected to carry at least 50% of your salary on grant/sponsored funding. Thereafter, subject to your renewal, you will be expected to meet or exceed the sponsored funding target set for all Medical School faculty. This is anticipated to increase to 60% in 2003.

Letters from Drs. David Greenblatt and John Harrington to Dr. Emmanuel Pothos, June 16, 2000, p. 1.

reimbursement policy, the then-nascent (now largely realized) revolution in third-party payment for clinical care, and the resulting reduction in university cross-subsidies that supported more than forty years of growth in teaching and research at American medical schools after the Second World War.[36] Shortly after Professor Bloche's article appeared, his warning of an impending financial crisis in academic medicine became suddenly and palpably real. By 1996, according to the AAMC, twenty percent of the nation's teaching hospitals were losing money, some at prodigious rates.[37] As the decade drew to a close, at least two prominent academic medical centers reported operating losses of more than $75 million annually.[38] Another academic medical center declared bankruptcy in 1998**,** threatening the closure of major urban teaching hospitals and the loss of thousands of health care jobs.[39]

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[36] M. Gregg Bloche, *Corporate Takeover of Teaching Hospitals*, 65 SO. CAL. L. REV. 1035, 1046-61 (1992). For a perceptive treatment of the causes underlying the current financial difficulties confronting academic medical centers, *see* John. K. Iglehart, *Health Policy Report: Rapid Changes for Academic Medical Centers (Second of Two Parts)*, 332 NEW ENG. J. MED. 407 (1995). Mr. Iglehart noted, for example, that:

> Despite their success, academic medical centers have surprisingly fragile economic foundations. Their many missions are financed through a complex web of cross-subsidies, because as a rule most functions—such as undergraduate and graduate medical education, biomedical research, and the treatment of severe or unusual diseases—do not pay for themselves.... As the system evolves to resemble a competitive marketplace more closely.... *the ability of academic medical centers to continue financing their activities through cross-subsidies is problematic in the extreme*. The reason is that payers—employers, managed-care plans, and government, as well as patients—are placing more emphasis on reducing the rate of increase in medical expenditures.

Id. at 407 (emphasis added) (footnotes omitted). *See also* David Blumenthal & Gregg S. Meyer, *The Future of the Academic Medical Center Under Health Care Reform*, 329 NEW ENG. J. MED. 1812 (1993).

[37] Martin Van Der Werf, *Changing Economics of Health Care Are Devastating Academic Medical Centers*, CHRON. OF HIGHER ED.., May 21, 1999, pp. A38, A38-A39.

[38] *Id.* at A38 (noting that the University of Pennsylvania Health Services System lost nearly $90 million in the preceding year, while the Georgetown University Medical Center lost almost $120 million in the preceding two years).

[39] *See* Chris Adams, *Big Pennsylvania Health System to File Chapter 11*, WALL ST. J., July 21, 1998, p. B7. The AAMC predicted in 1998 that in the following three years the number of academic medical centers with annual operating deficits would approach fifty percent of the total. *See* Van Der Werf, *supra* note 37, at A38.

In 2008, TUSM adopted a written policy on faculty compensation. The 2008 "Salary Plan" allowed for the reduction of tenured faculty members' salaries based on lack of annual grant support.[40] The plan required TUSM to calculate the three-year rolling average of "salary fraction"—in other words, the percentage of total compensation—covered or defrayed by indirect costs on sponsored research grants and contracts. A salary fraction average of 15 percent or less triggered a review process, one part of which included an assessment of the faculty member's "[o]ngoing efforts to attract additional extramural funds (number and quality of applications, NIH priority scores, etc.)" and another part of which assessed the faculty member's publication record, including the number of publications, the quality of journals in which publications appeared, and other standard measures of research productivity. A faculty member whose average salary fraction triggered the review process could be subject to a "base salary" equal to 75 percent of then-current compensation. The base salary limitation would remain in effect until the average salary fraction rose to 15 percent or more, at which point salary would be restored to 100 percent of total compensation and the "15-percent minimum salary fraction" clock would be reset.[41] To put this in simple terms, the 2008 Salary Plan guaranteed faculty members 75 percent of their then-current salary while conditioning the remaining 25 percent on achievement of a minimal level of external grant and contract support.

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[40] *Faculty Grievance Findings and Recommendations*, *supra* note 35, at ¶ 26.

[41] *Id.*, ¶¶ 27-29. By way of arithmetic example, if a faculty member earned a base salary of $150,000 a year and also was awarded grants and contracts through which $30,000 of salary was defrayed, the faculty member's salary fraction would be 20 percent. If the next year salary contribution through overhead recovery dropped to $10,000 and stayed at that level for one additional year, then the three-year average salary fraction would drop to 11 percent—below the 15-percent threshold—and a review would be triggered. If that review resulted in reduction of the faculty member's salary to $112,500 (75 percent of $150,000), then salary in the fourth year would be that amount ($112,500) and would remain at that level (plus cost-of-living adjustments) until grant funding volume increased to the point at which indirect-cost contribution to salary coverage raised the average salary fraction back to or more than the 15-percent threshold—at which point salary would be increased back to 100 percent and the three-year average measurement of salary fraction would be reset. I have assumed in this example that the faculty member's salary would stay the same over the period. In fact, it may go up as faculty salaries are adjusted on an annual basis, which makes the arithmetic more complicated. But the point remains the same: the faculty member's salary would drop and an incentive would be created for the faculty member to increase grant and contract volume in order to have the original salary restored.

In the decade of the 2010s, TUSM's financial situation worsened. TUSM generated substantial operating deficits for much of the decade, reaching levels substantial enough to draw the attention of the Liaison Committee on Medical Education, the body that accredits American medical schools. The accrediting agency made it clear in its 2018 reaccreditation report that TUSM needed to balance its budget and stop relying on cross-subsidies from the University to cover its operating deficit.[42]

Contributing substantially to the TUSM operating deficit was a precipitous decline in sponsored research funding in the basic sciences over that decade. TUSM estimates that shortfalls in projected sponsored research support led to a $20 million annual deficit in the cost of its basic science research infrastructure.[43] Efforts to stanch the deficit in support for basic science research caused TUSM to revisit the 2008 Salary Plan. Starting in 2015 a series of faculty committees generated reports and recommendations on faculty compensation, and the result of that effort was the adoption of the *2017 Compensation Plan* in July of that year. The sequence of events leading to the adoption of the policy was convoluted and involved many stages and steps.[44] I do not believe that the details of the process by which that policy was considered and adopted matter to the expert opinions I express in this rebuttal report. I draw three salient conclusions, however, about the process. First, faculty members and duly constituted faculty committees were involved from the very start. Second, the final version of the *2017 Compensation Plan* incorporated many of the features urged by the faculty during the process. Third and most important, the *2017 Compensation Plan* and the revisions to that policy made in 2019 were very much in keeping with policies adopted at roughly the same time by other medical schools across the country. I turn to the details of the two compensation policies at issue in this litigation.

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[42] *Id.* ¶¶ 1-10.

[43] *Id.* ¶¶ 8-9.

[44] Those events are described in paragraphs 30 through 52 of the grievance committee report referenced in note 35, above, and were also the subject of extensive deposition testimony in this proceeding.

B. The *2017 Compensation Plan* and the Alterations Made by the *2019 Compensation Plan Revision*

Like the 2008 Salary Plan it replaced, the *2017 Compensation Plan* adopts the operating principle that basic science faculty are responsible for defraying a portion of their salaries through recovery of overhead expenses on grants and contracts. The *2017 Compensation Plan* applies to all tenured faculty members in the Medical School's basic science departments. In its introductory section, the policy articulates a simple declaration of institutional expectation:

> TUSM expects that all tenured basic science faculty members will seek financial support for their research activities. These expectations include that faculty will obtain support for at least 50% of their salary through extramural funding, direct cost support, facility and administrative cost support and/or other sources to support an active laboratory.

Rather than using the cumbersome "salary fraction" calculation on which the 2008 Salary Plan was premised, the 2017 policy employs the common concept of "institutional base salary" (abbreviated "IBS"), defined by TUSM as "the annual compensation paid by the University for a faculty member's annually defined appointment whether the faculty member's time is spent on research, instruction, administration and/or other approved activities." IBS is determined on an annual basis by the department chair, based on an evaluation of the faculty member's scholarship record and extramural research funding. The faculty member is then assigned to one of four possible "evaluation categories": "consistently exceeds expectations," "meets expectations," "below expectations," and "consistently does not meet expectations." The faculty member's IBS is determined by reference to an objective external measure of salary comparability: "the AAMC annual salary survey for Northeast private medical schools."[45]

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[45] One of the AAMC's most valuable membership benefits is access to the results of the annual *Faculty Salary Report.* "The annual AAMC Faculty Salary Report displays total compensation of full-time medical school faculty broken out by rank, degree, department/specialty, medical school type, region, gender and race/ethnicity." Association of American Medical Colleges, AAMC FACULTY SALARY REPORT, https://www.aamc.org/data-reports/workforce/report/aamc-faculty-salary-report. As we will see in a subsequent section of this report, many medical schools employ the same benchmarking standard incorporated into TUSM's *2017 Compensation Plan*: they define the institutionally guaranteed percentage of salary by reference to percentiles in the AAMC's annual salary report.

The *2017 Compensation Plan* contains additional features applicable to faculty members whose annual performance is adjudged by the chair to be particularly meritorious or particularly problematic. Faculty members whose work manifests "high performance"—defined as "achieving salary support from extramural grants well in excess of 50%, significant generation of indirect costs, and/or national or international recognition of their work"—may be awarded productivity incentives, which may include bonuses or one-time salary enhancements. A faculty member whose annual performance is determined by the chair to be below expectations—defined in the policy as "not actively engaged in peer-reviewed research, teaching, and service"—may, after appropriate notice and an opportunity to contest the action through an appeal process, be subject to "a reduction in ... appointment commensurate with the deficiency in the faculty member's ability to meet expectations."

I wish to pause here to reflect on one important feature of the *2017 Compensation Plan* that does not receive sufficient attention in the reports prepared by the plaintiffs' witnesses. The 2017 plan is not a salary *reduction* plan. *It provides for both salary supplementation and salary reduction*, depending on the faculty member's success in achieving expected levels of external research support. I would characterize it as an *incentive plan* that makes salary variable based on volume of external support. Under the plan, productive faculty members see their salaries rise. Faculty members who fail to achieve specified levels of external support over a three-year benchmarking period may see their salaries go down and (under the research space guidelines discussed below) may lose laboratory space so it can be rededicated to more remunerative purposes. The policy does not tell faculty members how they must dedicate their research time, from where they must obtain their external funding, or what subjects they must choose to pursue in the laboratory; the policy simply attaches financial consequences to faculty members whose success in attracting specified levels of external support does not meet institutional expectations.

Shortly after the *2017 Compensation Plan* went into effect on July 1 of that year, ten basic science faculty members filed grievances challenging the new policy as a violation of their tenure rights "by conditioning maintenance of salary ... on a new requirement not present when these faculty were hired and tenured—to raise external funds bearing indirect cost recovery

('ICR') to support salary and laboratory space."[46] On August 10, 2018, the Grievance Committee rejected the faculty members' claim that TUSM could not reduce a faculty member's salary on account of failure to satisfy extramural funding requirements. Under the heading "TUSM May Include Extramural Funding Requirements in a Compensation Policy," the committee concluded:

> The Hearing Board finds, in concept, that the creation of a compensation policy which by its operation related to specified factors such as extramural funding requirements can serve to modify total annual compensation for a faculty member or adjust full-time appointments does not per se violate tenure rights. ... [A]s a general matter, ... it would not be a violation of tenure rights for TUSM to institute a compensation policy that conditions maintenance of salary and full-time employment upon faculty satisfaction of reasonable extramural funding requirements.[47]

The committee went on, however, to find that certain implementational features in the *2017 Compensation Plan* were "vague and confusing" and to recommend that the policy be revised to address such subjects as teaching and service expectations and the circumstances under which full-time faculty appointments could be reduced. When the committee's recommendations were presented to Tufts' President, he asked TUSM to make modifications to the policy to address the committee's concerns over vagueness and possible confusion. The result was the *2019 Compensation Plan Revision*, which went into effect that year and is still operative at TUSM.

The *2019 Compensation Plan Revision* added language clarifying evaluative criteria for gauging a faculty member's performance in teaching and service. It also removed one of the acknowledged ambiguities in the 2017 policy by making it clear that a faculty member whose appointment is reduced to less than full-time would also see a proportional reduction in expected work commitment. With respect to the critical compensation features in the 2017 policy, however, such as the explicit expectation that faculty members would defray a minimum of 50 percent of their IBS through grant and contract support, the definitions of IBS, high performance, and failure to meet performance expectations, and the use of AAMC benchmarks to set minima

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[46] *Faculty Grievance Findings and Recommendations*, *supra* note 35, at 11.

[47] *Id.* at 11-12.

for IBS, the *2019 Compensation Plan Revision* preserved the essential elements in its 2017 predecessor.

C. The *Research Space Guidelines*

I will touch upon this policy only briefly, because it is discussed and analyzed in the Grievance Committee Report in a thorough manner that leaves little to be added.

The guidelines apply to faculty members in both clinical and basic science departments. Developed between 2013 and 2016, the guidelines are designed to "document the criteria that will be used by TUSM's Dean when deciding on the distribution of wet bench research space."[48] They are, in effect, codified standards for allocating a precious resource—research space—at a time when the cost of providing space is increasing and the amount of space is not keeping pace with demand.[49]

Written space allocation policies have been adopted at many medical schools in the United States.[50] They share two features in common with TUSM's. First, they all declare as a general

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[48] *Id.* at 15.

[49] *See generally* Solomon S. Solomon, M.D. & Stephen C. Tom, M.S., *Allocating Research Space in the University Medical Center: Use of a Mathematical Formula*, 297 AM. J. MED. SCI. 3-8 (1989).

[50] "Research-intensive medical schools have evolved various methods for evaluating and distributing space based on the need to meet the requirements of the federal and private agencies that fund biomedical research." University of Louisville, *School of Medicine Space Policy*, https://louisville.edu/medicine/research/space/school-of-medicine-space-policy. I put the search term "wet laboratory allocation policy medical school" into an Internet search engine and got a list of policies too numerous to have explored in full. For examples of policies at some of TUSM's peer institutions, *see, e.g.*, Keck School of Medicine at the University of Southern California, *Keck Research Space Guidelines*, https://keck.usc.edu/research/research-resources/space-facilities/guidelines/; Northwestern University, Feinberg School of Medicine, *Policy for Reallocating Laboratory Space*, https://www.feinberg.northwestern.edu/research/about/policies/lab-space-policy.html; Washington University in Saint Louis School of Medicine, *Wet Lab Space Guidelines and Utilization Studies*, https://facilities.med.wustl.edu/wp-content/uploads/2019/10/Wet-Lab-Space-Guidelines-Rev.-October-2019.pdf; Yale School of Medicine, *Process for Space Allocation*, https://medicine.yale.edu/about/resources/Yale%20School%20of%20Medicine%20Space%20Policy%2012172021_428905_284_45001_v1.pdf; New York University Langone Health, *Policy on Assignment of Academic*

principle that research space should be apportioned in a manner that rationalizes space utilization and makes the process of allocating it fair and transparent. Second, they use formulae or logarithms based on multi-year averages of faculty members' indirect dollars per laboratory work station, typically calculated on the basis of dollars per square foot of laboratory space.

In its 2018 grievance decision, the Faculty Grievance Committee rejected faculty contentions that TUSM's *Research Space Guidelines* violated their academic freedom in any respect:

> The Research Space Guidelines do not deprive Grievants of any academic freedom rights. Grievants contend that the policy acts to subordinate free academic inquiry and the search for truth to outside market forces and priorities set by certain outside funders who provide high levels of indirect cost recovery. While academic freedom allows Grievants to perform research of the topics of their choosing, it does not prevent others from judging whether their work is valuable and whether their conclusions are sound. It also does not prevent TUSM from allocating its limited research space according to the metrics set forth in the Research Space Guidelines.[51]

D. The Plaintiffs

All eight of the plaintiffs in this action are tenured members of basic science departments in TUSM. Two (Drs. David Greenblatt and Theoharis Theodarides) hold M.D. and Ph.D. degrees. The other six have doctoral degrees in basic science areas but no M.D. degree. All, according to the amended complaint, have been subjected to or may be subjected to salary reductions under pertinent TUSM policies and have had or may have laboratory space taken away from them.

Other facts pertinent to my expert opinions are described in succeeding sections of this report.

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and Research Space, https://med.nyu.edu/for-faculty/sites/default/files/policy-on-assignment-of-academic-and-research-space.pdf.

[51] *Faculty Grievance Findings and Recommendations*, *supra* note 35 at 11.

IV. EXPERT OPINIONS

A. Summary of Expert Opinions

Each of the eight plaintiffs has submitted a set of supplemental interrogatory answers naming himself or herself as an expert witness and identifying three other expert witnesses. All eleven of the witnesses so identified express the opinion that TUSM's compensation and research space policies contravene the plaintiffs' entitlement to academic freedom in two respects: first, by subjecting them to salary reductions in contravention of their right to "a sufficient degree of economic security"; and, second, by interfering with their "full freedom in research" by "[c]onditioning tenure, academic freedom, and economic security on the current priorities of research funders." The first two phrases in quotation marks appear in Tufts' *AFTR Policy* and are derived from identical phrases in the AAUP's *1940 Statement of Principles on Academic Freedom and Tenure*. The third phrase in quotation marks is from the report by Professor Brint.

The witnesses' opinions assume that the two phrases on which the plaintiffs' legal claims are predicated—"sufficient degree of economic security" and "full freedom of academic research"—are terms of art that can be read to prohibit salary reductions for tenured faculty members and space allocation decisions based on a faculty member's research productivity. Because neither Tufts' *AFTR Policy* nor the *1940 Statement of Principles* offers any gloss on the meanings of the two phrases in question, the witnesses argue in effect that the phrases, which appear only once in the *AFTR Policy*, are understood in the academic community to ensure the full salaries of tenured faculty members and the full protection of all laboratory space dedicated to their research.

To the contrary, it is my opinion that there has never been any common understanding of the meaning of that language, either in the academic community generally or within the walls of TUSM specifically. The witnesses do not mention in their reports that the AAUP, in the more than eighty years that have elapsed since the drafting of the 1940 *Statement of Principles*, has never adopted a policy, published a report, or taken any other action that imparts to the phrase "sufficient degree of economic security" the meaning they give it in their opinions. Even the AAUP interprets the *1940 Statement of Principles* to allow salary reductions for tenured medical

school faculty members. In its only extended treatment of salary rules in medical schools, the AAUP[52] explicitly acknowledged that medical schools can fix base salaries for tenured faculty members, and that a policy allowing salaries to be reduced is consistent with tenure so long as salaries do not drop below the base. As for the phrase "full freedom of research," it has never been interpreted by a court or by the AAUP to mean that a medical school cannot develop a space allocation policy based on researchers' success in attracting external grant and contract support for their work. I agree with the Faculty Grievance Committee that, while academic freedom guarantees a faculty member's right to select research subjects, it does not require the university to support a faculty member's research priorities by guaranteeing forever the faculty member's access to allocated space.

For these and other reasons, the witnesses' reports do not support the contention that the general references to "economic security" and "full freedom of research" in the 1940 Statement of Principles prohibit TUSM from adopting the policies challenged in this case.

My expert opinion is based on these three conclusions:

(1) *The phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" in the* 1940 Statement of Principles *is not a term of art or a term with a special meaning in academia*. "Economic security" is not defined either in the 1940 *Statement* or in Tufts' *AFTR Policy*. In both places, the phrase is part of a longer introductory phrase describing *the purpose of tenure* in higher education. Over the last eighty years, courts, legal scholars, and the AAUP itself have construed, interpreted, and clarified many of the provisions in the 1940 *Statement of Principles*, including provisions relating to academic freedom and the processes associated with the revocation of tenure. *But no substantive content has ever been given to the phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability," and today there is no consensus*

[52] When I say "AAUP" in this paragraph, I am referring to a subcommittee of Committee A of the AAUP, which in 1996 published for comment a report titled *Tenure in the Medical School*. That report is discussed in more detail on pages 36-37 of this report. While, for the sake of brevity, I refer to this report as an "AAUP" report, I do not mean to suggest that the report has been adopted by the AAUP as an official explication of policy; it has not.

in the academic community on the meaning of that phrase. The "sufficient degree of economic security" language in the Tufts policy and the 1940 *Statement of Principles* has never been construed—by Tufts, by the AAUP, by legal scholars, or by courts—to protect tenured faculty members against salary reductions. To state that language of vague, indeterminate meaning ("sufficient degree of economic security") incorporates a very specific prohibition (no salary reduction) not expressed in the policy is unsupportable and wrong.

Furthermore, an abundant body of surveys, reports, and studies from the AAMC and other sources—including the AAUP—recognizes the ubiquity of salary policies like the one adopted at TUSM. To the witnesses' assertion that a reference to "economic security" in prefatory language is generally understood to preclude the reduction of a tenured faculty member's salary, the answer is that *salary reduction is expressly permitted at the overwhelming majority of American medical schools*, and that *nothing even close to a consensus operates to prohibit the practice at TUSM or any other medical school.*

(2) *The record in this case rebuts the assertion that there was a general understanding at Tufts that the salaries of tenured faculty members could not be reduced.* The witnesses' reports can be faulted because they do not examine or take into account what Tufts and TUSM administrators said on that subject. These are serious analytic omissions in a report that purports to offer an expert opinion on what the witnesses want this Court to accept as the commonly accepted meaning of a disputed term.

(3) Finally, I agree with the Faculty Grievance Committee that *the plaintiffs are reading too much into the phrase "full freedom in research" when they contend that it protects faculty members from reassignment of their research space under a fair and transparent institutional space allocation policy.* Again, the witnesses have pointed to no court decisions, scholarly commentary, AAUP interpretation, or other source to support their contention that TUSM's compensation policies or its *Research Space Guidelines* interfere with the academic freedom of faculty members.

To state my conclusions simply: TUSM is not prohibited from adopting a policy defining a base portion of salary and allowing the salary of an individual faculty member to be adjusted downward to (but not below) that minimum. Nor is TUSM prohibited from adopting a space

allocation policy that, like similar policies at many other medical schools, makes success in obtaining extramural research support a criterion for apportioning laboratory space. Efforts to manufacture prohibitions against salary reduction or space allocation policies out of cryptic references to phrases in the University's *AFTR Policy* represent one-off interpretations never advanced by the community of American medical schools or by the AAUP and never agreed to by Tufts.

B. There is No Commonly Understood, Universally Embraced Meaning of the Phrase "Economic Security" in the Academic Community.

The phrase "economic security" appears in one sentence in Tufts' *AFTR Policy*. That phrase is in an introductory section entitled "Academic Freedom and Tenure." The pertinent sentence in that section reads:

> Tenure is a means to certain ends, specifically:
>
> (1) Freedom of teaching and research; and
>
> (2) A sufficient degree of economic security to make the profession of teaching attractive to men and women of ability.

