Academic Freedom and Tenure: Southern University, Baton Rouge[1]

(APRIL 2013)

I. Background

Southern University and Agricultural and Mechanical College, a public, coeducational, historically black university, was chartered in 1880 by the General Assembly of the State of Louisiana as an institution serving African American students. It became a land-grant institution under the Second Morrill Act of 1890, and the campus was moved to Baton Rouge from the original location in New Orleans in 1914. With approximately seven thousand students, it is the flagship institution of what is now the Southern University system. The current president of the system is Ronald Mason Jr., Esq. The system is governed by a board of supervisors, which reports to the Louisiana Board of Regents, the oversight organization for all of the state's public higher education institutions. Southern University has been accredited since 1938 by the Southern Association of Colleges and Schools Commission on Colleges.

Southern University, Baton Rouge, is the largest of the five campuses of the SU system. One of the country's top ten highest producers of bachelor's degrees awarded to African Americans, SUBR, during the 2011–12 academic year, listed fourteen colleges and schools on its website and offered more than forty baccalaureate degree programs in liberal arts and sciences, engineering, business, education, architecture, nursing, and agricultural and consumer sciences, as well as approximately two dozen master's degree programs and six doctoral programs. SUBR's chief administrative officer, Chancellor James L. Llorens, took office in April 2011. Dr. Janet Rami began serving as the interim provost in October 2011.

Southern University was placed on the AAUP's censure list in 1968 following the suspension of a SUBR faculty member without stated cause and opportunity for a hearing and the summary dismissal of two faculty members who had spoken out against several other administration actions. The censure was removed in 1987 after a new administration paid compensation to the three injured professors and the board of supervisors adopted revised policies that substantially comported with AAUP-recommended standards in cases of nonreappointment and tenure termination and provided expanded opportunity for having grievances heard.

The flooding that followed Hurricane Katrina in 2005 inflicted devastating damage on most of the buildings at Southern University at New Orleans, shutting down the institution for a semester. Facing mass layoffs of faculty, the board of supervisors replaced the existing Southern University policies at SUNO with a declaration of "force majeure," which gave the administration virtually unfettered authority to select faculty members for placement on unpaid furlough. AAUP censure was imposed on the SUNO administration in 2007; the censure was removed a year later after most of the furloughed professors were reinstated and the

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of Southern University, Baton Rouge, to the president of the faculty senate, and to other persons directly concerned in the report. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

board acted to end "force majeure" and reinstate the previous Southern University policies.

In 2009, the statewide Louisiana Board of Regents called for the state's public higher education institutions to review their program offerings with the intention of eliminating those that did not graduate an average of five students per year. A committee at SUBR is reported to have reviewed the institution's programs at the time and developed a list of those that graduated the fewest students.

II. Declaration of Financial Exigency and Retrenchment

In spring 2011, the Louisiana legislature passed a budget with severe cuts in the funds for SUBR. On July 1 of that year, newly appointed chancellor Llorens formed a budget committee after a request by the faculty senate. It was composed of some fourteen members: two from the faculty (the president and vice president of the faculty senate), two from the staff, two from the state government, and others from the executive team (the provost, director of finance, and so on). According to Professor Sudhir K. Trivedi, president of the faculty senate during 2000–04 and 2008–12 and subsequently senate vice president, the budget committee was referred to as an "advisory group," took no votes, and made no formal report or recommendation when the administration decided to seek a declaration of financial exigency.

Chancellor Llorens met with the faculty senate over the summer and, citing severe budget problems, indicated that the senate could agree voluntarily to partial furloughs of all faculty members for the new academic year. He said that the salary reductions that would result from the furloughs were necessary for the institution to avoid a declaration of financial exigency. The senate voted down the furloughs on August 18. At the August meeting of the board of supervisors, Chancellor Llorens, with the support of President Mason, asked for a declaration of financial exigency. The board did not take action, perhaps because of the possibility of a furlough plan. At its September meeting, Chancellor Llorens again asked the board to vote to declare financial exigency. The vote failed.

