

Academic Freedom and Tenure: Meharry Medical College (Tennessee)¹

This report has its immediate origin in events at Meharry Medical College, in Nashville, Tennessee, which led to the issuance of notices of nonretention to more than a dozen faculty members, most of whom had completed over seven years of full-time service at the institution. Several of these faculty members received notices dated January 1, 2003, from Dr. PonJola S. Coney, dean of the School of Medicine, stating that, “due to restructuring in the School of Medicine, your Faculty Appointment will not be renewed for the 2003–2004 academic year.” These letters carried a termination date of June 30, 2003. Another, larger group of faculty members received notices dated May 29, 2003, which stated that “due to budget constraints in the School of Medicine, your Faculty Appointment will not be renewed for the 2003–2004 academic year.” This second group of letters carried a termination date of December 31, 2003. In the visit to Meharry Medical College by the undersigned investigating committee on February 26–27, 2004, the committee met with many of the affected faculty members, two of whom had their initial termination notices rescinded. Subsequent to the committee’s visit, the chair interviewed an additional affected faculty member, no longer at Meharry, by telephone. These cases grew out of a larger set of issues that will be treated in the latter half of the report.

I. The Institution

Meharry Medical College, one of four historically black medical schools in the United States, was founded in 1876 as the medical department of Central Tennessee College of Nashville, under the auspices of the Freedman’s Aid Society of the Methodist Episcopal Church. The school is named

after the Meharry brothers, whose donation of more than \$30,000 was part of its initial financing and was matched by the church. In 1900, Central Tennessee College became Walden University, and by 1915, through a new state charter, the medical department gained a separate corporate existence from the university. Meharry Medical College moved to its present location, a twenty-six-acre campus in the northern part of Nashville, in 1931.

The mission of Meharry is to provide education and training in the health sciences, with a special focus on providing opportunities to promising African Americans and other underrepresented ethnic minority students. It has graduated nearly 15 percent of all African American physicians and dentists practicing in the United States, approximately 70 percent of whom work in poor and underserved areas of the country, and about 10 percent of the PhDs in biomedical sciences received by African Americans since 1970. Meharry, which has some 625 students served by a full-time faculty numbering approximately 190, is presently composed of schools of medicine, dentistry, and graduate studies, with another program, in allied health professions, conducted jointly with Tennessee State University. The School of Graduate Studies and Research originally had its own faculty roster, but these were merged into departments of the School of Medicine about five years before the events described in this report.

The college has been accredited since 1972 by the Southern Association of Colleges and Schools (SACS). Its medical school is accredited by the American Association of Medical Colleges and its dental school by the American Dental Association. The college currently operates training centers in the Nashville and Murfreesboro areas, to name only two.

In 1994, Dr. John E. Maupin, Jr., a 1972 graduate of Meharry’s dental school, became the college’s ninth president. He had previously held positions as executive vice president of the Morehouse School of Medicine and as chief executive officer of Southside Healthcare, Inc., a provider of outpatient health-care services in Atlanta. Dr. PonJola S. Coney became dean of the School of Medicine and senior vice president for health affairs at Meharry in July 2002, hav-

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 Meharry Medical College, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

ing previously served as professor and chair of the Department of Obstetrics and Gynecology at Southern Illinois University College of Medicine in Springfield.

At the time of the events that led to the investigation resulting in this report, the chair of the college's forty-one-member board of trustees was Dr. Frank S. Royal, a prominent Richmond, Virginia, physician and a 1968 graduate of Meharry.

II. Issues Raised Previously

The Association's current involvement with issues of academic freedom and tenure at Meharry Medical College extends back to the 1994–95 academic year, when officers of the Meharry Faculty Senate consulted with the AAUP's staff regarding proposed revisions of the college's existing faculty personnel policies, which the board of trustees had approved in 1984. In 1998, a faculty member called the staff's attention to the status of at least half a dozen professors with more than seven years of full-time service on the Meharry faculty who had received notices of nonretention.

These cases, in turn, grew out of a longer record, dating back to the inception of President Maupin's term of office. Faculty concerns involved governance issues and administrative policies, particularly unilateral changes by the administration in academic programs, including the merger or restructuring of departments and the appointments of deans and department chairs with little or no faculty consultation. Following a tenure moratorium imposed by the board of trustees in January 1996, a 1997 self-study report for a SACS reaccreditation visit cited the status of tenure at Meharry as a long-standing "source of faculty unrest."²

As reported in 1998 by a Meharry faculty member to the Association's staff, the president's office had initiated the redesign of faculty contracts beginning around 1996. These contracts now specified the minimum percentage of salary support that faculty members had to bring in through research grants, a feature that remains in place today. Affected faculty were given two weeks to sign their contracts (this was later increased to a month), and were warned that failure to sign within the allotted time might result in the withholding of their salary or immediate dismissal. In 1998, notices of termination of services were issued to faculty members who had failed to acquire the stipulated level of grant support, calculated at 75 percent of the proportion of their salary that was allocated to research activities, despite the fact that performance reviews by their chairs were often positive. In addi-

2. January 1996 is the date of formal promulgation of the policy, but a moratorium on the award of tenure, whether official or not, appears to have existed as early as the 1980s. The investigating committee was told repeatedly that very few faculty members sought promotion or tenure during that period, but since no faculty were being released either, there seemed little disposition to press the point.

tion, a new procedure, the rescindable terminal contract, was introduced that could be nullified when the faculty member received grant support. If financial or other considerations dictated, the notice could still lead to termination of services at the end of the academic year, effectively displacing the standard twelve-month notification deadline that had been previously observed at Meharry. Two faculty members had their services terminated under these procedures in 1996 and two more in 1997, each of the four with a period of service ranging from fifteen to twenty-five years. In 1999, numerous faculty members, several of whom had been at Meharry for more than seven years (two of them for nearly thirty years), faced termination, despite support for their continuance in many cases from their department chairs. The Association's staff was advised of four more appointment terminations, two in the Department of Pharmacology and two in the Department of Microbiology; three of the affected individuals had been at Meharry for a period of nine to twenty-seven years. Although the dean of the School of Medicine issued the termination notices, faculty members attributed the impetus for these actions to the president's office.

Subsequently, most of the termination notices were rescinded. The underlying faculty personnel policy, however, which had been introduced in 1996 and implemented in 1998–99, was not withdrawn or significantly modified, and it was to figure again in the next sequence of events brought to the attention of the Association.

III. Investigating Committee

By letters dated January 1, 2003, less than a year after her arrival as dean of the Meharry School of Medicine and senior vice president for health affairs, Dr. Coney notified three faculty members that, because of a need for "restructuring" in the medical school, they would not be reappointed after June 30, 2003. One notice was later withdrawn. On May 19, 2003, Dean Coney met individually with the chairs of the departments in the School of Medicine to discuss their departmental budgets for the following academic year, stressing the need for budget cuts. A principal source of such cuts was to come from salary reductions for those faculty members who did not meet the 75 percent salary requirement for time committed to research, and from the termination of some faculty appointments to be effective December 31, 2003. Ten days later, Dean Coney issued six-month terminal contracts to more than a dozen faculty members, citing "budget constraints" in the medical school. A number of other faculty members, while they did not receive termination notices, were informed of substantial reductions in their 2003–04 salaries because of their loss of research funding.

The unprecedented scope of these actions led to a 45 to 5 vote of no confidence in President Maupin, with fifteen abstentions, by those Meharry faculty present at a faculty

senate meeting held on June 4. According to a reporter who attended the meeting, members of the faculty challenged the basis of the administration's actions against the affected faculty members and expressed concern about its failure to consult with the faculty before taking those actions. Additionally, they stressed that the administration had not made any attempt to justify the seriousness of the budget situation by declaring a state of financial exigency or by discontinuing any departments or programs of instruction. Among the faculty members quoted by the reporter as critical of the administration were Professors Shirley Russell, chair of the Department of Microbiology and associate dean for research in the School of Dentistry, and Joel Trupin, an associate professor in the microbiology department, whose cases are addressed in the sections that follow. A week later, at a meeting on June 11 between the dean and the faculty of the School of Medicine, Professor Russell questioned the method by which the dean had met the problems of institutional finances. On June 16, the dean removed Professor Russell as chair of the Department of Microbiology and withdrew an earlier one-year contract for the 2003–04 academic year, replacing it with two successive revised contracts, the latter of which terminated Professor Russell's services to the college as of December 31, 2003. Also on June 16, notice of termination was issued to Dr. James Russell, Shirley Russell's husband, associate professor of medical education and a faculty member at Meharry since 1970.

On July 2, more than a dozen faculty members who had received six-month contracts, including the Russells and Professor Trupin, were given letters placing them on paid administrative leave for the duration of their appointments and instructing them to return all college property and remove all personal belongings from their offices by the end of the following day. On the same day, President Maupin, in response to questions at a meeting of the faculty senate, asserted that the institution was not in a state of financial exigency.

Professor Shirley Russell appealed the decision to terminate her services to the Committee on Appointments, Promotions, and Tenure of the faculty senate, which on August 22 issued a report recommending that she be given a regular one-year contract for the 2003–04 academic year. As discussed below, President Maupin rejected the recommendation of the committee on August 29, and on September 15, Professors Shirley Russell, James Russell, Joel Trupin, and a fourth faculty member, Professor Steven Fredman, filed suit in the Chancery Court for Davidson County, Tennessee. Three of the plaintiffs reached settlements of their cases out of court. In Shirley Russell's case, on December 18, the court issued a summary judgment for the Meharry College administration, which she has appealed.

The Association's staff wrote to the Meharry administration on August 19, 2003, observing that many of the issues

posed by the 2003 terminations seemed virtually identical to those the staff had raised in 1998: claims to tenure on the basis of length of service, lack of faculty involvement in the decision-making process, and denial of academic due process. Additionally, the staff expressed concern over allegations by several of the affected faculty members that the administration had singled them out for reasons that violated their academic freedom, resulting from displeasure with their outspoken criticism of certain administration policies and practices. The staff noted that all the professors who received notices of termination had been placed on administrative leave with pay and banned from the campus, despite the absence of evidence that imminent harm was threatened either to them or to others by their continuance in their academic duties or by their presence on the campus. When the administration, after a further exchange of correspondence, declined to address the Association's concerns, the staff advised President Maupin by letter dated November 10, 2003, of the general secretary's decision to appoint an ad hoc committee to investigate the issues of academic freedom, tenure, and due process raised by the cases. Following a subsequent exchange of correspondence with attorneys for Meharry, the visit of the committee to Nashville was set for February 26–27, 2004. In the course of its visit, the committee met with President Maupin, Dean Coney, General Counsel Leilani Boulware, and current and former members of the faculty, including representatives of the AAUP chapter. The committee thanks all those who met with it for their cooperation.

IV. Basic-Science Faculty

In the discussions of individual basic-science faculty cases that follow, the investigating committee confines itself to an analysis of those cases in terms of Association-supported principles and procedural standards. Several issues are also implicitly raised with respect to the status of Meharry's own statutes, procedures, and guidelines. These, in the committee's judgment, are more properly treated separately as part of continuing governance issues at the institution, although a number of points will be noted at which the dispositions of individual cases appear not to have comported even with the inadequate standards set forth under the college's own guidelines.