On the basis of that sentence, Professor Brint posits the principle that "[u]niversities do not [presumably meaning *cannot*] reduce professor's [sic] salaries except under conditions of officially announced financial exigency."[53] The question I analyze first in this report is whether the phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" has ever been interpreted to mean that pay reductions for tenured faculty members are a violation of academic freedom when not undertaken after declarations of financial exigency, as Professor Brint maintains. In the next section of this report, I analyze the logical next question: whether the record contains any evidence showing whether TUSM has, by its words or by its conduct over the years, evinced its understanding of and adherence to what Professor Brint and the other witnesses presume to be that phrase's well understood meaning.

[53] *Brint Letter*, seventh unnumbered page.

1. The "Economic Security" Language in the 1940 *Statement of Principles*

The only reference to "economic security" in Tufts' *AFTR Policy* (or anywhere else in the governing documents at Tufts or TUSM) emanates from the *1940 Statement of Principles*, which states in one of its prefatory paragraphs:

> Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.[54]

That provision is derived in part from very different language in the AAUP's 1915 *General Report of the Committee on Academic Freedom and Tenure*, commonly referred to as the *1915 Declaration*.[55] Here, in its entirety, is the language from the *1915 Declaration*:

> If education is the corner stone of the structure of society and if progress in scientific knowledge is essential to civilization, few things can be more important than to enhance the dignity of the scholar's profession, with a view to attracting into its ranks men of the highest ability, of sound learning, and of strong and independent character. This is the more essential because the pecuniary emoluments of the profession are not, and doubtless never will be, equal to those open to the more successful members of other professions. It is not, in our opinion, desirable that men should be drawn into this profession by the magnitude of the economic rewards which it offers; but it is for this reason the more needful that men of high gifts and character should be drawn into it by the assurance of *an honorable and secure position*, and of freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them. (Emphasis added.)

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[54] AAUP, *1940 Statement*, *supra* note 4.

[55] The text of the *1915 Declaration* is reprinted online at: AAUP, *General Report of the Committee on Academic Freedom and Academic Tenure*, 1 BULL. AM. ASS'N OF UNIV. PROF'S 15 (1915), *reprinted in* 91 IND. L.J. 57, http://ilj.law.indiana.edu/articles/AAUP-1915-Statement.pdf.

This is the sum total of the 1915 *Declaration*'s treatment of "the pecuniary emoluments of the profession." The word "economic" and the phrase "economic security" do not appear. There is no discussion of compensation or salary. The reference to "emoluments" is in the context of a discussion comparing faculty earning power to the earning power of people in other professions. The operative sentence in this paragraph—the only sentence that actually frames a principle or policy as opposed to providing explanatory background—is the last sentence, which reads in pertinent part:

> [Persons] of high gifts and character should be drawn into [the scholar's profession] by the assurance of *an honorable and secure position*, and of freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them. (Emphasis added.)

The *1915 Declaration*, then, contains no prescriptive discussion of a faculty member's salary rights. It says only that, because faculty members cannot be expected to earn, and will never earn, what they could if they worked in business or industry, their *positions—not their salaries, but their positions*—should be "secure." What did the term "secure" mean to the authors of the document? The *1915 Declaration* concluded with a section titled "Practical Proposals." In that section, the AAUP offered three "ends to be accomplished," corresponding to the principal points made in the body of the report. Here is how the authors explained their reference to "security":

> [Our goal is to] render the profession more attractive to men of high ability and strong personality by insuring the dignity, the independence, and *the reasonable security of tenure*, of the professorial office. (Emphasis added.)

Faculty members should, in other words, be protected by *tenure of office*, a term of definite meaning in 1915. "Tenure of office" is defined in the *1915 Declaration* as a set of substantive and procedural rights relating to the term—in other words, the duration—of the faculty member's appointment: Tenure of office entitles faculty to a clear, written understanding of the length of the appointment term; the right to a term of indefinite duration (a "permanent" appointment, in the language of the document) after satisfactory completion of a probationary

period; and the right to a period of notice prior to the termination or nonrenewal of the appointment.

In my expert opinion, the limited discussion of "security" in the *1915 Declaration* was offered for the purpose of explaining the importance of "tenure of office," and not for the purpose of suggesting that faculty members were entitled to a particular salary or protected against the possibility of having their salaries reduced.

The same is true with respect to the phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" in the 1940 *Statement of Principles*. Again, the reference to "a sufficient degree of economic security" is abbreviated and cryptic. The phrase is not defined or explained. It is not characterized as a term of art or an entitlement. It appears in prefatory language, not in the substantive "Academic Freedom" or "Academic Tenure" section of the document. *It is mentioned for the purpose of providing a justification for tenure*, not for the purpose of bestowing substantive salary rights on faculty. In my expert opinion, the reference to "a sufficient degree of economic security to make the profession attractive to men and women of ability" is relevant only insofar as is supplies a rationale for the concept of tenure of office. There is no consensus today that that language was intended to apply to any aspect of faculty compensation or to protect tenured faculty against the possibility of having their salaries reduced.

2. Pertinent Scholarly Journals, Reports, and Commentary

If the "economic security" language in the *1940 Statement* were commonly understood to prohibit salary reduction, one would expect to see that meaning explicated in the literature on American postsecondary education. The plaintiffs' witnesses cite no authority to support this proposition because no other scholar, no court, no law review article, no textbook, and no other source has ever expressed the view that a tenured faculty member's salary can be increased but not decreased. The AAUP has never taken that position; in fact, in virtually its only sustained analysis of the question, the AAUP reached the contrary conclusion.

Over the course of the last eighty years, since the 1940 *Statement of Principles* was first promulgated, the AAUP, the courts, and legal commentators have given substantial secondary-source meaning to many terms that are used but not defined in the 1940 *Statement*—terms such

as "academic freedom," "financial exigency," "probationary period," "cause" (in the phrase "termination for cause"), "professional ethics," and "notice of nonreappointment," among others. The AAUP has issued decades' worth of Committee A reports, policy statements, articles, commentaries, and other materials clarifying, explaining, and in some instances broadening or modifying the commonly understood meanings of these terms. Scholarly treatises have discussed these terms, and law review commentary has used and expounded upon them. Can the same be said of the phrase "a sufficient degree of economic security to make the profession attractive to men and women of ability"?

The answer is no.

(a) *Treatises*. Starting with treatises: there are several standard reference works on academic freedom and tenure, some of which are mentioned in Professor Brint's report. As a practicing higher education lawyer for more than a third of a century, I read these treatises and relied on them for the work I performed as a university attorney. None of these treatises contains an analysis of the "sufficient degree of economic security" language in the 1940 *Statement of Principles*. None of them supports the proposition that the term is commonly understood and applied in academia to prohibit salary reductions.[56]

[56] Without going through these treatises one by one, let me offer a few illustrative observations. The most encyclopedic compendium of higher education is the two-volume work by Catholic University Law Professor Emeritus William A. Kaplin and Rutgers University Senior Vice President for Academic Affairs Barbara Lee. The treatise is titled, appropriately, THE LAW OF HIGHER EDUCATION. While Kaplin & Lee contains extended discussions of the 1940 *Statement of Principles*, it offers no elucidation on the meaning of the "economic security" reference. Nor does it state or suggest that the phrase "a sufficient degree of economic security" has a commonly understood meaning in the higher education community or is interpreted by the higher education community as a protection against salary reduction.

One of the principal treatises on academic freedom and tenure was authored by the late William W. Van Alstyne, a Duke University Law Professor and long-time AAUP officer, in 1993. Titled FREEDOM AND TENURE IN THE ACADEMY, Professor Van Alstyne's book includes a brief discussion of economic security and concludes that it protects, not salary, but tenure in office: "economic security … [means that] tenured faculty members accept low wages in return for appointment until retirement." William W. Van Alstyne, FREEDOM AND TENURE IN THE ACADEMY, p. 441 (1993).

(b) *Law review articles and other scholarly articles.* The number of scholarly articles on the meaning of "economic security" is vanishingly small. In his definitive work on the *1940 Statement of Principles*, Columbia University History Professor Walter Metzger, one of the acknowledged giants in the field of faculty academic freedom and tenure rights, devoted only the briefest of passages to the "economic security" rationale for tenure. He did not use the phrase "economic security," preferring instead the clearer term "job security," and did not discuss faculty salaries at all, much less suggest a link between the *1940 Statement of Principles* and the salary rights of tenured faculty members.[57]

In 2017, in what is perhaps the clearest expression of a conclusion contrary to Professor Brint's and the other witnesses, Law Professor Richard Neumann wrote:

> *Tenure does not protect a faculty member's salary*. Nothing in the law of tenure prevents reduction of a tenured faculty member's salary. … To bring compensation in line with value, a school can legally reduce the salary of an unproductive faculty member, tenured or not.[58]

The only law review article on that topic I was able to find was the one I wrote in 2000, in which I stated:

> For at least three-quarters of a century, tenure has been justified on two independent grounds: as the surest way to safeguard the academic freedom of faculty members, and as a means of ensuring "economic security" for the professoriate. For most of that time, little attention was given to the latter justification. … [Few] commentators … made any effort to plumb the analytic link between tenure and the "economic security" language in the 1940 *Statement of Principles*.[59]

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[57] Walter P. Metzger, *The 1940 Statement of Principles on Academic Freedom and Tenure*, 53 LAW & CONTEMP. PROBS. 3, 8 (1990).

[58] Richard K. Neumann, *Academic Freedom, Job Security, and Costs*, 66 J. LEGAL EDUC. 595, 600 (2017) (emphasis added).

[59] Lawrence White, *Academic Tenure: Its Historical and Legal Meaning in the United States and Its Relationship to the Compensation of Medical School Faculty Members*, 44 ST. LOUIS L.J. 51, 54, 73 n.90 (2000) (footnotes and citations omitted).

(c) *AAUP Pronouncements (or the Absence of Pronouncements*). If the witnesses were correct that the *1940 Statement of Principles* embodies a broadly understood prohibition against salary reductions, then, in the 80-plus-year period between the drafting of that document and the preparation of the witnesses' reports in this case, one would expect the AAUP to have developed the contours of that protection the same way it develops policies in other areas—by conducting investigations of institutions violating that precept, by censuring institutions that reduced the salaries of tenured faculty, by commissioning scholars to write articles explaining what economic security means, and by formulating recommended policies on faculty compensation, just as it has in many other areas. This has not happened, and the AAUP has not interpreted the phrase "sufficient degree of economic security to make the profession attractive to men and women of ability" in the way the witnesses suggest.

For at least the last quarter-century, ever since the publication of its report *Tenure in the Medical School* in the AAUP publication ACADEME in 1996, the AAUP's Committee A has been aware of the prevalence of salary policies in medical schools allowing for the reductions of tenured faculty salaries.[60] Yet the AAUP has never censured an institution based on a medical school faculty member's salary reduction. Nor has Committee A initiated an investigation into the reduction of a tenured medical school faculty member's salary. There is no AAUP policy or draft policy that addresses the process for setting or reducing a faculty member's salary.

The one and only time the AAUP ever engaged in depth on the salary implications of tenure in the medical school context was in 1996, when a subcommittee of the AAUP's Committee A on Academic Freedom and Tenure prepared a report on *Tenure in the Medical School*.[61] The timing of the report was hardly coincidental; as stated in the body of the report, it was prepared at the moment when medical schools around the country were redoing their compensation policies in the face of significant financial and operational challenges. The AAMC assisted in the

[60] "It is not uncommon in medical schools to have tenure commitments attached to, say, 20 or 30 percent of a faculty member's full-time appointment, with the remainder of the salary dependent on the procurement of external funding." *Report: Tenure in the Medical School*, 82 ACADEME 40, 40-45 (1996).

[61] *Id*.

preparation of the AAUP subcommittee's 1996 report and provided data from the AAMC's longitudinal survey of medical school leaders.

The AAUP was aware when this report was prepared in 1996 that medical schools across the country were in the process of either reducing faculty salaries outright or adopting policies that would have allowed for such reductions. The 1996 report did not condemn salary reduction. It declared that AAUP policy had to be sufficiently flexible to adapt to the new realities of academic medicine.[62] As the AAUP often does, it adopted a practical middle ground recognizing the right of medical school administrators to reduce the salaries of tenured faculty members but conditioning the exercise of that right on enumerated procedural safeguards: participation by duly constituted faculty bodies in the development of the institution's policy, adherence to the probationary-period standards in the 1940 *Statement of Principles*, the right to contest administrative action through a grievance process, and others.

The AAUP did not suggest in its report that salary reductions for tenured faculty would jeopardize the economic security of faculty members or violate rights ensured by the 1940 *Statement of Principles*. In 1996, as dozens of medical schools were adopting incentive-compensation policies permitting salary reductions for tenured faculty, the AAUP—the organization that co-authored the 1940 *Statement of Principles*—did not, when given the opportunity, adopt the plaintiffs' interpretation of the "economic security" phrasing.

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[62] From that report:

> It is not uncommon in medical schools to have tenure guarantees attached to, say, 20 or 30 percent of a faculty member's full-time appointment, with the remainder of the salary dependent on the procurement of external funding. … [T]he enormous diversity of medical school programs and of the variety of faculty who teach in them suggests that certain kinds of appointments were not foreseen by, and in any case not intended to fall within the ambit of, the 1940 *Statement*… The subcommittee acknowledges that medical schools to some extent, and increasingly, partake of the nature of corporate as well as academic enterprise. Association policy must be flexible enough to address this question in a principled manner while being persuasive in terms of policy guidance to those engaged in the daily work of medical education.

Id.

3. Court Decisions[63]

If the economic security language has a common, definite, and well-understood meaning in academia, one would expect courts to have recognized and applied that common meaning when faculty plaintiffs challenged reductions to their salaries. To the contrary, decisions in salary cases brought by faculty members establish quite the opposite proposition: courts have consistently found that this language does not have a well-defined meaning and tenured status does not confer insulation from salary reduction. In addition, the very existence of these decisions refutes the assertion that there is a commonly understood, universally embraced relationship among tenure, academic freedom, and salary.

In the late 1990s, at the same time the AAMC's "Forum on the Future of Academic Medicine" was convening in Washington to study changing compensation models for medical school faculty members,[64] two court decisions specifically addressed faculty claims that incentive compensation policies reducing their salaries violated tenure rights purportedly secured by the "economic security" reference in the *1940 Statement of Principles*. On July 20, 1998, a California trial court rendered a preliminary ruling in *Albrecht v. University of Southern California*.[65] The School of Medicine at the University of Southern California, in an effort to address what administrators referred to as a "structural deficit" in the medical school, sent a form letter to all tenured members of the basic science faculty. The form letter notified each faculty member that the medical school intended to implement certain unilateral changes in the standard-form faculty appointment letter, including a shortened employment term (from twelve to nine months), a concomitant reduction of twenty-five percent in each faculty member's annual compensation, and the implementation of new "productivity standards" by which to determine compensation in future years. In late 1996, all the tenured basic scientists filed suit for breach of contract. Their lawsuit alleged, among other things, that the School's unilateral implementation

[63] This section of my report borrows in part from the treatment of this issue in my 2000 law review article.

[64] See pages 15-16 of this report for a discussion of the AAMC forum.

[65] No. BC160860, 1998 WL 34187335 (Cal. Super. Ct. July 20, 1998).

of these changes violated their contract rights, including provisions in the faculty handbook that incorporated the "economic security" language in the 1940 *Statement of Principles*.

The court threw out major portions of the lawsuit. The court ruled that "economic security" was too vague to rise to the level of an enforceable contractual obligation:

> A promise is not enforceable unless it is sufficiently definite to allow a court to determine the scope of any duty created by the promise. Promises that are not sufficiently certain to be enforced and which improperly impose on the court the burden of making financial decisions cannot support a breach of contract action.... During oral argument, the court inquired of plaintiffs' position as to the meaning of the ["economic security" language in the faculty handbook] and the scope of the duty it allegedly creates. The response involved a vague claim that plaintiffs are entitled to pay parity. ... [T]he [tenure] contract is unenforceable as a matter of law if interpreted in the manner advanced by plaintiffs.[66]

Just a few days before *Albrecht* was decided, an Illinois trial court in *Kirschenbaum v. Northwestern University*[67] rejected the salary claims of a tenured Northwestern University Medical School faculty member—claims that were closely akin to those made by the plaintiffs in this case. In *Kirschenbaum*, the plaintiff, a tenured clinical psychologist, alleged that his tenure rights were violated by a medical school salary policy (known as the "zero-based salary policy") that required tenured faculty members to generate sufficient extramural funding from patient revenues or grants to defray one hundred percent of their salaries. The plaintiff argued that, by virtue of the "economic security" provision in the 1940 *Statement of Principles*, he was entitled to be paid by the University even in the absence of external funding support. The trial judge rejected the argument, holding that "'economic security,' meaning a salary guaranteed from university sources, is not an implied term of the contract between the parties; and tenure itself, for medical school faculty, as a status, does not as a matter of law require as a necessary incident

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[66] *Id*. at 1-2.

[67] No. 93-CH-8206, 1998 WL 34185376 (Ill. Cir. Ct. July 17, 1998), *aff'd*, 728 N.E.2d 752 (Ill. App. Ct. 2000).

thereof the payment of an annual salary from university sources."[68] The appellate court affirmed the trial court's decision, finding that the "documents comprising the contract" awarded the plaintiff tenure "for an indefinite period with no financial obligation on Northwestern's part."[69]

Albrecht and *Kirschenbaum* belie the suggestion that the connection between tenure and protected salary is commonly understood and applied in academia to prohibit reductions in salary for tenured faculty members.

In *Franken v. Arizona Bd. of Regents*, an earlier case involving a faculty member's compensation, a university in Arizona reduced the salary of a tenured physics professor from $72,588 to $64,000 when the professor resigned from an administrative position at the university and returned to a full-time faculty position. The faculty member brought a breach of contract action claiming that because his contract did not provide for any reduction in salary upon relinquishment of administrative duties the salary reduction violated his rights under the *1940 Statement of Principles*. The court disagreed and granted summary judgment in the university's favor:

> We find no threat to the concept of tenure in our determination that [the faculty member] is not entitled to maintain his administrative salary after his return to teaching. … [The] American Association of University Professors issued a *Statement of Principles on Academic Freedom and Tenure* in 1940 which made clear that the purpose of tenure is to protect the faculty member in the classroom and in scholarly research. A university policy that an administrator is to be compensated at a higher rate than a professor does not interfere in any way with that purpose. … Simply because Dr. Franken has always been compensated at a higher rate since he was recruited for an administrative position does not mean he is entitled to the higher rate forever, especially since he voluntarily resigned from the administrative position.[70]

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[68] *Id*. at *1.

[69] 728 N.E.2d at 763.

[70] *Franken v. Arizona Bd. of Regents*, 714 P.2d 1308, 1310-11 (Ariz. Ct. App. 1985).

Although the court in *Franken* made reference to the *1940 Statement of Principles*, the decision makes no reference to "economic security"—which would have been the dispositive language in the 1940 *Statement of Principles* under the theory espoused by the plaintiffs here.

Cases in which administrators relinquish their duties and return to the faculty are analytically distinct from the situation in this case, and I do not intend to suggest that the decision in *Franken* compels a particular outcome here. My reference to *Franken* is simply for the purpose of pointing out that, if the plaintiffs were correct about the link between tenure and salary protection, one would expect that assertion to have been made by faculty plaintiffs in *Franken* and many similar cases in the 1970s and '80s[71]—but none did.

Finally, Professor Brint cites an interlocutory decision by a trial court in the *Monaco* litigation at New York University.[72] As I mentioned on page 17 of this report, I was retained by New York University as an expert witness in the *Monaco* case. Following the one-page decision Professor Brint mentioned in his report, the *Monaco* case proceeded through discovery and was dismissed by the trial court on NYU's motion for summary judgment.[73] The trial court order was affirmed in all respects relevant to this case by a New York State appellate court, which upheld the trial court's summary judgment in the medical school's favor on the "economic security" claims asserted by the faculty-member plaintiffs—the same claims asserted against Tufts in this case. The appellate court decision is worth quoting from in detail because of its clear language on issues pertinent to the Tufts case and the substance of the expert opinions expressed in this report. A full copy is attached to this report as Exhibit C.

Monaco was a breach-of-contract action by tenured faculty members in basic science departments at New York University Medical School. The plaintiffs, like the ones in this action, argued that the "economic security" language in the medical school's faculty handbook gave

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[71] The cases are collected in note 101 of my law review article.

[72] *See Brint Letter*, sixth page: "A relevant case is *Monaco v. New York University & New York University School of Medicine*. In a one-page decision, the Appellate Division of the First Department of the Supreme Court of the State of New York overturned a lower court's ruling that the faculty handbook is not contractually binding."

[73] *Monaco v. New York University*, No. 100738/2014 (N.Y. Sup. Ct. Nov. 12, 2020).

them protection against salary reductions under the medical school's faculty compensation plan—a plan that, like the one at TUSM, required faculty members to defray a specified portion of their salaries through indirect costs in grants and contracts or face the possibility of salary reduction.

The trial court granted summary judgment in the university's favor, holding that NYU had not breached the "economic security" provision when it reduced faculty salaries "because the phrase 'economic security' was 'merely a general preamble to the description of tenure and the related policies.'" The trial court also found that the institution's compensation policy, "even if it were not merely 'introductory' and in fact 'created contractual obligations ... did not set forth any language prohibiting NYU from implementing the [compensation] policy and imposing the policy's extramural funding requirements on tenured members of the faculty."[74] The Appellate Division affirmed. The court stated:

> Our analysis of the contract claim based on the Faculty Handbook necessarily begins with the Professors' argument that the term "economic security" ... is understood in academia as prohibiting salary reductions for tenured faculty ... . They point to the testimony of their expert witness ... who explained that:
>
> > "the economic security that tenure guarantees is that the tenured faculty will not have his or her salary reduced involuntarily except for financial exigency or as a sanction, imposed after hearing, for serious misconduct that does not warrant dismissal."
>
> The Professors argue further that reliance on external funding from private and governmental entities is anathema to the stated purpose of the Academic Tenure Statement:
>
> > "The clearest danger is that investigators who receive corporate funding for their research may be influenced in ways that favor the industry ... Having received such support ... they

[74] *Monaco v. New York University*, No. 2021-00792, 2022 WL 516793 (N.Y. App. Div. Feb. 22, 2022).

> may be subtly affected when they decide how strongly to word a conclusion, how much to emphasize possible qualifications and contrary interpretations, or whether to mention potential (but unproven) new risks."[75]

These are, of course, the same arguments made by Professor Brint and the other witnesses in this case. The appellate court rejected those arguments:

> The problem with the above arguments is that [they] seek to give meaning to a term that is prefatory, rather than using a defined term to give meaning to clauses elsewhere in the Faculty Handbook. The phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" is a part of the "Case for Academic Tenure." It is mere prefatory language succinctly explaining why tenure is desirable. Importantly, the "Case for Academic Tenure" does not lay out how to obtain tenure. Rather, the tenure process is detailed elsewhere, and, critically, there is no meaningful discussion of compensation at all, except that set forth in the Faculty Handbook's salary grievance section. Thus, contrary to the Professors' contention, "economic security," standing alone, simply does not confer any contractual rights or obligations ….
>
> *... The language of the "economic security" provision is clear—it does not include salary considerations.*[76]

In sum: there is no support anywhere in the literature or jurisprudence of higher education law for the proposition that the reference to "economic security" in the 1940 *Statement of Principles* has a commonly understood, universally embraced meaning that incorporates protections against salary reductions. The plaintiffs' witnesses believe that the phrase "economic security" means protection against salary reductions. The few legal scholars who have examined the phrase believe it means job security. What emerges unarguably from an examination of the scholarly literature on economic security is that the phrase has no universally understood

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[75] *Id*.