The faculty senate then proposed voluntary 10 percent furloughs as a way to avoid financial exigency. Chancellor Llorens indicated that 90 percent of the faculty would have to sign these agreements in order to make up a $1.7 million shortfall remaining after other cuts had been made. When only 60 percent of the faculty signed the agreements during the two-week signing period, Chancellor Llorens and President Mason requested that the board, at its October meeting, declare financial exigency. According to senate president Trivedi, President Mason used the phrase "martial law" to describe what was needed—removal of obstacles to the reduction of faculty and restructuring of schools and departments.

On October 28, 2011, the board of supervisors issued a declaration of financial exigency for the system's main Baton Rouge campus. It cited a predicted $10 million shortfall as a result of state budget cuts, lower enrollment (the state had previously imposed selective, rather than open, admissions, resulting in smaller enrollment), and internal financial problems. At the same meeting, the board approved a new set of procedures for implementing a response to financial exigency. Chancellor Llorens reportedly described the declaration as "a small window of opportunity" for initiating academic reorganization of the institution. Following the board's declaration, the chancellor announced a mandatory 10 percent 2011–12 salary cut for all faculty and staff members.

Dr. Ella Kelley, interim associate provost and dean of the honors college, who met with the undersigned investigating committee in the place of Interim Provost Rami, stated that there were nineteen faculty separations, some of which resulted from the faculty members' decisions to retire rather than be involuntarily laid off. She said that seventy-three faculty positions had been eliminated since mid-2011; a number of those positions, excepting the nineteen, were vacated by faculty members who chose to retire based in part on retirement incentives. The investigating committee was provided with a list of sixteen faculty members whose appointments were actually terminated involuntarily.

III. The Layoffs

The termination of tenured appointments occurred in two waves during the spring 2012 semester. In both, decisions about which appointments to terminate were made without faculty involvement or the opportunity for a hearing before a faculty committee for those who received notice.

A. First Wave

On November 16, 2011, the administration called a meeting at the School of Nursing that included Provost Rami, Associate Provost Kelley, Dean of Arts and Humanities Joyce O'Rourke, and the seven chairs of arts and humanities departments. Provost Rami

announced that because of the bad financial situation, some faculty members would have to be laid off. She stated that the chairs would be best able to determine whom to let go, based on such factors as individual performance and a desire to retain the best and most efficient faculty. The chairs were to submit the names of those they recommended for layoff. They were not to use personal preferences as criteria. Various departments were given the number of names they should submit. Chair Irma Farfan-Cobb of the Department of Foreign Languages told the investigating committee that since there were no written criteria, she created her own and gave the provost one name as requested.[2] Professor David Porter, chair of the English department, said that he would not provide a name and that he believes Provost Rami or Associate Provost Kelley provided the names for his department.

Faculty members reported to the committee that decisions about which positions to eliminate were made, to the best of their knowledge, by chairs and deans with no other faculty involvement and no scrutiny or review. A November 27 e-mail from Provost Rami to Dean Lonnie Wilkinson of the School of Architecture stated: "Based on SCH [student credit hours] data and your faculty student ratio, and our meeting on Tuesday, your program should be able to offer current courses and serve student population with four or five faculty. You have seven faculty including the dean. Please give me a list of three faculty names for elimination of their positions (prioritize 1st to go to 3rd) by Monday end of work day."

Baton Rouge's leading newspaper, *The Advocate*, reported that the budget for the 2012–13 academic year included an administration decision to double its subsidy of SUBR's athletics program from $1.2 million to $2.4 million. Members of the faculty senate expressed the view that the athletics subsidy should be eliminated and that the money thus saved should be used to meet essential academic needs. Chancellor Llorens stated to the investigating committee that, overall, the athletics budget had been reduced and that this infusion of funds was necessary to satisfy the minimum program requirements of the National Collegiate Athletic Association (NCAA) and prevent SUBR from being demoted from Division 1 to Division 3 status.

