

THE UNIVERSITY OF NEWCASTLE STAFF ASSOCIATION

REPORT OF THE EXECUTIVE TO THE MEMBERS OF THE
STAFF ASSOCIATION ON THE RECENT DISMISSAL OF
A TENURED MEMBER OF THE ACADEMIC STAFF OF THE
UNIVERSITY

Authorized by the Executive of the University
of Newcastle Staff Association

11 July, 1980

BULLETIN

At the special general meeting of the University of Newcastle Staff Association held on 5 June, 1980, the Association resolved to defer consideration of three Executive motions which were before the meeting, concerning academic staff discipline procedures. This resolution had the effect of preventing the Executive from giving a satisfactory and coherent presentation of its view on discipline procedures in the University of Newcastle and especially on the procedures which were followed in the case of Dr. M.E. Spautz, formerly a tenured Senior Lecturer in the Department of Commerce, who was dismissed by the University in May, 1980. The fact that the Executive was prevented at this meeting from presenting its point of view on this subject has disturbed the Executive. Following the meeting, the Executive decided to circulate a report to all members outlining:

- I. The view of the Executive on events leading to the dismissal of Dr. M.E. Spautz;
- II. The role of members of the Executive as observers of the two official proceedings of the University, concerned with the conduct of Dr. Spautz; and
- III. The rationale of an Executive proposal that the By-Laws of the University governing academic staff discipline be amended.

I. Background Events

[1] The recent dispute in the Department of Commerce commenced more than 18 months ago in 1978 when Dr. M.E. Spautz of that Department challenged the academic standing of Professor A.J. Williams, who was appointed a Professor of Commerce in 1976. Within two years of the appointment of Professor Williams, Dr. M.E. Spautz launched a campaign against Professor Williams in which Dr. Spautz raised some issues concerning the use of source materials for and the methodology employed in the doctoral thesis of Professor Williams. This thesis had been submitted successfully to the University of Western Australia and was one of the credentials offered by Professor Williams in support of his appointment to a Chair of Commerce within the University of Newcastle. In essence, Dr. Spautz raised questions on and advanced criticisms of the methodology and framework of the research which had been undertaken by Professor Williams for the thesis. Dr. Spautz sought the comments of Professor Williams on these questions and criticisms.

[2] As is widely known throughout the University, Dr. Spautz was an unsuccessful candidate for the Chair of Commerce which was eventually filled by Professor Williams. In order to avoid unfair and unreasonable inferences from this fact, the Executive feels obliged to point out to the members of Staff Association that Dr. Spautz was not a candidate for the Chair on the occasion of the successful application for it made by Professor Williams in 1976.

[3] The matters of substance raised by Dr. Spautz with respect to the thesis of Professor Williams were not resolved successfully between the two academics, and had not been so resolved at the time of the dismissal of

Dr. Spautz. In 1978, shortly after the dispute arose, Professor Williams was appointed to the position of Head of the Management Section of the Department of Commerce. The occupancy by Professor Williams of this position was opposed by Dr. Spautz.

[4] By 1979, personal and professional relations between members of the Department of Commerce were severely affected by the tension between the two academics. Further, in the course of 1979, Dr. Spautz started to inform a large number of academics in the University and others outside the University, of his allegations against Professor Williams. In a series of letters and memoranda, copies of which were widely distributed by Dr. Spautz, he accused Professor Williams of incompetence, plagiarism, and fraudulence.

[5] *The Carter Committee.* In an attempt to resolve the dispute amicably, a Committee was appointed by the University Council, under the chairmanship of Professor M.P. Carter. The purpose of this action of Council was to seek a report on the substance of the dispute and to seek a resolution of the dispute and the restoration of harmony within the Department of Commerce. This Committee (the 'Carter Committee') consisted of Professor Carter, Professor K.E. Lindgren and Associate Professor G.C. Curthoys. Through a series of meetings with Professor Williams, academic staff of the Department of Commerce, students enrolled in the Master of Business Administration course offered by the Faculty of Economics and Commerce, and at least initially with Dr. Spautz, the Carter Committee formulated certain proposals as to how the dispute might be resolved. The Executive believes, however, that these attempts proved unsuccessful partly because Dr. Spautz objected to some of the procedures of the Carter Committee, refused to participate in its activities and subsequently refused to accept its recommendations. The Carter Committee, which had been established by Council on 19 October, 1979, completed its work and reported to Council at the Council Meeting of 14 December, 1979. The Council resolved as follows (299/79):