[76] *Id*. at *5-6 (citations omitted and emphasis added).

meaning and was intended merely to offer a justification for tenure, not an embellishment on a faculty member's tenure rights. We know one thing for sure on the basis of the appellate court's decision in *Monaco*: the "economic security" referenced in the AAUP's 1940 *Statement of Principles* and Tufts' *AFTR Policy* does not, by itself, protect faculty members against compensation policies that subject them to the possibility of salary reductions.[77]

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[77] This is perhaps as good a place as any to address briefly the argument on the fourth page of Professor Brint's report that the Constitutional provision allowing tenure in office for federal judges is somehow pertinent. That Constitutional provision—Article III, § 1—explicitly prohibits Congress from diminishing the compensation of sitting judges:

> The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, *which shall not be diminished during their Continuance in Office*. (Emphasis added.)

The 1940 *Statement of Principles* contains no express prohibition against salary reduction, and no court or legal commentator has ever interpreted it to have that meaning. Professor Brint mentions that the analogy to judges comes from an article by Michael McPherson and Morton Schapiro that appeared in the Journal of Economic Perspectives in 1999. Michael S. McPherson & Morton Owen Schapiro, *Tenure Issues in Higher Education*, 13 J. ECON. PERSPECTIVES 85 (1999). That article, however, contains no meaningful discussion of "economic security" or its purported relation to salary reduction.

In the recent *Monaco* decision, the appellate court in New York addressed and rejected the argument that the Article III lifetime appointment provision for federal judges had any bearing on the tenure rights of faculty members:

> Their analogy to Article III judges' constitutionally guaranteed compensation to support their reasoning that "economic security" precludes salary reductions is misplaced. Unlike the disputed term herein, article III, § 1, of the U.S. Constitution unequivocally states that federal judges' compensation "shall not be diminished during their Continuance in Office." Thus, there can be no dispute that a federal judge's salary cannot be reduced. In stark contrast, the Faculty Handbook does not contain any language prohibiting tenured faculty's salaries from being diminished.

Monaco, WL 516793, at *5.

4. Any Consideration of Salary Practices at TUSM Must Be Informed by an Understanding of the Abundant Literature from the AAMC and Other Sources Recognizing the Propriety of Salary Policies Like the Ones at TUSM.

In important financial and operational respects, academic medical centers function differently from other parts of the academic enterprise. That fact is reflected in a large body of studies, surveys, and reports defining best practices for salary-setting at medical schools and teaching hospitals. Any effort to articulate standards applicable to the parties at TUSM must be informed by a well-grounded understanding of salary practices in academic medicine generally.

Starting in the 1990s, the AAMC conducted a series of surveys on the salary practices of its medical school members. Those surveys were summarized in reports published every three years in the AAMC's official journal ACADEMIC MEDICINE.[78] These AAMC reports constitute, in my judgment, extraordinarily relevant evidence of national trends and best practices in medical school salary-setting during that period, a decade or more before TUSM adopted compensation policies in 2017 and 2019. They are worthy of careful attention and close reading. They establish, more clearly than any other source, how the medical school community of which TUSM was part interpreted its salary-policy prerogatives for tenured faculty members engaged in medical education.

The first substantive AAMC study was prepared by Robert Jones and his colleague Jennifer Gold and published in ACADEMIC MEDICINE in 1998.[79] The study contained results from a survey of all 125 medical schools that existed in the United States at that time. It reported that faculty compensation systems "top the list of areas in which medical schools are most frequently making policy changes." Those changes, continued the report, "are characterized by the division of pay

[78] A partial list of pertinent AAMC survey results and reports appears in note 7 on page 4 of this report.

[79] Robert F. Jones & Jennifer S. Gold, *AAMC Paper—Faculty Appointment and Tenure Policies in Medical Schools: A 1997 Status Report*, 73 ACAD. MED. 211 (1998) (cited in this section of my report as "*AAMC 1998*").

into separate components, each with its own financial guarantees and with the level of compensation tied specifically to measures of individual and group productivity."[80]

Those survey results were updated in 2001, when the AAMC published *The Present and Future of Appointment, Tenure, and Compensation Policies for Medical School Faculty*, also co-authored by Jones and Gold.[81] The AAMC reported that only two medical schools—less than two percent of the nation's total—had policies in place that ensured faculty members the full amount of their salary and protected them from salary reductions. In the most valuable part of the report, the AAMC offered summaries of new faculty compensation plans adopted at ten medical schools for both basic science and clinical faculty members. Those plans, observed the report, "illustrate, in our opinion, the general direction for clinical faculty compensation plans." While plans varied, each shared two characteristics. They identified a portion of a faculty member's salary—denominated the "base" in many plans—established by reference to some external benchmark such as AAMC median salary by geographic region. And they provided a mechanism for reducing salaries to (but not below) the base in the case of faculty members who did not satisfy institutional expectations on research productivity and quality.[82] This is precisely the type of policy TUSM first adopted in 2008 and the policy it subsequently adopted in 2017 and revised in 2019.

The AAMC published its next study in 2004. Titled *Tenure in Transition: Trends in Basic Science Faculty Appointment Policies at U.S. Medical Schools*, the study reported on the results of a survey of all medical schools, including interviews with medical school leaders.[83] As a

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[80] The language in quotation marks is from the abstract of the Jones-Gold paper as reproduced online at https://insights.ovid.com/crossref?an=00001888-199802000-00023.

[81] Robert F. Jones & Jennifer S. Gold, *The Present and Future of Appointment, Tenure, and Compensation Policies for Medical School Faculty*, 76 ACAD. MED. 993-1004 (2001), *reproduced at* https://case.edu/menu/partnership/jones.pdf.

[82] *Id*.

[83] Mandy Liu & William T. Mallon, *Tenure in Transition: Trends in Basic Science Faculty Appointment Policies at U.S. Medical Schools*, 79 ACAD. MED. 205 (2004).

snapshot of the state of medical school salary-setting in 2004—just as TUSM started to engage in deliberations on that subject—the 2004 AAMC study is valuable both for the sweep of its coverage (more than one hundred medical schools) and for the specificity of its findings. Under the heading "Limiting the Tenure Guarantee," the study observed that "medical schools are rethinking and, in some cases, limiting their financial commitment [as it applies] to their tenured basic science faculty members."[84]

In 2010, the AAMC published *The Relationship between Tenure and Guaranteed Salary for U.S. Medical School Faculty*.[85] The data and analysis in that report and all the AAMC reports published between 1998 and 2010 are critical to the formulation of my expert opinion on medical schools' common understanding (or, more accurately, lack of common understanding) of the relationship between tenure and the salary rights of faculty members. The 2010 report summarizes findings from a survey conducted in 2008 of all 126 U.S. medical schools. The survey showed that in that year only seven medical schools—less than six percent of the total—protected 100 percent of total salary for tenured faculty in basic science departments; and only three medical schools (two percent) protected 100 percent of total salary for tenured faculty in clinical departments. Of the remaining 90-plus percent in each category, about half had policies that either permitted salaries to be reduced or were silent on that question.

These reports and data demonstrate that, by the first decade of the new millennium, virtually all American medical schools had adopted or were in the process of adopting compensation policies for tenured faculty members under which salaries could be reduced on productivity-related grounds. The AAMC's careful examination of compensation policies over the period from 1996 to 2010 showed how medical schools chose to adopt policies guaranteeing only part of tenured faculty members' salaries and making variable portions of compensation dependent on research productivity measures like the ones first adopted at TUSM in 2008. In my expert opinion, the suggestion by the plaintiffs' witnesses that a university's aspirational goal of

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[84] AAMC 2004 at 208, 209.

[85] Sarah A. Bunton, *The Relationship between Tenure and Guaranteed Salary for U.S. Medical School Faculty*, AAMC ANALYSIS IN BRIEF, April 2010, reproduced on the AAMC web site at https://www.aamc.org/download/125190/data/aibvol9_no6.pdf.

providing "economic security" to tenured faculty means that it may not reduce their salaries absent financial exigency is oversimplified and incorrect.

C. TUSM Does Not Subscribe to the View that the Salaries of Tenured Faculty Members Could Not Be Reduced.

There is probative deposition testimony in the record of this case illuminating the views of TUSM and Tufts officials on the meaning (or, more accurately, non-meaning) of the "economic security" phraseology in the *AFTR Policy*. That testimony reinforces two of the points upon which my expert opinions rest: first, that in general terms the phrase "sufficient degree of economic security to make the profession attractive to men and women of ability" is a phrase of inherent ambiguity and no widely accepted meaning; and, second and specifically, that the phrase has not been interpreted by Tufts officials to rise to the level of a contractual guarantee against salary reductions for tenured faculty members.

At his deposition on November 16, 2021, TUSM's Executive Dean Thomas Malone was asked, "What is the definition of financial security [sic] as that concept appears in the AFTER policy and the 1940 statement on academic freedom?" He answered, "There is no definition. … It is my understanding that those words are aspirational as it states that it is tenure [that] affords a sufficient degree of economic security to attract men and women of ability, but beyond that, it doesn't -- there's no definition for it.[86] Asked whether TUSM had ever prepared an analysis of what the phrase means in the *AFTR Policy*, Mr. Malone responded "no."[87]

Counsel for the plaintiffs explored the same issue when he took the deposition of Dr. Kevin Dunn, Tufts' Vice Provost, as Tufts' Rule 30(b)(6) designee on November 10, 2021:

> Q. So does Tufts – does Tufts have a definition of what the phrase means, "A sufficient degree of economic security to make the profession attractive to men and women of ability?"

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[86] *Deposition of Thomas Malone*, pp. 66-67, Nov. 16. 2021.

[87] *Id*. at 67.

A. No.[88]

…

Q. Have you endeavored to find out what Tufts definition of, "A sufficient degree of economic security to make the profession attractive" … means?

A. I have spoken with counsel and others, and no one believes that the phrase has enough clarity to be interpretable.

Q. So Tufts does not have an interpretation of that phrase?

A. That's right.[89]

At the deposition of Dr. Naomi Rosenberg, formerly Vice Dean for Research at TUSM and Dean of the Sackler School of Graduate Biomedical Sciences at Tufts, on September 23, 2021, Dr. Rosenberg was asked, "As a tenured faculty member, or former tenured professor, what was your understanding of economic security?" She answered, as Mr. Malone and Dr. Dunn had, "I honestly never thought about it. I don't know that I have an understanding of what that means in any concrete way." When the plaintiffs' counsel asked whether she "in any way associate[d] the idea of being tenured with the idea that your salary would not be reduced?", Dr. Rosenberg answered with one word: "No."[90]

At the November 12, 2021 deposition of Dr. Caroline Genco, a tenured basic sciences professor and former department chair at TUSM, later Vice Provost for Research at Tufts and now interim Provost at Tufts, Dr. Genco testified that insofar as she had an understanding of economic security in relation to tenure, it means job security, not salary security:

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[88] *Deposition of Kevin Dunn*, pp. 44-45, Nov. 10, 2021.

[89] *Id.* at 55.

[90] *Deposition of Naomi Rosenberg*, p. 18, September 23, 2021.

> A. [M]y sense is that the term "economic security" is really an individual term. … [T]he assumption is that tenure itself is job security and is a form of economic security.[91]
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> …
>
> Q. Okay. Is it your view that the 2017 Compensation Plan, which permits Tufts to cut a tenured professor's salary in half for nonperformance, offers reasonable economic security when grant funding decreases?
>
> A. I think, again, as I said, economic security … is defined individually, and I – I do think that tenure provides job security, and that is [a] job for life, and that's a form of economic security.[92]

In his deposition on January 18, 2022, Tufts' President Anthony Monaco made the same point when he testified that "economic security" in the context of the *AFTR Policy* "probably refers to lifelong employment" for tenured faculty, and that it does not mean anything else, such as "the ability to generate enough money so that [a person is] economically secure."[93] President Monaco added:

> Q. What is Tufts's understanding of the phrase "a sufficient degree of economic security to make the profession attractive to men and women of ability" other than lifetime employment, if it means anything more than that from your perspective?
>
> A. My answer is the same. It's not well-defined here [in the AFTR Policy], but our interpretation, my interpretation is that it means lifelong employment, if it refers to anything.[94]

In short, the evidence in this case demonstrates the absence of any meeting of the minds over the meaning of the "economic security" language in the *AFTR Policy*. In my opinion, that phrase provides no support for the contention that the *AFTR Policy* or principles of academic

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[91] *Deposition of Caroline Genco*, p. 80, November 12, 2021.

[92] *Id*. at 82.

[93] *Deposition of Anthony Monaco*, pp. 16-17, January 18, 2022.

[94] *Id*. at 18.

freedom prohibit TUSM from reducing the salaries of tenured faculty members whose extramural funding support is insufficient to defray their salary expenses.

D. None of the Policies Challenged in this Case Abridges Academic Freedom or Rights Guaranteed by Tufts' *AFTR Policy* by Interfering in Any Way with Faculty Members' Freedom in Research.

Borrowing language from the AAUP's *1940 Statement of Principles*, Tufts' *AFTR Policy* provides that a faculty member is "entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his/her other academic duties." Several of the plaintiffs' witnesses suggest in their opinions that the entitlement to "full freedom in research" protects faculty members from (in the words of Professor Wortis) "requiring extramural funding from a specific source," thereby (in the words of witness Todd Miller) "sculpting the types and scope of research that faculty pursue" in violation of their right to determine for themselves what research to conduct. In the summarizing opinion of Professor Brint, "[c]onditioning tenure, academic freedom, and economic security on the current priorities of research funders is explicitly in contradiction to the precepts of academic freedom."

I disagree. The argument advanced by the plaintiffs' witnesses appears to be that a medical school would violate academic freedom—specifically "freedom in research," the phrase that appears in Tufts' *AFTR Policy*—by encouraging faculty members to seek grants and contracts from sources (including federal government sources) that provide more generous overhead support than extramural sources of support that are less generous. That is an extremely specific conclusion to be derived from the short, unexplained, unglossed, inherently imprecise language in that section of the *AFTR Policy*. That was not why that language was included in the AAUP's *1940 Statement of Principles.* It is not how the language has been interpreted for eighty years by the AAUP, by the Courts, or by historians of American academic freedom. In the words of one of academic freedom's most illustrious scholars, the late Duke University School of Law faculty member, longtime AAUP Committee A member and chair, and former AAUP general counsel William Van Alstyne:

> Academic freedom is a "freedom"—rather than a "right"—in the sense that it establishes an immunity from the power of others to use their authority to

> restrain its exercise *without, however, necessarily commanding a right of institutional subsidy for every object of professional endeavor that might engage the interest of the individual professor*. In cleaving to a limited program or *in husbanding its scarce financial resources*, for instance, the decision of an institution not to offer a particular subject *or not, itself, to provide means for a particular line of research* may be faulted as educationally unenlightened, *but it would not, on that account, constitute an abridgment of academic freedom*.[95]

Professor Van Alstyne's more constrained interpretation of "freedom in research" is based on his careful reading of the language in the *1940 Statement of Principles* and the way scholars and judges have construed and largely rejected faculty claims of research freedom in litigated cases. Professor Van Alstyne perceived a limited purpose underlying the *1940 Statement of Principles*' reference to "freedom in research"; his conclusion was that it was intended by its authors to protect against "any act of institutional censure in respect to the professional endeavors of [a university's] faculty" and not to extend more broadly to limitations on the research enterprise aimed at "husbanding [the university's] scarce financial resources," a distinction derived in part from the drafting history of the *1940 Statement of Principles* and the antecedent language in the AAUP's *General Report of the Committee on Academic Freedom and Academic Tenure* (1915).[96] While both the *1915 General Report* and the *1940 Statement of*

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[95] William W. Van Alstyne, *The Specific Theory of Academic Freedom and the General Issue of Civil Liberties*, 404 ANNALS OF THE AM. ACADEMY 140, 147 (1972) (emphasis added).

[96] The AAUP was founded in 1912. As one of its first orders of business, its founders convened a committee of distinguished professors "to prepare a treatise on academic freedom and tenure that would clarify and justify concepts long considered in many lay and academic circles as dubious or arcane." Metzger, *supra* note 57, at 12. That committee produced, in 1915, a 20-page report that is widely recognized as the first encapsulation of bedrock academic freedom principles in American higher education. Professor Metzger's article contains a lengthy discussion of the *1915 General Report* and the many ways in which that report articulated themes and principles that later became the foundation for the *1940 Statement of Principles*. In Professor Metzger's memorable summary of the animating principle underlying what the *1915 General Report* called "freedom of inquiry and research": "[that freedom protects] *the idea of institutional neutrality*—the view that *a university cannot put the stamp of its approval or disapproval on a disputed truth-claim and still be faithful to its social trust*." Metzger, *supra* note 57, at 14.

The text of the *1915 General Statement* is reprinted as Appendix A in Professor Metzger's 1990 article.

Principles contain literally no exposition on the contours of the research-related rights of faculty members,[97] Professor Van Alstyne and other scholars conclude that it was intended to prohibit a university from telling a faculty member that certain lines of inquiry are out of bounds or forbidden—*not* to constraint the university in establishing its own research priorities or making financial decisions in order to exercise prudent stewardship over university resources. A university is not obliged to underwrite the costs of a faculty member's devotion to a particular line of research; but the university *is* prohibited from directing a faculty member's research based on ideological, religious, moral, or other distaste for the subject the faculty member wishes to pursue.

That is, in fact, how the AAUP has interpreted the freedom-of-research language in the *1940 Statement of Principles*. Starting in 1964, the AAUP issued a series of implementing statements addressing aspects of professorial research. That year, in its *Statement on Preventing Conflicts of Interest in Government-Sponsored Research at Universities*, the AAUP focused, not on the *rights* of faculty members in conducting sponsored research, but on the faculty member's *responsibilities* to avoid conflict-of-interest pitfalls by taking advantage of financial relationships with companies funding their research, for example by focusing university research to meet the commercial needs of the funder, purchasing equipment from the funder, or allowing the funder to pre-review findings and publications.[98] The 1964 statement contained explicit limitations on faculty compensation in the form, for example, of prohibitions on faculty members' ability to earn salaries or stipends or perform compensated consulting for companies sponsoring their research; neither the AAUP nor any other commentator ever suggested that those limitations violated the "freedom in research" provisions in the *1940 Statement of Principles.*

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[97] The 1915 *General Statement* devotes literally no attention to the research rights of faculty, stating in its introductory paragraph that "freedom of inquiry and research…. is almost everywhere so safeguarded that the dangers of its infringement are slight. It may therefore be disregarded in this report." With respect to the drafting of the 1940 *Statement of Principles*, Professor Metzger's encyclopedic history of the drafting of the "freedom in research" provision called out "the thinness and brevity of the commentary" and attributed it to "the inexperience and lack of interest of the AAUP's actual interlocutors." Metzger, *supra* note 57, at 46.

[98] The 1964 conflict-of-interest statement was issued jointly by the AAUP and the American Council on Education. It is reproduced in AAUP, POLICY DOCUMENTS AND REPORTS 83-85 (1990 ed.).

Since 1964, the AAUP has issued statements on many issues pertinent to the conduct of academic research: statements on faculty members' right to publish the results of their research without imposition of pre-publication delays by financial sponsors; statements prohibiting "ghost authorship" of scientific papers; statements on the circumstances under which faculty members can engage in classified Department of Defense research; statements clarifying the circumstances under which faculty members can engage in consultation for compensation; statements explaining faculty members' rights to manage intellectual property resulting from their research; statements on the operations of institutional review boards and other mechanisms for ensuring that research is conducted ethically; statements on the conduct of clinical drug trials; and many others.[99] Those statements make it clear that the AAUP interprets the freedom-in-research provision in the *1940 Statement of Principles* to ensure that research is conducted ethically; that faculty members do not allow their relationships with external funders to taint the objectivity of their research findings; and that the university will allow faculty members to determine for themselves what to study and how to study it. But—to return to that important line-drawing distinction made by Professor Van Alstyne in 1972—the AAUP does not interpret and has never interpreted the freedom-in-research provision to bestow upon faculty members the "*right of institutional subsidy*" for their research endeavors.[100]

In 2014, in what it described as "the longest report the AAUP has ever produced, as well as the most comprehensive in its scope and collation of empirical evidence," the AAUP offered its most comprehensive look at what the freedom-in-research provision in the 1940 *Statement of Principles* is and is not designed to protect. Titled *Recommended Principles to Guide Academy-Industry Relationships*,[101] the 356-page report summarized virtually every policy statement issued by the AAUP on research-related topics. Nowhere in the AAUP's comprehensive

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[99] All these statements are described in the AAUP's 2014 report *Recommended Principles to Guide Academy-Industry Relationships*, discussed in the next paragraph of this report.

[100] *See* note 95 and accompanying text on pages 51-2 of this report, *supra*.

[101] The report is viewable on the AAUP web site at: AAUP, *Recommended Principles to Guide Academy-Industry Relationships*, https://www.aaup.org/sites/default/files/Academy-Industry%20Relationships_0.pdf.

treatment of research issues—written less than ten years ago, well after all the changes in medical school compensation models described in this report—is it suggested that the freedom-in-research provision protects faculty members from salary reductions, holds them harmless against loss of research space, or prohibits a medical school from basing compensation or space allocation on research productivity.

I have not identified any court-decided case in which a faculty member has successfully invoked freedom in research as protection against a salary reduction or the loss of assigned research space. To the contrary, in *Gertler v. Goodgold*,[102] a medical school faculty member claimed that administrators breached his employment contract by ordering him to vacate the workspace he and his research team had occupied for a dozen years and reassigned him to less space in a less desirable location. The plaintiff claimed that his loss of space and forced relocation interfered with his ability to do research by depriving him of the opportunity to continue advanced experiments in which he was then engaged. "Thus," said the court in paraphrasing the plaintiff's legal claim, "relocation would render meaningless his ability to research or teach—a basic tenet of academic freedom and the rationale underlying the tenure contract." The court rejected the plaintiff's claim:

> The main focus of the complaint is plaintiff's claim of a right to office space. ... Yet, there is nothing in the complaint or the record to show that tenure guarantees a faculty member any office at all, much less space of his own choosing. ...
>
> Plaintiff premises his asserted contractual rights on the proposition that the notion of tenure is instinct with the obligation to provide faculty members with adequate research facilities, as well as other benefits commensurate with their position. While tenure is a concept of some elasticity and, no doubt, the source of many rights, it cannot be the wellspring of every conceivable academic amenity and privilege. ... The University has never expressly, by contract or otherwise, obligated itself to provide the amenities plaintiff claims, and thus has not relinquished its authority to make its own academic

[102] 487 N.Y.S.2d 565 (N.Y. App. Div. 1985).