On December 14, 2011, the administration released a retrenchment and reorganization plan to the press and posted it on the university's website. According to faculty senate president Trivedi, Chancellor Llorens had appointed and chaired the committee that drafted the plan. It had been shared with the academic council, a body composed of the deans and including the faculty senate president, but the council had not voted on the plan prior to its release. The plan, which reduced the number of SUBR's colleges and schools from nine to five and called for the elimination of thirty-five faculty appointments, was not shared with the faculty senate prior to its public dissemination. The faculty senate president said that he never saw the finalized plan and did not know it was moving to the next stage, review by the board, until the administration posted a two-page summary of it on the university's website on the same day that it was reported in local newspapers. Chair Diola Bagayoko of the physics department stated to the investigating committee that although a brief outline of the proposed five-college model had been shared with the faculty, the administration did not share the full plan with department chairs or other faculty members until the day before the board met in December to approve it. In fact, most members of the faculty were unaware even that the retrenchment portion of the plan existed.

In mid-February, the administration sent out letters to faculty members selected for release, notifying them that their positions were to be eliminated at the end of the 2011–12 academic year (approximately seven to ten weeks later). There were varying dates on which these appointment terminations would become effective toward the end of the spring semester. The notifications cited SUBR's financial condition as the grounds for the layoffs and informed recipients that they had the right to appeal the decision to the chancellor within seven days of receiving the notice. He rejected the appeals of those who invoked this right.

Following this round of layoffs, SUBR faculty members turned to the American Association of University Professors for assistance, and on April 26, 2012, its staff expressed the AAUP's concerns by letter to Chancellor Llorens. After receiving no response other than an acknowledgment that the letter had been received, the staff wrote again, on May 10. The chancellor again did not reply. On May 23, the staff

2. Letter of Professor Cobb to Provost Rami, November 28, 2011: "I am willing to make the toughest professional decision that I have ever encountered, which is to have to let go at least one member of our faculty team. My decision is made based on keeping the best and most efficient faculty members that the DFL has, as well as the diverse professional skills that will support and make this department more efficient and stronger."

wrote once more to the chancellor, informing him that the general secretary had authorized this investigation. A month later, in a letter dated June 26, Chancellor Llorens replied with assurance that the investigating committee would be able to meet with him and other administrators and faculty members during its site visit.

B. Second Wave

In a letter dated January 4, 2012, and posted to the university's website, Chancellor Llorens had stated that notification of terminations planned for the fall 2012 semester were instead to be issued during the impending spring 2012 semester because of further budget cuts. In Louisiana, financial exigency at public colleges and universities is declared on a year-by-year basis. As the end of May approached, with only one month left in which to terminate positions under the declaration of financial exigency, department chairs who had not identified faculty appointments to be terminated were pushed to make final selections. At a retreat for the deans and higher administrators in late April 2012, the provost took aside several deans individually and told them to make immediate telephone calls to department chairs. The chairs were given about thirty minutes to call back with the names of the faculty members to be laid off. Once again, when some department heads refused to provide names, the deans and the provost selected faculty members for appointment termination.

Apparently aware that the declaration of financial exigency would expire at the end of June 2012, the administration sent out its final termination letters at the end of May to be effective on June 30, 2012, the last day of the academic year. Shortly thereafter, in mid-June, the chancellor sent an e-mail to the campus community stating that there would be no need to declare financial exigency for the 2012–13 academic year.

As in the first wave of layoffs, those notified were afforded only seven days to appeal the decision to Chancellor Llorens. This time, one appeal was accepted, that of Professor Michael Fontenot of the Department of History, who received notification of appointment termination by letter dated May 30, 2012, effective June 30, 2012. The chancellor responded to his appeal on July 2 with the following explanation: "[Y]our position was placed on the list to be eliminated because your dean had been informed that you expected to retire by Fall 2012. If you do not intend to retire by Fall 2012, I will approve your appeal and rescind the layoff decision for your position."

One other appeal is thus far unresolved. Physics professor Dong Sheng Guo was among those whom the administration notified of appointment termination after the semester ended. Professor Guo had left his home in Baton Rouge in mid-May for summerlong, university-sanctioned research at Oak Ridge National Laboratories in Tennessee. The administration sent notice of termination dated May 30 by regular US mail to his home address, including the provision of a seven-day deadline by which to file an appeal. Upon his return on August 13, the professor found the notice waiting. He spoke to his department chair, Professor Diola Bagayoko, who said that the administration had failed to notify him of Professor Guo's appointment termination. Upon learning of Professor Guo's layoff, Professor Bagayoko met with Chancellor Llorens and was told that since he had not complied with the administration's directive to recommend department faculty members for layoff, the chancellor saw no reason to notify him of the Guo appointment termination. Meanwhile, Professor Guo received his teaching assignment from the university's automated online system, through which he was scheduled to teach his regular slate of fully enrolled fall semester courses, as well as one overload course.