- (1) That Council, having considered the Report (C.128:79) of the Committee appointed at its meeting on 19 October, 1979
 - (a) expresses its confidence in the qualifications and ability of Professor Williams, confirms the appropriateness of his appointment to a chair within the Department of Commerce and declares that it recognises the value of his contribution to the work of the University; and
 - (b) that Dr. Spautz be informed accordingly.
- (2) (a) that no further correspondence be entered into with Dr. Spautz by the University relating directly or indirectly to any of the matters referred to in the body of this Report as falling within the ambit of the dispute, except on the initiative of the Council or the Vice-Chancellor; and
 - (b) that Dr. Spautz be informed accordingly.
- (3) That Council directs Dr. Spautz to stop forthwith conducting what he himself has called his campaign against Professor Williams and in particular and without prejudice to the generality of the foregoing

- (a) not, except in accordance with normal academic practice, to involve or seek to involve students, staff or officers of the University directly or indirectly in challenges to I the legitimacy of the qualifications held by Professor Williams and of his appointment to a Chair within the Department of Commerce at this University and to II his holding the positions of Head of the Management Section within that Department and M.B.A. Course Co-ordinator within the Faculty of Economics and Commerce;
 - (b) not to display in any part of the University material relating directly or indirectly to this campaign and not to use any classroom, office or other part of the University or any University photocopying machine or other office equipment in connection therewith.
- (4) That Council inform Dr. Spautz that if he disobeys any direction contained in the foregoing resolutions, such disobedience may inter alia be regarded as "misconduct" within the meaning of the By-laws of the University and that the University will take such action in respect of such disobedience as it may be advised.
- (5) That Council advise the Vice-Chancellor in consultation with the Head of the Department of Commerce to relocate Dr. Spautz in an office elsewhere than in the Social Sciences Building pending a review of the situation in the light of Dr. Spautz's response to these resolutions of Council.
- (6) In view of the evidence that Dr. Spautz has carried the dispute to students, that Council advise the Vice-Chancellor and the Head of the Department of Commerce that Dr. Spautz should not for the time being be required to teach in his subject pending a review of the situation in the light of Dr. Spautz's response to these resolutions.

[6] The substance of this resolution was conveyed to Dr. Spautz in a letter to him from the University Secretary of 17 December, 1979 as follows:

Dear Dr. Spautz,

The Committee appointed by Council at its meeting held on 19 October, 1979, about which I wrote to you on 22 October, 1979, reported to Council at the meeting held last Friday, 14 December, 1979.

Council, having considered the report of that Committee, expressed its confidence in the qualifications and ability of Professor Williams, confirmed the appropriateness of his appointment to a Chair within the Department of Commerce and declared that it recognised the value of his contribution to the work of the University.

Council has also decided that no further correspondence shall be entered into with you by the University relating directly or indirectly to any of the matters referred to in the body of the Committee's report as falling within the ambit of the dispute, except on its own initiative or that of the Vice-Chancellor.

You are directed by Council to stop forthwith conducting what you yourself have called your campaign against Professor Williams and in particular and without prejudice to the generality of the foregoing

- (a) not, except in accordance with normal academic practice, to involve or seek to involve students, staff or officers of the University directly or indirectly in challenges to I the legitimacy of the qualifications held by Professor Williams and of his appointment to a Chair within the Department of Commerce at this University and to II his holding the positions of Head of the Management Section within that Department and M.B.A. Course Co-ordinator within the Faculty of Economics and Commerce.
- (b) not to display in any part of the University material relating directly or indirectly to this campaign and not to use any classroom, office or other part of the University or any University photocopying machine or other office equipment in connection therewith.

If you disobey any direction contained in the foregoing decisions of Council, such disobedience may inter alia be regarded as "misconduct" within the meaning of the By-laws of the University and the University will take such action in respect of such disobedience as it may be advised.