> judgments and to administer and allocate its resources. The benefits which plaintiff seeks are undoubtedly perquisites of faculty life, but they are not contract entitlements.[103]

There is no suggestion in anything written by the AAUP, in any court decision, in any treatise or law review articles, or in anything construing the freedom-in-research provision in the *1940 Statement of Principles* that a faculty member's right to freedom in conducting research is violated by a compensation policy or a space allocation policy that creates incentives to obtain external grant and contract support.

In their discussions of the meaning of the research provision in the *1940 Statement of Principles*, the plaintiffs' witnesses are sparing in their citations to supporting authority. Professor Pifer makes passing reference to a delightful book written by Henry Rosovsky, former Dean of the Faculty of Arts and Sciences at Harvard University, in 1990. Dean Rosovsky's chatty, humorous book is entitled THE UNIVERSITY: AN OWNER'S MANUAL. According to the introduction, its purpose is to explain why refrigerators, personal computers, and automobiles come with users' manuals while a university does not. The quotation attributed by Professor Pifer to Dean Rosovsky ("Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society") does not, in fact, appear in his book; rather, that quotation is from the preface to the *1940 Statement of Principles*. Dean Rosovsky's book contains no discussion of the meaning of the freedom-of-research language in the *1940 Statement*, no discussion of faculty compensation, and no discussion of any other issue related to the merits of this litigation. Thus, the single citation offered in Professor Pifer's report is to a passage from the *1940 Statement* that makes no mention of compensation or laboratory space.

In his report, Professor Brint expresses only one opinion: "it is my opinion that the 2017 Comp Plan as amended in 2019 is antithetical to the commitments stated in the 1940 Statement on Principles of Academic Freedom and Tenure and a substantial violation [of] Tufts' AFTR

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[103] *Id.* at 568.

Policy." Professor Brint's report does not address TUSM's *Research Space Guidelines* at all. His argument—again, with no citation to supporting literature or documentation—is this sentence: "Conditioning tenure, academic freedom, and economic security on the current priorities of research funders is explicitly in contradiction to the precepts of academic freedom."[104] Professor Brint cites one case—*O'Brien v. New England Tel. & Tel. Co.*[105]—that had nothing to do with higher education, research, academic freedom, or any other subject germane to his expert opinion. He also mentions, without citing, an interlocutory opinion in *Monaco v. New York University* that had nothing to do with the "freedom in research" provision in the *1940 Statement of Principles*.[106]

This may be an appropriate juncture at which to take a step back and reflect on the purposes served by academic freedom. Professor Brint states in his report that "[t]he goal of academic freedom and tenure is to allow professors the freedom and security to perform research they deem worth of pursuing rather than being subject to the values and interests of their employers or of agencies that fund research."[107] That is inaccurate and overly limiting. As many thoughtful

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[104] *Professor Brint Report*, fourth page.

[105] 664 N.E.2d 843 (Mass. 1996).

[106] Professor Brint's report contains no citation to the decision and no date. I believe he is referring to a decision rendered by the Appellate Division in 2016, which did not address academic freedom, freedom in research, compensation, economic security, or any other subject that is now under discussion in expert testimony in this case. *See Monaco v. New York University*, 43 N.Y.S.3d 328 (N.Y. App. Div. 2016).

When, in 2020, New York University renewed its motion for summary judgment after the close of discovery in the *Monaco* case, the trial court granted the motion and explicitly held:

> Here, petitioners allege that various terms, such as academic freedom, tenure and economic security, prohibit [NYU] from implementing the [compensation policy]. However, there is no language in the Handbook prohibiting the implementation of the [policy] or one prohibiting salary reductions to tenured members of the faculty. Therefore, "the plain and unambiguous language of the [policy] is prima facie proof of [NYU's] entitlement to summary judgment."

Monaco, 2020 WL 6873441, at *11 (*citing Tompkins Fin. Corp. v John M. Floyd & Assocs., Inc.*, 144 A.D.3d 1252, 1255 (N.Y. App. Div. 2016)).

[107] *Professor Brint Report*, second page.

observers have pointed out, academic freedom serves a purpose more substantial than bestowing rights on faculty members, a purpose summarized by the AAUP in its 1956 report, *Academic Freedom and Tenure in the Quest for National Security*: *Report of a Special Committee of the American Association of University Professors:*

> The demand we of the academic world make for academic freedom is not made primarily for our own benefit. We enjoy the exercise of freedom; but the purposes of liberty lie, in a democracy, in the common welfare. ... We ask, then, for the maintenance of academic freedom and of the civil liberties of scholars, not as a special right, but *as a means whereby we may make our appointed contribution to the life of the commonwealth and share equitably, but not more than equitably, in the American heritage*. Society has the power to destroy or impair this freedom; but it cannot do so and retain the values of self-criticism and originality fostered by higher education.
>
> *The spirit of free inquiry is not a privilege claimed for a single profession, but the touchstone of our character as a people, the proved source of our national strength*. Its defilement in any area of our society is a threat to the entire body politic.[108]

While academic freedom indisputably benefits faculty members, its primary justification is more profound than that: it serves the interest of the public as a whole, and the public's interest is measured, at least in part, by what federal agencies (and other sources) are willing to fund.

The plaintiffs' witnesses are incorrect when they assert that TUSM's policies violate academic freedom by "requiring extramural funding from a specific source." My objection is with the word "requiring" in that sentence, which comes from the supplemental interrogatory answers prepared by Professor Wortis.[109] TUSM's 2017 and 2019 compensation plans impose no

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[108] *Academic Freedom and Tenure in the Quest for National Security: Report of a Special Committee of the American Association of University Professors*, 42 AAUP BULLETIN 49, 55 (1956), *reprinted in* Louis Joughin, ed., ACADEMIC FREEDOM AND TENURE: A HANDBOOK OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS 48, 49 (1969 ed.), available online at the AAUP web site at https://www.aaup.org/sites/default/files/files/Quest%20for%20National%20Security.pdf (emphasis added).

[109] "Dr. Wortis is expected to opine that the Plans *requiring extramural funding from a specific source* violates the academic freedom guaranteed by tenure. In Dr. Wortis' experience, while the plans do not

rules or restrictions on the source of a faculty member's external grant support. If the policies flatly prohibited a faculty member from seeking or obtaining funding from a particular source, that might raise legitimate academic freedom concerns.[110] But that is not, by any stretch of the imagination, what TUSM's compensation and space allocation policies do; those policies say only that, if a faculty member meets or exceeds institutional expectations for external funding that faculty member will be rewarded, and if he or she does not then the faculty member's salary and space allocation may be affected. I believe the Faculty Grievance Committee had it right when it found:

> While academic freedom allows Grievants to perform research of the topics of their choosing, it does not prevent others from judging whether their work is valuable and whether their conclusions are sound. It also does not prevent

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reference the NIH by name, extramural support only counts toward the percentage required under the Plans if the funds bring the full NIH administrative cost (overhead) rate in the range of 65%. *If the extramural support, however, does not provide the overhead costs that would typically be covered under NIH grants, then it is deemed not to count under the plan.*" Plaintiff's Supplemental Answers to Defendant The Trustees of Tufts College First Set of Interrogatories [Dr. Henry Wortis], January 31, 2022, p. 4 (emphasis added).

[110] I can think of several examples. Many universities prohibit researchers from accepting grants and contracts from the U.S. Department of Defense to perform classified military research. *E.g.*, Carnegie Mellon University, *University Policies: Restricted Research*, https://www.cmu.edu/policies/research/restricted-research.html ("It is the policy of Carnegie Mellon that restricted research is inappropriate and, therefore, not permitted within its non-autonomous units"). While there are, in my judgment, compelling practical reasons for limiting such research, and while such limitations do not, in my opinion, raise academic freedom concerns, the concern is sufficiently palpable that the AAUP has addressed it—and, interestingly enough, come out on the other side, endorsing bans of classified research because of restrictions placed by the Department of Defense on faculty members' rights to publish their findings in peer-reviewed journals. AAUP, *Principle 6—Confidential and Classified Research*, in *Recommended Principles to Guide Academy-Industrial Relationships* (2014), https://www.aaup.org/sites/default/files/Academy-Industry%20Relationships_0.pdf. Another example might be university prohibitions against accepting corporate funding from tobacco companies to do research on the addictive characteristics of cigarettes, a subject discussed at length in the AAUP's 2014 research report. *Id*. at 29-33. While the AAUP has expressed unease about wholesale prohibitions against bans on tobacco company support, it recognizes the complexity of the issue and so far has resisted outright prohibition of such support, saying only that universities should be sensitive to the potential pitfalls of "objecting to a funding agency because of its corporate behavior." *Id*. at 30.

TUSM from allocating its limited research space according to the metrics set forth in the Research Space Guidelines.[111]

[111] I want to make brief mention of some other disagreements I have with some of the wording in Professor Brint's report.

Professor Brint asserts on the sixth page of his report that TUSM violates academic freedom by "conditioning tenure" on the "current research priorities" of funders. Nothing in TUSM's 2017 or 2019 compensation policies "conditions" tenure on anything. Those policies make no change to TUSM or Tufts tenure policies. Tenure revocation is the subject of separate standards contained in a separate Tufts policy which is *not* revised or affected by the policies challenged in this litigation.

Professor Brint asserts on that same page that "appointment and promotion letters are the only documents specifying the terms of [faculty members'] employment," a statement that is incorrect as a matter of fact and law. TUSM's *APS Policy*—the *Basic Science Faculty Appointment, Promotion and Separation Policy*, viewable online at https://tufts.app.box.com/v/tusm-basic-science-appt—contains this paragraph:

> The personnel policies and practices for all faculty appointments derive from a variety of sources, including the Bylaws of the Faculty, policies adopted by the Trustees of the University, and policies adopted by the University and/or the School of Medicine. Faculty members who are employed by Tufts University have benefits, rights, and obligations apart from those faculty members who are not employees of the University.

On the seventh page of his report, Professor Brint makes several references to the AAUP's *Recommended Institutional Regulation on Financial Exigency*. He begins with an inaccurate assertion that "terminations are possible only under conditions of financial exigency." In fact, the *Recommended Institutional Regulations* recognize other grounds on which a tenured faculty appointment can be terminated, including discontinuance of an academic department or program for educational reasons and a wide range of circumstances under which an appointment can be terminated for incompetence or on other for-cause grounds. *See* AAUP, *Recommended Institutional Regulations on Academic Freedom and Tenure*, https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure. More to the point, this case at Tufts has nothing to do with an institutional declaration of financial exigency or, for that matter, with any aspect of tenure termination.

Finally, Professor Brint writes on the seventh page of his report, "I disagree with Dr. Rosenberg's and Mr. Malone's [deposition] testimony in substance that the salary plans were intended to incentivize 'under-performing' faculty members to compete successfully for grant funding." To be clear, the two witnesses testified, as Professor Brint acknowledges, as to TUSM's "intent" in enacting the two compensation policies. Professor Brint offers no evidence to support the contention that incentivization was not the intent of the policies, nor can he claim any expertise in determining the intent of university officials in promulgating a policy.

V. CONCLUSION

The plaintiffs' witnesses, in my opinion, make the cardinal error of reading general principles as specific prohibitions against conduct they view as "educationally unenlightened," to borrow Professor Van Alstyne's felicitous phrase.[112] Their opinions posit very specific prohibitions—no salary reductions, no space allocation rules—from language that has not been construed by courts, by scholars, or by the higher education community in general to command the results they seek. The witnesses' conclusions are not supported by evidence in the record and ignore probative record evidence that contradicts or undermines their conclusions.

The higher education community has not adopted a common understanding of the meaning of the single reference to "economic security" in the *1940 Statement of Principles*. To the witnesses' suggestion that the phrase "sufficient degree of economic security" in the *AFTR Policy* bars TUSM from reducing the salaries of tenured faculty members, or limits salary reductions to cases in which the university declares financial exigency, I respond that the phrase "economic security" was not intended by the authors of the *1940 Statement of Principles* to be a term of art or a proscriptive commandment. Nor is there any evidence that "economic security" has been treated by the higher education community as a phrase connoting that meaning. The record is devoid of any evidence suggesting that TUSM manifested an intention to be bound by that reading of the "economic security" language in the *1940 Statement of Principles*." The witnesses' opinions do not take into account a great deal of pertinent material showing that faculty members at medical schools have for decades been paid under policies permitting salary reductions. Foremost among these materials are authoritative surveys and studies from the AAMC showing that there is no uniform, clearly expressed national consensus to the effect that tenure protects a medical school faculty member's salary, and that medical schools typically define for themselves, in written institutional policies, what the relationship is or whether there is any relationship at all.

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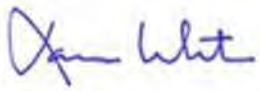
[112] *See supra* note 95 and accompanying text on pages 51-52 of this report.

Medical schools in general, and TUSM in particular, have never subscribed to the principle that tenure protects faculty members against salary reductions. Opinions to the contrary are not entitled to credence because they ignore the most important evidence contradicting that view—the AAMC's survey results and the finding in the AAUP's own 1996 report that salary policies like TUSM's do not violate the precepts of tenure and academic freedom in the *1940 Statement of Principles*.

Finally, it is my expert opinion that the compensation and research space allocation policies challenged in this lawsuit do not violate faculty members' freedom in research. That is what the Faculty Grievance Committee found. Virtually all medical schools have adopted incentive compensation policies allowing faculty salaries to be adjusted to take into account research productivity and other objective factors. Virtually all medical schools have policies by which research space is allocated based on the extent to which faculty members use their assigned space productively. I conclude that, by adopting the 2017 and 2019 compensation policies and the research space policy challenged in this action, TUSM neither violated the university's *AFTR Policy* nor abridged faculty members' entitlement to academic freedom.



Lawrence White

March 21, 2022

Exhibit A

REFERENCES TO DOCUMENTS REVIEWED AND RELIED UPON IN THE PREPARATION OF THIS REPORT

In preparing this report, I reviewed and relied upon the documents to which reference is made in the list below.

A. All the books, articles, newspaper stories, policies, decisions in court cases, and other documents cited or otherwise mentioned in the footnotes and text of my report.

B. All the books, articles, policies, decisions in court cases, and other documents cited or mentioned in the reports prepared by Drs. Todd Miller, Steven Brint, and Linda Pifer on behalf of the plaintiffs in this case.

C. The supplemental answers to interrogatories prepared by the eight named plaintiffs and served on the defendants on January 27, 2022, and all the books, articles, policies, decisions in court cases, and other documents cited or mentioned in those supplemental answers.

D. The following pleadings and submissions of the parties in this action and an ancillary action in Washington, D.C.:

1. The plaintiffs' *Amended Complaint and Jury Demand* filed December 19, 2019, and Exhibits 1 through 28 attached thereto.

2. *Defendant's Answer and Jury Demand* filed August 18, 2020.

3. Transcripts of the depositions of:

   a. Dr. Kevin Dunn.
   b. Dr. Caroline Genco.
   c. Thomas Malone (volumes 1 and 2).
   d. Dr. Naomi Rosenberg.
   e. Dr. Anthony Monaco.
   f. Dr. Brent Cochran.
   g. Dr. David Greenblatt.
   h. Dr. Michael Malamy.
   i. Dr. Emmanuel Pothos.
   j. Dr. Ana Soto.
   k. Dr. Theoharis Theoharides.
   l. Dr. Henry Wortis.
   m. Dr. Amy Yee.

4. Exhibits 1 through 139 to the depositions in this action.

5. *The American Association of University Professors' Motion to Quash Subpoena* filed February 3, 2022 in *Wortis v. Trustees of Tufts College*, Case Number: 2021 CA 004584 2 (D.C. Super. Ct.) and Exhibits 1 through 8 attached thereto along with sub-exhibits attached to the exhibits.

E. The following additional articles and materials not cited in my report:

1. American Association of University Professors, POLICY DOCUMENTS AND REPORTS ["The Redbook"] (9th ed. 2001).

2. Rebecca Eisenberg, *Academic Freedom and Academic Values In Sponsored Research*, 66 TEX. L. REV. 1363 (1988).

3. David Rabban, *Does Academic Freedom Limit Faculty Autonomy?*, 66 TEX. L. REV. 1405 (1988).

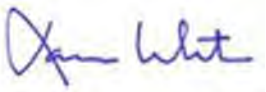
4. Robert Post, *Academic Freedom and Legal Scholarship*, 64 J. LEGAL EDUC. 530 (2015).

5. Cary Nelson, *Defining Academic Freedom: Penn State professors move to give more leeway to faculty members dealing with controversial issues*, INSIDE HIGHER ED (December 21, 2010), https://www.insidehighered.com/views/2010/12/21/defining-academic-freedom.

6. Charles Kidd, *The Implications of Research Funds for Academic Freedom*, 28 LAW & CONTEMPORARY PROBS. 613 (1963).

7. James W. Jones *et al.*, *Surgical Ethics Challenges: The ethics of odd ideas, good science, and academic freedom*, 41 J. Vascular Surgery 1074 (2005).

8. Solomon Solomon *et al.*, *Allocating Research Space in the University Medical Center: Use of a Mathematical Formula***,** AM. J. MEDICAL SCIENCES 297(1):3-8 (1989).



Lawrence White
March 21, 2022

Exhibit B

LAWRENCE WHITE

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Philadelphia, Pennsylvania 19103
(267) 250-3154 (Text and Mobile)
whitelarry@gmail.com

PROFESSIONAL EXPERIENCE:

Retired from the full-time practice of higher education law at the end of 2015.

2016-19: **Senior Counsel, Office of the General Counsel, University System of New Hampshire, Concord, New Hampshire (part-time)**. I performed part-time legal work for the four constituent campuses that comprise USNH (the University of New Hampshire, Keene State College, Plymouth State University and Granite State College).

2016-19: **Consultant, Association of Governing Boards of Universities and Colleges, Washington, DC**. I performed consulting assignments for AGB on legal and governance-related topics.

2009-15: **Vice President and General Counsel, University of Delaware, Newark, Delaware**. I was hired in 2009 as the University of Delaware's first-ever General Counsel. I managed an office of three attorneys and one paralegal assistant and supervised the work of specially retained outside counsel. As the University's Chief Legal Officer I reported to the President and served as a member of the President's cabinet of senior advisors.

2006- : **President, Lawrence White Consulting, Philadelphia, Pennsylvania**. In 2005 I established a small consulting firm specializing in projects for colleges, universities, and other nonprofit organizations. I handled matters relating to—

- *Institutional management, operations and planning* (confidential investigations, counseling on difficult or sensitive personnel matters, training programs for trustees, officers and administrators, risk management, strategic assessment and planning, and compliance work); and
- *The institutional legal function* (external audits of in-house general counsel's offices, counsel on law office management, short-term, on-site project work, and assistance with administrative and court litigation).

The firm's clients included colleges and universities throughout the country and nonprofit organizations in Washington, DC, and the metropolitan Philadelphia area.

2003-06: **Chief Counsel, Pennsylvania Department of Education, Harrisburg, Pennsylvania.** I was appointed by Pennsylvania Governor Edward G. Rendell in February, 2003. The Pennsylvania Department of Education is the state's largest executive department, with an annual budget of $9 billion. The Chief Counsel supervises a staff of fourteen attorneys and six professional and clerical employees. My duties included the conduct and supervision of an active docket of court cases in state and federal courts in Pennsylvania; compliance and regulatory matters extending to every level of elementary, secondary and postsecondary education; and corporate and in-house legal duties, including personnel matters, contract negotiation and review, and statutory and regulatory compliance matters.

1999-2003: **Program Officer, The Pew Charitable Trusts, Philadelphia, Pennsylvania**. I was responsible for the management of a $25 million grant portfolio in the Venture Fund, one of seven program areas at the Trusts. Duties included identifying, developing, and implementing funding opportunities; initiating promising ideas for funding; collaborating with appropriate individuals and organizations to develop ideas into fundable proposals for implementation; and monitoring grants after they were made.

1991-99: **University Counsel, Georgetown University, Washington, D.C.** I served as general counsel and chief legal officer and a member of the President's Cabinet. I managed a staff of eight lawyers and seven paraprofessional and clerical workers and an annual legal budget of about $6 million. My duties included representing the University in civil and administrative proceedings; serving as legal advisor to the President, Board of Directors, and senior administrators; drafting and implementing University policies; and selecting and supervising the work of outside counsel.

1989-91: **Deputy General Counsel, University of Virginia, Charlottesville, Virginia.** I was responsible for the provision of legal services to the governing board, President, and top-level administrators of the University of Virginia. My duties included litigation in Federal and Virginia courts; providing corporate counsel to the institutional governing board (the Board of Visitors); and service on Hospital Ethics and Human Subjects Committees.

1984-89: **Assistant Attorney General, Educational Affairs Division, Office of the Maryland Attorney General, Baltimore, Maryland**.

- *1988 to 1989*: **Deputy Chief Counsel, Educational Affairs Division**. Counsel to the Board of Regents of the University of Maryland System and the Maryland Higher Education Commission.

- *1984 to 1988*: **Counsel, Educational Affairs Division**. I served as counsel to the University of Maryland College Park, the Maryland Higher Education Commission, Morgan State University, and the University of Maryland Schools of Medicine, Social Work, Pharmacy and Law.

1982-84: **Associate Secretary and Assistant Counsel, American Association of University Professors, Washington, D.C.** I was responsible for civil rights and civil liberties litigation undertaken on behalf of college and university faculty members.

1977-82: **Attorney, Peabody, Rivlin, Lambert & Meyers, Washington, D.C.** Associate attorney in a mid-sized (50-lawyer) general practice law firm. Principal areas of practice: higher education law, civil litigation, and general corporate law.

1975-77: **Legislative Assistant and Subcommittee Counsel, Office of the Honorable Alan Cranston, United States Senate, Washington, D.C.** I drafted legislation, organized Congressional hearings, handled correspondence, did speechwriting, and performed administrative duties.

(*June to November, 1971*: Active Duty, United States Army, Fort Polk, Louisiana, and Fort Sam Houston, Texas. I served as an enlisted man in the United States Army Medical Corps and served from 1971 to 1977 in the United States Army Reserve. Discharged honorably in April, 1977.)

TEACHING EXPERIENCE:

2005-2008: **Adjunct Professor, The University of Pennsylvania Law School, Philadelphia, Pennsylvania.** I taught one-semester, three-credit courses on Employment Law and Education Law.

2001-2003: **Adjunct Professor, The Wharton School, University of Pennsylvania, Philadelphia, Pennsylvania.** I taught a one-semester section of a Department of Legal Studies course, "Introduction to Law and the Legal Process." In 2002 I was the recipient of the William G. Whitney Award for Distinguished Undergraduate Teaching, awarded annually to affiliated faculty members in the Wharton School selected by students as outstanding undergraduate instructors.

1995-99: **Lecturer, Department of Government, Georgetown University, Washington, D.C.** I taught a one-semester undergraduate seminar entitled "Lawyers and the American Legal System."