1. PROFESSOR SHIRLEY B. RUSSELL

Shirley Russell received her PhD in medical genetics from the University of Wisconsin in 1969, and was a postdoctoral student at the Howard University College of Medicine, where she studied somatic cell genetics from 1968 to 1970. From 1970 to 1974 she was first a part-time instructor and then an assistant professor in the Division of Genetics and Molecular Medicine, School of Graduate Studies, at

Meharry, her appointment becoming full time in 1974. Dr. Russell was promoted to the rank of associate professor in the Division of Biomedical Sciences and the Department of Microbiology in 1980 and to the rank of professor in the Department of Microbiology in 1994. She served as department chair from 1989 to 2003, and as associate dean for research in the School of Dentistry from 1995 to 2003. Professor Russell received various teaching and service honors at Meharry, including an award in 1999 “for her untiring efforts and commitment to the School of Dentistry.” She served as the co-principal investigator and principal investigator on a variety of research and training grants from the National Science Foundation and from several institutes (among them, the National Cancer Institute; the National Heart, Lung, and Blood Institute; and the National Institute of Dental and Craniofacial Research) of the National Institutes of Health (NIH). She was the principal investigator for a regional research center for minority oral health, for expanding oral health disparities research at Meharry, and for various minority research and training grants in cellular and molecular biology. Total funding for research projects in which Professor Russell participated exceeded \$4 million in direct costs and resulted in twenty-three publications, seventeen of them in peer-reviewed journals. She also obtained more than \$7 million in direct costs for expanding institutional research infrastructure and for training PhD students.

At the time she was issued notice of termination, Professor Russell was the director of two PhD training programs, one sponsored by the NIH and the other by the U.S. Department of Education, and was the co-director of two other PhD training programs, one in human genetics and the other in cardiovascular disease, jointly sponsored by Vanderbilt University and Meharry. She also served as a consultant on a third PhD training program at Vanderbilt and Meharry in cellular microbiology. Her own research, which was focused on a skin disorder particularly common among persons of African, Mediterranean, and Asian descent, and was carried out with Professor Trupin, received favorable publicity in the local press.

Professor Russell was never formally awarded tenure at Meharry. In early 1994, when the acting dean of the School of Medicine recommended that she be promoted to the rank of professor, Professor Russell requested that she also be recommended for tenure. The dean did so, in his letter to the chair of the promotions and tenure committee. But the committee’s report of March 15, 1994, addressed only her promotion in rank and made no reference to her candidacy for tenure. In her initial contract for the academic year 2003–04, with an expiration date of June 30, 2004, which Professor Russell received on June 2, her appointment was labeled “tenure track.” Meharry’s standard contract form provides

for two other kinds of faculty appointment: “non-tenured specific term” and “tenured.”

According to Professor Russell, the initial May 19, 2003, individual meetings that Dean Coney had with each of the department chairs in the School of Medicine were characterized by certain common elements. The dean informed the chairs of the budgetary deficit that she expected them to meet within their faculty salary category, but she did not give them an opportunity to present their own proposals for addressing the deficit. The chairs were informed that the board of trustees had approved implementation of salary cuts for individuals who did not meet the 75 percent requirement for time contractually committed to research, and that teaching allowances for each department would be based on contact hours turned in by faculty for teaching students and training fellows. Professor Russell reports that she was told that she needed to identify approximately \$250,000 in faculty salaries not covered by general funds, and that in all likelihood she would have to release some faculty members on December 31, 2003, to address the deficit. Professor Russell indicated to the dean that she would try to avoid such an action and would seek other mechanisms for meeting the deficit, such as the rebudgeting of grant funds and the identification of new funding sources. The next day she delivered a letter to Dr. Coney, questioning some of the dean’s suggested methods for meeting the budget deficit. She received no response to her letter. According to Professor Russell, the dean was absent from the campus during much of the period from May 19 on, and the conversations about the budget that took place after that date were with Paul McFarland, the medical school’s fiscal officer.

After having conversations about budgetary matters with her departmental colleagues and with chairs in the other basic-science departments, Professor Russell met early in the following week with Mr. McFarland to present her response and was told that she had met all but about \$40,000 in cuts. Professor Russell reports that she stated she would look for more funds, and that she offered to relinquish her administrative supplement of \$20,000 a year to meet part of the remaining deficit. The fiscal officer suggested that she address the problem by reducing the time of the appointment of one faculty member in the department who had just lost a grant. Professor Russell responded that she “needed to think about it and perhaps find another way.”

On May 28, Professor Russell sent an e-mail message to Dean Coney, requesting that the department be credited with additional teaching hours, since some of her colleagues had been devoting more hours to teaching than the percentage of time allocated by their respective contracts. Professor Russell asked Dean Coney for an opportunity to discuss these changes, to explain her attempts to meet the budget

cuts, and to discuss her letter of May 20 to the dean. The dean responded that the department could not have more teaching funds, that it was already receiving funds in the ninety-fifth percentile of microbiology courses in U.S. medical schools and more than any other basic-science department at Meharry, and that further cuts might be on the way. Professor Russell told the dean that the department taught many more courses than medical microbiology to medical, dental, allied health, and graduate students, and trained numerous PhD students and postdoctoral students. She added that she would continue to seek funds and that she hoped she would not need to make additional cuts. These exchanges all took place through e-mail.

Professor Russell left town on May 29. On June 2, before her return, the department's business manager called to inform her that contracts had been delivered to the members of her department, seven of which included salary reductions based on the failure of individuals to meet the 75 percent rule on the previous year's contractual research portion of the appointment. An eighth contract was for only three months. Professor Russell's own contract, received on this day, was a regular one-year contract with an expiration date of June 30, 2004, and continued to carry her supplementary administrative stipend of \$20,000. Professor Russell asked her business manager not to distribute the contracts until she returned on June 4 and could examine them. She knew that three of her colleagues had met their requirements based on funds she had identified and discussed with the medical school's fiscal officer, and that an additional individual had identified funds while she was gone.

When the faculty senate met on June 4, Professor Russell, who was now back in Nashville and in attendance, was the first speaker. She addressed the question of the 75 percent requirement, stating that it was counterproductive to punish people with good records, and that the institutional climate was driving away faculty who had not already been released. She also expressed concern that the administration had not given any clear picture of overall financial conditions at Meharry or any description of how other schools in the college were being asked to address those issues. The senate's vote of no confidence in the president, noted earlier, followed. Professor Russell was contacted later in the day by a reporter from the Nashville *Tennessean* who, unknown to her, had been in the audience. He asked whether he could report what she had said. According to Professor Russell, she told him that she believed her statements were too strong for publication, but that she would agree to be quoted to the effect that these were the most difficult cuts she had been asked to make in her fourteen years as chair, and that departments were being asked to give up a lot without knowing the full extent of the problem. These remarks were included in the next day's issue of the newspaper.

On Friday, June 6, Professor Russell provided the dean's office with documentation in support of revised contracts for four faculty members and indicated that she wished to give them those revised contracts. The dean's office, however, instructed her that she needed to provide all existing contracts to the affected faculty even if they were being renegotiated, since they needed to have thirty days to review them prior to the July 1 deadline for signing them. Professor Russell urged the dean's staff not to compel that action, because it would damage the morale of productive faculty. When her efforts failed and the contracts were distributed as originally written, two faculty members whose contracts contained salary reductions refused to accept them. In Professor Russell's words, "one of them, a productive tenured professor in the department, broke down in tears saying that he worked so hard he did not deserve this type of treatment."

The dean's office also sent out an e-mail message on June 6 to faculty members stating that those who had questions about their contracts should discuss the matter with their department chair rather than with the dean. On June 9, Professor Russell sent an e-mail message to the dean, requesting an appointment to discuss the contracts. She also stated that she wanted to wait until the documented sources of additional funding, which she had provided on June 6, were processed so that she could have a clearer picture of the budget. The dean, according to Professor Russell, did not respond.

On June 11, however, Dean Coney held a meeting of the medical school faculty in which she described the budget and her efforts to balance it. When Professor Russell asked about the six-month renewal contracts, Dean Coney replied that they were not renewals but terminations, and that the college's legal counsel had ruled them permissible. Professor Russell stated to the investigating committee that she had pointed out that a six-month notice of nonrenewal assumed that the faculty member would be informed no later than December of the academic year at the end of which the termination was to take place and that a second legal opinion might be necessary. Professor Russell also stated that she then asked the dean why the only target for budget cuts appeared to be faculty. According to Professor Russell, Dean Coney responded that "I hadn't listened to her when the budget was discussed. I told her I had tried to get her to answer me. I was told that I could discuss it with her in private. I was told by others that I was polite, but that she was rude to me and to the only other chair who tried to question the budget process." Faculty members who had witnessed this exchange told the investigating committee that while Professor Russell's questions had been blunt and direct, they did not transgress the normal bounds of academic courtesy.

Late in the afternoon of June 16, less than a week following the faculty meeting, Dean Coney called Professor Russell

to her office and stated that she needed to make a change in the leadership of the Department of Microbiology. The dean handed Professor Russell a letter, on which President Maupin and other administrators were copied, which expressed the dean's "disappointment in your leadership and support during this period of financial difficulty and adjustment for the School of Medicine and College. The success of a medical school depends on department chairs, which means that chairs must wear multiple hats. Naturally, I expect you to voice your opinion and be an advocate for your department and test me in every possible way, but once a decision is made, I expect the support of its implementation from my chairs." The dean then quoted from the college's code of conduct, which states, in part: "In order to ensure that the mission of the College is successfully achieved, each of us must be committed to upholding the highest standards of ethics. Everyone must share 'commitment to excellence.' . . . It is imperative that management promotes a culture of compliance that exemplifies the highest standards of ethics." With this language in mind, Dean Coney advised Professor Russell, "I have been talking for months about the need to reduce expenses or increase revenue and balance the budget as the bottom line. It is my opinion that your response and recent actions do not demonstrate a shared desire to promote the institution's goals and objectives, and thus you have not exemplified a 'commitment to excellence' in the management of the medical school." The letter stated that Professor Russell's appointment as chair of the Department of Microbiology ended immediately, that she should vacate her office space by the close of business on June 17, that the contract extended to her on June 1 was rescinded, and that a new contract was under consideration. Professor Russell states that Dean Coney indicated that she could remain a faculty member, and that she would need to discuss her new contractual time allocations with the dean rather than with the interim chair.

According to Professor Russell, Dean Coney then indicated that her administrative assistance was no longer needed in the School of Dentistry. At that point, Dr. William B. Butler, dean of the dental school, entered the room and handed Professor Russell a letter, also dated June 16, stating that, "as you and I have discussed and agreed upon recently, there is a need to recruit new leadership for the research initiatives in the School of Dentistry." Her appointment as associate dean for research in the School of Dentistry and program director of the infrastructure research grant, "Expanding Oral Health Disparities Research at Meharry Medical College," was thereby terminated, effective immediately.

On June 24, prior to an appointment with the dean to discuss her new time allocations, Professor Russell was informed by an e-mail message that a revised contract had been prepared for her, which she could pick up in the dean's

office. The contract allocated 90 percent of her time to teaching and teaching-related activities and 10 percent to research. Believing that this reallocation reflected a conversation that she had already had with her interim chair, Professor Etheleen M. Hill, Professor Russell signed the contract, as did Professor Hill. Like the June 1 contract, the June 24 contract was for twelve months, expiring on June 30, 2004.