Yours sincerely,

(Signed)

P.D. Alexander,
SECRETARY.

[7] Dr. Spautz did not receive a copy of the written report to Council of the Carter Committee and therefore at that stage was ignorant of the official reasons behind the substance of this letter. Following the dispatch of the letter, an attempt was made to relocate Dr. Spautz to a room situated in a part of the University not within the physical precincts of the Department of Commerce. Dr. Spautz refused to be relocated.

[8] *The Kirby Committee.* The Carter Committee was unsuccessful in resolving the dispute, and Dr. Spautz persisted in the continuance of his campaign against Professor Williams which by this time he was describing as his "campaign for justice". The campaign was conducted by Dr. Spautz principally by the circulation of memoranda which attacked and impugned not only Professor Williams but eventually, various other University officers, including the Vice-Chancellor, Professor D.W. George and the Deputy Chancellor, Mr. Justice M.D. Kirby. On 15 February, 1980, the University Council resolved to institute an enquiry into the conduct of Dr. Spautz, and accordingly resolved that this enquiry be undertaken by a Committee to be chaired by the Deputy Chancellor, Mr. Justice M.D. Kirby. The other members of the Committee appointed by Council were Council members, Professor K.R. Dutton, Mr. L. Gibbs, and Mr. A. Oliver, with Mr. L. Farrell (Assistant Secretary, Legal) as the Secretary of the Committee. Initially this Committee (the 'Kirby Committee') had eight terms of reference. These were as follows:

1. Whether Dr. Spautz disobeyed instructions given to him by the Council of the University and refused to accept and obey decisions of the Council concerning him.
2. Whether contrary to decisions of the Council of the University communicated to him, Dr. Spautz continued to distribute and display letters and other material with respect to Professor A.J. Williams, in intemperate language contrary to normal academic practice.
3. Whether Dr. Spautz continued to conduct a campaign otherwise than in accordance with normal academic practice against Professor Williams contrary to a decision of the Council of the University communicated to him directing that he should cease to do so.
4. Whether Dr. Spautz continued to display on the door of his room in the Social Sciences building of the University, letters and other material relating to his dispute with Professor Williams, contrary to a decision of the Council of the University communicated to him.
5. Whether Dr. Spautz continued contrary to a decision of the Council of the University communicated to him to use university photocopying machines and other office equipment for the duplication of such letters and material.
6. Whether Dr. Spautz contrary to the direction of the Head of the Department of Commerce in consultation with the Vice-Chancellor refused to agree to the relocation of his office elsewhere than in the Social Sciences building as required by the Council.
7. Whether Dr. Spautz acted in such a way as to interfere with the research, teaching in the Department of Commerce and the learning environment of the students of that Department in that he persisted with intemperate attacks on Professor Williams contrary to normal academic practice.
8. Whether if the answers to the foregoing or any of them are "yes",
 - (a) "good cause" within the meaning of By-law 3.6.1.6 may exist for the Council to censure, suspend, ask for the resignation of or dismiss Dr. Spautz; and
 - (b) if so, what action the Council should take.

[9] As members would be aware, the Vice-Chancellor read out the first seven of the abovementioned terms of reference at the special general meeting of the Staff Association held on 5 June, 1980.

[10] Council approved these terms of reference for the Committee "in principle" but authorized the Chancellor after consultation with Minter, Simpson and Company, the Deputy Chancellor and the Vice-Chancellor, if necessary, "*to determine their final expression*" (Council Minutes of 15 February 1980, 1423; emphasis supplied). The Executive discovered later that the Chancellor interpreted this authorization as enabling him, upon advice, to delete reference 8. Subsequently, the Chairman of the Committee, Mr. Justice Kirby, directed that

...the following items shall be included in the Committee's enquiry:

1. Whether Dr. Spautz persistently acted in a manner contrary to decisions relating to Professor Williams made by officers and members of staff of the University in the proper performance of their duties.
2. Whether Dr. Spautz interfered with and harrassed duly appointed officers and members of staff of the University in the performance of their duties.