OFFICES, HONORS AND PROFESSIONAL ACTIVITIES:

Member of the bar and admitted to practice in Delaware (admitted in 2009), the District of Columbia (1975), Maryland (1983), Virginia (1989), and Pennsylvania (2003). Admitted to practice before the United States Supreme Court and all federal and state courts in states of licensure.

Member of the Board of Directors of the National Association of College and University Attorneys (1991 to 1994 and 1996 to 1999). I served as Treasurer of the Association and a member of the Board's Executive Committee (1996 to 1999). In 2010 I received NACUA's Distinguished Service Award for "extraordinary service both to NACUA and to institutions of higher learning over an extended period of time."

Member of the Board of Trustees of Mercy College, Dobbs Ferry and New York, New York (1999 to 2010). Member of the Executive Committee (2002 to 2010), the Committee on Academic Affairs (1999-2002), the Committee on Finance (2001 to 2010), and the Committee on Trusteeship (2001 to 2006, and Chair, 2002 to 2006).

Frequent speaker, lecturer, writer, and consultant on higher education issues. I served as a presenter at conferences organized by the American Council on Education, the Association of American Medical Colleges, the Law School Admission Council, the American Health Lawyers Association, the Council of Graduate Schools, Dartmouth College, the National Association of Minority Medical Educators, the American Association of Colleges of Nursing, and many others. I have served as a paid consultant to (among other institutions) the University of Alabama, the University of Arizona, the University of Kansas Medical Center, the University of Massachusetts School of Medicine, Rice University, the University of Vermont, and Washington University in Saint Louis. I am a national authority on faculty tenure in academic medical centers, and the author of *Academic Tenure: Its Historical and Legal Meanings in the United States and its Relationship to the Compensation of Medical School Faculty Members*, 44 ST. LOUIS U. L. J. 51 (2000). My writing appeared regularly in the CHRONICLE OF HIGHER EDUCATION, TRUSTEESHIP MAGAZINE, law reviews, and legal periodicals.

EDUCATION:

Professional: University of Pennsylvania Law School, Philadelphia, Pennsylvania. J.D., 1975.

Undergraduate: Harvard University, Cambridge, Massachusetts. B.A. *cum laude*, 1971.

PERSONAL INFORMATION:

Married August 20, 1972, to Wendy S. White, who is currently Senior Vice President and General Counsel at the University of Pennsylvania. Two children: Miriam, a graduate of Washington University in Saint Louis

and an academic counselor at the University of the Arts in Philadelphia, Pennsylvania; and Andrew, a teacher and administrator at Friends' Central School in Wynnewood, Pennsylvania.

March 2022

Exhibit C

2022 WL 516793
Supreme Court, Appellate Division, First Department, New York.

Dr. Marie MONACO et al., Plaintiffs-Appellants,
v.
NEW YORK UNIVERSITY et al., Defendants-Respondents.
Mark Barenberg, Isidor and Seville Sulzbacher Professors of Law, Columbia Law School, Helen Bender, Associate Professor of Law, Fordham University School of Law, Cynthia Grant Bowman, Dorothea S. Clarke Professor of Law, Cornell Law School, James Brudney, Joseph Crowley Chair in Labor and Employment Law, Fordham University School of Law, Matthew Dimick, Professor of Law, University at Buffalo School of Law, Cynthia Estlund, Catherine A. Rein Professor of Law, New York University Law, Philip Hamburger, Maurice & Hilda Friedman Professor of Law, Columbia Law School, Robert Hillman, Edwin H. Woodruff Professor of Law, Emeritus, Cornell Law School, Arthur Leonard, Robert F. Wagner Professor of Labor and Employment Law, New York Law School, Carlin Meyer, Professor of Law, Emerita, New York Law School, Liam Murphy, Herbert Peterfreund Professor of Law, New York University Law, Norman S. Poser, Professor of Law, Emeritus, Brooklyn Law School, Samuel Weinstein, Associate Professor of Law, Cardozo Law, Amici Curiae.

Appeal No. 15034
|
Index No. 100738/14
|
Case No. 2021-00792
|
ENTERED February 22, 2022

Plaintiffs appeal from an order of the Supreme Court, New York County (Francis A. Kahn, III, J.), entered November 23, 2020, which, insofar as appealed from, granted defendants' motion for summary judgment dismissing the complaint.

Attorneys and Law Firms

Gladstein, Reif & Meginniss, LLP, New York (Katherine H. Hansen, Beth M. Margolis and Jessica E. Harris of counsel), for appellants.

Kelley Drye & Warren, LLP, New York (Barbara E. Hoey and Damon W. Suden of counsel), for respondents.

Bantle & Levy LLP, New York (Robert L. Levy of counsel), for amici curiae.
Judith J. Gische, J.P., Cynthia S. Kern, David Friedman, Jeffrey K. Oing, Anil C. Singh, JJ.

Opinion

OING, J.

***1** We are asked to decide a novel issue – whether "economic security" guaranteed to tenured professors protects them from the imposition of a policy mandating a salary reduction if they fail to obtain sufficient grants to fulfill their extramural funding goals. The implication of our decision on the issue is clear – it would affect the meaning of and rights associated with academic tenure. The resolution of this issue involves a nationally and internationally leading academic and research institution – New York University (N.Y.U).

We begin our analysis with the concept of academic tenure, which has its genesis in a 1940 Statement of Principles on Academic Freedom and Tenure (1940 Statement), drafted jointly by the American Association of University Professors (AAUP)[1] and the Association of American Colleges (AAC). The 1940 Statement defines the rights and responsibilities associated with tenure, including the right to "permanent or continuous" employment and the right to "academic freedom" and "economic security". In 1948, NYU's Board of Trustees authorized the adoption of the

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1940 Statement, incorporating it into the university's Faculty Handbook. As is relevant herein, Title I of the Faculty Handbook (issued April 2014), entitled "Statement in Regard to Academic Freedom and Tenure" (Academic Tenure Statement), provides, in relevant part:

> "*I. Authorization by the Board of Trustees* [footnote omitted]
>
> The Board of Trustees of New York University has authorized the following statement in regard to academic freedom and tenure at New York University. It reserves the right to amend this statement at its discretion, but no amendment shall take away a status of permanent or continuous tenure acquired before such amendment.
>
> ***2** "*II. The Case for Academic Freedom*
>
> Academic Freedom is essential to the free search for truth and its free expression. Freedom in research is fundamental to the advancement of truth. Freedom in teaching is fundamental for the protection of the rights of the teacher in teaching and of the student in learning. Academic freedom imposes distinct obligations on the teacher such as those mentioned hereinafter.
>
> "*III. The Case for Academic Tenure*
>
> Academic tenure is a means to certain ends, specifically: (1) freedom of teaching and research; and (2) a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability."

Individual schools and colleges within NYU may promulgate their own policies; those may supplement but not supersede or replace the rights set forth in the Faculty Handbook.

[1] The association was founded in 1915 to advance the standards, ideals, and welfare of the academic profession in higher education.

Plaintiff Professor Herbert Samuels received his medical degree from defendant New York University School of Medicine in 1965.[2] NYU hired him in 1970 as an assistant professor of medicine, promoted him to associate professor in 1975, and awarded him tenure and promoted him to full professor in 1977. During his tenure at NYU, Professor Samuels has served in numerous high-level administrative positions, published extensively, served on journal editorial boards and as a grant reviewer for the National Institutes of Health (NIH), received many nationally and internationally recognized honors and awards, and was awarded millions of dollars in external grants.

[2] NYU and NYU School of Medicine are referred to herein collectively as NYU.

Plaintiff Professor Marie Monaco received her Ph.D. in biochemistry from Columbia University. NYU hired her in 1980 as an assistant professor of physiology and biophysics, and awarded her tenure and promoted her to associate professor in 1987. Professor Monaco has published extensively, served as a grant reviewer for the NIH, the National Science Foundation, and the Department of Defense, led curriculum development, devoted many hours to service on faculty governance bodies, and was awarded millions of dollars in external grants. Professor Monaco has also served as Secretary and President of the NYU Chapter of the American Association of University Professors. Like that of other faculty members, Professors Samuels's and Monaco's employment at NYU has always been subject to the terms of the Faculty Handbook.

In May 2001, NYU offered Professor Samuels the position of Chairman of its Department of Pharmacology. The initial appointment letter provided no salary guarantee.[3] Professor Samuels rejected it. NYU then provided Professor Samuels with another appointment letter.[4] That letter set forth a "compensation package" indicating a specific salary and conditional benefits (final appointment letter). It was in contrast to the initial version, which merely proposed a salary tied to certain conditions. Neither letter contained a durational term. Professor Samuels agreed to the terms of the final appointment letter and accepted it. Although receiving two appointment letters and a tenure letter during her association with NYU, Professor Monaco never had letters of this kind, i.e., specifying a salary level or amount for an indefinite time.

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3 The initial appointment letter, drafted by NYU, provides, in pertinent part:

> "Your compensation package and future annual increases are subject to approval by the NYU Board of Trustees Compensation Committee in accordance with prevailing SOM [School of Medicine] guidelines. Your salary in future years will be adjusted according to changes in the cost of living and any increase in the scope of your work. If, in the future, you should step down as Chair of Pharmacology but remain on the faculty, your salary will be equivalent to that of a tenured professor in the Department of Pharmacology or as appropriate under the tenure-based salary rules applicable at that time."

4 The final appointment letter, drafted by NYU, provides, in relevant part:

> "Your compensation package and future annual increases are subject to approval by the NYU Board of Trustees Compensation Committee in accordance with prevailing SOM guidelines. Your salary in future years will be increased according to changes in the cost of living and any increase in the scope of your work. If, in the future, you should step down as Chair of Pharmacology but remain on the faculty, your salary will be equivalent to your current salary ($235,226) excluding $10,000 for your role as Director of Endocrinology, adjusted for cost of living increases during the time you were Chairman. Your benefits will be equivalent to those of a tenured Professor of Pharmacology or tenured Professor of Medicine which are applicable at that time."

***3** On November 3, 2009, NYU promulgated a new salary policy for its research faculty, known as the "Policy on Performance Expectations" or "Required Extramural Funding" policy (REF Policy), which took effect in 2010. The purpose of the policy was to define realistic expectations for research faculty productivity and teaching obligations. To that end, the policy provides a standardized approach to evaluating faculty for merit increases, salary adjustments, and incentive rewards. As to salary adjustments, the policy permits NYU School of Medicine to require faculty to secure extramural funding to cover 60% of their research salaries. A faculty member's failure to obtain at least 20% of his or her salary in grants for two years could result in a salary reduction of 20% each year. The policy allows for the gradual reduction of a faculty member's salary when the member has failed to meet the newly required performance expectations, but the salary cannot be reduced to a level below a base salary.

Sometime in 2012, NYU eliminated the Department of Pharmacology by merging the Departments of Biochemistry and Pharmacology into a new Department of Biochemistry and Molecular Pharmacology. As a result of this departmental restructuring, Professor Samuels's position as Chairman of the Pharmacology Department was eliminated. NYU offered him the position of Vice Chair of Education in the new department in an appointment letter that, by its terms, would "supersede and merge all prior proposals, understandings and other agreements, oral and written, relating to your employment." Critically, this new appointment letter would have subjected Professor Samuels to the REF Policy. Professor Samuels refused to sign it. Instead, he returned to his tenured faculty position and, pursuant to the terms of the final appointment letter, was paid a salary of $285,151 for the 2012–2013 academic year, which was equivalent to his pay in 2001, adjusted for inflation. His salary for 2013–2014 was nearly identical.

In November 2013, NYU informed Professor Samuels for the first time that he was subject to the REF Policy, and in

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around April 2014 informed him that, for the 2012–2013 academic year, he had secured grants amounting to only 0.4% of his salary – far less than the REF Policy's 60% requirement. Accordingly, effective September 1, 2014, NYU reduced his salary by $11,286. NYU reduced Professor Samuels's salary each year thereafter through the 2019–2020 academic year, by which point his salary had been reduced from $285,151 to $179,630. The salary reductions had a corresponding negative effect on the value of his pension. Similarly, NYU informed Professor Monaco in March 2014 that, pursuant to the REF Policy, because she had failed to meet her 60% requirement, effective September 1, 2014, her salary would be reduced from $167,646 to $161,611. Professor Monaco's salary was reduced each year thereafter through the 2019–2020 academic year, by which point her salary had been reduced to $120,643.

In 2014, Professors Samuels and Monaco commenced a hybrid CPLR article 78 proceeding and plenary action challenging their salary reductions. Their two article 78 claims alleged that NYU failed to comply with its policies and procedures in promulgating the REF Policy and that, even if that policy was valid and lawful, NYU applied it arbitrarily and capriciously insofar as NYU did not apply the policy equally to all faculty consistent with the policy's terms. The Professors' two plenary action claims alleged breach of contract and promissory estoppel. Supreme Court granted NYU's motion to dismiss the hybrid proceeding. On appeal, this Court only reinstated the claims for breach of contract and promissory estoppel (*see Matter of Monaco v. New York Univ.*, 145 A.D.3d 567, 43 N.Y.S.3d 328 [1st Dept. 2016]). Following several years of discovery, including expert discovery, NYU moved for summary judgment dismissing the complaint, and Professors Samuels and Monaco moved for summary judgment on their breach of contract claims.

***4** Supreme Court granted NYU's motion and denied Professors Samuels and Monaco's motion. It determined that NYU did not breach the Academic Tenure Statement's "economic security" provision when it reduced the Professors' salaries pursuant to the REF Policy, because the phrase "economic security" was "merely a general preamble to the description of tenure and the related policies." The court found that even if it were not merely " 'introductory' " and in fact "created contractual obligations," the Academic Tenure Statement did not set forth any language prohibiting NYU from implementing the REF Policy and imposing the policy's extramural funding requirements on tenured members of the faculty, including Professors Samuels and Monaco. As to the claim based on Professor Samuels's "2001 Contract," i.e., the final appointment letter, the court dismissed the claim because the "2001 Contract" was "not an indefinite and unrestricted salary guarantee," and "did not intend to exclude Samuels from any type of salary reductions." The court found that the contractual claim based on NYU's failure to abide by the disciplinary process in reducing the Professors' salary was not tenable because NYU's salary reductions in accordance with the REF Policy were not for disciplinary purposes because no disciplinary rule was violated when the Professors failed to meet the REF Policy's extramural funding goals. This appeal ensued.[5]

5 We deem the promissory estoppel claim abandoned because Professors Samuels and Monaco failed to advance any argument supporting it.

Our analysis of the contract claim based on the Faculty Handbook necessarily begins with the Professors' argument that the term "economic security" found in the Faculty Handbook is ambiguous and that the following evidence could lead a reasonable factfinder to conclude that the term is understood in academia as prohibiting salary reductions for tenured faculty:

> "The drafters of the 1940 *Statement* analogized the economic security required to protect faculty's academic freedom to that accorded federal judges under Article III of the Constitution—who, absent serious misconduct, also hold lifetime tenure and cannot have their salaries reduced;

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> "Academic freedom 'depends upon the ability of the university to make its staff absolutely independent of private remuneration or subvention';
>
> "Academics, including Allan Cartter, *former Chancellor and Executive Vice President of NYU,* have long agreed that tenured salaries are fixed costs that cannot be reduced;
>
> "The AAMC, 'the nation's most authoritative voice on faculty compensation practices in American medical schools,' has repeatedly stated that historically, '[i]t was assumed that tenure guaranteed the total salary of basic scientists' "

(citations omitted). They also point to the testimony of their expert, Professor Matthew Finkin, who explained that:

> "the economic security that tenure guarantees is that the tenured faculty will not have his or her salary reduced involuntarily except for financial exigency or as a sanction, imposed after hearing, for serious misconduct that does not warrant dismissal."

The Professors argue further that reliance on external funding from private and governmental entities is anathema to the stated purpose of the Academic Tenure Statement:

> " 'The clearest danger is that investigators who receive corporate funding for their research may be influenced in ways that favor the industry ... Having received such support ... they may be subtly affected when they decide how strongly to word a conclusion, how much to emphasize possible qualifications and contrary interpretations, or whether to mention potential (but unproven) new risks.'
>
> ...
>
> " '[T]he federal government has become far more desirous of supporting research with foreseeable practical application than it has the search for 'useless knowledge.' It is the latter, however, research not conducted for some immediate pay-off nor having any immediately discernible practical application that ... can have the most impact in the long run.' "

(citations omitted). The Professors also point out that NYU's own documents make clear that when NYU previously wanted to reduce tenured faculty salaries it had the faculty enter into agreements explicitly permitting such reductions. They argue that those agreements would have been unnecessary if NYU had the unilateral right to make the reductions.

In support of the Professors' arguments, amici curiae focus on what a court should consider in deciding the ambiguity issue. Notably, they contend that Supreme Court's finding is untenable because it relied on inapposite case law, namely, the law governing "bargained-for commercial transactions," rather than the body of authority concerning academic custom or usage, which they claim has special salience when considering rules governing the terms and conditions of faculty employment. Amici curiae maintain that the "words these policies use draw meaning from how they are understood by those accustomed to use them in the academic world and are to be interpreted in accordance with the purposes they serve."

***5** The problem with the above arguments is that both the Professors and amici curiae improperly seek to give meaning to a term that is prefatory, rather than using a defined term to give meaning to clauses elsewhere in the Faculty Handbook (*see* *Ellington v. EMI Music, Inc.,* 24 N.Y.3d 239, 997 N.Y.S.2d 339, 21 N.E.3d 1000 [2014] [relying on definitions contained in preamble]). The phrase "a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability" is a part of the "Case for Academic Tenure." It is mere prefatory language succinctly explaining why tenure is desirable. Importantly, the "Case for Academic Tenure" does not lay out how to obtain tenure. Rather, the tenure process is detailed elsewhere, and, critically, there is no meaningful discussion of compensation at all, except that set forth in the Faculty Handbook's salary grievance section. Thus, contrary to the Professors' contention, "economic security," standing alone, simply does not

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confer any contractual rights or obligations (*see* *Andersen v. Weinroth*, 48 A.D.3d 121, 133, 849 N.Y.S.2d 210 [1st Dept. 2007]).

We further find that the absence of any discussion of this term in the Faculty Handbook underscores its vagueness, which is buttressed by the Professors' own differing interpretations of the term throughout this litigation. While the petition alleges that "[t]he tenure guarantee of economic security protects tenured faculty from any diminution in their salaries," in their appellate arguments the Professors take the position that only retroactive, rather than prospective, reductions in salary are prohibited. Thus, as shown by the Professors' own changing interpretations, the term is too vague to be enforceable (*see* *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105, 109, 436 N.Y.S.2d 247, 417 N.E.2d 541 [1981]).

Assuming that the term "economic security" gives rise to contractual rights, we reject the argument advanced by the Professors and amici curiae that "economic security" is an ambiguous term of art and that custom and usage in academia define it as prohibiting retroactive salary reductions pursuant to such policies as the REF Policy.[6]

[6] Their analogy to Article III judges' constitutionally guaranteed compensation to support their reasoning that "economic security" precludes salary reductions is misplaced. Unlike the disputed term herein, article III, § 1, of the U.S. Constitution unequivocally states that federal judges' compensation "shall not be diminished during their Continuance in Office." Thus, there can be no dispute that a federal judge's salary cannot be reduced. In stark contrast, the Faculty Handbook does not contain any language prohibiting tenured faculty's salaries from being diminished.

Regardless of the kind of transaction involved, New York contract law is well settled and clear: "Ambiguity exists when, looking within the four corners of the document, the terms are reasonably susceptible of more than one interpretation" (*Ellington*, 24 N.Y.3d at 250, 997 N.Y.S.2d 339, 21 N.E.3d 1000). "A contract is unambiguous if 'on its face [it] is reasonably susceptible of only one meaning' " (*Macy's Inc. v. Martha Stewart Living Omnimedia, Inc.*, 127 A.D.3d 48, 54, 6 N.Y.S.3d 7 [1st Dept. 2015], quoting *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 570, 750 N.Y.S.2d 565, 780 N.E.2d 166 [2002]).

The language of the "economic security" provision is clear – it does not include salary considerations. We look no further than the faculty grievance procedures which provide that upon receiving an unfavorable decision concerning a salary grievance, the faculty member may appeal the decision only on two enumerated grounds:

> "That the procedures used to reach the decision were improper, or that the case received inadequate consideration;
>
> That the decisions violated the academic freedom[7] of the person in question, in which case the burden of proof is on that person."

***6** Thus, the only enumerated grounds for salary grievance review are violations of due process and academic freedom. An "[in]sufficient degree of economic security" is not a ground for resolving a salary grievance dispute. A fortiori, the term "economic security" does not involve salary issues.

[7] Academic Freedom is defined as:

> "Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties, but outside occupations and research for pecuniary gain, except in the case of sporadic and wholly unrelated engagements, should be based upon an understanding with the administration of the University.
>
> "Teachers are entitled to freedom in the classroom in discussing their subject, but they

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> should not introduce into their teaching controversial matter that has no relation to their subject.
>
> "Teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but this special position in the community imposes special obligations. As men and women of learning and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they at all times should be accurate, should exercise appropriate restraint, should show respect for the opinions of others and for the established policy of their institution, and while properly identifying themselves to outside audiences as associated with the University should clearly indicate that they are not institutional spokespeople unless specifically commissioned to serve in such capacity."

Even if the term is ambiguous, we reject the argument that prohibiting the retroactive reduction of a faculty member's salary pursuant to the REF Policy safeguards academic freedom and tenure.[8] The Professors and amici curiae acknowledged that NYU could impose the REF Policy prospectively when they abandoned their article 78 claims relating to the promulgation and application of the policy. Their acknowledgment reveals the weakness of their argument – that it would create two classes of tenured faculty, those purportedly influenced by extramural funders and those not so influenced. Because the guarantee of academic freedom applies equally to all tenured faculty, such a distinction would be wholly inexplicable.

[8] Academic Tenure is defined, in relevant part:

> "The general policy of the University with respect to probation and tenure for full-time assistant professors, associate professors, and professors is given below. After expiration of the stipulated probationary periods, full-time associate professors and professors are considered to have permanent or continuous tenure, and their services are to be terminated only for adequate cause, except in the case of retirement, or under extraordinary circumstances because of financial exigencies, or because of the discontinuance of a considerable part of the University, such as a college, school, or division or a department in a college, school, or division. It is understood that the University has the right to reduce the length of the probationary period in specific cases."

Turning to the Professors' contract claim based on the disciplinary process, we note that, contrary to NYU's argument, the language of our reinstatement of the breach of contract cause of action in the prior appeal did not exclude that claim. We found that the Professors "sufficiently alleged that the *policies* contained in ... [the] Faculty Handbook ... 'form part of the essential employment understandings between a member of the Faculty and the University,' [and] have the force of contract" (*Matter of Monaco v. New York Univ.*, 145 A.D.3d at 568, 43 N.Y.S.3d 328 [emphasis added]). Those policies, without a doubt, include the disciplinary procedures.

The Professors argue that NYU violated its own disciplinary procedures when it reduced their salaries without affording them due process pursuant to Title IV of the Faculty Handbook ("General Disciplinary Regulations Applicable to Both Tenured and Non–Tenured Faculty Members"). They contend that their salary reductions based on their failure to fulfill the REF Policy's extramural funding obligations amount to discipline regardless of how

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NYU characterizes the reductions or whether there exists a salary grievance procedure. We disagree.