Professor Guo then wrote to the chancellor, citing the procedural errors the administration committed in notifying him and indicating his intent to file an appeal within seven days of August 13, the date of his actual receipt of the notification. He filed the appeal and began teaching classes when the semester commenced. He discovered from the human resources office, however, that he no longer had health insurance benefits through the university, and when the first pay date of the semester arrived, he received no paycheck. The chancellor informed the physics department chair that he was consulting with the provost concerning Professor Guo's appointment. The administration did not respond to the appeal. Professor Guo pursued legal action against the university, and a judge in December granted him twenty days to file a new appeal. The chancellor denied this appeal, and Professor Guo then appealed that decision to the system president and the board of supervisors. As of early February, Professor Guo had not been notified of their decision. He has continued to teach full time at the university without receiving salary or benefits and has remained faculty of record in the course scheduling system.

IV. Issues of Concern

The board of supervisors' declaration of financial exigency and the administration's subsequent actions raised numerous concerns for the Association.

A. Financial Exigency Policies and Procedures in the Southern University System, 1987–2011

The removal of Southern University from the AAUP censure list in 1987 was conditioned, in part, on the university's adoption of AAUP-supported procedures that included policies for handling the termination of faculty appointments on grounds of financial exigency. According to the SU system bylaws on the board of supervisors' website ("Financial Exigency or Emergency"), termination procedures

> shall include provisions whereby there will be faculty participation on the Committee determining: (1) whether financial exigency or emergency exists which might lead to the termination of faculty appointments or reduction in faculty status; (2) the method of deciding which faculty positions are to be eliminated or reduced in status; (3) the method for making appointments to vacant positions in areas not affected by the financial exigency or emergency; (4) the method of review and the process for appealing the decision to terminate faculty or reduce faculty status for financial exigency or emergency reasons; (5) a delineation of the appropriate timeframes in which notice shall be given to all affected faculty; and (6) the operative recall policy for faculty whose employment was terminated or status was reduced when the exigency or emergency no longer exists.

The edition of the SUBR faculty handbook available on the university's website, dated 2005–07, contains an appendix G, "Policies and Procedures for Responding to Financial Emergencies." The appendix entrusts the board with final authority, on the recommendation of the president, to declare financial exigency and grants the system president (not the chancellor) the authority to develop a preliminary retrenchment plan, subject to board approval. It states that "such a plan will not be implemented, however, until the Board declares financial emergency," and it provides that "the review of programs as a part of the retrenchment planning process will be done in recognition of . . . the following criteria": centrality to the university's mission; quality; demand (based on enrollment, number of graduates, and so on); critical relationships to other programs; costs in relation to productivity; research implications; potential for external financial support; external considerations (for example, whether the program serves "a special need within the state or region"); and alternative actions.

The investigating committee finds the official Southern University provisions for faculty involvement in financial exigency decisions that were in existence until 2011 to have been consistent with AAUP-recommended standards. It also considers the stated criteria for program review, as far as they go, not to be inconsistent with AAUP standards.

B. Policies and Procedures Adopted in 2011

A document dated October 28, 2011 (the same day the board of supervisors declared financial exigency), titled "Policies and Procedures for Responding to Financial Emergencies within the Southern University System (Revised)," to some extent echoes the wording of appendix G, but with the following differences:

- Whereas appendix G ends with the considerations to be used in the program review process, this document adds step-by-step procedures for notifying the university community. It goes on to entrust the chancellors with preparing retrenchment strategies for the system president and to list the information to be included with each recommendation. It states that the chancellor "may convene [a meeting] for the purpose of discussing the plan with each faculty organization in order for each to have the opportunity to make recommendations regarding the plan, but the Chancellor must set a deadline for any review action in which each organization may participate." It adds that "should the Chancellor consult and receive recommendations from the faculty organizations, he/she may modify the preliminary retrenchment plan, as needed."
- Newly added "Guidelines for Implementation of the Official Retrenchment Plan" explicitly suspend the personnel policies set forth in the faculty handbook in cases of financial emergency: "During a period of financial emergency, however, the special termination policies promulgated in this document will supersede all statements in the *Faculty Handbook* and all other personnel policies pertaining to the employment, appointment, non-reappointment and termination of all classes of university employees, except classified personnel." However, in partial accordance with the AAUP's recommended standards, the document states that, "during deliberation regarding

persons to be terminated, consideration must be given to the following: 1. Transferring faculty or other employees to other areas of the University; 2. Retraining faculty or other employees for new job assignments at the University; and 3. Giving terminated employees first priority in filling future vacancies for which they are qualified and able to fill."

- A newly added "Termination Notices to Affected Individuals" reduces the terms of notice to "at least thirty days" and provides that written notice of termination shall include "a clear statement for the basis of the decision in the particular case of the person affected" and "a statement indicating the employee's right to appeal the notice of termination or change of status, as provided herein." It allows for appeal directly to the chancellor within seven days of the date of the notice and, in the event of the chancellor's denial, for appeal to the system president within five days of the date of the chancellor's written denial. The president's recommendation is to be submitted to the board for a final decision.
- Finally, a newly added part reserves the board's right to change any of the policies at its discretion.

Although this October 28, 2011, document states that it suspends the personnel policies in the faculty handbook in cases of financial emergency, it is not clear to the investigating committee that the intent of the document was to override the existing policies and procedures of the SU system posted by the board of supervisors, nor is it clear just how many of the previous standards issued at various times by the board and set forth in the SUBR faculty handbook were replaced.

The investigating committee finds these ex post facto changes to the faculty handbook, adopted on the day the board declared financial exigency, to be an apparent attempt to avoid the existing standards of the board and handbook. The committee doubts whether such changes can apply legally to faculty members who were granted tenure under previous standards, given that, under Louisiana law, tenure constitutes a property right that cannot be changed retroactively and without due process. The committee has no doubt in finding that the unilateral action by Southern University authorities in removing protections from previously granted tenure was inimical to tenure's basic principles.

The committee finds further that the SUBR administration violated its own standards, as well as those recommended by the AAUP, when it replaced without warning or faculty involvement the existing board and handbook regulations for financial emergencies. These regulations had contained sufficient provisions for ensuring faculty involvement in the process for declaring financial exigency and termination of tenured faculty appointments.[3]

C. The Faculty Role under Regulation 4c of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*

If indeed SUBR's financial situation warranted extraordinary procedures, Regulation 4c is the source of the AAUP's policies on the matter. Under Regulation 4c, "termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means."[4]

It is critical, before the implementation of any proposals for program discontinuance or faculty appointment termination on financial grounds, that the faculty be given pertinent information on the institution's financial position and clear reasons why it cannot be alleviated by less drastic means. Regulation 4c thus calls for

- faculty participation in the decision that such a condition exists and "that all feasible . . . alternatives to termination of appointments have been pursued";
- an appropriate faculty body to be responsible for determining the criteria for identifying the individuals whose appointments are to be terminated;
- the designation or approval by the faculty of the person or group responsible for identifying the specific individuals; and
- the right of any faculty member issued notice of termination to an on-the-record adjudicative hearing before a faculty body in which the

3. Both the board and the SUBR website still contain the prior standards.

4. A draft Committee A subcommittee report, currently posted on the AAUP website with an invitation for comments, defines financial exigency as "a severe financial crisis that threatens the academic mission of the institution as a whole." The draft's provisions for the faculty role in the process strengthen the current provisions as recounted in the paragraph that follows. "The Role of the Faculty in Conditions of Financial Exigency" (draft, January 2013), 5.

burden of proof on controversial issues rests with the administration.

The investigating committee finds the SUBR administration to have been derelict in affording the faculty its appropriate role on all these counts.