[11] The Executive feels compelled to note publicly that: (a) the Council authorization to the Chancellor to determine the "final expression" of the terms of reference could be interpreted as only permitting the *expression* of the substance of references 1-8 (above) but as not permitting the deletion of a complete reference (8); and (b) Dr. Spautz was not given 28 days notice of the abovementioned two additional particular "items" - which could be classified as additional terms of reference - and that at no stage during the hearings were they formally deleted by the Kirby Committee upon objection to them expressed by Dr. Spautz at the commencement of the hearings of the Committee. It is stated in the report of the Kirby Committee, however, that these additional particulars were not pressed by the Committee and hence did not become important in the Enquiry (Report p.3).

[12] The Kirby Committee answered specifically 'yes' to each and every element of the first six of the abovementioned terms of reference and to the seventh reference stated that on the question of interference in teaching in the Department of Commerce, there was no evidence before the Committee that Dr. Spautz interfered in the teaching of persons other than himself: otherwise "yes" to reference 7.

[13] *Dismissal of Dr. Spautz.* The Report of the Kirby Committee was presented to a Special Meeting of the Council held on Tuesday, 20 May, 1980. After hearing the comments of Dr. Spautz on the Report of the Kirby Committee, Council on that day resolved

1. Having considered the Report of the Committee of Enquiry established by Council and having before it the transcript of and the exhibits before that Committee, and having received further exhibits from and heard Dr. M.E. Spautz, the Council resolves that "good cause" has been shown in accordance with By-law 3.6.1.6(3)(b), as extended by By-law 3.7.2.5, in that the Council considers that the conduct of Dr. Spautz has been such as to render him unfit to continue to hold his office.
2. (a) That Dr. M.E. Spautz be dismissed from the academic staff of the University.
- (b) That the dismissal be with effect from 12 Noon on Friday, 23 May, 1980, unless in the meantime Dr. Spautz has tendered to the Vice-Chancellor in writing his resignation to be effective from not later than 12 Noon on Friday, 23 May, 1980.
- (c) That without admissions and without prejudice, an *ex gratia* payment equivalent to one month's salary be paid to Dr. Spautz in addition to any monies lawfully due to him.

[14] This summary of the events surrounding the dispute in the Department of Commerce and the conduct of Dr. Spautz, is not put forward by the Executive as one which purports to encompass all of the various permutations of this factually complex and involved dispute. The Executive believes, however, that a broad outline of the formally significant events which led to the dismissal of Dr. Spautz has been given in the above description.

II. The Role of the Executive

[15] From the outset, the Executive has not been able to act as a party principal either in attempts to resolve the dispute in the Department of Commerce, or in the formal University enquiries into the conduct of Dr. Spautz as part of the disciplinary process in relation to that conduct. Neither Professor Williams nor Dr. Spautz is or has been a member of the Staff Association. As members will be aware, the Constitution of the Staff Association prevents the rendering of legal and/or financial assistance by the Association to a non-member. On a couple of occasions, Dr. Spautz attempted to enlist the support of the Executive. For instance, early in March, 1980, Dr. Spautz wrote to the Secretary of the Association requesting information regarding membership of the Association and seeking the views of the Association on the dispute. The then Secretary of the Association, Mr. P.N. Chopra, replied to Dr. Spautz by enclosing membership forms and a copy of the Constitution of the Association, should Dr. Spautz wish to join. Mr. Chopra pointed out to Dr. Spautz that membership of the Association does not automatically confer a right on a member to legal and/or financial assistance by the Association, as a request for such assistance would need to be determined by a properly constituted general meeting of the Association. Dr. Spautz did not join the Association, and it may be added that at no stage did Professor Williams make any approach to the Association for its assistance.

[16] The Association as such played no part in the proceedings of the Carter Committee. Professor Curthoys was a member of the Committee in his capacity as a member of the University Council, and the Association did not immediately receive a copy of the Report of the Carter Committee. The Executive feels compelled to point out that Dr. Spautz also did not immediately receive a copy of the Report of this Committee. The Executive's knowledge of and consequent views and policies on the dispute in the Department of Commerce arose principally out of its concern with procedural issues and not with the substance of the claims made by Dr. Spautz against Professor Williams and other members and officials of the University. Quite properly the Executive did not feel competent to become a quasi-arbitrator in an academic dispute which had its origins in the claims of Dr. Spautz about the thesis of Professor Williams. Nor did the Executive consider that it would be proper for it to intervene in a conflict internal to the Department of Commerce, especially one between two non-members of the Association.