On June 27, Professor Russell filed a complaint with Professor George Breaux, the chair of the faculty senate, petitioning for redress of a grievance against Dr. Coney under Meharry's Policy on Guidelines for Academic Freedom, Appointments, Promotions, and Tenure of Faculty. Her grievance was directed specifically against the reasons given for removing her as chair of the Department of Microbiology, not against the right of the dean to remove her from that position. Professor Russell complained that the reasons inadequately reflected her own practices during her period of service at Meharry and were "damaging to my reputation," "incorrect and defamatory, and . . . based on my stated concerns rather than my actions." After summarizing the attempts she had made to convey her concerns to the dean, Professor Russell maintained that she had been motivated throughout by her desire to have the college reconsider measures that might be harmful to the reputation of Meharry, its ability to serve student needs, and its future efforts to secure reaccreditation. As for her simultaneous removal from any administrative role in the School of Dentistry, without having been apprised of any previous concerns about her performance, Professor Russell further complained that this decision struck her as strongly suggestive of "a conspiratorial action." She pointed out that "although Dr. Butler and I have discussed on numerous occasions the need to recruit full-time leaders for research in the School of Dentistry as well as additional research scientists, in our recent discussions it was agreed that I would lead a Center for Oral Research in the School of Dentistry. There was no indication in any of these discussions that he was planning to terminate my involvement in the dental school in the near future."

In the late afternoon of June 30, Professor Russell was presented with yet another contract, replacing the previous ones. Unlike the contracts issued on June 1 and June 24, both of which expired in a year's time, the June 30 contract ended on December 31, 2003. An accompanying memorandum from the dean stated that the June 24 contract, although signed by Professor Russell and her interim chair, was "in error" in that Professor Russell had not responded to the dean's request for a revised time-allocation proposal. Professor Russell immediately made an appointment to meet with the dean at the latter's "earliest possible convenience," which was July 10, to discuss her own recommended allocations of time. Faced with a July 1 deadline, she signed the

contract but stated that she was doing so under duress and protest. When told by the dean that the contract could not be validated with that qualification, "as neither the institution nor I have applied any pressure for you to accept or deny this offer of employment," Professor Russell resubmitted it with her signature and that of her interim chair, Professor Hill. Professor Russell did this, she told the investigating committee, because she had continuing obligations in the department and assumed that the contract would ultimately be extended. The events that followed immediately thereafter were to show that her assumption was unwarranted.

On July 2, when Professor Russell and other faculty members who had received six-month contracts were notified that they had been placed on administrative leave until the end of the six-month contract and needed to vacate their campus offices no later than July 3, several of these faculty members decided to consult with a Nashville attorney, John Norris, who indicated that they could file an injunction for a restraining order to prevent their forcible removal from the campus. After further consultation, and Mr. Norris's notice to Meharry's general counsel of the action contemplated, the outside counsel retained by the college advised Mr. Norris that the affected faculty members could stay on campus and carry out their duties.

Also on July 2, Professor Russell forwarded an addendum to the grievance statement she had previously submitted, describing the circumstances in which the June 30 contract was presented to her. She pointed out that, although she apologized for any misunderstanding about how the time allocation on her contract should have been written, "the Dean did provide an earlier contract that I signed, and my failure to meet with her does not seem to warrant a change in my contract from one year to six months with the same time allocations." She stated her belief that the subsequent requirement of removal from campus was a violation of applicable college policy, which called for a deferral of such action until a grievance could be heard.

During the summer, while additional legal steps were being taken by five Meharry Medical College faculty members, Professor Russell's case was pending before the appointments, promotions, and tenure committee.³ Professor Russell wrote again to the committee chair on August 8, providing additional documentation and information, including an account of the funding secured for research by the Department of Microbiology dating back to 1989, when she became chair, and evidence of student performance on subject board examinations. She broadened the grounds of her original grievance to

3. The five faculty members were Shirley Russell, James Russell, Joel Trupin, Mary Beth Hogan (who subsequently withdrew from the litigation when she took a new teaching position at another institution), and Steven Fredman.

include her December 31 termination and her placement on administrative leave. Professor Russell alleged that the action against her was not based on adequate consideration or evaluation, and that the issuance of the termination notice immediately following her removal as chair and associate dean was an abridgment of her right to free speech and academic freedom. She further claimed that termination in the middle of a contract year constituted a dismissal, and that such an action should therefore be taken only in cases of adequate cause or financial exigency, and that being placed on administrative leave and ordered to leave the campus on July 3 prevented her from carrying out her academic responsibilities, not justified by any showing that her continuance was a source of harm to anyone. Professor Russell advised the Association's staff at this time that despite the fact that her grievance was still in process, she was experiencing repeated efforts by the administration to change her duties. An attempt had been made to remove her as principal investigator of her two training grants. She had been accused of being insubordinate to Dean Coney, of interfering with the duties of the interim chair of microbiology, and of "making derogatory comments about the administration to students." With respect to this last charge, Professor Russell informed the investigating committee that she had never initiated any discussion of these matters with students, but that the publicity surrounding the turmoil at the college made it impossible not to field questions from them when they asked. In only one instance, she stated, did she take the initiative in telling a student that her services were being terminated.

On August 22, 2003, the promotions and tenure committee wrote to President Maupin, stating that its recommendation was only in reference to the issuance of a six-month non-renewable contract, inasmuch as the committee's charge was limited to the question of determining whether adequate consideration was given to the faculty when a decision to issue a nonrenewable contract was made.⁴ The committee requested

4. The promotions and tenure committee's report states that the remaining issues raised by Professor Russell were being referred to the Grievance Committee. The investigating committee notes here that the distinction between the functions of these committees does not seem entirely clear, although as a general rule the promotions and tenure committee appears to have construed its obligations as applying only narrowly to the correctness of the appointment and reappointment procedures. When the Grievance Committee received the remaining three issues of Professor Russell's appeal, its members decided that they could not make a decision on those issues separate from the first issue, and remanded the entire case to the promotions and tenure committee. The latter, apparently overwhelmed by the president's rejection of all judgments submitted to him, ceased meeting in September 2003 pending resolution of their differences. As of the time of the submission of this report, it has not met further on Professor Russell's or any other faculty member's appeal. The investigating committee is unaware of any record of a subsequent report from the Grievance Committee in Professor Russell's case.

reconsideration of Professor Russell's case on the following grounds: (a) under Meharry's personnel policies, the minimum period of appointment to the faculty was one year; (b) there was "a paucity of information in the communications from the dean in support of the decision for nonrenewal"; (c) there was no evidence that Professor Russell was afforded the time to present materials for adequately assessing her performance; and (d) Professor Russell had signed a twelve-month contract on June 24, 2003, though she had subsequently received and signed a six-month contract.

Accordingly, the committee recommended that Professor Russell be given a one-year contract from July 1, 2003, to June 30, 2004, consistent with the procedures for reappointment set forth in the college's personnel policies.

Responding to the committee's report on August 29, President Maupin disagreed that college policy mandated a minimum appointment of one year. There was, he stated, "a great deal of information available regarding the communications from the dean in support of her decision not to renew Dr. Russell's appointment," and there was evidence that Professor Russell had been afforded adequate time to present materials for evaluating her performance but that she had not availed herself of the opportunity. On the basis of these reasons and two additional charges to be discussed in the next section of this report, President Maupin declined to accept the committee's recommendation.

On August 29, 2003, Meharry Medical College posted an advertisement in the *Chronicle of Higher Education* announcing a national search for a chair of the Department of Microbiology.

2. ISSUES IN THE CASE OF PROFESSOR SHIRLEY RUSSELL

The investigating committee focused on four questions in the termination of Professor Russell's faculty services. Was she entitled to the protections of tenure? Was she afforded adequate protections of academic due process? Was she presented with reasons that, had they been tested in accordance with academic due process, might have sustained a judgment to dismiss her? Did the decision to dismiss her violate her academic freedom?

Was Professor Russell entitled to the protections of tenure? The 1940 *Statement of Principles on Academic Freedom and Tenure*, a joint formulation of the AAUP and the Association of American Colleges and Universities (AAC&U), provides that "beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years." As noted above, Professor Russell's full-time service on the Meharry Medical College faculty began with the 1974-75 academic year. At the time she was issued notice of termination in June 2003, she had completed twenty-eight years of such service. The investigating committee finds that Professor Russell was entitled to the protections of tenure because of length of service that extended far beyond any reasonable period of probation.

Was Professor Russell afforded adequate protections of academic due process? According to the 1940 *Statement*,

Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. . . . Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

These procedures, as amplified in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, also jointly issued by the AAUP and the AAC&U, and the AAUP's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure* set forth a number of particular requirements: the presentation of specific charges only after other avenues of recourse have been pursued, proscription against suspension while proceedings are in process unless the faculty member's continuance represents a threat of immediate harm to the subject individual or others, a hearing before an elected faculty committee, the right to confront and cross-examine witnesses, and a response from the governing board setting forth the reasons for any nonconcurrence with the conclusions reached by the committee.⁵ In the case of dismissal, whether of a tenured faculty member or of a nontenured faculty member prior to the expiration of a term appointment, the burden of proof rests with the administration to demonstrate adequacy of cause by clear and convincing evidence in the record considered as a whole.

Whether or not a moratorium on the award of tenure is currently in effect at Meharry Medical College—and Dean Coney has stated to the investigating committee that none has been in effect since July 2002—it is obvious, as the case of Professor Russell and that of others to be discussed below reveal, that the Meharry Medical College administration

5. Since the question of suspension is applicable to several of the cases considered in this report, that issue is treated separately in section VII. This is also true of adherence to Association-supported standards for notice of nonreappointment; on that subject, see section VII as well.

regards its obligation to faculty members, no matter how long their service to the institution, as satisfied merely by the issuance of contracts for a year or less, with either renewal or termination taking place at the end of the contract period. It is also clear from the preceding narrative that Professor Russell was not accorded a shred of academic due process, apart from a review by a faculty grievance committee to which she had to apply to be heard and before which she had to carry the burden of proof. This review body, in any case, did not view itself as able to render more than a narrowly tailored judgment that did not reach the main issues in the case.

Was Professor Russell presented with reasons that, had they been tested in accordance with academic due process, might have sustained a judgment to dismiss her? In explaining the reasons for her actions against Professor Russell, Dean Coney referred only to her performance as chair of the Department of Microbiology, which will be treated separately below. No reasons were given by Dean Butler for the decision to terminate her administrative appointment as associate dean for research in the School of Dentistry and program director of the infrastructure research grant. In the letter of July 2 in which Dean Coney informed Professor Russell that her services would be terminated on December 31, 2003, with her last day of active employment being July 3, 2003, the reason given was, in effect, circular: she had received a contract with that stipulation.

When the case of Professor Russell and those of several other dismissed faculty members shifted from the campus to the court, legal counsel for Meharry, in declining on behalf of the college to extend the contracts to a full year or more, wrote: "The decisions not to renew full-year contracts . . . were difficult ones, and they were carefully made. The College simply cannot reconsider these decisions, in fairness to other faculty members and in light of budgetary constraints and other considerations."

He stated further:

As a general matter, one of the reasons your clients have been asked to take administrative leave is because they have been extremely disruptive at the College. Dr. Shirley Russell has been insubordinate to her Dean, has interfered with the efforts of the new interim Chair to run her Department, and has made derogatory statements to students regarding the administration of the College. Dr. James Russell has also been disruptive and insubordinate to his superiors, as have Dr. [Joel] Trupin, Dr. [Steven] Fredman, Dr. [Mary Beth] Hogan, and Dr. [Douglas] Dorer. These actions individually and collectively have had a severely negative impact upon the sound administration of the College and the morale of other faculty and students. If they continue in service at the College for any amount of time, such conduct will not be tolerated.

The charge of "insubordination" was echoed by Dean Coney in her conversation with the investigating committee. President Maupin, in his letter of August 29, 2003, rejecting the recommendation of the promotions and tenure committee and invoking his own interpretation of the college's bylaws as permitting the issuance of six-month contracts, stated that Professor Russell had been given every opportunity to provide additional information. "I am informed," he stated further, "that Dr. Russell has continued to make derogatory statements to her students regarding the administration of Meharry and has continued to conduct herself in a manner which has been disruptive to and has interfered with the orderly operations of the College, despite express requests that she cease such behavior." In scrutinizing the president's letter for a statement of reasons for the termination of her services, the investigating committee could find only one other argument: that "when she was removed as chair, Dr. Russell was instructed to provide Dean Coney with her proposed duties to determine what her future role would be as a faculty member. Dr. Russell did not do so, but instead offered the interim chair some vague ideas that did not justify retaining her as a member of the faculty. Accordingly, she received a six-month contract on June 30, 2003, and that contract remains in force."