Pursuant to Title IV, discipline may be imposed when a faculty member engages in conduct unbecoming a member of the faculty, such as any action that interferes with the regular operations of the university or the rights of others, or any other conduct prejudicial to the teaching, research, or welfare of the university. Prior to the imposition of discipline, specified due process requirements must be satisfied, including a hearing before a faculty hearing committee and the right to an appeal. In the event the faculty committee concludes that discipline is warranted, it can impose sanctions including, but not limited to reprimand, censure, removal of privileges, and suspension.

***7** A faculty member's failure to comply with the REF Policy is simply not conduct that is subject to discipline. The Professors' reliance on (*Yoon v. Fordham Univ. Faculty & Admin. Retirement Plan*, 2004 WL 3019500, 2004 U.S. Dist LEXIS 26070 [S.D. N.Y., Dec. 29, 2004, No. 99–CV–110429 (RCC)], *affd* 173 Fed. Appx. 936 [2d Cir.2006]), (*Klinge v. Ithaca Coll.*, 167 Misc.2d 458, 634 N.Y.S.2d 1000 [Sup. Ct., Tompkins County 1995], *mod* 235 A.D.2d 724, 652 N.Y.S.2d 377 [3d Dept. 1997]), and (*Matter of Soriano v. Elia*, 155 A.D.3d 1496, 1500, 66 N.Y.S.3d 331 [3d Dept. 2017], *lv denied* 31 N.Y.3d 913, 2018 WL 3149499 [2018]) in support of their contrary proposition, that "courts have repeatedly held that universities are required to comply with their disciplinary procedures before imposing salary reductions on faculty for failing to meet performance expectations," is misplaced. None of these cases support this proposition. In *Yoon*, the court decided whether Fordham University had adhered to its internal procedural guidelines when it terminated a professor and suspended his pay after the professor was found to have committed misconduct. NYU does not allege any misconduct on the part of Professors Monaco and Samuels. The *Klinge* court concluded that Ithaca College did not follow its disciplinary procedures when it demoted a professor for plagiarism. *Klinge*, therefore, also involved professor misconduct and is inapposite. *Soriano* addresses the reassignment of a tenured administrator in a public school district and whether it complied with the requirements of the Education Law. No such concerns are raised in the case at bar.

"Discipline" refers "not merely to action that has an adverse impact, but adverse action that is motivated by a punitive intent" (*Soriano*, 155 A.D.3d at 1498–1499). The flaw in the Professors' analysis is that they focus only on the "stick" and ignore the "carrot." As recognized by Supreme Court, the REF Policy is not disciplinary because it provides not only for salary decreases, but also for salary increases. Indeed, the policy states that its purpose is "to define realistic expectations for research faculty productivity ... Expectations of salary support on extramural funding and teaching obligations provide a standardized approach to evaluate faculty for merit increases, salary adjustments and incentive rewards for those exceeding expectations." Incentivizing conduct is not punitive. Rather, by its own terms, and as is apparent from the record, the REF Policy is intended to help guide the faculty's productivity by motivating them to secure extramural funding.

NYU argues that Professor Samuels did not plead a breach of contract claim based on the "2001 Contract" in the petition and that even if he did, the claim was never reinstated, because our prior decision concerned contract claims based on provisions of the Faculty Handbook. Supreme Court correctly rejected the argument that the petition did not allege a breach of the "2001 Contract." It found that this claim was not a new theory raised for the first time in the Professors' summary judgment motion, because the parties had litigated the merits of this claim extensively throughout the course of this litigation. We agree with Supreme Court and make an additional observation. The breach of the "2001 Contract" cause of action sets forth the following pertinent allegations:

> "Respondents are contractually obligated to abide by the terms of Petitioners' employment contracts which consist of the Handbook, *appointment letters*, promotion letters and numerous other communications between Petitioners and Respondents.

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> "Reduction of Petitioners' salaries pursuant to the Salary Reduction Policy constitutes a material breach of Petitioners' *contractual rights*, including their guarantees of academic freedom and economic security.
>
> > "As a result of the breach of their *contractual rights*, Petitioners will suffer damages and injuries including, but not limited to, loss of salary and benefits, loss or damage to their professional reputations, and significant disruption to their research."

(emphasis added). There can be no dispute that the "2001 Contract" was an "appointment letter." Thus, these allegations were sufficiently specific to place NYU on notice that Professor Samuels's "2001 Contract" was implicated in the breach of contract cause of action.

***8** Although NYU accurately points out that our reinstatement of the breach of contract claim addressed the Faculty Handbook, we did not limit the claim solely to the handbook. NYU overlooks our additional finding that apart from the Faculty Handbook the petition "sufficiently alleged that [petitioners] had a mutual understanding with [NYU] that tenured faculty members' salaries may not be involuntarily reduced" (*Matter of Monaco,* 145 A.D.3d at 568, 43 N.Y.S.3d 328). This finding necessarily includes Professor Samuels's "2001 Contract."

Professor Samuels argues that the "2001 Contract" precludes NYU from reducing his salary pursuant to the REF Policy below the amount stipulated therein. We agree. The terms of the contract are clear and unambiguous. The fact that it is for an indefinite durational term is of no moment. Under the undisputed rules governing tenured faculty, the term of Professor Samuels's employment is permanent and continuous until he either resigns, retires, dies, or is removed in accordance with the applicable terms of the Faculty Handbook. None of those contingencies have occurred. Although NYU contends that nothing in the "2001 Contract" prohibits it from applying the REF Policy to Professor Samuels's salary, nothing in the contract permits NYU to impose the REF Policy on him either (*see Ellington,* 24 N.Y.3d at 244, 997 N.Y.S.2d 339, 21 N.E.3d 1000 [where contract terms are clear and unambiguous the parties' intent must be found within the four corners of the contract, giving a practical interpretation to the language employed and reading the contract as a whole]). The "2001 Contract" unambiguously provides that should Professor Samuels "step down as Chair of Pharmacology but remain on the faculty," his salary would be "equivalent to [his then] current salary ($235,226), excluding $10,000 for [his] role as Director of Endocrinology, adjusted for cost of living increases during the time [that he was] Chairman." The only portion of his "compensation package" that was subject to adjustment was his "benefits." Thus, his continued association with NYU by remaining on the faculty after he stepped down as Chairman due to the elimination of his department requires NYU to comply with the salary terms set forth in his contract (*see Ayers v. City of Mount Vernon,* 176 A.D.3d 766, 770, 110 N.Y.S.3d 43 [2d Dept. 2019]). We find that NYU breached the terms of the "2001 Contract" when it reduced Professor Samuels's salary pursuant to the REF Policy and that he is entitled to summary judgment on this claim.

Accordingly, the order of the Supreme Court, New York County (Francis A. Kahn, III, J.), entered November 23, 2020, which, insofar as appealed from, granted defendants' motion for summary judgment dismissing the complaint, should be modified, on the law, to deny the motion as to plaintiff Professor Herbert Samuels's breach of contract claim arising out of the "2001 Contract" and to grant plaintiff Professor Samuels's motion for summary judgment on that claim, and otherwise affirmed, without costs.

All concur.

Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered November 23, 2020, modified, on the law, to deny the motion as to plaintiff Professor Herbert Samuels's breach of contract claim arising out of the "2001 Contract" and to grant plaintiff Professor Samuels's motion

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for summary judgment on that claim, and otherwise affirmed, without costs.

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AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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December 13, 2016

VIA ELECTRONIC AND SURFACE MAIL

Dear Concerned Tenured Faculty Members of the Tufts University School of Medicine:

This letter is in response to your request for a review of the "Tufts University School of Medicine Compensation Plan for Tenured Basic Science Faculty" and for comments on its conformance with AAUP-recommended standards. These standards have been formulated to protect academic freedom, tenure, and due process, the principles of which have been enunciated in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*. The 1940 *Statement* was jointly formulated by the AAUP and the Association of American Colleges and Universities and has been endorsed by more than 250 higher-education and scholarly organizations. Procedural standards derived from the 1940 *Statement* are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (also enclosed).

The compensation plan is in essence a post-tenure review program with two components: guidelines for the setting of base salaries and guidelines for adjustments to faculty appointments on the basis of performance reviews. The plan provides for the regular modification of faculty base salaries every three to four years and ties evaluation categories to targeted salaries. The targeted salaries are based on the annual salary survey of the American Association of Medical Colleges and range from the 75th percentile (+/- 10%) to 75% of the 25th percentile of that survey for northeast private medical schools. The plan further provides for adjustments to faculty appointments according to the following:

> A faculty member who is not actively engaged in peer-reviewed research, teaching, and service as defined in this Plan and sufficient to support a full time appointment will be advised by their chair that they are not meeting expectations. The faculty member will be advised of the need to meet institutional and departmental expectations and asked to engage in specific activities to meet those expectations. If the faculty member does not heed the chair's directive and/or does not meet expectations again in the next performance cycle, the chair may recommend a reduction in the faculty member's appointment commensurate with the deficiency in the faculty member's ability to meet expectations. In any case, faculty will be given at least a one-year notice of a possible reduction in appointment and a faculty member's appointment will not be reduced by more than 0.25 FTE per year and never lower than 0.50 FTE in total. A faculty member's FTE can be restored to 1.0 upon achieving the expectations outlined by their chair.

While the plan contains provisions for appeals of reductions in appointments, such appeals are to be reviewed by a committee of department chairs. The final decision regarding reductions in appointments is to be rendered by the dean.

The AAUP's position on post-tenure review is set forth in the attached *Post-Tenure Review: An AAUP Response*. The Association does not object to evaluation of tenured faculty members, nor does it consider tenure to be "an indefinite entitlement." The granting of tenure has never been seen as immunizing the tenured professor from reviews of performance after tenure has been granted. What matters is the actual nature of the review itself. In the AAUP's view, any systems to be developed for evaluation of tenured faculty members are best directed toward constructive measures for improvement. The Association emphasizes that no procedure for evaluation of faculty should be used to weaken or undermine the principles of academic freedom and tenure. The Association has cautioned particularly against allowing any general system of evaluation to be used as ground for dismissal or other disciplinary sanctions. The imposition of such sanctions is governed by other established procedures that provide the necessary safeguards of academic due process.

Post-Tenure Review sets forth "practical recommendations for faculty at institutions where post-tenure review is being considered or has been put into effect." The report emphasizes that when recurring evaluations reveal persistent and intractable problems with a faculty member's performance that call into question his or her ability to function in that position, then other possibilities, such as a mutually agreeable reassignment to other duties or separation, should be explored. If these are not practicable, or if no other solution acceptable to the parties can be found, then the administration should invoke peer consideration regarding any contemplated sanctions.

The report emphasizes that the standard for dismissal or other severe sanction has to remain that of adequate cause, and the mere fact of successive negative reviews does not in any way diminish the obligation of the institution to show such cause in a separate forum before an appropriately constituted hearing body of peers convened for that purpose. Evaluation records may be admissible but rebuttable as to accuracy. Even if they are accurate, the administration is still required to bear the burden of proof and demonstrate through an adversarial proceeding not only that the negative evaluations rest on fact, but also that the facts rise to the level of adequate cause for dismissal or other severe sanction. The faculty member must be afforded full procedural safeguards, including the opportunity to confront and cross-examine adverse witnesses.

Plainly, the unilateral imposition of a salary reduction or reduction in appointment status to less than full-time are severe sanctions. The 1940 *Statement*, in defining academic tenure, recognizes that assurance of continued salary is basic to tenure and thus to the academic freedom that tenure protects:

> Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligation to its students and to society.

Loss of salary or full-time appointment status certainly are a loss of economic security. Action to reduce a faculty member's salary or appointment status, if taken because of displeasure with the faculty member's performance or activities and designed to punish the individual and perhaps force a resignation, are tantamount to a severe sanction, subject to imposition only after the administration has demonstrated adequate cause through a duly constituted hearing and other requisites of academic due process. The Association's recommended procedures in such a case are set forth in Regulation 7a of our *Recommended Institutional Regulations*.

Should the administration, contrary to the above, have the ability to act selectively to reduce a faculty member's salary, without needing to establish cause under safeguards of academic due process, a significant underpinning for principles of academic freedom and tenure at that institution would be lacking. The opportunity to appeal the reduction in appointment status to a committee of department chairs is not an adequate substitute for the procedural safeguards outlined in Regulation 7a.

Consequently, we view the compensation plan as severely deficient relative to widely-observed principles of academic freedom, tenure, and due process.

Finally, *Post-Tenure Review* also addresses the role of the faculty in the development of post-tenure review policies. It observes that "post-tenure review must be developed and carried out by faculty," adding that "faculty representatives involved in the development of those procedures should be selected by the faculty according to procedures determined by the Faculty." It is our understanding that the process leading to the adoption of this plan only involved faculty members who had been appointed by the administration. Thus, the adoption of the compensation plan appears to fall short of generally-recognized principles of institutional governance.

I do hope that you find these comments useful and would be happy to discuss them further with you or other members of your campus community should questions arise.

Sincerely,

Hans-Joerg Tiede
Associate Secretary
Department of Academic Freedom, Tenure, and Governance

Enclosures

Part I ADMINISTRATION OF THE GOVERNMENT

Title XXI LABOR AND INDUSTRIES

Chapter 149 LABOR AND INDUSTRIES

Section 148 PAYMENT OF WAGES; COMMISSIONS; EXEMPTION BY CONTRACT; PERSONS DEEMED EMPLOYERS; PROVISION FOR CASHING CHECK OR DRAFT; VIOLATION OF STATUTE

Section 148. Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week, or in the case of an employee who has worked for a period of less than five days, hereinafter called a casual employee, shall, within seven days after the termination of such period, pay the wages earned by such casual employee during such period, but any employee leaving his employment shall be paid in full on the following regular pay day, and, in the absence of a regular pay day, on the following Saturday; and any employee discharged from such employment shall be paid in full on the day of his discharge, or in Boston as soon as the laws requiring pay rolls, bills and accounts to be certified shall have been complied with; and the commonwealth, its departments, officers, boards and

commissions shall so pay every mechanic, workman and laborer employed by it or them, and every person employed in any other capacity by it or them in any penal or charitable institution, and every county and city shall so pay every employee engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee engaged in its business if so required by him; but an employee absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand; provided, however, that the department of telecommunications and energy, after hearing, may authorize a railroad corporation or a parlor or sleeping car corporation to pay the wages of any of its employees less frequently than weekly, if such employees prefer less frequent payments, and if their interests and the interests of the public will not suffer thereby; and provided, further, that employees engaged in a bona fide executive, administrative or professional capacity as determined by the attorney general and employees whose salaries are regularly paid on a weekly basis or at a weekly rate for a work week of substantially the same number of hours from week to week may be paid bi-weekly or semi-monthly unless such employee elects at his own option to be paid monthly; and provided, further, that employees engaged in agricultural work may be paid their wages monthly; in either case, however, failure by a railroad corporation or a parlor or sleeping car corporation to pay its employees their wages as authorized by the said department, or by an employer of employees engaged in agricultural work to pay monthly the wages of his or her employees, shall be deemed a violation of this section; and provided, further, that an employer may make payment of wages prior to the time that they are required to be paid under the provisions of this section, and

such wages together with any wages already earned and due under this section, if any, may be paid weekly, bi-weekly, or semi-monthly to a salaried employee, but in no event shall wages remain unpaid by an employer for more than six days from the termination of the pay period in which such wages were earned by the employee. For the purposes of this section the words salaried employee shall mean any employee whose remuneration is on a weekly, bi-weekly, semi-monthly, monthly or annual basis, even though deductions or increases may be made in a particular pay period. The word "wages" shall include any holiday or vacation payments due an employee under an oral or written agreement. An employer, when paying an employee his wage, shall furnish to such employee a suitable pay slip, check stub or envelope showing the name of the employer, the name of the employee, the day, month, year, number of hours worked, and hourly rate, and the amounts of deductions or increases made for the pay period.

Compensation paid to public and non-public school teachers shall be deemed to be fully earned at the end of the school year, and proportionately earned during the school year; provided, however, that payment of such compensation may be deferred to the extent that equal payments may be established for a 12 month period including amounts payable in July and August subsequent to the end of the school year.

Every railroad corporation shall furnish each employee with a statement accompanying each payment of wages listing current accrued total earnings and taxes and shall also furnish said employee with each such payment a listing of his daily wages and the method used to compute such wages.

This section shall apply, so far as apt, to the payment of commissions when the amount of such commissions, less allowable or authorized deductions, has been definitely determined and has become due and payable to such employee, and commissions so determined and due such employees shall be subject to the provisions of section one hundred and fifty.

This section shall not apply to an employee of a hospital which is supported in part by contributions from the commonwealth or from any city or town, nor to an employee of an incorporated hospital which provides treatment to patients free of charge, or which is conducted as a public charity, unless such employee requests such hospital to pay him weekly. This section shall not apply to an employee of a co-operative association if he is a shareholder therein, unless he requests such association to pay him weekly, nor to casual employees as hereinbefore defined employed by the commonwealth or by any county, city or town.

No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty. The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section. Every public officer whose duty it is to pay money, approve, audit or verify pay rolls, or perform any other official act relative to payment of any public employees, shall be deemed to be an employer of such employees, and shall be responsible under this section for any failure to perform his official duty relative to the payment of their wages or salaries, unless he is prevented from performing the same through no fault on his part.

Any employer paying wages to an employee by check or draft shall provide for such employee such facilities for the cashing of such check or draft at a bank or elsewhere, without charge by deduction from the face amount thereof or otherwise, as shall be deemed by the attorney general to be reasonable. The state treasurer may in his discretion in writing exempt himself and any other public officer from the provisions of this paragraph.

An employer paying his employees on a weekly basis on July first, nineteen hundred and ninety-two shall, prior to paying said employees on a bi-weekly basis, provide each employee with written notice of such change at least ninety days in advance of the first such bi-weekly paycheck.

Whoever violates this section shall be punished or shall be subject to a civil citation or order as provided in section 27C.

SWEEZY v. NEW HAMPSHIRE

Supreme Court of the United States

March 5, 1957, Argued ; June 17, 1957, Decided

No. 175

Reporter

354 U.S. 234 *; 77 S. Ct. 1203 **; 1 L. Ed. 2d 1311 ***; 1957 U.S. LEXIS 655 ****

SWEEZY v. NEW HAMPSHIRE, BY WYMAN, ATTORNEY GENERAL

Prior History: [**1]** APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE.

Disposition: *100 N. H. 103, 121 A. 2d 783*, reversed.

Case Summary

Procedural Posture

The Supreme Court of New Hampshire affirmed a decision that held petitioner professor in contempt for failing to respond to certain questions propounded by respondent Attorney General in his investigation of the professor brought pursuant to the New Hampshire Subversive Activities Act of 1951, N.H. Rev. Stat. Ann., 1955, c. 588, §§ 1-16. The professor appealed.

Overview

Pursuant to the New Hampshire Subversive Activities Act of 1951, the Attorney General began investigating the professor for subversive behavior. The professor was summoned to testify before the Attorney General. The professor testified at length but refused to answer questions regarding his knowledge of the Progressive Party or of persons in that organization. The Attorney General filed a petition to compel the professor to respond to the questions. The district court granted such petition, but the professor maintained his refusal. The district court adjudged him in contempt, and the reviewing courts affirmed such decision. On appeal, the court found that the professor was improperly held in contempt for refusing to answer the questions. The professor's right to lecture and his right to associate with others were constitutionally protected freedoms that had been abridged through the Attorney General's investigation. The professor was improperly ordered to disclose the nature of his past expressions and associations because such order was an unconstitutional governmental interference in the professor's rights safeguarded by the *Bill of Rights* and the *Fourteenth Amendment*.

Outcome

The court reversed the decision because the Attorney General invaded the professor's constitutional rights of freedom of association and political expression.

Syllabus

1. This case was brought here on appeal under *28 U. S. C. § 1257 (2)*; but the appellant has failed to meet his burden of showing that jurisdiction by appeal was properly invoked. *Held*: The appeal is dismissed. Treating the papers as a petition for certiorari under *28 U. S. C. § 2103*, certiorari is granted. Pp. 235-236.

2. In an investigation conducted by a State Attorney General, acting on behalf of the State Legislature under a broad resolution directing him to determine whether there were "subversive persons" in the State and to recommend further legislation on that subject, appellant answered most questions asked him, including whether he was a Communist; but he refused to answer questions related to (1) the

contents of a lecture he had delivered at the State University, and (2) his knowledge of the Progressive Party of the State and its members. He did not plead his privilege against self-incrimination, but based his refusal to answer such questions on the grounds that they were not pertinent to the inquiry and violated his rights under the *First Amendment*. **[****2]** Persisting in his refusal when haled into a State Court and directed to answer, he was adjudged guilty of contempt. This judgment was affirmed by the State Supreme Court, which construed the term "subversive persons" broadly enough to include persons engaged in conduct only remotely related to actual subversion and done completely apart from any conscious intent to be a part of such activity. It also held that the need of the Legislature to be informed on the subject of self-preservation of government outweighed the deprivation of constitutional rights that occurred in the process. *Held*: On the record in this case, appellant's rights under the *Due Process Clause of the Fourteenth Amendment* were violated, and the judgment is reversed. Pp. 235-267.

For the opinions of the Justices constituting the majority of the Court, see:

Opinion of THE CHIEF JUSTICE, joined by MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE BRENNAN, p. 235.

Opinion of MR. JUSTICE FRANKFURTER, joined by MR. JUSTICE HARLAN, concurring in the result, *post*, p. 255.

For dissenting opinion of MR. JUSTICE CLARK, joined by MR. JUSTICE BURTON, see *post*, p. 267.

Counsel: Thomas I. Emerson argued the cause **[****3]** for appellant. With him on the brief was William L. Phinney.

Louis C. Wyman, Attorney General of New Hampshire, argued the cause for appellee. With him on the brief were Joseph F. Gall, Special Assistant to the Attorney General, and Elmer T. Bourque, Assistant Attorney General.

Judges: Warren, Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan; Whittaker took no part in the consideration or decision of this case.

Opinion by: WARREN

Opinion

[*235] [*1316] [**1204]** MR. CHIEF JUSTICE WARREN announced the judgment of the Court and delivered an opinion, in which MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE BRENNAN join.

[1A]

This case, like *Watkins* v. *United States*, *ante*, p. 178, brings before us a question concerning the constitutional limits of legislative inquiry. The investigation here was conducted under the aegis of a state legislature, rather than a House of Congress. This places the controversy in a slightly different setting from that in *Watkins*. The ultimate question here is whether the investigation deprived Sweezy of due process of law under the *Fourteenth Amendment*. For the reasons to be set out in this opinion, we conclude that the record in this case does not **[****4]** sustain the power of the State to compel **[***1317]** the disclosures that the witness refused to make.