[17] The first occasion on which the Executive of the Staff Association became directly involved in the events concerning Dr. Spautz was on the establishment by Council of the Kirby Committee. The Executive sought and was granted observer status at the meetings of that Committee. The following members of the Executive attended the meetings of the Kirby Committee which

was convened for hearings on four separate days: P.N. Chopra (26 March and 30 March), D.W. Mitchell (28 March and 18 April), and R. Mackie (26 March and 30 March).

[18] Upon the completion of the hearings of the Kirby Committee, the three Executive members who had witnessed the hearings of the Committee reported to the Executive their evaluation of the procedures adopted at the hearings of the Committee. This report was made to the Executive on 1 April, 1980, and it emphasized that Mr. Justice Kirby apparently saw the Enquiry as a 'fact finding enquiry' on behalf of the University Council and not as one which could be seen as an 'inquisition' or a 'trial' of Dr. Spautz. It was the opinion of the Executive members present at the hearings of the Kirby Committee that in view of the (apparent) functions of the Committee, Mr. Justice Kirby and the other members of the Committee had conducted it in a fair and proper manner. For instance, all participants in the Enquiry were, in the opinion of the Executive, treated not only with courtesy and civility but were accorded a reasonable opportunity to make statements to the Committee in order to permit it to reach a state of satisfaction on whether or not the conduct of Dr. Spautz fell within the terms of reference of the Committee.

[19] *Non-Disclosure to the Executive Observers of a Term of Reference.* Subsequent to the submission to the Executive of the report of 1 April, the Executive awaited the appearance of the Report of the Kirby Committee. In the meantime, however, the attention of the Executive was drawn to the existence of and the alternative interpretation which could be given to the *eighth* term of reference of the Kirby Committee (*ante* p.5). The terms of reference which had been distributed by the University Administration to members of the Executive (observers of the proceedings of the Kirby Committee) were only one to seven (*ibid*) and the observation and evaluation of those proceedings by members of the Executive had been based on the assumption that the terms of reference 1-7 were the *only* terms of reference in existence when this Committee convened. The Executive became concerned that the existence of this eighth term of reference seemed to raise the distinct possibility that the Enquiry which had been conducted by the Committee could have been intended by Council to be one which would be intimately linked with an overall 'quasi-judicial' disciplinary process in relation to Dr. Spautz. This concern became crucial for the Executive at this stage as, *inter alia*, the statements of the Executive which had been made as to the fairness of the proceedings of the Committee were statements based on the original understanding that references 1-7 were the only references of the Committee.

[20] The Executive communicated to Mr. Justice Kirby its concern about the existence of term of reference 8. On 23 April, 1980, the Executive wrote to him informing him of its original understanding of the functions of the Committee of Enquiry, and informing him that the Executive's evaluation of the fairness of the procedures adopted by the Committee had rested on the assumption that the functions of the Committee had not only substantially been, but were seen to be of a 'fact finding' nature with some necessary evaluation of those facts, especially as required by term of reference 7. On 28 April, 1980, Mr. Justice Kirby replied that the Committee had conducted itself as a 'fact finding' body to report to the Council, which would decide what, if anything, ought to follow from the findings of the Committee on the facts. This reply confirmed the belief of the Executive that the Chancellor had been advised to extricate the Committee of Enquiry from an *immediate*

'link' in a possible process of discipline. The Executive, however, believed and still believes that the other possible interpretation of Council's authorization to the Chancellor was legally available and that on sound argument, this interpretation had been in accordance with the original intentions of Council behind the passing of the resolutions of 15 February, 1980. Stated simply, the Chancellor had been empowered by Council to state the *particulars* of the terms contained in the references, i.e., their '*manner and form*' of expression but had not been empowered by Council to delete a term of reference of the Committee or to add one.