It should be noted that Dean Coney's June 16 letter removing Professor Russell as department chair made no explicit charge of insubordination, but only of failure to implement the policy upon which the dean had determined and thus to support the goals and objectives of the institution. A dean may, of course, request that a department head or chair resign the administrative position, but normal academic practice presumes that such a request would be preceded by discussions between the dean and the members of the affected department. In this case, the inference is inescapable to the investigating committee that Dean Coney removed Professor Russell from the chair because she objected to Professor Russell's public criticism of the dean's method of making budget cuts at the medical school meeting on June 11. The available record indicates that Professor Russell made every effort to cooperate with the budget cutting, that she in fact proposed the sacrifice of her own administrative stipend (a recommendation that the administration, in its first contract offer of June 1, declined to accept), and that on more than one occasion she sought to meet with the dean but was instructed instead to meet with the medical school's budget officer.

The investigating committee questions the soundness of Dean Coney's reasons for removing Professor Russell as chair. Yet more singularly absent from the record, in the committee's view, is any indication of what circumstances then justified the administration's severing her from her faculty position. After the dean's expressed displeasure with

Professor Russell's departmental leadership in their conference of June 16, a second full-year contract for the 2003–04 academic year was nonetheless proffered, this time without stipulation of any administrative duties. The sole reason given, in the dean's memorandum of June 30, for a revision of the contract to a six-month period was that Professor Russell had failed to get back to Dr. Coney with her recommended allocation of time in the Department of Microbiology. Since the June 24 contract had already included such an allotment, based on discussions between Professor Russell and the newly appointed interim chair, it was not unreasonable for Professor Russell to have concluded that the matter had been addressed. When, therefore, the president, in his letter of August 29, gave as a reason for terminating Professor Russell's services her alleged failure to provide a draft allocation of duties and her having "instead offered the interim chair some vague ideas that did not justify retaining her as a member of the faculty," the administration pushed the case for her removal from an administrative appointment over the threshold and into an argument for the issuance of a terminal contract. If, however, in fact, the more serious charges against Professor Russell could have been sustained, then the investigating committee believes it would have been surely unnecessary to resort to so nugatory a criterion for termination as the suggestion that Professor Russell could offer only "some vague ideas" regarding her contractual allocation of duties.

The investigating committee also notes with disapproval the use of "insubordination" as a criterion for dismissal, whether uttered by the administration (as it was during the committee's interviews) or by counsel for the college in his correspondence with the attorney for several of the dismissed faculty. The relationship between faculty members and administrative officers is not analogous to that enforced by military discipline or to the carrying out of orders in a corporate hierarchy. The 1940 *Statement*, subscribed to by numerous professional societies and incorporated directly or by reference in college and university handbooks around the country, describes college and university teachers as "citizens, members of a learned profession, and *officers* of an educational institution." (Emphasis added.) The right to contribute to the shaping of academic policy—which, as we will see, is a right substantially impaired and endangered at Meharry—is implicit in the role of faculty members as "officers" of their institution.

There is disturbing evidence in the record that the Meharry administration, having once announced the dismissal of Professor Russell, continued to collect more charges against her and circulate them when challenged. Even as her grievance was being processed, efforts apparently were made not only to remove her as the principal investigator of her two training grants, but also to build the administration's case further by accusing her of interfering with the duties of the interim

chair of the Department of Microbiology (a charge not substantiated by the interim chair) and making derogatory comments about the administration to students. Such charges were, it would seem, brandished in such a way as to cause a not-unreasonable apprehension on the part of Professor Russell that her rights of access to the campus could be revoked if she persisted in the alleged misbehavior.

One can finally ask whether any aspect of Professor Russell's record might have justified either her removal from the chairmanship or her removal from the faculty. On this question, judgments from external reviewers appear to confirm that Professor Russell was an admirable academic citizen and leader in her department. On July 20, 2000, an external reviewer of the Department of Microbiology's curriculum cited general comments from the medical students as highly laudatory: "Many voiced the opinion that the Department of Microbiology was, far and away, the best basic-science department at Meharry. Dr. Russell's leadership in curriculum matters was exemplary and clearly appreciated by both the students and her faculty."⁶ In spring 2003, just a month and a half before the events that have been the focus of this report, a three-person panel of external reviewers, assessing the needs of the research infrastructure of the School of Dentistry at Meharry, recommended that, in light of the "current development grant to the MMC by the National Institute of Dental and Craniofacial Research," the institution had a "unique opportunity to develop the School of Dentistry as a viable and independent research institution." It proposed the establishment of a department that would provide a home for "all biological, clinical, and population-health researchers." The reviewers reported "a unanimous agreement among all basic-science and clinical faculty and staff who met with the committee that Dr. Shirley Russell is the ideal candidate to chair this new department." They suggested "that the position of an associate dean be abolished and the chair of the new department assume the role of the lead administrator for research development at the [School of Dentistry]."⁷ Such testimony is difficult to reconcile with the judgments rendered by the Meharry administration in the course of removing Professor Russell as chair of her department, in reducing the length of her contract, and, gravest of all, in terminating her faculty appointment.

Did the decision to dismiss Professor Russell violate her academic freedom? The rapid series of decisions successively

6. Francis L. Macrina, acting vice president for research, Virginia Commonwealth University, to Dr. A. Cherrie Epps, then-dean of the School of Medicine, Meharry Medical College, July 20, 2000.

7. Caroline Genco, Boston University; Frank Macrina, Virginia Commonwealth University; and Amid Ismail, University of Michigan, to Dean William B. Butler, principal investigator, and Shirley B. Russell, program director, April 16, 2003.

stripping Professor Russell of her position as chair and then of her twelve-month faculty contract seem to have been based on the perception that she was noncooperative in forwarding the goals and programs of Meharry, and that she was, to use the term later adopted, “insubordinate” in the remarks she addressed to the dean during an open faculty meeting. The Association has long taken the position that academic freedom does not merely apply to freedom of teaching and inquiry, but extends to a faculty member’s professional functioning as a member of a learned profession and of an academic community. If any basis existed for a longer-standing discontent with Professor Russell’s performance as chair or in the areas of teaching, research, or service at a level that might justifiably invoke concern about her fitness in these capacities, much less any actual misbehavior that might warrant a for-cause dismissal hearing, none appears in the material the investigating committee reviewed or in the information provided to the committee by officers of the Meharry administration. Rather, everything points to a whirlwind set of decisions during a very narrow time frame in the spring and early summer of 2003. The investigating committee finds that, whether in her remarks in open meetings or in her private attempts to argue the case of the Department of Microbiology with Dean Coney, or in some mixture or balance of the two, Professor Russell incurred administrative displeasure for challenging the way in which the dean chose to deal with a reported budgetary crisis. Such displeasure might appropriately be cause for removing her as chair if, in fact, it so compromised her working relationship with the dean as to make it problematic whether she could continue to represent the interests of the department to the dean or the reverse. But it should not equally have served as grounds for terminating Professor Russell’s faculty appointment, especially since any remarks she might wish to make on an important matter affecting the status of other members of the faculty fell within the ambit of speech protected by the principles of academic freedom.

In discussing Professor Russell’s case with the dean and the president, the investigating committee was disturbed by their attempts, fitful though they were, to devalue her contributions to Meharry. When the question of Professor Russell’s substantive contributions to Meharry, extending over many years, was raised as a possible counterweight to a precipitate decision to dismiss her from the faculty, the committee was told that, after all, many others were involved in these successful funding enterprises and that her research was not really central—whether to the discipline or to the mission of the college was not made clear. That her visibility had brought distinction to the college appeared to be a matter of little or no moment to the administrators, or at least of negligible value when weighed in the balance

against other factors dictating dismissal.⁸ What those factors might be, to the extent that they are involved not only in this individual case, will be weighed later in this report.

3. PROFESSOR JOEL S. TRUPIN

Among the cases that led to communications from the Association’s staff in 1998–99 to the Meharry College administration was that of Professor Joel Trupin. He joined the Meharry Medical College faculty in spring 1971 and was an associate professor in the Department of Microbiology when an effort was first made to terminate his services in 1996. He has been associated with Professor Shirley Russell in her research. In 1987, he was named Meharry’s Basic Science Teacher of the Year.

Prior to the events outlined in this report, Professor Trupin experienced two other attempts, one in 1996 (just noted) and another in 1998, to remove him from the faculty. The first of these was overruled by President Maupin, who found that the proposed action by the then-dean of the School of Graduate Studies was not based on a recommendation from Professor Trupin’s department chair or on any sufficient reasons. The second was vigorously opposed by Professor Russell, as chair of the Department of Microbiology, and, after correspondence between the Association’s staff and President Maupin, was withdrawn. In 2003, the Meharry administration once again took steps to terminate Professor Trupin’s services, presenting him with a contract for the period July 1 to September 30, 2003. According to Professor Trupin, the reason for the September termination date was that Professor Russell had told the college’s fiscal officer that he would be retiring in the fall, even though Professor Trupin had himself given no formal notice of that intent. The contract was accompanied by the same conditions as those extended to Professor Russell and several other members of the faculty, namely, that he was being placed immediately on “administrative leave” and that he had to remove his belongings from his office. Writing to Professor George Breaux, chair of the Faculty Senate, on July 2, 2003, Professor Trupin sharply challenged this decision: “My enforced departure from the campus with all personal belongings before 5:00 p.m. tomorrow, with severe penalties should I return without permission . . . is a degrading and humiliating experience that no person should be subjected to, let alone a professor and research scientist who has given this institution over thirty years of professional service. The absence of any reason for this unprovoked and unprecedented treatment of a faculty member leaves no other conclusion than

8. Professor Russell’s research, in conjunction with her husband James Russell and Joel Trupin, had been reported on at length in the *Tennessean* on January 20, 2003; her coordinatorship with Dr. John Phillips of Vanderbilt of a \$750,000 training grant for genetic scientists had been featured in the *Vanderbilt Medical Center Reporter* on September 7, 2001.

that this action is being imposed solely to intimidate and stifle dissent and criticism of administration policies and practices.”

As part of the settlement of his case in court, the full details of which are confidential and therefore were not shared with the investigating committee, Professor Trupin was notified by letter of January 6, 2004, from the interim chair of the Department of Microbiology, Professor Etheleen M. Hill, that his official employment would end on April 30, 2004, but that in the meantime he had no duties or responsibilities at Meharry and could consider himself to be on administrative leave. Requests for access to the department were to be made in writing with a statement of the specific purpose for which he was requesting access. Professor Hill wrote that “I will consider each such request separately.” On January 28, Professor Hill notified William Hatcher, the college’s chief of security, that Professor Trupin had permission to enter the West Basic Sciences Building to give lectures in the Medical Technology Program on three days in February. On February 5, however, she wrote to Professor Trupin: “It has come to my attention that you are in violation of the memo dated January 28, 2004, in which you were granted permission to access the building only on certain days and times. Once again, I’m requesting that you get approval from me if you are in need of additional time to visit the campus to carry out certain tasks. Thank you.”