[4]This case was brought here as an appeal under *28 U. S. C. § 1257 (2)*. Jurisdiction was alleged to rest upon contentions, rejected by the state courts, that a statute **[*236]** of New Hampshire is repugnant to the Constitution of the United States. We postponed a decision on the question of jurisdiction until consideration of the merits. *352 U.S. 812*.The parties neither briefed nor argued the jurisdictional question. The appellant has thus failed to meet his burden of showing that

jurisdiction by appeal was properly invoked. The appeal is therefore dismissed. Treating the appeal papers as a petition for writ of certiorari, under *28 U. S. C. § 2103*, the petition is granted. Cf. *Union National Bank v. Lamb, 337 U.S. 38, 39-40*.

The investigation in which petitioner was summoned to testify had its origins in a statute passed by the New Hampshire legislature in 1951. [1] It was a comprehensive scheme of regulation of subversive activities. There was a section defining criminal conduct in the nature of sedition. "Subversive organizations" **[****5]** were declared unlawful and ordered dissolved. "Subversive persons" were made ineligible for employment by the state government. Included in the disability were those employed as teachers or in other capacities by any public educational institution. A loyalty program was instituted to eliminate "subversive persons" among government personnel. All present employees, as well as candidates for elective office in the future, were required to make sworn statements that they were not "subversive persons."

In 1953, the legislature adopted a "Joint Resolution Relating to the Investigation of Subversive Activities." [2] It was resolved:

"That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive **[*237]** persons as defined in said act are presently located within this state. The attorney general is **[****6]** authorized to act upon his own motion and upon such information as in his judgment may be reasonable or reliable . . . .

. . . .

"The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular **[**1205]** session the results of this investigation, together with his recommendations, if any, for necessary legislation." [3]

Under state law, this was construed to constitute the Attorney General as a one-man legislative committee. [4] **[****8]** **[*238]** He was given the authority **[***1318]** to delegate any part of the investigation to any member of his staff. The legislature conferred upon the Attorney General the further authority to subpoena witnesses or documents. He did **[****7]** not have power to hold witnesses in contempt, however. In the event that coercive or punitive sanctions were needed, the Attorney General could invoke the aid of a State Superior Court which could find recalcitrant witnesses in contempt of court. [5]

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[1] N. H. Laws 1951, c. 193; now N. H. Rev. Stat. Ann., 1955, c. 588, §§ 1-16.

[2] N. H. Laws 1953, c. 307.

[3] The authority of the Attorney General was continued for another two-year period by N. H. Laws 1955, cc. 197, 340.

[4] "Having determined that an investigation should be conducted concerning a proper subject of action by it, the Legislature's choice of the Attorney General as its investigating committee, instead of a committee of its own members or a special board or commission, was not in and of itself determinative of the nature of the investigation. His position as the chief law enforcement officer of the State did not transform the inquiry which was otherwise legislative into executive action." *Nelson v. Wyman, 99 N. H. 33, 38, 105 A. 2d 756, 762-763*.

The Attorney General of New Hampshire is appointed to office by the Governor and the State Council, a group of five persons who share some of the executive responsibilities in the State Government. The principal duties of the Attorney General are set forth in N. H. Rev. Stat. Ann., 1955, c. 7, §§ 6-11. He represents the State in all cases before the State Supreme Court. He prosecutes all criminal cases in which the accused is charged with an offense punishable by twenty-five years in prison or more. All other criminal cases are under his general supervision. He gives opinions on questions of law to the legislature, or to state boards, departments, commissions, officers, etc., on questions relating to their official duties.

[5] "Whenever any official or board is given the power to summon witnesses and take testimony, but has not the power to punish for contempt, and any witness refuses to obey such summons, either as

Petitioner was summoned to appear before the Attorney General on two separate occasions. On January 5, 1954, petitioner testified at length upon his past conduct and associations. He denied that he had ever been a member of the Communist Party or that he had ever been part of any program to **[****9]** overthrow the government by force or violence. The interrogation ranged over many matters, from petitioner's World War II military service with the Office of Strategic Services to his sponsorship, in 1949, of the Scientific and Cultural Conference for World Peace, at which he spoke.

During the course of the inquiry, petitioner declined to answer several questions. His reasons for doing so were given in a statement he read to the Committee at **[*239]** the outset of the hearing. [6] **[****10]** He declared he would **[***1319]** not answer those questions which were not pertinent to

to his appearance or as to the production of things specified in the summons, or refuses to testify or to answer any question, a petition for an order to compel him to testify or his compliance with the summons may be filed in the superior court, or with some justice thereof." N. H. Rev. Stat. Ann., 1955, c. 491, § 19. "Upon such petition the court or justice shall have authority to proceed in the matter as though the original proceeding had been in the court, and may make orders and impose penalties accordingly." *Id.*, § 20. See *State v. Uphaus, 100 N. H. 1, 116 A. 2d 887*.

[6] "Those called to testify before this and other similar investigations can be classified in three categories.

"First there are Communists and those who have reason to believe that even if they are not Communists they have been accused of being and are in danger of harassment and prosecution.

"Second, there are those who approve of the purposes and methods of these investigations.

"Third, there are those who are not Communists and do not believe they are in danger of being prosecuted, but who yet deeply disapprove of the purposes and methods of these investigations.

"The first group will naturally, and I think wholly justifiably, plead the constitutional privilege of not being witnesses against themselves.

"The second group will equally naturally be cooperative witnesses.

"The third group is faced with an extremely difficult dilemma. I know because I belong to this third group, and I have been struggling with its problems for many weeks now. I would like to explain what the nature of that dilemma is. I think it is important that both those conducting these inquiries and the public should understand.

"It is often said: If a person is not a Communist and has nothing to fear, why should he not answer whatever questions are put to him and be done with it? The answer, of course, is that some of us believe these investigations are evil and dangerous, and we do not want to give our approval to them, either tacitly or otherwise. On the contrary, we want to oppose them to the best of our ability and persuade others to do likewise, with the hope of eventually abolishing them altogether.

"Our reasons for opposing these investigations are not captious or trivial. They have deep roots in principle and conscience. Let me explain with reference to the present New Hampshire investigation. The official purpose of the inquiry is to uncover and lay the basis for the prosecution of persons who in one way or another promote the forcible overthrow of constitutional forms of government. Leaving aside the question of the constitutionality of the investigation, which is now before the courts, I think it must be plain to any reasonable person who is at all well informed about conditions in New Hampshire today that strict adherence to this purpose would leave little room for investigation. It is obvious enough that there are few radicals or dissenters of any kind in New Hampshire; and if there are any who advocate use of force and violence, they must be isolated crackpots who are no danger to anyone, least of all to the constitutional form of government of state and nation. The Attorney General should be able to check these facts quickly and issue a report satisfying the mandate laid upon him by the legislature.

"But this is not what he has done. We do not know the whole story, but enough has come out to show that the Attorney General has issued a considerable number of subpoenas and has held hearings in various parts of the state. And so far as the available information allows us to judge, most of those subpoenaed have fallen into one or both of two groups: first professors at Dartmouth and the University of New Hampshire who have gained a reputation for liberal or otherwise unorthodox views, and, second, people who have been active in the Progressive Party. It should be specially noted that whatever may be thought of the Progressive Party in any other respect, it was certainly not devoted to violent overthrow of constitutional forms of government but on the contrary to effecting reforms through the very democratic procedures which are the essence of constitutional forms of government.

"The pattern I have described is no accident. Whatever their official purpose, these investigations always end up by inquiring into the politics, ideas, and beliefs of people who hold what are, for the time being, unpopular views. The federal House Committee on Un-American Activities, for example, is supposed to investigate various kinds of propaganda and has no other mandate whatever. Over the years, however, it has spent almost no time investigating propaganda and has devoted almost all of its energies to 'exposing' people and their ideas, their affiliations, their associations. Similarly, this New Hampshire investigation is supposed to be concerned with violent overthrow of government, but it is actually turning out to be concerned with what few manifestations of political dissent have made themselves felt in the state in recent years.

"If all this is so, and if the very first principle of the American constitutional form of government is political freedom -- which I

[1206]** the **[*240]** subject under inquiry as well as those which transgress the limitations of the **[***1320]** *First Amendment*. In keeping with **[*241]** this stand, he refused to disclose his knowledge of the Progressive Party in New Hampshire or of persons with **[*242]** **[**1207]** whom he was acquainted in that organization. [7] No action was taken by the Attorney General to compel answers to these questions.

The Attorney General again summoned petitioner to testify on June 3, 1954. There was more interrogation about the witness' prior contacts with Communists. The Attorney General lays great stress upon an article which petitioner had co-authored. It deplored the use of violence by the United States **[**1208]** and other capitalist countries in attempting to preserve a social order which the writers thought must inevitably fall. This resistance, the article **[*243]** continued, will be met by violence from the oncoming socialism, violence which is to **[****11]** be less condemned morally than that of capitalism since its purpose is to create a "truly human society." Petitioner affirmed that he styled himself a "classical Marxist" and a "socialist" and that the article expressed his

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take to include freedoms of speech, press, assembly, and association -- then I do not see how it can be denied that these investigations are a grave danger to all that Americans have always claimed to cherish. No rights are genuine if a person, for exercising them, can be hauled up before some tribunal and forced under penalties of perjury and contempt to account for his ideas and conduct.

"Let us now return to the problem of the witness who would have nothing to fear from being what is nowadays styled a 'friendly' witness, but who feels deeply that to follow such a course would be a betrayal of his principles and repugnant to his conscience. What other courses are open to him?

"He can claim the privilege not to be a witness against himself and thus avoid a hateful inquisition. I respect the decision of those who elect to take this course. My own reason for rejecting it is that, with public opinion in its present state, the exercise of the privilege is almost certain to be widely misinterpreted. One of the noblest and most precious guarantees of freedom, won in the course of bitter struggles and terrible suffering, has been distorted in our own day to mean a confession of guilt, the more sinister because undefined and indeed undefinable. It is unfortunate, but true, that the public at large has accepted this distortion and will scarcely listen to those who have invoked the privilege.

"Alternatively, the witness can seek to uphold his principles and maintain his integrity, not by claiming the protection of the *Fifth Amendment* (or the Fifteenth Article of the New Hampshire *Bill of Rights*), but by contesting the legitimacy of offensive questions on other constitutional and legal grounds.

"Just how far the *First Amendment* limits the right of legislative inquiry has not been settled. The Supreme Court of the United States is at this very moment considering a case (the *Emspak* case) which may do much to settle the question. But even before the Court has handed down its decision in the *Emspak* case, it is quite certain that the *First Amendment* does place *some* limitations on the power of investigation, and it is always open to a witness to challenge a question on the ground that it transgresses these limitations and, if necessary, to take the issue to the courts for decision.

"Moreover, a witness may not be required to answer questions unless they are 'pertinent to the matter under inquiry' (the words are those of the United States Supreme Court).

"What is the 'matter under inquiry' in the present investigation? According to the Act of the New Hampshire legislature directing the investigation, its purpose is twofold: (1) 'to make full and complete investigation with respect to violations of the subversive activities act of 1951,' and (2) 'to determine whether subversive persons as defined in said act are presently located within this state.'

"I have studied the subversive activities act of 1951 with care, and I am glad to volunteer the information that I have absolutely no knowledge of any violations of any of its provisions; further, that I have no knowledge of subversive persons presently located within the state.

"That these statements may carry full conviction, I am prepared to answer certain questions about myself, though in doing so I do not mean to concede the right to ask them. I am also prepared to discuss my views relating to the use of force and violence to overthrow constitutional forms of government.

"But I shall respectfully decline to answer questions concerning ideas, beliefs, and associations which could not possibly be pertinent to the matter here under inquiry and/or which seem to me to invade the freedoms guaranteed by the *First Amendment to the United States Constitution* (which, of course, applies equally to the several states)."

[7] The Progressive Party offered a slate of candidates for national office in the 1948 presidential election. Henry A. Wallace, former Vice President of the United States, was the party's selection for the presidency. Glen Taylor, former United States Senator, was the vice-presidential nominee of the party. Nationwide, the party received a popular vote of 1,156,103. Of this total, 1,970 votes for Progressive Party candidates were cast in New Hampshire. Statistics of the Presidential and Congressional Election of November 2, 1948, pp. 24, 48-49.

continuing opinion.

Again, at the second hearing, the Attorney General asked, and petitioner refused to answer, questions concerning the Progressive Party, and its predecessor, the Progressive Citizens of America. Those were:

"Was she, Nancy Sweezy, your wife, active in the formation of the Progressive Citizens of America?"

"Was Nancy Sweezy then working with individuals who were then members of the Communist Party?"

"Was Charles Beebe active in **[***1321]** forming the Progressive Citizens of America?"

"Was Charles Beebe active in the Progressive Party in New Hampshire?"

"Did he work with your present wife -- Did Charles Beebe work with your present wife in 1947?"

"Did it [a meeting at the home of Abraham Walenko in Weare during 1948] have anything to do with the Progressive Party?"

The Attorney General also turned to a subject which had not yet occurred at the time of the first hearing. On March 22, 1954, petitioner had delivered a lecture to a class of 100 **[****12]** students in the humanities course at the University of New Hampshire. This talk was given at the invitation of the faculty teaching that course. Petitioner had addressed the class upon such invitations in the two preceding years as well. He declined to answer the following questions:

"What was the subject of your lecture?"

"Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?"

[*244] "Did you advocate Marxism at that time?"

"Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?"

"Did you in this last lecture on March 22 or in any of the former lectures espouse the theory of dialectical materialism?"

Distinct from the categories of questions about the Progressive Party and the lectures was one question about petitioner's opinions. He was asked: "Do you believe in Communism?" He had already testified that he had never been a member of the Communist Party, but he refused to answer this or any other question concerning opinion or belief.

Petitioner adhered in this second proceeding to the same reasons for not answering he had given in **[****13]** his statement at the first hearing. He maintained that the questions were not pertinent to the matter under inquiry and that they infringed upon an area protected under the *First Amendment*.

Following the hearings, the Attorney General petitioned the Superior Court of Merrimack County, New Hampshire, setting forth the circumstances of petitioner's appearance before the Committee and his refusal to answer certain questions. [8] The petition prayed that the court propound the questions to the witness. After hearing argument, the court ruled that the questions set out **[**1209]** above were pertinent. [9] Petitioner was called as a witness by the court and persisted in his refusal to answer for constitutional reasons. The court adjudged him in contempt **[*245]** and ordered him committed to the county jail until purged of the contempt.

[**14]** The New Hampshire Supreme Court affirmed. *100 N. H. 103, 121 A. 2d 783*. Its opinion discusses only two classes of questions addressed to the witness: those dealing with the lectures and those about the Progressive Party and the Progressive Citizens of America. No mention

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[8] See note 5, *supra*.

[9] The court made a general ruling that questions concerning the opinions or beliefs of the witness were not pertinent. Nevertheless, it did propound to the witness the one question about his belief in Communism.

is made of the single question concerning petitioner's belief in Communism. In view of what we hold to be the controlling issue of **[***1322]** the case, however, it is unnecessary to resolve affirmatively that that particular question was or was not included in the decision by the State Supreme Court.

[5] [6] [7] [8]There is no doubt that legislative investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals. It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. Responsibility for the proper conduct of investigations rests, of course, upon the legislature **[****15]** itself. If that assembly chooses to authorize inquiries on its behalf by a legislatively created committee, that basic responsibility carries forward to include the duty of adequate supervision of the actions of the committee. This safeguard can be nullified when a committee is invested with a broad and ill-defined jurisdiction. The authorizing resolution thus becomes especially significant in that it reveals the amount of discretion that has been conferred upon the committee.

[9]In this case, the investigation is governed by provisions in the New Hampshire Subversive Activities Act of **[*246]** 1951. [10] The Attorney General was instructed by the legislature to look into violations of that Act. In addition, he was given the far more sweeping mandate to find out if there were subversive persons, as defined in that Act, present in New Hampshire. That statute, therefore, measures the breadth and scope of the investigation before us.

"Subversive persons" are defined in many gradations of **[****16]** conduct. Our interest is in the minimal requirements of that definition since they will outline its reach. According to the statute, a person is a "subversive person" if he, by any means, aids in the commission of any act intended to assist in the alteration of the constitutional form of government by force or violence. [11] The possible remoteness from armed insurrection of conduct that could satisfy these criteria is obvious from the language. The statute goes well beyond those who are engaged in efforts designed to alter the form of government **[**1210]** by force or violence. The statute declares, in effect, that the assistant of an assistant is caught up in the definition. This chain of conduct attains increased significance in light of the lack of a necessary element of guilty knowledge in either stage of assistants. The State Supreme Court has held that the definition encompasses persons engaged in the specified conduct ". . . whether or not done 'knowingly and willfully . . . .'" *Nelson v. Wyman, 99 N. H. 33, 39, 105 A. 2d 756, 763*. **[*247]** The potential sweep of this definition extends to conduct which is only remotely related to **[****17]** **[***1323]** actual subversion and which is done completely free of any conscious intent to be a part of such activity.

The statute's definition of "subversive organizations" is also broad. An association is said to be any group of persons, whether temporarily or permanently associated together, for joint action or advancement of views on any subject. [12] An

[10] See note 1, *supra*.

[11] "'Subversive person' means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization." N. H. Rev. Stat. Ann., 1955, c. 588, § 1.

[12] "For the purpose of this chapter 'organization' means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any

organization is deemed subversive if **[****18]** it has a purpose to abet, advise or teach activities intended to assist in the alteration of the constitutional form of government by force or violence.

[10]The situation before us is in many respects **[****19]** analogous to that in *Wieman v. Updegraff, 344 U.S. 183*. The Court held there that a loyalty oath prescribed by the State of Oklahoma for all its officers and employees violated the requirements of the Due Process Clause because it entailed sanctions for membership in subversive organizations without scienter. A State cannot, in attempting to bar disloyal individuals from its employ, exclude persons solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they belonged. The Court said:

"There can be no dispute about the consequences visited upon a person excluded from public employment **[*248]** on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy.' Yet under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression **[****20]** and controversy at one of its chief sources." *344 U.S., at 190-191*.

The sanction emanating from legislative investigations is of a different kind than loss of employment. But the stain of the stamp of disloyalty is just as deep. The inhibiting effect in the flow of democratic expression and controversy upon those directly affected and those touched more subtly is equally grave. Yet here, as in *Wieman*, the program for the rooting out of subversion is drawn without regard to the presence or absence of guilty knowledge in those affected.

[1211]** The nature of the investigation which the Attorney General was authorized to conduct is revealed by this case. He delved minutely into the past conduct of petitioner, thereby making his private life a matter of public record. The questioning indicates that the investigators had thoroughly prepared for the interview and were not acquiring new information as much as corroborating data already in their possession. On the great majority of questions, **[***1324]** the witness was cooperative, even though he made clear his opinion that the interrogation was unjustified and unconstitutional. Two subjects arose upon which **[****21]** petitioner refused to answer: his lectures at the University of New Hampshire, and his knowledge of the Progressive Party and its adherents.

[*249] The state courts upheld the attempt to investigate the academic subject on the ground that it might indicate whether petitioner was a "subversive person." What he taught the class at a state university was found relevant to the character of the teacher. The State Supreme Court carefully excluded the possibility that the inquiry was sustainable because of the state interest in the state university. There was no warrant in the authorizing resolution for that. *100 N. H., at 110, 121 A. 2d, at 789-790*. The sole basis for the inquiry was to scrutinize the teacher as a person, and the inquiry must stand or fall on that basis.

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group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"'Subversive organization' means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence." *Ibid.*

The interrogation on the subject of the Progressive Party was deemed to come within the Attorney General's mandate because that party might have been shown to be a "subversive organization." The State Supreme Court held that the ". . . questions called for answers concerning the membership or participation of named persons in the Progressive Party which, if given, would aid the Attorney **[****22]** General in determining whether that party and its predecessor are or were subversive organizations." *100 N. H., at 112, 121 A. 2d, at 791*.

The New Hampshire court concluded that the ". . . right to lecture and the right to associate with others for a common purpose, be it political or otherwise, are individual liberties guaranteed to every citizen by the State and Federal Constitutions but are not absolute rights . . . . The inquiries authorized by the Legislature in connection with this investigation concerning the contents of the lecture and the membership, purposes and activities of the Progressive Party undoubtedly interfered with the defendant's free exercise of those liberties." *100 N. H., at 113, 121 A. 2d, at 791-792*.

[11][2A]The State Supreme Court thus conceded without extended discussion that petitioner's right to lecture and his right to associate with others were constitutionally **[*250]** protected freedoms which had been abridged through this investigation. These conclusions could not be seriously debated. Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and **[****23]** associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the *Bill of Rights* and the *Fourteenth Amendment*. We believe that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression -- areas in which government should be extremely reticent to tread.

[12]The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot **[**1212]** yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship **[***1325]** cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

[13] [14]Equally **[****24]** manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the *First Amendment* of the *Bill of Rights*. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political **[*251]** ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.

Notwithstanding the undeniable importance of freedom in the areas, the Supreme Court of New Hampshire did not consider that the abridgment of petitioner's rights under the Constitution **[****25]** vitiated the investigation. In the view of that court,

"the answer lies in a determination of whether the object of the legislative investigation under consideration is such as to justify the restriction thereby imposed upon the defendant's liberties." *100 N. H., at 113-114, 121 A. 2d, at 791-792*. It found such justification in the legislature's judgment, expressed by its authorizing resolution, that there exists a potential menace from those who would overthrow the government by force and violence. That court concluded that the need for the legislature to be informed on so elemental a subject as the self-preservation of government outweighed the deprivation of constitutional rights that occurred in the process.

We do not now conceive of any circumstance wherein a state interest would justify infringement of rights in these fields. But we do not need to reach such fundamental questions of state power to decide this case. The State Supreme Court itself recognized that there was a weakness in its conclusion that the menace of forcible overthrow of the government justified sacrificing constitutional rights. There was a missing link in the chain of **[****26]** reasoning. The syllogism was not complete. There was nothing to connect the questioning of petitioner with this fundamental interest of the State. Petitioner had been **[*252]** interrogated by a one-man legislative committee, not by the legislature itself. The relationship of the committee to the full assembly is vital, therefore, as revealing the relationship of the questioning to the state interest.

In light of this, the state court emphasized a factor in the authorizing resolution which confined the inquiries which the Attorney General might undertake to the object of the investigation. That limitation was thought to stem from the authorizing resolution's condition precedent to the institution of any inquiry. The New Hampshire legislature specified that the Attorney General should act only when he had information which ". . . in his judgment may be reasonable or reliable." **[***1326]** The state court construed this to mean that the Attorney General must have something like probable cause for conducting a particular investigation. It is not likely that this device would prove an adequate safeguard against unwarranted **[**1213]** inquiries. The legislature has specified that **[****27]** the determination of the necessity for inquiry shall be left in the judgment of the investigator. In this case, the record does not reveal what reasonable or reliable information led the Attorney General to question petitioner. The state court relied upon the Attorney General's description of prior information that had come into his possession. [13]

[**28]** **[*253]** The respective roles of the legislature and the investigator thus revealed are of considerable significance to the issue before us. It is eminently clear that the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been given such a sweeping and uncertain mandate that it is his

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[13] The State Supreme Court illustrated the "reasonable or reliable" information underlying the inquiries on the Progressive Party by quoting from a remark made by the Attorney General at the hearing in answer to petitioner's objection to a line of questions. The Attorney General had declared that he had ". . . considerable sworn testimony . . . to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party." *100 N. H., at 111, 121 A. 2d, at 790-791*. None of this testimony is a part of the record in this case. Its existence and weight were not independently reviewed by the state courts.