Additionally, Regulation 4c stipulates that tenured faculty members' appointments will not be terminated in favor of retaining a probationary faculty member except in extraordinary circumstances, that the institution "will make every effort to place the faculty member concerned in another suitable position," that the faculty member "will be given notice or severance salary not less than [one year]," and that the faculty member concerned will have the right of reinstatement for no less than three years. Here, too, the investigating committee finds the SUBR administration's actions to have been at odds with the recommended AAUP standards on all counts.

D. The Declaration of Financial Exigency

The investigating committee doubts greatly that the budget shortfall at SUBR for the 2011–12 academic year was so large as to warrant a declaration of financial exigency or financial emergency (the terms were used interchangeably, with "emergency" more common after 2011), a crisis defined by the AAUP as a threat to the institution's survival or at least its academic mission. The crisis, according to the AAUP definition, is one that resists alleviation by "less drastic means" than terminating the appointment of tenured professors. The fact that 2011–12 funding for athletics at SUBR was significantly increased, for the stated reason of avoiding a demotion from Division 1 to Division 3 NCAA status, is reason alone to believe that the actions to terminate faculty appointments did not reflect a truly exigent situation. Moreover, the 1940 *Statement of Principles on Academic Freedom and Tenure* calls for the condition of financial exigency to be bona fide. The investigating committee finds that the SUBR administration made no attempt to demonstrate, in testimony before any SUBR faculty body, the good faith of its declaration.

E. The Involvement of Others at SUBR in the Administration's Decisions

The administration urged the board to declare financial exigency and then took action following that declaration without other significant academic involvement. A budget committee it appointed at the outset of the events had only two representatives from the faculty among its approximately fourteen members, with lesser-ranked administrators and deans dominating the group. Available evidence indicates that the budget committee did not undertake significant investigation and examination of the evidence for financial exigency and resulting actions. The committee was referred to as only an "advisory group." It took no votes and made no formal report or recommendation.

Likewise, the administration later created an academic council that did not invite faculty involvement in the decisions. The council's primary role seems to have been endorsement of the retrenchment and reorganization plan that the administration released on December 14, 2011. The council did not vote on the plan before its release, and it appears to have lacked sufficient time for either input or meaningful review. The president of the faculty senate was the only faculty member on the council, serving alongside nine academic deans and the heads of such departments as the library and the university honors college. The senate president informed the investigating committee that he never saw the retrenchment plan and did not know it was moving to the stage of review by the board of supervisors until a summary was posted on the university website the same day that it was reported by local newspapers.

The faculty senate did participate to some extent in discussions in summer and fall 2011. News accounts and individual faculty members report that senate members questioned the existence of a bona fide financial exigency because they believed that the budget shortfall resulted from the administration's reallocation of money from academics to the athletics program. Several faculty members expressed the belief that the administration sought a declaration of financial exigency in order to reduce the number and cost of faculty members and reorganize the university's academic programs. The senate collaborated with the board of supervisors on a plan to collect individual pledges from tenured faculty members to accept a voluntary furlough in an effort to find an alternative to declaring financial exigency. That effort was stymied when the administration refused to accept a 60 percent pledge rate by the tenured faculty as sufficient.

Some faculty members suggested that the administration never intended to accept voluntary furloughs, having already decided on a declaration of financial exigency in order to create an opportunity for reducing faculty positions and restructuring schools and departments without significant faculty involvement. In addition, the administration seems not to have

seriously considered other alternatives as required by the regulations. The administration decided to transfer nearly $2 million to athletics and to a laboratory school without faculty involvement (indeed, in opposition to the sentiment expressed in the senate) and without adequately considering what would be lost if the SUBR athletics program were allowed to fall into a lower NCAA category.

F. Determinations about Criteria for Appointment Terminations and Which Appointments Would Be Terminated

The decisions regarding criteria for faculty layoffs were at first delegated to department heads. Their most common criterion was eligibility or near-eligibility for retirement. In the cases of department heads who refused to participate in the process, deans or the provost made the decisions. In those cases, the most common criterion was the lowest number of credit hours produced. The faculty senate's executive committee requested the list of criteria but did not receive it.