Since Professor Trupin’s case might be considered to have been resolved by his decision to retire and the extension of his contract as an outcome of the court proceeding, the foregoing recital of events illustrates the climate in which the administration pressed its attempts to hasten the departure of faculty members of long standing. Professor Trupin’s period of full-time service at Meharry College totaled twenty-five years at the time adverse action, subsequently rescinded, was first taken against him in 1996, and in excess of thirty years on the occasion of the most recent events. Under the same Association-supported standards as applied in the case of Professor Russell, discussed above, Professor Trupin was therefore entitled to the procedural protections of tenure, including a statement of charges and an adjudicative hearing of record before an elected faculty committee in which the burden of proof for dismissal would rest on the administration.

Unlike Professor Russell, in whose case the circumstances leading to dismissal were crowded into a few short months, Professor Trupin’s difficulties with the administration went back many years. In his case, there were repeated, and repeatedly rescinded, attempts, beginning at least as early as 1996, to terminate his services. If periodic evaluation is part of the life of any faculty member, tenured or nontenured, one cannot help wondering at the extraordinarily time-consuming nature of a process that depends on the issuance and then revocation of terminal contracts rather than on a responsible year-by-year assessment.

While the president’s earlier decision to reverse the recommendation of the graduate dean to terminate Professor Trupin’s services was certainly welcome, that decision left untouched the essential structural weakness in the Meharry procedures, namely, the absence of protections against involuntary termination of services for a faculty member who is deemed to be without tenure despite his or her length of service. In none of its efforts to terminate Professor Trupin’s appointment did the administration present a credible case against the quality of his contributions to Meharry and to the academic community in any manner that would have warranted his discharge. Nor did the administration provide adequate rationale either for his being put on “paid administrative leave” (a matter, again, that will be treated separately below). While allowing Professor Trupin to teach three sessions of a course in the Medical Technology Program three months prior to his date of retirement, the administration chose to impose stringent restrictions on his access to the building in which the class was held, limiting him to class days and requiring him to sign in with a security guard. As Professor Trupin objected to his chair, the limited access denied him adequate time for the preparation of materials in his office and for receiving students to answer their questions. At no point has the administration provided evidence that the threat of harm, either to Professor Trupin or others, would justify the onerous and humiliating restrictions imposed on this longtime Meharry faculty member. Professor Trupin’s chief offense seems to have been that over a number of years he was a vigorous and frank critic of the Meharry administration, publicly objecting to various practices that he believed infringed on the rights of Meharry’s faculty and students.

4. OTHER BASIC-SCIENCE FACULTY

Several other faculty members in the basic-science departments with complaints against the administration were interviewed by the investigating committee. Four of these cases involved faculty members whose total length of service at the institution ranged from sixteen to over thirty years. Of these, one was settled by retirement, one agreed to a settlement of his case after having joined in the original lawsuit, and the notice of termination of services extended to a third was rescinded for the next academic year. (Later sections of this report will, however, make it clear that a rescission of notice of termination under present Meharry practices in no way guarantees any future recognition of tenured status.) A fourth case, that of a faculty member who intermittently accumulated sixteen years of full-time teaching experience at Meharry, was unresolved at the time of the committee’s visit. One additional case involves an individual who joined the institution in fall 1996 as a tenure-track faculty member, was promoted without tenure from assistant to associate professor in fall 2002, and was dismissed by the administration as of

December 31, 2003, on six months' notice. This faculty member took a position at another institution in fall 2003.

V. Faculty with Primarily Clinical Duties

The cases that follow include clinicians for whom expectations involved the generation of clinical income. The Association has already acknowledged, notably in its 1999 report, *Tenure in the Medical School*, that certain classes of medical school appointments do not, and need not in all respects, conform to the kinds of faculty positions envisaged in traditional Association-recommended policies. With only two exceptions, however, the clinical faculty members who provided information to the investigating committee are described in their Meharry contracts as tenure-track faculty. Furthermore, during the investigating committee's meeting with them, it became apparent that several of these faculty members shared serious concerns regarding the adequacy of the clinical income collection services employed by the college, and that some of them believed that declines in clinical income were unfairly attributed to them in circumstances over which they had no control.⁹ Had the Meharry administration wished from the outset to stipulate a year-by-year renewal process that would be based upon a clear understanding of the criteria for reappointment, it could have availed itself of the contract designation "non-tenured specific term." As it was, the very length of service of most of the faculty members discussed here, including the fact that some had served in faculty leadership positions in the senate or otherwise had available to them such recourse in faculty grievances and appeals as the senate afforded, invites the presumption that their status and responsibilities can be gauged by standards generally applicable to full-time tenured or tenure-track faculty members in American higher education.

The cases of four clinical faculty members are reported here. A fifth was granted a rescission of the notice terminating his services, but (as previously reported in the case of similarly affected basic-science faculty) Meharry practices do not suggest that the rescinded notice conveys any assurance of treatment appropriate to a tenured member of the faculty.

Dr. John Arradondo joined the Meharry faculty in 1976 to set up the residency program in family practice. He expanded the program into a Division of Family Medicine and later the Department of Family Medicine. He was the director or

9. In 1997, President Maupin informed the board of directors of Meharry's family practice plan that the board of trustees had suspended the authority of the Meharry Medical Services Foundation board, and that he had been appointed the acting executive director. Clinical faculty members had no voice in the governance of the clinical faculty plan, nor in any of the academic policies of their departments. On July 1, 2003, he was replaced by the Meharry Medical Group, with little or no faculty involvement in the decision.

chair of the family-medicine unit from July 1974 through June 1984. From 1978 to 1981, he was also provost for external affairs (a title that is apparently not in current use at Meharry), holding the position on a quarter-time basis with no administrative stipend.¹⁰ In that position, he had responsibility for off-campus programming, oversaw Meharry's state and local governmental relations, and managed the regional educational system (one he had established as head of family medicine) for training students, residents, and fellows. Professor Arradondo left Meharry in 1986 but returned in March 1996, when he was asked to come back as dean of the medical school following the interim deanship of Dr. A. Cherrie Epps. He stated to the investigating committee that in his sixteen months as dean, he addressed the school's budgetary problems, accumulating a surplus equal to 11 percent of the budget (reportedly the first time in its history that the school had run a surplus), and avoided having to terminate any faculty appointments. During his first year as dean, he was offered professorships in two departments, one of which, in family medicine, he accepted. On July 1, 1997, Dr. Arradondo was removed as dean and replaced by former dean Epps on a permanent basis. He took a six-month leave, after which he began his full-time faculty duties in January 1998.

In the contract issued to him for the 1998–99 academic year, Dr. Arradondo was identified as holding a tenured faculty appointment. (He had requested and been granted such an appointment when he returned to Meharry as dean in 1996.) That status was reconfirmed in successive annual contracts through 2002–03. He was also designated as a tenured faculty member on the Association of American Medical Colleges form that described his status at Meharry as of October 25, 1999. In addition, in September 2002, Dean Coney appointed him as chair of the medical school's Appointments, Promotions, and Tenure Committee, a position that could be held only by a tenured professor. His terminal contract, however, for July through December 2003, carried the designation "tenure track." When, according to his discussion with the investigating committee, he asked Dean Coney (by e-mail) why his status had been changed, he was told only that his previous contract designation had been an error and that termination decisions were based on a serious departmental deficit and not on questions of research productivity. Responding to his request to review his faculty file, the dean referred him to the college counsel's office, but Professor Arradondo stated that he never received an answer to his two requests to examine it. He filed a grievance with the faculty

10. The investigating committee was informed that the office of vice president for academic affairs was abolished after Dr. Maupin assumed the presidency, as part of his administrative reorganization, and that thereafter the president has dealt with the deans directly. The president confirmed this by stating that he had in effect assumed the duties of both chief executive and chief academic officer.

senate on June 27, 2003, questioning the basis for a negative judgment on his productivity and reciting the nature of his duties.

By resigning from the Meharry faculty in 1986, Professor Arradondo, of course, relinquished tenure at the institution. He did not provide a copy of the original contract or the letter of offer that presumably would have been tendered at the time he returned to the faculty ten years later. Since the initial offer of the deanship did not include a faculty position, it may have been that tenure was not explicitly conferred until he returned to the Department of Family Medicine in 1998. On the other hand, the investigating committee was told that administrators often requested, or were offered, tenure as a "perk," and hence it may be that such an offer was part of the 1996 appointment. In any case, the administration, by brushing off as a mere clerical error the statement of tenured status on Professor Arradondo's successive annual appointment forms, in effect deprived him of the protections of tenure without offering any evidence for its own position. The committee regards this summary dismissal as a serious abrogation both of the principles of academic due process and of Professor Arradondo's rights as a tenured member of the faculty with a total of nearly twenty years of service at the institution.

Professor Otis Cosby served for more than ten years in the Department of Family Medicine, where he was director of the Division of Occupational Medicine. Under his leadership, this program was accredited until 2006 with one occupied residency position. He received grants and contracts that covered his salary, including a \$50,000 contract to serve as the head of occupational medicine at Nashville General Hospital, which is affiliated with Meharry, until he was replaced, without written reasons, by another Meharry clinician. He was issued a terminal contract on May 29, 2003, with a termination date of December 31. "Unfortunately," Dean Coney wrote to him, "this [action] is necessitated by financial exigencies. I am confident that with the reorganization of the practice plan an improvement in collections will be realized. This plan demands optimal faculty productivity and revenue generation of sufficient funds to meet these goals."

After he received notice that his services were being terminated and was then placed on administrative leave, Professor Cosby entered into discussions with Dean Coney about extending his employment at Meharry. The dean assigned him to prepare a proposal for a college-wide employee health service that allowed him to continue working on the campus. In addition, Professor Cosby taught an environmental health class and served as chair of thesis committees for students in the School of Graduate Studies and Research. During this period, he attempted to arrange a meeting with Dr. Coney to discuss the rescission of his dismissal and to obtain comments on his employee health proposal, but several scheduled meet-

ings were postponed. He finally met with the dean in mid-December, only to learn that she would not reconsider his dismissal. In February 2004, the dean of the School of Graduate Studies and Research, Dr. Maria Fatima Lima, offered Professor Cosby a part-time position to teach and mentor students and to assist with curricular issues in the Master of Science in Public Health Program. No further work was offered to him.

Although his annual appointment contracts listed him as "tenure track," Professor Cosby, as a full-time member of the Meharry faculty for more than a decade, should have received the procedural protections that accrue with tenure before he was dismissed from the faculty. Among the features of his case that should have been tested was the dean's use of the term "financial exigencies." The investigating committee sees these exigencies as the result of an income shortfall which, according to the dean's expressed hope, might be reversed under an improvement in collections. The affordance of a hearing could have tested Professor Cosby's claim that, in fact, he was already supporting his own salary as well as bringing in external grants.

Dr. Evelyn J. Diehl, an assistant professor in the Department of Pathology, was in her twenty-first year of full-time service on the Meharry faculty when she was issued notice of termination of her services by letter of January 1, 2003. Her main assignment had been the practice of pathology at Nashville General Hospital, including some teaching of junior and senior medical students on rotation. She also offered elective courses in surgical pathology. Her first reaction to the notice she had received was one of surprise in view of recent losses in the Department of Pathology, resulting in a faculty already stretched with its combination of teaching and research duties. She sought an explanation of the term "restructuring" from Dean Coney. Failing to secure a satisfactory answer, she filed a grievance based on inadequate reasons, inadequate consideration, and insufficient notice. She stated to the investigating committee that she believed that the Department of Pathology was being singled out in part because it was not bringing in the patient collections the college administration believed it should be providing as income.

On April 24, 2003, the senate appointments, promotions, and tenure committee recommended that, because Professor Diehl had signed her contract when the college's 1984 Academic Freedom and Tenure document was in effect, she was entitled to an additional six months of notice, to expire on December 31, 2003. On June 25, President Maupin rejected this recommendation on grounds that Professor Diehl was a nontenured faculty member with a probationary appointment, and that therefore she was not entitled to additional notice. He also cited the revised 2002 faculty personnel guidelines that stipulated a minimum notice of six months.