The court did not point to anything that supported the questioning on the subject of the lecture. It stated that the Attorney General could inquire about lectures only if he ". . . possesses reasonable or reliable information indicating that the violent overthrow of existing government may have been advocated or taught, either 'knowingly and wilfully' or not." *100 N. H., at 110, 121 A. 2d, at 789-790*. What, if anything, indicated that petitioner knowingly or innocently advocated or taught violent overthrow of existing government does not appear. At one point in the hearing, the Attorney General said to petitioner: "I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. 'His talk this time was on the inevitability of the Socialist program. It was a glossed-over interpretation of the materialist dialectic.'" R. 107. The court did not cite this statement.

decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which petitioner was interrogated.

Instead of making known the nature of the data it desired, the legislature has insulated itself from those witnesses whose rights may be vitally affected by the investigation. Incorporating by reference provisions from its subversive activities act, it has told the Attorney General, in effect to screen the citizenry of New Hampshire to bring to light anyone who fits into the expansive definitions.

Within the very broad area thus committed to the discretion of the Attorney General **[****29]** there may be many facts **[*254]** which the legislature might find useful. There would also be a great deal of data which that assembly would not want or need. In the classes of information that the legislature might deem it desirable to have, there will be some which it could not validly acquire because of the effect upon the constitutional rights of individual citizens. **[***1327]** Separating the wheat from the chaff, from the standpoint of the legislature's object, is the legislature's responsibility because it alone can make that judgment. In this case, the New Hampshire legislature has delegated that task to the Attorney General.

As a result, neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed **[**1214]** when it initiated this inquiry. The judiciary are thus placed in an untenable position. Lacking even the elementary fact that the legislature wants certain questions answered and recognizing that petitioner's constitutional rights are in jeopardy, we are asked to approve or disapprove his incarceration for contempt.

[15A] [16] [17]In our view, the answer is **[****30]** clear. No one would deny that the infringement of constitutional rights of individuals would violate the guarantee of due process where no state interest underlies the state action. Thus, if the Attorney General's interrogation of petitioner were in fact wholly unrelated to the object of the legislature in authorizing the inquiry, the Due Process Clause would preclude the endangering of constitutional liberties. We believe that an equivalent situation is presented in this case. The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with constitutional rights, **[*255]** was not in accordance with the due process requirements of the *Fourteenth Amendment*.

[3A]

The conclusion that we have reached in this case is not grounded upon the doctrine of separation of powers. In the Federal Government, it is clear that the Constitution has conferred the powers of government upon three major branches: the Executive, the Legislative and the Judicial. No contention has been made by petitioner that **[****31]** the New Hampshire legislature, by this investigation, arrogated to itself executive or judicial powers. We accept the finding of the State Supreme Court that the employment of the Attorney General as the investigating committee does not alter the legislative nature of the proceedings. Moreover, this Court has held that the concept of separation of powers embodied in the United States Constitution is not mandatory in state governments. *Dreyer v. Illinois, 187 U.S. 71*; but cf. *Tenney v. Brandhove, 341 U.S. 367, 378*. Our conclusion does rest upon a separation of the power of a state legislature to conduct investigations from the responsibility to direct the use of that power insofar as that separation causes a deprivation of the constitutional rights of individuals and a denial of due process of law.

The judgment of the Supreme Court of New Hampshire is

Reversed.

MR. JUSTICE WHITTAKER took no part in the consideration or decision of this case.

Concur by: FRANKFURTER

Concur

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE HARLAN joins, concurring in the result.

For me this is a very different case from *Watkins* v. *United States, ante*, p. 178. This **[****32]** case comes to us solely through the limited power to review the action of the **[*256]** States **[***1328]** conferred upon the Court by the *Fourteenth Amendment*. Petitioner claims that respect for liberties guaranteed by the Due Process Clause of that Amendment precludes the State of New Hampshire from compelling him to answer certain questions put to him by the investigating arm of its legislature. Ours is the narrowly circumscribed but exceedingly difficult task of making the final judicial accommodation between the competing weighty claims that underlie all such questions of due process.

In assessing the claim of the State of New Hampshire to the information denied it by petitioner, we cannot concern ourselves with the fact that New Hampshire chose to make its Attorney General in effect a standing committee of its legislature for the purpose of investigating the extent of "subversive" activities within its bounds. The case **[**1215]** must be judged as though the whole body of the legislature had demanded the information of petitioner. It would make the deepest inroads upon our federal system for this Court now to hold that it can determine the appropriate distribution of powers **[****33]** and their delegation within the forty-eight States. As the earlier Mr. Justice Harlan said for a unanimous Court in *Dreyer v. Illinois, 187 U.S. 71, 84*:

[3B]

"Whether the legislative, executive and judicial powers of a State shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the State. And its determination one way or the other cannot be an element in the inquiry whether the due process of law prescribed by the *Fourteenth Amendment* has been respected by the State or its representatives when dealing with matters involving life or liberty."

[*257] [18]Whether the state legislature should operate largely by committees, as does the Congress, or whether committees should be the exception, as is true of the House of Commons, whether the legislature should have two chambers or only one, as in Nebraska, whether the State's chief executive should have the pardoning power, whether the State's judicial branch must provide trial by jury, are all matters beyond **[****34]** the reviewing powers of this Court. Similarly, whether the Attorney General of New Hampshire acted within the scope of the authority given him by the state legislature is a matter for the decision of the courts of that State, as it is for the federal courts to determine whether an agency to which Congress has delegated power has acted within the confines of its mandate. See *United States v. Rumely, 345 U.S. 41*. Sanction of the delegation rests with the New Hampshire Supreme Court, and its validation in *Nelson v. Wyman, 99 N. H. 33, 105 A. 2d 756*, is binding here.

Pursuant to an investigation of subversive activities authorized by a joint resolution of both houses of

the New Hampshire Legislature, the State Attorney General subpoenaed petitioner before him on January 8, 1954, for extensive questioning. Among the matters about which petitioner was questioned were: details of his career and personal life, whether he was then or ever had been a member of the Communist Party, whether he had ever attended its meetings, whether he had ever attended meetings that he knew **[***1329]** were also attended by Party members, whether **[****35]** he knew any Communists in or out of the State, whether he knew named persons with alleged connections with organizations either on the United States Attorney General's list or cited by the Un-American Activities Committee of the United States House of Representatives or had ever attended meetings with them, whether he had ever taught or supported the **[*258]** overthrow of the State by force or violence or had ever known or assisted any persons or groups that had done so, whether he had ever been connected with organizations on the Attorney General's list, whether he had supported or written in behalf of a variety of allegedly subversive, named causes, conferences, periodicals, petitions, and attempts to raise funds for the legal defense of certain persons, whether he knew about the Progressive Party, what positions he had held in it, whether he had been a candidate for Presidential Elector for that Party, whether certain persons were in that Party, whether Communists had influenced or been members of the Progressive Party, whether he had sponsored activities in behalf of the candidacy of Henry A. Wallace, whether he advocated replacing the capitalist system with **[**1216]** another **[****36]** economic system, whether his conception of socialism involved force and violence, whether by his writings and actions he had ever attempted to advance the Soviet Union's "propaganda line," whether he had ever attended meetings of the Liberal Club at the University of New Hampshire, whether the magazine of which he was co-editor was "a Communist-line publication," and whether he knew named persons.

Petitioner answered most of these questions, making it very plain that he had never been a Communist, never taught violent overthrow of the Government, never knowingly associated with Communists in the State, but was a socialist believer in peaceful change who had at one time belonged to certain organizations on the list of the United States Attorney General (which did not include the Progressive Party) or cited by the House Un-American Activities Committee. He declined to answer as irrelevant or violative of free speech guarantees certain questions about the Progressive Party and whether he knew particular persons. He stated repeatedly, however, that **[*259]** he had no knowledge of Communists or of Communist influence in the Progressive Party, and he testified that he had been a candidate **[****37]** for that Party, signing the required loyalty oath, and that he did not know whether an alleged Communist leader was active in the Progressive Party.

Despite the exhaustive scope of this inquiry, the Attorney General again subpoenaed petitioner to testify on June 3, 1954, and the interrogation was similarly sweeping. Petitioner again answered virtually all questions, including those concerning the relationship of named persons to the Communist Party or other causes deemed subversive under state laws, alleged Communist influence on all organizations with which he had been connected including the Progressive Party, and his own participation in organizations other than the Progressive Party and its antecedent, the Progressive Citizens of America. He refused, however, to answer certain questions regarding (1) a lecture given by him at the University of New Hampshire, (2) activities of himself and others in the Progressive political organizations, and (3) "opinions **[***1330]** and beliefs," invoking the constitutional guarantees of free speech.

The Attorney General then petitioned the Superior Court to order petitioner to answer questions in these categories. The court ruled that petitioner **[****38]** had to answer those questions

pertaining to the lectures and to the Progressive Party and its predecessor but not those otherwise pertaining to "opinions and beliefs." Upon petitioner's refusal to answer the questions sanctioned by the court, he was found in contempt of court and ordered committed to the county jail until purged of contempt.

The Supreme Court of New Hampshire affirmed the order of the Superior Court. It held that the questions at issue were relevant and that no constitutional provision permitted petitioner to frustrate the State's demands. *100 N. H. 103, 121 A. 2d 783*.

[*260] The questions that petitioner refused to answer regarding the university lecture, the third given by him in three years at the invitation of the faculty for humanities, were:

"What was the subject of your lecture?"

"Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?"

"Did you advocate Marxism at that time?"

"Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?"

"Did you in this last lecture on March 22 or in any of **[****39]** the former **[**1217]** lectures espouse the theory of dialectical materialism?"

"I have in the file here a statement from a person who attended your class, and I will read it in part because I don't want you to think I am just fishing. 'His talk this time was on the inevitability of the Socialist program. It was a glossed-over interpretation of the materialist dialectic.' Now, again I ask you the original question."

In response to the first question of this series, petitioner had said at the hearing:

"I would like to say one thing in this connection, Mr. Wyman. I stated under oath at my last appearance that, and I now repeat it, that I do not advocate or in any way further the aim of overthrowing constitutional government by force and violence. I did not so advocate in the lecture I gave at the University of New Hampshire. In fact I have never at any time so advocated in a lecture anywhere. Aside from that I have nothing I want to say about the lecture in question."

The New Hampshire Supreme Court, although recognizing that such inquiries "undoubtedly interfered with **[*261]** the defendant's free exercise" of his constitutionally guaranteed right to lecture, justified the **[****40]** interference on the ground that it would occur "in the limited area in which the legislative committee may reasonably believe that the overthrow of existing government by force and violence is being or has been taught, advocated or planned, an area in which the interest of the State justifies this intrusion upon civil liberties." *100 N. H., at 113, 114, 121 A. 2d, at 792*. According to the court, the facts that made reasonable the Committee's belief that petitioner had taught violent overthrow in his lecture were that he was a Socialist with a record of affiliation with groups cited by the Attorney General of the United States or the House Un-American Activities Committee and that he was co-editor of an article stating that, although the authors hated violence, it was less to be deplored when used by the Soviet **[***1331]** Union than by capitalist countries.

[19]When weighed against the grave harm resulting from governmental intrusion into the intellectual life of a university, such justification for compelling a witness to discuss the contents of his lecture appears grossly inadequate. Particularly is this so where the witness has sworn that neither in the **[****41]** lecture nor at any other time did he ever advocate overthrowing the Government by force and violence.

[1B]

Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. **[*262]** For society's good -- if understanding be an essential need of society -- inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling.

These pages need not be burdened with proof, **[****42]** based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual **[**1218]** life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor. One need only refer to the address of T. H. Huxley at the opening of Johns Hopkins University, the Annual Reports of President A. Lawrence Lowell of Harvard, the Reports of the University Grants Committee in Great Britain, as illustrative items in a vast body of literature. Suffice it to quote the latest expression on this subject. It is also perhaps the most poignant because its plea on behalf of continuing the free spirit of the open universities of South Africa has gone unheeded.

"In a university knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, **[****43]** its ideal being the ideal of Socrates -- 'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant **[*263]** to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.

. . . .

"Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary **[***1332]** for creative work in the arts which, equally with scientific research, is the concern of the university.

. . . .

". . . It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university -- to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." The Open Universities **[****44]** in South Africa 10-12. (A statement of a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand, including A. v. d. S. Centlivres and Richard Feetham, as Chancellors of the respective universities. [1])

[1] The Hon. A. v. d. S. Centlivres only recently retired as Chief Justice of South Africa, and the Hon. Richard Feetham is also an eminent, retired South African judge.

[20]I do not suggest that what New Hampshire has here sanctioned bears any resemblance to the policy against which this South African remonstrance was directed. I do say that in these matters of the spirit inroads on legitimacy must be resisted at their incipiency. This kind of evil grows by what it is allowed to feed on. The **[*264]** admonition of this Court in another context is applicable here. "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight **[****45]** deviations from legal modes of procedure." *Boyd v. United States, 116 U.S. 616, 635*.

Petitioner stated, in response to questions at the hearing, that he did not know of any Communist interest in, connection with, influence over, activity in, **[**1219]** or manipulation of the Progressive Party. He refused to answer, despite court order, the following questions on the ground that, by inquiring into the activities of a lawful political organization, they infringed upon the inviolability of the right to privacy in his political thoughts, actions and associations:

"Was she, Nancy Sweezy, your wife, active in the formation of the Progressive Citizens of America?"

"Was Nancy Sweezy then working with individuals who were then members of the Communist Party?" [2]

"Was Charles Beebe active in forming the Progressive Citizens of America?"

"Did he work with your present wife -- Did Charles Beebe work with your present wife in 1947?"

"Did it [a meeting at the home of one Abraham Walenko] have anything to do with the Progressive Party?"

[**46]** **[*265]** [2B]The Supreme Court of New Hampshire justified this intrusion upon his freedom on the same basis that it upheld questioning about the university lecture, namely, that the restriction was limited to situations where the Committee had reason to believe that violent overthrow of the **[***1333]** Government was being advocated or planned. It ruled:

". . . That he [the Attorney General] did possess information which was sufficient to reasonably warrant inquiry concerning the Progressive Party is evident from his statement made during the hearings held before him that 'considerable sworn testimony has been given in this investigation to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party.'" *100 N. H., at 111, 121 A. 2d, at 790*.

[21]For a citizen to be made to forego even a part of so basic a liberty as his political autonomy, the subordinating interest of the State must be compelling. Inquiry pursued in safeguarding a State's security against threatened force and **[****47]** violence cannot be shut off by mere disclaimer, though of course a relevant claim may be made to the privilege against self-incrimination. (The New Hampshire Constitution guarantees this privilege.) But the inviolability of privacy belonging to a citizen's political loyalties has so overwhelming an importance to the well-being of

[2] Inclusion of this question among the unanswered questions appears to have been an oversight in view of the fact that petitioner attempted to answer it at the hearing by stating that he had never to his knowledge known members of the Communist Party in New Hampshire. In any event, petitioner's brief states that he is willing to repeat the answer to this question if the Attorney General so desires. This is consistent with his demonstrated willingness to answer all inquiries regarding the Communist Party, including its relation to the Progressive Party.

our kind of society that it cannot be constitutionally encroached upon on the basis of so meagre a countervailing interest of the State as may be argumentatively found in the remote, shadowy threat to the security of New Hampshire allegedly presented in the origins and contributing elements of the Progressive Party and in petitioner's relations to these.

[*266] [22] [23] [24] [25] [26] [27]In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. **[**1220]** Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their **[****48]** day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888. The implications of the United States Constitution for national elections and "the concept of ordered liberty" implicit in the *Due Process Clause of the Fourteenth Amendment* as against the States, *Palko v. Connecticut, 302 U.S. 319, 325*, were not frozen as of 1789 or 1868, respectively. While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning. See *Hurtado v. California, 110 U.S. 516, 528-529*; *McCulloch v. Maryland, 4 Wheat. 316*. Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations **[***1334]** that appear **[****49]** in the record to warrant such a view of the Progressive Party. [3] This precludes the questioning that petitioner resisted in regard to that Party.

[28]To be sure, this is a conclusion based on a judicial judgment in balancing two contending principles -- the right **[*267]** of a citizen to political privacy, as protected by the *Fourteenth Amendment*, and the right of the State to self-protection. And striking the balance implies the exercise of judgment. This is the inescapable judicial task in giving substantive content, legally enforced, to the Due Process Clause, and it is a task ultimately committed to this Court. It must not be an exercise of whim or will. It must be an overriding judgment founded on something much deeper and more justifiable than personal preference. As far as it lies within human limitations, it must be an impersonal judgment. It must rest on fundamental presuppositions **[****50]** rooted in history to which widespread acceptance may fairly be attributed. Such a judgment must be arrived at in a spirit of humility when it counters the judgment of the State's highest court. But, in the end, judgment cannot be escaped -- the judgment of this Court. See concurring opinions in *Haley v. Ohio, 332 U.S. 596, 601*; *Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 466, 470-471*; *Malinski v. New York, 324 U.S. 401, 412, 414-417*.

And so I am compelled to conclude that the judgment of the New Hampshire court must be reversed.

Dissent by: CLARK

Dissent

MR. JUSTICE CLARK, with whom MR. JUSTICE BURTON joins, dissenting.

The Court today has denied the State of New

[3] The Progressive Party was on the ballot in forty-four States, including New Hampshire, in 1948, and in twenty-six States in 1952.

Hampshire the right to investigate the extent of "subversive activities" within its boundaries in the manner chosen by its legislature. Unfortunately there is no opinion for the Court, for those who reverse are divided and they do so on entirely different grounds. Four of my Brothers join in what I shall call the principal opinion. They hold that the appointment of the Attorney General to act as a committee for the legislature results in a separation of **[****51]** its power to investigate from its "responsibility to direct the use of that power" and thereby "causes a deprivation **[*268]** **[**1221]** of the constitutional rights of individuals and a denial of due process . . . ." This theory was not raised by the parties and is, indeed, a novel one.

[3C]

My Brothers FRANKFURTER and HARLAN do not agree with this opinion because they conclude, as do I, that the internal affairs of the New Hampshire State Government are of no concern to us. See *Dreyer v. Illinois, 187 U.S. 71, 84 (1902)*. They do join in the reversal, however, on the ground that Sweezy's rights under the *First Amendment* have been violated. I agree with neither opinion.

The principal opinion finds that "The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked." The New Hampshire Act clearly indicates that it was the legislature that determined the general subject matter of the investigation, subversive activities; the legislature's **[***1335]** committee, the Attorney General, properly decided what witnesses **[****52]** should be called and what questions should be asked. My Brothers surely would not have the legislature as a whole make these decisions. But they conclude, nevertheless, that it cannot be said that the legislature "asked the Attorney General to gather the kind of facts comprised in the subjects upon which petitioner was interrogated." It follows, says this opinion, that there is no "assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed . . . ." But New Hampshire's Supreme Court has construed the state statute. It has declared the purpose to be to investigate "subversive" activities within the State; it has approved the use of the "one-man" technique; it has said the questions were all relevant to the legislative purpose. In effect the state court says the Attorney General was "directed" to inquire as he did. **[*269]** Furthermore, the legislature renewed the Act in the same language twice in the year following Sweezy's interrogation. N. H. Laws 1955, c. 197. In ratifying the Attorney General's action it used these words: "The investigation . . . provided for by chapter 307 of the Laws of 1953, **[****53]** as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, *manner* and authority as therein provided . . . ." (Emphasis added.) We are bound by the state court findings. We have no right to strike down the state action unless we find not only that there has been a deprivation of Sweezy's constitutional rights, but that the interest in protecting those rights is greater than the State's interest in uncovering subversive activities within its confines. The majority has made no such findings.

[15B]

The short of it is that the Court blocks New Hampshire's effort to enforce its law. I had thought that in *Pennsylvania v. Nelson, 350 U.S. 497 (1956)*, we had left open for legitimate state control any subversive activity leveled against the interest of the State. I for one intended to suspend state action only in the field of subversion against the Nation and thus avoid a race to the courthouse door between federal and state prosecutors. Cases concerning subversive activities against the National Government have such interstate ramifications that individual state action might effectively destroy a prosecution on **[****54]** the

national level. I thought we had left open a wide field for state action, but implicit in the opinions today is a contrary conclusion. They destroy the fact-finding power of the State in this field and I dissent from this wide sweep of their coverage.

The principal opinion discusses, by way of dictum, due process under the *Fourteenth [**1222] Amendment*. Since the basis of the opinion is not placed on this ground, I would not think it necessary to raise it here. However, my Brothers say that the definition of "subversive person" **[*270]** lacks "a necessary element of guilty knowledge . . . ." *Wieman v. Updegraff, 344 U.S. 183 (1952)*, is heavily depended upon as authority for the view expressed. I do not so regard it. I authored that opinion. It was a loyalty oath case in which Oklahoma had declared *ipso facto* disqualified any employee of the State who failed to take a prescribed oath that, *inter alia*, he belonged to no subversive organizations. We struck down the Act for lack of a requirement **[***1336]** of *scienter*. We said there that "constitutional protection . . . [extends] to the public servant whose *exclusion pursuant to* **[****55]** *a statute* is patently arbitrary or discriminatory." *Id., at 192*. But Sweezy is not charged as a "subversive person" and the Committee has made no finding that he is. In fact, had he been found to be such a person, there is no sanction under the Act. New Hampshire is invoking no statute like Oklahoma's. Its Act excludes no one from anything. *Updegraff* stands for no such broad abstraction as the principal opinion suggests.

Since the conclusion of a majority of those reversing is not predicated on the *First Amendment* questions presented, I see no necessity for discussing them. But since the principal opinion devotes itself largely to these issues I believe it fair to ask why they have been given such an elaborate treatment when the case is decided on an entirely different ground. It is of no avail to quarrel with a straw man. My view on *First Amendment* problems in this type of case is expressed in my dissent in *Watkins*, decided today, *ante*, p. 217. Since a majority of the Court has not passed on these problems here, and since I am not convinced that the State's interest in investigating subversive activities for the protection of its citizens **[****56]** is outweighed by any necessity for the protection of Sweezy I would affirm the judgment of the New Hampshire Supreme Court.

References

Annotation References:

1. Contempt proceedings and due process, 93 L ed 578, 99 L ed 892.

2. Freedom of speech and press as limitation on power to punish for contempt, 159 ALR 1379.

3. The Supreme Court and the right of free speech and press, 93 L ed 1151, 94 L ed 973, 95 L ed 1196, 96 L ed 1126, 97 L ed 955.

4. Contempt of Congress or congressional committee, 97 L ed 782, 99 L ed 985.

6. Constitutionality of statute relating to power of committee or officials of political party, 62 ALR 924.

7. Constitutional provision against self-incrimination as applicable to questions asked or testimony given before nonjudicial officer or body, 68 ALR 1503.

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