[21] *Delegation from the Department of Commerce.* Subsequent to the above-mentioned reply of Mr. Justice Kirby, the Executive received a request from members of the Department of Commerce to meet with them in order to discuss possible actions that the Council might take in relation to Dr. Spautz in settlement of the long-standing dispute in the Department. Five members of the Executive met with a large delegation from the Department of Commerce, and the Dean of the Faculty of Economics and Commerce, Professor Lindgren. The members of this delegation presented to the Executive, in a forceful and direct manner, their very considerable anxiety and distress at what they claimed were the effects of the dispute and the campaign of Dr. Spautz, on the teaching and research life of the Department of Commerce, and on the general harmony and morale of that Department. In response to a request made by a member of this delegation to the Executive to intervene on their behalf with the University Administration in order to seek some protection of their academic interests, the President advised that the Staff Association could neither judge the conduct of Dr. Spautz nor be seen to be judging the conduct of Dr. Spautz, before the Council had reached a decision. Further, the President advised the delegates to exercise self-denying discipline and restraint in the matter of Dr. Spautz until Council had a further opportunity to express its intentions in the matter on 20 May, 1980.

[22] *Response of the Administration to a Further Enquiry of the Executive re the Process of Discipline.* On 5 May, 1980, the President of the Staff Association wrote to the Acting Vice-Chancellor, Professor A.D. Tweedie, seeking clarification of the following points:

Dear Professor Tweedie,

I have just read the "Report of the Committee of Enquiry into the Conduct of Dr. M.E. Spautz, Senior Lecturer, Department of Commerce".

On the basis of this report it is possible that the University Council may impose a serious penalty on Dr. Spautz under the appropriate By-Laws on the basis of either (a) states of fact established to the satisfaction of the Committee of Enquiry and/or (b) opinions and evaluations made by the Committee of Enquiry.

In view of the serious nature of the charges, and as a member of Council and president of the Staff Association who wishes to be certain that any action the Council may take is beyond challenge I would be obliged if you could obtain answers to the following questions from the University's solicitors before the Council meeting on May 20.

- (1) Whether, by the operation of common law, it will be necessary to charge Dr. Spautz with 'misconduct' and

to ask him to show cause before a formal disciplinary tribunal why the penalty should not be imposed.

If the answer to (1) above is affirmative

- (2) Who could validly constitute an impartial disciplinary tribunal for this purpose?

If the answer to (1) above is negative

- (3) Whether the issue of the validity of the exercise of the power of the Council to impose a penalty without formal disciplinary proceedings could be litigated by Dr. Spautz against the University, and if so, whether Dr. Spautz would be able to make out a good prima facie case in support of a temporary order restraining the University from imposing the penalty pending formal disciplinary proceedings.

Yours sincerely,

G. CURTHOYS
Associate Professor.

[23] A verbal reply to this letter was conveyed to two members of the Executive by Mr. L. Farrell, Assistant Secretary (Legal), to the effect that the University's solicitors, Messrs. Minter, Simpson & Company had provided advice to the University that Council was empowered to invoke *directly* the disciplinary By-law 3.6.1.6(1) as extended by By-law 3.7.2.5 if it so desired, i.e., without the necessity for a full quasi-judicial hearing of possible 'charges' of misconduct.

[24] *Resolution of the Executive.* At a meeting of the Executive held on 15 May, 1980, it was resolved that Professor Curthoys present to the Council the following statement:

The Executive of the Staff Association has discussed the report of the Committee of Enquiry into the conduct of Dr. M.E. Spautz and I wish to make this formal statement on its behalf:

"As the report before the Council indicates representatives of the Staff Association were present throughout the Enquiry. These representatives reported to the Executive of the Staff Association that, in view of the functions of the Committee of Enquiry, the Enquiry had, in their opinion, been carried out in a fair and impartial manner. The Executive noted that the Committee had 'no function to conclude or recommend what, if anything, follows from its findings. That will be a matter for the Council'.

Although two enquiries have been carried out which have arisen from the conduct of Dr. Spautz, it is to be noted that to this stage Dr. Spautz has not been formally charged by the University with any offence. It is the view of the Executive of the Staff Association that it would be improper for the Council to impose any penalty on Dr. Spautz simply as a result of the enquiry into his conduct which has just been held.

If the Council is of the view that a *prima facie* case exists for Dr. Spautz to be charged with misconduct, then he should be charged with misconduct and a formal disciplinary tribunal of the University established to hear the matter".