(The question of notice is treated separately below.) Whatever the Meharry regulations or their interpretation, Professor Diehl's length of full-time service clearly entitled her under Association-supported standards to the procedural protections that ought to be accorded to a tenured faculty member.

Dr. Joseph Hinds was a professor of internal medicine at Meharry and a past chair of that department. He went to Meharry from a tenured appointment at the Howard University College of Medicine in March 1982. Thus, at the time of the events described here, he had completed more than twenty years of service at Meharry. The investigating committee has not been advised of any written reasons from the administration for its action against Professor Hinds other than the formulaic, "due to budget constraints." No case of financial exigency or of a bona fide discontinuance of a program of instruction appears to have been adduced as a basis for this decision. As with the other cases mentioned in this section, the length of Dr. Hinds's full-time service at Meharry amply justified affordance of procedural safeguards consistent with those that should be provided to a tenured member of the faculty.

VI. Adverse Actions Short of Termination

The investigating committee spoke with several faculty members whose salaries were reduced under the "75 percent rule"; the full-time service of these faculty members ranged individually from ten to over twenty years. The question of salary reductions, however, raises broader questions best treated together rather than in the context of individual cases. That treatment is reserved for the following section, where we consider first the status of faculty members under successive versions of Meharry's personnel policies, and then proceed to a discussion of specific actions (notice of nonreappointment, suspension, salary reduction) in light of AAUP-supported standards.

VII. Underlying Issues

The investigating committee identified five underlying issues in the cases of concern discussed in this report: Meharry Medical College's policies on academic freedom and tenure; the adequacy of notice of termination; the college's policies on suspension; the college's practice regarding research funding, salary reductions, and clinical income; and financial exigency or program discontinuance.

1. POLICIES ON ACADEMIC FREEDOM AND TENURE

In January 1984, the board of trustees of Meharry Medical College adopted policies on academic freedom and tenure that were broadly consistent with Association-supported principles and standards. The college's policies identified three categories of faculty appointments: "tenure track (probationary appoint-

ment)," "appointment with continuous tenure," and "non-tenured track (indefinite term)." The last of these is plainly inconsistent with Association-recommended standards. A section entitled "transfer of tenure" provided, under certain circumstances, for the award of tenure to a prospective faculty member who had already held it at another institution. In addition, the college's policies called for a probationary period of up to seven years with allowance for credit for prior service, and the termination of tenured appointments only for adequate cause, retirement, bona fide financial exigency "within the institution or discrete units of the institution," or program discontinuance. Adequate cause was described as "incompetence, neglect of duty, gross professional or personal misconduct, lack of mobility to carry out regular duties, or conduct employing unlawful means to obstruct the orderly functioning of the college or to violate the right of other members of the college community." Standards for notice of nonreappointment largely conformed to the AAUP's recommended policy.¹¹ The document also outlined procedures for imposing severe sanctions other than dismissal, allowing for suspension pending the result of a proceeding "only if immediate harm" to the faculty member or others was "threatened by his or her continuance."

Notwithstanding these 1984 policies on tenure and due process, the investigating committee was told that tenure was awarded infrequently, if at all, after this date.¹² At present, only 10 percent of the faculty at Meharry hold tenured appointments. Salary reductions were also possible under existing policies but, so far as the committee could tell, rarely invoked. In January 1996, the board of trustees declared a moratorium on granting tenure after a particular faculty member's tenure application was approved by the appropriate faculty bodies. Dean Coney stated to the investigating committee that the moratorium had been lifted in July 2002, that she had placed "five or six" recommendations for tenure before the president and board, and that these were approved.

The 1984 policies were the subject of considerable discussion and controversy on the campus, especially after President Maupin took office in 1994. Notably, in 1998 the faculty reaffirmed the institution's commitment to tenure and proposed further revisions to the college's policies for terminating a tenured appointment or a nontenured appointment

11. The 1992 faculty handbook, which incorporated much of the thrust of the 1984 standards in simplified form, stipulated that the amount of notice to be given in cases involving the nonrenewal of a probationary appointment was the same as the notice required in cases of dismissal, namely, three months in the first year of service, six months in the second or third year, and twelve months after three or more years of service. A 1998 document (see below) approved by the faculty incorporated the AAUP notice standards.

12. For a discussion of whether a moratorium in any formal sense was in effect prior to 1996, see footnote 2 of this report.

prior to the expiration of a specified term. Although these procedures, and the accompanying burden-of-proof standards, more nearly approached AAUP standards, they were not approved by the board of trustees. Instead, a new document incorporating subsequent faculty-administration discussions was approved by the board on October 4, 2002. This document, the Policy on Guidelines for Academic Freedom, Appointments, Promotions and Tenure of Faculty, described a category of "Series I-Tenure appointments" made at the rank of associate professor or professor for a ten-year term. Faculty members in this category would be required to undergo "a comprehensive post-tenure review" during the ninth year of their appointment term "as a condition for subsequent reappointment." As Dean Coney acknowledged in her meeting with the investigating committee, this section leaves unresolved the question of who has the burden of proof in the event that the administration decides not to retain a faculty member after the ten years.

The 2002 document distinguishes, importantly, between *termination* and *dismissal*. Termination is allowable at the end of a stated term, which by definition would appear to include ten-year terms awarded to what Meharry Medical College defines as "tenured faculty," as well as, more obviously, the one- to four-year appointments that may be awarded, according to their rank, to nontenured or non-tenure-track members of the faculty.¹³ Dismissal is defined as a termination prior to the expiration of a term, without reference to length of service or rank. Either dismissal or less severe sanctions require the institution to shoulder the burden of proof.

The question of the preemption of the 1984 guidelines by the 2002 document, as well as the board's refusal to take up the 1998 faculty-approved document, was a bone of contention throughout the meetings of the investigating committee with members of both the Meharry administration and the faculty. President Maupin stated that the faculty had been full participants in the process that led to the 2002 document, and that he was perfectly willing to revisit any of the sections that were a cause of concern, including that of notice (see next section). Faculty representatives stressed that the faculty approved the document only when it became clear that the administration would forward no candidates for promotions or tenure to the board until the faculty acted affirmatively. These faculty members also asserted that President Maupin had had a much more prominent hand in the drafting of the document than had the faculty. They stated that their

colleagues collectively had become weary of the entire process and essentially took a fatalistic view of the prospects of prevailing with more advantageous bylaws. The investigating committee is in no position itself to assess the "climate" and mood that actually prevailed at the institution prior to its visit. The practical consequences of the new document may be said to have come to a head on the question of adequate notice.

2. ADEQUATE NOTICE

The faculty members whose cases have been discussed received notices of termination to take effect either in June 2003, following a January 2003 notification, or in December 2003, following notice the previous June. Several of these notices were subsequently rescinded, but the inference is inescapable to the investigating committee that the Meharry administration regards this notice device as a tool for removing faculty members quickly. With the exception of one of the basic scientists, the investigating committee, as reported previously, found that all the faculty members discussed in this report, by their length of service, were entitled under the 1940 *Statement* to protections consonant with those accorded to tenured faculty members. Where tenured faculty members are dismissed for reasons not involving moral turpitude, according to the 1940 *Statement*, they "should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution."

By denying the protections of tenure to affected faculty members of long service, the Meharry administration effectively was able to place all such cases on the same footing with respect to notice as that provided to those faculty serving on tenure-track or non-tenure-track appointments. The provisions governing nonrenewal of either tenure-track or non-tenure-track faculty appointments at Meharry stipulate that, "except for dismissal for adequate cause, notice of nonrenewal shall be no less than six months." It is this last provision on which the administration has relied in issuing termination notices in the cases that are the subject of this report. For example, in his August 29, 2003, response to the promotions and tenure committee's recommendations regarding Professor Russell's appeal, President Maupin wrote:

I fundamentally disagree (as does our general counsel) with your statement that the Appointments, Promotions, and Tenure Policy mandates a minimum appointment of one year. The document does not state that, and Section 2.1.4, which deals with initial appointments, calls for terms as follows: "Instructor one (1) year; Assistant Professor up to two (2) years; Associate Professor up to three (3) years, and Full Professor up to four (4) years." Under that provision, an initial appointment of any Professor can be for any term not exceeding the limits indicated. For example, a Full Professor could

13. Section 2.1.4 speaks to Series III-Non Tenure Track appointments for a term as follows: "Instructor one (1) year; Assistant Professor up to two (2) years; Associate Professor up to three (3) years; and Full Professor up to four (4) years." Series II-Tenure Track positions are designed contractually as up to two years for assistant professors, three years for associate and full professors, with the maximum period of probation being six years.

be appointed for two years and six months. More importantly, Dr. Russell's matter concerns a non-renewal of her appointment, not an initial appointment. Therefore, Dean Coney was free to offer Dr. Russell any term of employment Dean Coney wished, subject to the six-month notice requirement regarding non-renewal found in Section 8.4.2 of the [Appointments, Promotions, and Tenure] Policy.

President Maupin is citing here those provisions that cover non-tenure-track faculty, whereas Professor Russell's annual contracts repeatedly designated her as holding a "tenure-track" appointment. In effect, therefore, the Meharry administration is tacitly promulgating the doctrine that because any contract issued to other-than-tenured faculty is for a specific term, it carries within it the possibility (though not the definite prospect) of nonrenewal. Under such a reading, the six-month notice to the faculty member who is not issued a new annual contract becomes a virtual termination "at will."

President Maupin told the investigating committee that he had offered, in place of a six-month notice to a faculty member, the option of a twelve-month appointment conditional on improvements in the faculty member's performance. He observed that faculty leaders believed that there should be no such thing as a conditional appointment as part of the appointment, promotion, and tenure process. The response of faculty leaders to whom the investigating committee spoke was that conditional appointments prevented affected faculty members from knowing whether or not they should look for another position. When was a notice not a notice? The president's offer, to them, seemed to be a distinction without a difference.

The investigating committee would observe the following. First, the regulations quoted by President Maupin do appear to offer the option of multiyear contracts, though it seems that in the present climate the administration is unlikely to tender such contracts. Second, any term contract is ipso facto conditional. The fact that the six-month notice may be (and in some cases has been) "reversible" emphasizes the uncertainty in which the administration of this system places the individual faculty member. Third, even if one were to reject the Association's position that many Meharry faculty members through length of service already had a claim to notice appropriate to tenured members of the faculty (or to any full-time faculty member beyond the second year), it must be noted that the Meharry regulations do not appear to *prohibit* a more generous notice of nonreappointment. The administration, however, has seized upon the 2002 policy as a justification for a six-month notice that, in the majority of cases, amounted to a termination of employment in the middle of the academic year. The fact that the recent court decision against the faculty plaintiffs cites the six-month rule as evidence against their claims appears to have hardened the

administration's decision to hew to this deadline, which must be accounted as unacceptable by Association standards. Not only does the six-month notice violate those standards, but when given in May or June it also casts a faculty member adrift in mid-year with no assured income and, given the penchant of the administration for simultaneously expelling outspoken faculty members from the campus, no base from which to search for a new position.¹⁴

This treatment seems particularly gratuitous in the case of faculty members who (as was true for at least two of those professors with whom the investigating committee met) were planning on retiring at or before the end of the 2003-04 academic year. On what conceivable grounds might an administration deliberately set aside the possibility of preretirement negotiations, in the case of faculty members with twenty or thirty years of service to the institution, to single them out for sanctions? This, it seems to the committee, goes beyond mere discourtesy.¹⁵ Coupled with the issue of fairness to the individuals concerned is the detrimental effect of the application of such a system on the research and educational climate of the institution. Perhaps the present administration regards this as a local and temporary fallout from its invoking of the 2002 policies that will cease as incoming faculty members become accustomed to the rules and guide their conduct accordingly. The investigating committee thinks otherwise. Research obligations, rational curricular planning, the very scheduling of classes, not to mention the future recruitment of prospective faculty, are all put at risk, while the negative effects on faculty morale can be expected in the long term to be deleterious to the teaching mission of the college.