The deans and the provost made the decisions on terminating specific appointments on the recommendation of department chairs. Little documentation is available concerning how these decisions were made, but a November 2011 e-mail from the provost, ordering a dean to submit a list of three faculty names, in rank order, for appointment termination, is suggestive of the procedure used. The investigating committee finds that no faculty body appears to have been involved in the decision making, in identifying criteria for determining appointment terminations, or in choosing or approving which person or group would identify the specific individuals whose appointments would be terminated.

G. Right to a Hearing

Regulation 4c's provisions in a contested decision on appointment termination call for an on-the-record adjudicative hearing before a faculty body with the burden of proof on the administration. In contrast, the appeal process afforded to the SUBR faculty members who received layoff notices gave them only seven days to appeal the decision to the chancellor, who had himself approved the decision. If the chancellor denied the appeal, the affected faculty member had five days from the date of the denial to appeal to the system president, who would then make a recommendation to the board of supervisors, whose decision would be final. The appeals to the chancellor by faculty members notified of termination were summarily denied except for the appeal from Professor Fontenot, whose notification was rescinded because of a misunderstanding about his intent to retire. Two faculty members who appealed further to the president stated that he referred them to the board of supervisors. One of these went before the board and was allowed to speak for three minutes. The board heard three appeals that day and took one "global" vote, rejecting all three. Two wrote to request a hearing before a faculty committee, and neither received a reply. As indicated earlier, the investigating committee finds that the SUBR administration denied the affected professors the hearing they should have received under AAUP-recommended standards.

H. Preference to Be Given to Tenured over Nontenured Faculty in Decisions on Retention

The SU system policy states, "In instances of financial exigency, tenured faculty members shall be governed by the existing policies for prioritizing employees during retrenchment." The investigating committee finds no explicit priority for tenured appointments in the policies, however, and it notes that all of the notified faculty members held indefinite tenure. Some faculty members expressed the view that the administration had a conscious intent to terminate older tenured professors with higher salaries. Closeness to retirement seems to have been a prominent criterion for some selections. Professor Ronald Vogel reported that probationary faculty members in his department (public administration) were retained while his own appointment was terminated after fifteen years of service. Others whose tenured appointments were terminated informed the investigating committee that nontenured members in their departments were retained, and one faculty member reported a stated desire by a high administrative officer to lay off tenured professors and replace them with temporary faculty. Regulation 4c allows for exceptions to tenure preference in extraordinary circumstances where a serious distortion of the academic program would otherwise result. The investigating committee is unaware of any attempt by deans or the provost to identify extraordinary circumstances in an individual case that warranted such exceptions.

I. Administration Attempts to Relocate Faculty to Other Positions

SU system policies and the exigency policy adopted by the board on October 28, 2011, follow Regulation 4c in calling for attempts to relocate tenured faculty members with terminated appointments in other positions

in the institution. The investigating committee finds no evidence that the administration sought to relocate faculty members whose positions had been eliminated. The only mention of assistance in the form letter of termination from the chancellor was the following: "The Chancellor's office shall offer to provide letters of reference upon request and letters of explanation to prospective employers to assist in suitable placement."

J. Amount of Notice of Termination

In contrast to the minimum of one year's notice or severance salary called for under AAUP's *Recommended Institutional Regulations*, the policy approved by the board of supervisors on October 28, 2011, provides for notice of "at least thirty days" for all faculty and staff members so notified. Laid-off faculty members received notice varying from thirty days to ten weeks. The length of notice apparently depended on when a faculty member was selected for termination. In May 2012, when only thirty days' notice was given, the extremely short amount of time reflected the administration's desire to accomplish the termination while the declaration of financial exigency was still in effect.