This statement, in the form of a motion, was presented to Council on 20 May. The motion was overwhelmingly defeated but its terms were read into the minutes of that meeting of Council.

[25] *Council Meeting of 20 May, 1980.* At the meeting of Council on 20 May, 1980, the Executive was permitted to have an observer present at the meeting. The observer on this occasion was Mr. D.W. Mitchell. Soon after the meeting commenced at approximately 11 a.m., Dr. Spautz was invited to address the Council on his response to the Report of the Kirby Committee. His address to Council continued with a brief pause for lunch, until approximately 3.45 p.m. At this time, Dr. Spautz completed his address and at that point all non-members of Council who had been present for the address, including Dr. Spautz and Mr. Mitchell, were asked to leave the Council Room while Council deliberated on the whole matter of the conduct of Dr. Spautz. At approximately 4.50 p.m., the Council unanimously resolved that in terms of By-law 3.6.1.6(3)(b) as extended by By-law 3.7.2.5, "good cause" had been shown in that the Council considered that the conduct of Dr. Spautz had rendered him unfit to continue to hold office (see resolution in full, *ante* p.6). At approximately 5.00 p.m., Dr. Spautz and the other non-members of Council who had witnessed his address to Council on the Report of the Kirby Committee, were summoned back to Council. The Chancellor then read the resolution to Dr. Spautz and invited his comments on it. Dr. Spautz refrained from making any substantial comment on the terms of the resolution. One member of Council asked Dr. Spautz whether he was aware of the penalties specified in By-law 3.6.1.6(1), and Dr. Spautz was told that he did have the real option of tendering his resignation from the University. Dr. Spautz indicated to Council that he was aware of the penalties specified in the By-Law and stated that he would not tender his resignation from office.

[26] At approximately 5.15 p.m., Dr. Spautz and the other non-members of Council present at the meeting were again requested to leave the Room while Council deliberated on the possible consequences of the resolution and on the response which the communication of the resolution had evoked from Dr. Spautz. At approximately 6.05 p.m., Dr. Spautz and the other non-members of Council who had been present at the earlier sessions of the Council meeting were summoned to the Council Room once again and on this occasion the Chancellor communicated to Dr. Spautz the second resolution, which Council had just passed, that he be dismissed from the academic staff of the University (see resolution in full, *ibid*). Dr. Spautz did not respond substantially to this resolution and the meeting of the Council was closed.

III. Reform of the By-Laws

[27] As a result of the process of discipline which was brought into force by the University in the case of Dr. Spautz, it has become clear to the present Executive that it is highly desirable for the University to alter the By-Laws which govern academic staff discipline. The Executive is of the opinion that these By-Laws should include more comprehensive provisions for the protection of academic staff members and of the University conceived as a whole. Once again, it should also be emphasized to the members of the Association that the Executive is of the opinion that as a matter of justice, Dr. Spautz ought to have been given a *full* and *effective* opportunity to defend himself on an official charge of misconduct before a body constituted as a quasi-judicial tribunal. The Executive is of the opinion that he should have been given a full as well as a merely 'formal' opportunity to defend himself specifically on the charge of unfitness to hold office and on this alone, irrespective of the prior opportunities which were accorded him to participate in 'fact finding' enquiries and to comment on the Report of the Kirby Committee. In brief, the Executive believes that a person should be officially charged with an offence and so charged well in advance, before he or she is found officially guilty of that offence. The Executive is of the opinion that official hearings of a formal and specific charge of misconduct against a member of the academic staff should be principally concerned with the question whether or not the conduct of that member of staff as established by the facts of the case amounts to 'misconduct', i.e., whether or not the conduct is within the bounds of legitimacy for an academic member of staff in his or her capacity as an academic in the university.