3. "PAID ADMINISTRATIVE LEAVE": SUSPENSION

Association policies regarding the suspension of faculty members from their teaching or other academic duties have their origin in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The criterion for suspension set forth there, however, namely that "immediate harm to the faculty member or others is threatened by the faculty member's continuance," is conditioned on the pendency of a hearing before an elected faculty body that will reach findings and recommendations concerning the faculty member's status.

14. "Because of the special rhythm of academic appointment procedures, notification of nonrenewal to take effect in the midst of an academic year severely limits the faculty member's opportunity to move promptly to a new position." "Academic Freedom and Tenure: Onondaga Community College (New York)," *AAUP Bulletin* 57 (1971): 172.

15. Faculty members who were dismissed before they could retire were unable to remain on Meharry's health insurance plan, and were thereby forced to make expensive COBRA payments unless their personal situation offered them other options. The institution was simultaneously relieved of its obligation to contribute further to their insurance.

The AAUP's "1970 Interpretive Comments" on the 1940 *Statement*, taking into account subsequent experiences with suspension in the higher education community, describe "a suspension which is not followed by either reinstatement or the opportunity for a hearing" as "in effect a summary dismissal in violation of academic due process."

The Meharry Medical College's 2002 faculty personnel policy covers "suspension from service for a stated period" in terms broadly resembling these Association-supported guidelines. In most of the cases that are the subject of this report, however, the Meharry administration has avoided those guidelines by declaring the affected faculty members to be on "administrative leave with pay," thereby drawing an artificial distinction between an administrative leave and a suspension, and imposing the leave without affording academic due process as required under the guidelines for suspension.

The administration appears to have wavered in its publicly stated reasons for sending such notices to more than a dozen faculty members who had received six-month contracts. As we have seen, those letters, which were identical, placed them on paid administrative leave for the remainder of their appointment term and instructed them on twenty-four hours' notice to return all college property and remove all personal belongings from their offices. President Maupin, according to a transcript of the meeting of the faculty senate on July 2, 2003, commented that "the decision was [made] that during that six-month period there was no need for the faculty member to be engaged in active work and it would be in the faculty member's best interest and the institution's best interest if that transition period was free from [his or her] having to be engaged in any activity that was previously a part of that employment." Legal counsel for the college, however, in a letter to the attorney representing several of the dismissed faculty, subsequently leveled the charge that these faculty members had been "disruptive" and "insubordinate" to their "superiors," and negatively affected "the sound administration of the College and the morale of other faculty and students." In the investigating committee's view, President Maupin's benign, if somewhat opaque, reference to language of "best interest" certainly seems less accurate as a statement of the reason for these suspensions than the forthright language of the college's attorney. Yet a claim by an administration that a faculty member has been disruptive must be subjected to the test of academic due process to determine its validity. The Meharry administration, by calling these personnel actions "paid administrative leaves" rather than suspensions, circumvented requisite safeguards of due process.

Such adverse action against faculty members is not only potentially damaging to their reputations, but also poses immediate practical problems for carrying out their various duties. In their discussions with the investigating committee, both Dean Coney and President Maupin emphasized that the

college had quickly backed down from its insistence that faculty members clear their possessions from their offices. But the obstacles to the affected faculty members' pursuing their work on the campus continued to remain in place.¹⁶ Their continued access to the campus was threatened almost as soon as that right was granted, contingent on an unnamed standard of behavior that the faculty members presumably had to meet in order not to be physically expelled from their offices again. Even after three of the cases were settled out of court, Professor Trupin, as we have seen, was subject to stringent conditions of access that called into question his very ability to meet with the students in the course that he was teaching in winter 2004. The investigating committee has been unable to ascertain any justification for suspending the faculty members on grounds that they posed a threat of immediate harm. And inasmuch as the suspensions were not followed by the opportunity for an on-the-record adjudicative hearing, the investigating committee finds that the suspended faculty members were summarily dismissed in violation of academic due process.

4. REDUCTIONS IN SALARY

The expectation that faculty members, particularly in scientific disciplines, "make up" a certain portion of their salaries through external funding is not new in American higher education, particularly in medical schools, although it is almost certainly more common today than was the case when the 1940 *Statement* was first issued. Nonetheless, we believe that that statement still provides a reasonable guideline in its injunction that tenure, if it is to be meaningful, must provide "a sufficient degree of economic security to make the profession attractive to men and women of ability." The Association's special committee on the status of tenure in American medical schools suggested in 1999 that "a reasonable interpretation of the 1940 *Statement* would seem to imply that the ability of the faculty member to defend academic freedom, his or her own or the principle in general, is linked to whether the salary is adequate to the maintenance of financial independence," and adds in a footnote to the statement that "the faculty of the particular school should be involved in arriving at a specific recommendation"—that is, as to the policy to be applied in such circumstances.¹⁷

As previously stated in Section II of this report, the Meharry administration decided to enforce provisions, apparently already available to it but largely dormant,

16. In the laboratory sciences, research activities generally involve commitments to graduate students as well as due care to comply with applicable regulations by the federal government or other granting agencies. These activities would seem to have been severely compromised by the administration's unilateral actions.

17. "Academic Freedom in the Medical School," *Policy Documents and Reports*, 9th ed. (Washington, D.C.: AAUP, 2001), 106.

governing the right of the institution to reduce faculty base salaries where there was a failure to secure external funding. This decision involved the rewriting of the standard faculty contract, in or around 1998, to specify that faculty members must secure funding of 75 percent of that portion of their appointment designated for research. Depending on the percentage, the amount expected might be trivial (for example, in the case of someone whose teaching and service duties were, say, at the 80 or 90 percent level), but it might also be substantial. No faculty involvement appears to have occurred either in the development of this policy or in its implementation, which has been frequently carried out without involvement even of the department chair. The investigating committee was informed that beginning in the 2002–03 academic year, Dean Coney also removed the decision on time allocation from the hands of the chairs and made decisions herself concerning time allocated to research based on the previous year's time distributions. Finally, the application of the policy seems also to have been inconsistent, and the rescission of salary cuts appears to have been almost as inexplicable as their imposition.

The investigating committee was provided with documentation of some, though not all, of the salary reductions implemented in 2003. The committee takes no position with respect to the merits of the individual cases, other than to observe that, when a six-month termination notice has been issued to the same faculty member, it seems both small-minded and punitive to reduce the salary at the same time. The situation has been exacerbated, according to various faculty members, by an inattention to the relationship between the timing of a salary reduction and the cycle of grant applications and grant renewals by federal agencies, as well as by the constant shifting of departmental boundaries, which has meant a constant changing of department chairs and hence an absence of continuity in the evaluation of faculty members. In this sense, the whole question of salary reductions is subsumed in the larger context of the instability in institutional governance at Meharry and the lack of an effective faculty voice in determining either departmental structure or departmental leadership.

Incorporating salary reductions into an annual cycle of personnel reviews without taking into account pending grant applications and other evidence of continuing research activity gravely risks the misrepresentation of a faculty member's situation. Such a process also makes for more paperwork on everyone's part, inasmuch as a decision to reduce a salary may within a few weeks or a month have to be reconsidered in light of new funding. Internally, the institution appears to have little in the way of "bridge funds" to carry over faculty members whose external funding is in hiatus between an expired and a pending grant. Finally, the broad decision to enforce salary reductions and the absence of any avenue for

appeal in individual cases has, rightly or wrongly, cast a shadow on the motives that might lie behind the unilateral declaration of the policy by the Meharry Medical College administration.

The situation is partly, though only partly, analogous to that of the obligation on clinical faculty to generate clinical income. The investigating committee was told by members of the clinical faculty (one of whom has consistently over the last nine years supported himself on external grants while teaching two courses in the public-health program and two graduate classes) that chairs do not have budgets in clinical departments, and that if they challenge administrative decisions they are "gone." The situation was described as especially difficult for junior faculty members, who were the most severely affected because they were not getting their clinical supplements up to the level stipulated in their contracts. The investigating committee was informed that the administration has apparently insisted upon using an outside collection agency and refuses to allow the clinical departments to participate in the determination of collection policies. The clinical faculty members to whom the investigating committee spoke described the morale as the lowest in their memory.

5. FINANCIAL EXIGENCY OR PROGRAM DISCONTINUANCE

According to the 1940 *Statement*, "Termination of a continuous appointment because of financial exigency should be demonstrably bona fide." Regulation 4 of the Association's *Recommended Institutional Regulations* sets out in some detail the conditions under which termination either of tenured appointments or of probationary or special appointments before the end of a stated term "may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency," defined as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means." Such a termination may also occur as a result of "bona fide formal discontinuance of a program or department of instruction," but under circumstances in which the faculty as a body plays a significant role in the decision to discontinue an academic department or program, and in which affected faculty members should, if possible, be accommodated in other positions within the institution.

The Meharry administration has consistently stated, in response both to the inquiries of its own faculty and to those of the Association, that the institution has not been in a state of financial exigency. Furthermore, though there has been considerable administrative shuffling and reshuffling of departments within different groupings, no evidence has been presented that any of the cases of termination of services that form the nucleus of this report resulted from discontinuance of a program or department of instruction. According to the

minutes and partial transcript of the meeting of the faculty senate on July 2, 2003, President Maupin stated:

There has been no declaration of financial exigency because we have not terminated anybody's contract during the contract term. If you look at the [Appointments, Promotions, and Tenure] document [the 2002 policy statement], it talks about termination of contracts and elimination of tenured faculty or reduction of effort during the contract period as only being able to be done in cases of financial exigency. The issues that have been confronted have been budgetary decisions in some cases; in some departments there are raises. In some areas there is an evaluation done that says, by the dean, that there is sufficient faculty to do *x*, there is a need to do this or that and she has made those decisions. Now, that is not an exigency decision[,] that is a decision of the budget for the coming year, balancing that budget and then deciding whether there will be contract renewals or whether there are other conditions that she felt were appropriate to take and they were not just personnel in nature. And they are not just in academic departments, they are across the board.

In his letter of October 16, 2003, to the Association's staff, the president, citing the Association's 1999 report, *Tenure in the Medical School*, for support of his position, stated that "Meharry faces even more striking challenges than the typical medical school the 1999 report addresses. Meharry is a private college not affiliated with any major university. Therefore, it does not enjoy many of the financial advantages the 1999 Committee A report assumes for most medical schools." The letter continued, "We have declared no financial exigency. Budgetary challenges are another matter altogether, and Meharry, like many other colleges and universities, must make its determinations of salaries and appointments in light of such challenges."

One faculty member paraphrased the president as having said at one point during the events of 2003, "It's not that we don't have the money, it's because we want the money for other things." When asked by members of this investigating committee whether such actions had been taken in other schools of the college, faculty members responded that there had been some on a smaller scale in the School of Dentistry, most of them allegedly for budgetary reasons. Dean Coney's letters, referenced earlier in this report, cited "budget constraints in the School of Medicine" as one of two reasons for issuing notices of termination, the other being "restructuring in the School of Medicine." Each of these reasons, it is obvious, creates a lower bar for termination than "financial exigency" in the first instance or "formal discontinuance of a program or a department of instruction" in the second. Neither of them, particularly in light of the subsequent

decision to advertise a national search for a new chair of the Department of Microbiology, can be construed as a sufficient reason for terminating the services of a faculty member of long standing. In the investigating committee's view, such terms as "budgetary constraints" and "budgetary challenges" do not satisfy the standards for cause implicit in the Association's categories of bona fide financial exigency or "discontinuance of a program or department of instruction."