V. Conclusions

1. Acting as recommended by the administration of Southern University, Baton Rouge, the Southern University system's board of supervisors responded in October 2011 to a reduction in allocated funding by declaring a state of financial exigency and approving new policies and procedures that enhanced the administration's authority to act as it saw fit in reducing academic expenditures. The administration's resulting actions in cutting or reorganizing academic programs and in terminating tenured faculty appointments (nineteen involuntary terminations, according to the provost) disregarded the provision in the 1940 *Statement of Principles on Academic Freedom and Tenure* that termination on grounds of financial exigency be demonstrably bona fide and disregarded provision after provision of Regulation 4c ("Financial Exigency") of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. Of particular concern is the administration's virtual exclusion of the university's faculty from successive phases of the decision-making process where the faculty's involvement should be crucially important: exploring alternatives to deal with the financial problem, declaring a state of financial exigency, determining where within the academic program cuts are to be made, determining the criteria for identifying individuals for appointment termination, and designating the person or group to identify the specific individuals serving as a hearing body in a contested faculty case.
3. The administration's declaration of financial exigency when 60 percent rather than the desired 90 percent of the faculty voluntarily agreed to a 10 percent salary cut and its subsequent decision to cut salaries across the board by 10 percent is another concern. Also particularly troubling was the reduction, in the second wave of layoffs, of the already inadequate notice provided those who were released in the first wave. Notice for the new victims was woefully scant because the terminal date for consummating layoffs was close at hand.[5] ■

5. The administration of Southern University, Baton Rouge, having received together with other concerned parties a preliminary draft text of this report with an invitation for corrections and comments, replied with the following letter, copied here in full:

> Southern University and A&M College at Baton Rouge acknowledges receipt of a copy of the AAUP's draft report of the investigating committee charged by AAUP to investigate the University's actions regarding faculty leading up to and following a declaration of financial exigency by Southern University and A&M College during the 2011-2012 academic year.
>
> The University basically agrees with the information included in the background section of the report. However, there are several instances in other sections of the report that the University is not in agreement.
>
> First, the University did everything possible to avoid financial exigency. The financial challenges facing the University have been consistent over the last several years. Listed are just some of those challenges.
>
> 1) Repeated state-mandated budget reductions over the last several years
>
> 2) State-mandated increases in admission standards, resulting in decreased enrollment
>
> 3) Increases in the cost of out-of-state fees, resulting in decreased enrollment
>
> 4) Unfunded mandates (These are expenses the state requires that the University pay even though the state provides no money to pay these expenses.)
>
> The University implemented numerous measures before seeking approval of a declaration of financial exigency.
>
> Hundreds of staff employees (non-faculty) were terminated over the last several years.
>
> • Classes were increased in size (enrollment).
>
> • The number of adjunct and temporary faculty was reduced.

EDWARD F. SHERMAN (Law)
Tulane University, *chair*

M. EVELYN FIELDS (Early Childhood Education)
South Carolina State University

JUDITH F. GENTRY (History)
University of Louisiana at Lafayette

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **ERNST BENJAMIN** (Political Science), Silver Spring, MD; **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Communications), New York University; **RISA L. LIEBERWITZ** (Law), Cornell University; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **THERESA CHMARA** (Law), Arlington, VA, *ex officio*; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant;* **ROBERT A. GORMAN** (Law), University of Pennsylvania, *consultant*.

- Utility cost saving measures were implemented.
- Administrators and unclassified staff were furloughed for almost three years.

It was only following the declaration of financial exigency that the faculty was furloughed for a period of eight (8) months. The AAUP draft report implies that financial exigency could have been avoided, had the administration accepted a 60% voluntary furlough rate by faculty. Once faculty members became aware that furloughs would not be 100% for all faculty, many who had voluntarily agreed to be furloughed began to demand a reversal of their voluntary furlough pledges. As such, the entire effort for voluntary furloughs was compromised and was much less than 60%.

The University is certain that it can document that without the declaration of financial exigency and the subsequent mandatory furlough of employees, including faculty, it would have been impossible to balance the 2011-2012 budget and the budget for the subsequent year.

The report also misrepresents the role of the Academic Council. The Council was not especially created by the administration to endorse any plan. The Academic Council is a **standing committee** of academic deans and directors, faculty senate president, associate vice chancellor for academic affairs and provost. This Council has been in existence for decades.

The University does take issue with the investigating committee's "great doubt" that the budget shortfall at SUBR for 2011-2012 was so large as to warrant a declaration of financial exigency. The University wishes to re-emphasize that had it not declared financial exigency for the 2011-2012 year, not only would it have been impossible to balance the budget for 2011-2012, but for 2012-2013 as well.