[28] The Carter Committee was authorized by Council to investigate and if possible, to settle the dispute in the Department of Commerce. The Kirby Committee regarded itself as being essentially a committee of enquiry and not a quasi-judicial tribunal. It could, of course, be argued that the term "proper enquiry" in By-Law 3.6.1.6 is sufficient to justify the importation of the common law of natural justice and the constitution by the Council of a special tribunal whose functions would at least be quasi-judicial. This argument essentially rests on the notion that a member of the academic staff of the University is in general, an occupant of a public office and is not merely a 'servant' of a corporate 'master'. Such an argument on the implications of this By-Law, however, is one which competes with the view that By-Law 3.6.1.6, whether or not extended by By-Law 3.7.2.5, contains powers vested in Council the exercise of which does not have to be fully qualified by the common law of natural justice.

[29] In the course of discussions between the Executive and the Vice-Chancellor held at 12.20 p.m. on Friday, 23 May, 1980, it emerged that Council had been informed that the constitution of a full disciplinary tribunal as suggested to Council and moved in the form of a motion by Professor Curthoys at the Council meeting of 20 May, would be "illegal". It was not made clear to the Executive what would have been the grounds of the *prima facie* illegality in such an event.

[30] At this meeting with the Vice-Chancellor and at the special general meeting of the Association held on 5 June, 1980, the Executive was anxious to affirm that it has not endorsed and does not endorse the actual conduct of Dr. Spautz (the 'merits' of the case). The opinion of the Executive

that the hearings of the Kirby Committee and of Council of 20 May, had been fair and proper, applies to the *manner* in which Dr. Spautz and others had been *heard* at both of these hearings. This opinion of the Executive does not apply to what must now be seen by the Executive as having been the overall and integrated disciplinary *process* of enquiry, formally limited quasi-adjudication, and statutory dismissal of Dr. Spautz. It is precisely this point which has led the Executive to form the further opinion that the relevant By-Laws of the University of Newcastle should be drastically amended to provide for a more straightforward and just process of academic staff discipline.

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Executive Signatories

G.C. Curthoys (President) (Chemistry)

R. Mackie (Secretary) (Education)

G.B. Samuel (Assistant Secretary) (Sociology)

J.E. Bern (Sociology)

P.N. Chopra (Education)

D.W. Dockrill (Philosophy)

M.H. Hayes (Medicine)

B.D. Henry (Chemical Engineering)

D.W. Mitchell (Legal Studies)

[In view of his role as a member of the Committee of Enquiry into the Conduct of Dr. Spautz and as a member of the University Council who supported the two resolutions passed by Council on 20 May, 1980, concerning Dr. Spautz, the Vice-President of the Staff Association, Professor K.R. Dutton (Modern Languages), is not a signatory to this report.]

SOURCE REFERENCES

- . The By-Laws of the University of Newcastle.
- . Minutes of the meeting of the Council of the University of Newcastle, held on 19 October, 1979.
- . The Report from the Committee Established in Reference to the dispute in the Department of Commerce (the Carter Committee), dated 4 December, 1979 (c.128:79).
- . Minutes of the meeting of the Council of the University of Newcastle, held on 14 December, 1979.
- . Minutes of the meeting of the Council of the University of Newcastle, held on 15 February, 1980.
- . The Report of the Committee of Enquiry into the Conduct of Dr. M.E. Spautz, dated 30 April, 1980.

After this report was completed, the Executive was provided with a copy. This is a confidential report prepared for the use only of the Committee and the University Council. Copyright of this report is in the University of Newcastle. As no part of it may be reproduced without the express approval of the Council, the Executive has not quoted from it verbatim. It may be recalled that at the special general meeting of the Staff Association held on 5 June, 1980, the Vice-Chancellor gave orally an assurance to members that upon request, the report would be made available for them to read. The Executive is also willing to make this report available, upon request, to any member of the Association.

- . The Reports of Executive Observers of proceedings of the Committee of Enquiry into the Conduct of Dr. M.E. Spautz, and of the University Council of 20 May, 1980.
- . The Letter from the Secretary of the Staff Association to Mr. Justice Kirby, concerning the terms of reference of the Committee of Enquiry, dated 23 April, 1980.
- . The Letter from Mr. Justice Kirby to the Secretary of the Staff Association, concerning the terms of reference of the Committee of Enquiry, dated 28 April, 1980.
- . The Letter from the Chancellor of the University of Newcastle to each member of the academic staff of the University, concerning the dismissal of Dr. Spautz, dated 11 June, 1980.