The faculty of the School of Medicine, as far as the investigating committee can tell, was given no opportunity to conduct a review of the overall budgetary situation in the school, and the dean does not appear to have welcomed efforts by department chairs to propose means other than those she had already decided upon for dealing with (possibly short-term) budgetary shortfalls. If, for example, the School of Medicine was in a deficit situation, as seems to have been at least fitfully alleged, what steps might have been taken centrally to alleviate that problem through reallocation of funds from other sources? No forum seems to have been offered to the faculty to explore alternatives.

In short, the vagueness and overbreadth of those criteria that were invoked for not retaining particular faculty members lend themselves to putting all but the very small proportion (roughly 10 percent) of the college's faculty who are tenured at annual risk for nonreappointment. Coupled with the exclusion of faculty bodies from any part in the salary and budgetary process, they amount to a virtual carte blanche for unilateral administrative actions against faculty members it has selected for release.¹⁸

VIII. Larger Governance Questions

President Maupin has been a vigorous and committed chief executive officer since his arrival at Meharry Medical College in 1994. When he arrived, he faced a number of serious problems: what he estimated as a \$49 million deficit, an audit of student performance on board examinations revealing a 39 percent pass rate, a threat from the Liaison Committee on Medical Education to withdraw accreditation, and the placement of the dental school on conditional accreditation. The medical education committee, he told the investigating committee, had identified the existing administration as the contributing factor to poor performance of the medical school class on the required board examinations, and that led to his decision to reorganize the administration, in the process of which he took on the role of chief academic officer as well.

18. See, for example, the Association's *Statement on Government of Colleges and Universities* ("the faculty should actively participate in the determination of policies and procedures governing salary increases") and the derivative statement, *The Role of the Faculty in Budgetary and Salary Matters*. It was reported on the second day of the investigating committee's visit that twenty-five administrative assistants had been dismissed, allegedly because of a \$3 to \$6 million deficit.

The Maupin administration did not lack for faculty support in its attempts to move the college forward. By 1997, the college's self-study for accreditation by the Southern Association of Colleges and Schools was able to report that "significant improvements in salary structure have occurred in recent years, particularly for members of the medical school's clinical departments." As late as August 2002, the Meharry AAUP chapter, even as it was embarking on a lengthy criticism of the new policies governing appointment, reappointment, and tenure and criticizing "the continued and continuous patterns of running Meharry without sufficient faculty input into decision-making," found occasion to praise the president for the striking improvements in space and physical plant. Disaffection, however, had been developing much earlier, and strains in faculty-administration relations were very much out in the open by 1997, at the time of the preparation of Meharry's self-study report.

This report is a remarkably prescient register of the problems that came to a climax in spring 2003, particularly in its analysis of the timeliness of the issuance of contracts and the status of tenure. While the self-study reported that "the overwhelming majority of faculty indicated that they enjoyed academic freedom to teach in their discipline, award course grades, and pursue research and publication," it also stated that "the status of the tenure system at Meharry Medical College has long been a source of faculty unrest. Although this policy was revised at the direction of the administration and approved by the board of trustees in 1984, it has not been fully implemented. . . . The majority of probationary faculty have not been reviewed for tenure. The reason for this lack of review could not be determined due to multiple conflicting explanations." The 1996 tenure moratorium, explained here in terms of the demand of the board for some sort of post-tenure review system, was cited as the current, if not the historical, obstacle to any progress.

Many of the self-study's recommendations were aimed at clarifying and codifying comprehensive personnel policies. Of particular interest was the fifth recommendation, to "implement a system of timely faculty contract negotiations, with appropriate recognition of and compensation for all teaching services in the form of a base salary linked to local and regional standards," and to give adequate weight in performance evaluation to teaching and academic service as well as clinical and research productivity.

The spirit of these recommendations, as was seen, has been almost entirely disregarded, initially in the discussions that led to the promulgation of the 2002 policy on appointments, promotions, and tenure, and then in the flurry of terminations that marked the spring of 2003. It became clear to the investigating committee that, since spring 2003, the role of the medical school faculty in governance has been almost totally abrogated.

In a memorandum of June 19, 2003, to all medical school faculty, Dean Coney announced that, effective June 30, "all committee appointments will be rescinded and new committee chairs and committees will be appointed." She stated that this was necessary "due to restructuring and changes in personnel duties and responsibilities in the School of Medicine." She invited those interested in serving on a particular committee to contact her administrative assistant by July 3, but, given the events that preceded her announcement, it is hard to ascertain what level of response she received. The faculty view, somewhat more cynically put, was that so many people had been released or put on reduced salary that there were not "enough bodies" to go around.

Like other schools at Meharry Medical College, the School of Medicine has its own set of bylaws. The bylaws under which the medical school faculty had been working at the time of the events described here nowhere envision the voiding of all existing committee appointments by the dean of the school. Under these bylaws, the council officers are elected by the entire School of Medicine faculty "and may not hold an administrative appointment." The faculty council is responsible for establishing and charging standing committees, including the school's promotions and tenure committee and curriculum committee.

Although President Maupin stated to the investigating committee that the faculty should have full authority over the curriculum, these recent events seem to call into question at Meharry even that fundamental principle.¹⁹ Although membership on the curriculum committee, as on other committees, rests officially within the appointment power of the faculty council, the investigating committee was told that the dean removed the course directors in the School of Medicine from the curriculum committee and replaced them with members of the faculty, both basic science and clinical, who have little experience with curricular oversight. Dean Coney also directed the curriculum committee to modify the current curriculum from a traditional discipline-based program to one integrated with the clinical sciences. She is reported as having stated that this change was mandated by the Liaison Committee on Medical Education, whereas it is generally understood that the committee does not mandate how the teaching of the basic sciences should proceed. It was also reported that Dean Coney chided the faculty members on the committee for lacking the necessary documents and files on the curriculum (a clear misstatement of fact, according to the faculty members interviewed by the investigating committee). When the investigating committee questioned the clinical faculty as to whether they were aware of the dean's

19. The investigating committee was informed that although technically the curriculum is lodged within the faculty senate as a responsibility, day-to-day curricular recommendations have for all practical purposes rested within the authority of the individual schools.

plans to have clinical faculty participate in first- and second-year courses, those faculty members professed themselves to have been taken by surprise. In short, a meaningful faculty role in governance at Meharry seems no longer to exist, which does not augur well either for the faculty's exercising its proper authority in decision making affecting the curriculum or for its ability to function as a truly professional body in overseeing matters affecting faculty status.

IX. A Note on Morale

The investigating committee would be remiss if it were not to convey its observations on the question of faculty morale. One dismissed faculty member described her struggle to survive on social security, another to meet the COBRA payments necessitated by his having been cut from the Meharry health insurance plan, yet another to retain his home. One broke down in tears as he attempted to describe his sense of betrayal by an institution he had sought to serve loyally through patient care and his participation in clinical training. In the investigating committee's view, this abuse of loyal and dedicated faculty assumes tragic dimensions. President Maupin, as an alumnus of the college, was in a unique position to capitalize on the loyalty of these long-standing faculty members in trying to shape a new mission for Meharry. Instead, he appears to have given the new dean full authority to initiate a series of draconian personnel decisions, no matter what the cost to individual faculty members, to institutional quality, and to core principles of the academic profession. The investigating committee believes that the mistreatment of both basic-science and clinical faculty, the lack of an untrammelled faculty voice in matters most directly affecting faculty status, the absence of a meaningful faculty role in decisions affecting the curriculum, and the resulting potential for a major reduction of instructional quality do not bode well for the future of Meharry Medical College or its students.

X. Findings and Conclusions

1. The administration of Meharry Medical College acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* in the cases of eleven faculty members by not recognizing their attainment of tenure after each had served well beyond the maximum permissible period of probation, and by then notifying them of the termination of their services without having afforded them the safeguards of academic due process to which faculty members who have served beyond the stated probationary period are entitled.

2. In the cases of Professors Shirley Russell and Joel Trupin, strong prima facie evidence exists that the administration's decision to terminate their services was based on their disagreements with the administration's policies, disagreements which, under generally accepted principles of academic freedom, college faculty members should be free to voice.

3. The notice of termination received by these faculty members was severely inadequate under the Association's applicable recommended standards. In addition, the present system whereby a six-month notice of termination may be issued either early in or in the middle of the calendar year makes it apparent that Meharry faculty members serve "at will," that is, at the pleasure of the administration.

4. The Meharry administration, in placing certain faculty members on what it described as "paid administrative leave," effectively suspended them from further academic responsibilities. The suspensions were not preceded by demonstration of cause, and thus the administration summarily dismissed the faculty members by not having afforded them safeguards of academic due process.

5. In replacing a system of indefinite tenure with tenure for a span of ten years, and with no assurance that the burden of proof in a decision against further retention rests on the administration, the Meharry Medical College administration has effectively scuttled the system of tenure as it is understood generally in American higher education.

6. The virtual abrogation of any system of faculty governance in Meharry Medical College's School of Medicine, in violation not only of the principles of shared authority (particularly in matters of faculty status and curriculum) as set forth in the *Statement on Government of Colleges and Universities* but also of the governing documents of the medical school itself, has left the faculty without an effective voice in the making of academic policy and without the ability to fulfill traditional faculty responsibilities in dealing with matters affecting faculty status.²⁰

20. Responding by letter dated September 2, 2004, to the draft text of this report, President Maupin wrote as follows:

We have received and studied your draft report entitled "Academic Freedom and Tenure: Meharry Medical College (Tennessee)" dated August 2, 2004. We appreciate the time and effort you put into your investigation and report. Of course, we are disappointed with the contents of the report and are even more disappointed with your findings and conclusions.

We believe that your investigation placed too much credence upon the statements of a few disgruntled former faculty members. We also believe that the vast majority of our faculty would have given you positive comments about faculty-administrative relationships here at Meharry. We also believe that our system of faculty governance does in fact share authority, and I would remind you that our Policy on Guidelines for Academic Freedom, Appointments, Promotion and Tenure of Faculty was approved by the Faculty Senate as well as our Board of Trustees.

It is clear that we will not be able to come to agreement on this matter, but I would like to assure you personally that Meharry Medical College will continue to work with the AAUP as much as it can to improve our relationships with your organization in the future.

LAWRENCE S. POSTON (English)
University of Illinois at Chicago, chair
EARL F. BLOCH (Microbiology)
Howard University
GERALD SOSLAU (Biochemistry)
Drexel University
Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

JOAN WALLACH SCOTT (History), Institute for Advanced Study, chair.

Members: JEFFREY HALPERN (Anthropology), Rider University; MARY L. HEEN (Law), University of Richmond; EVELYN BROOKS HIGGINBOTHAM (Afro-American Studies and Divinity), Harvard University; DAVID A. HOLLINGER (History), University of California, Berkeley;

STEPHEN LEBERSTEIN (History), City College, City University of New York; ROBERT C. POST (Law), Yale University; CHRISTOPHER M. STORER (Philosophy), DeAnza College; DONALD R. WAGNER (Political Science), State University of West Georgia; MARTHA S. WEST (Law), University of California, Davis; JANE BUCK (Psychology), Delaware State University, ex officio; ROGER W. BOWEN (Political Science), AAUP Washington Office, ex officio; DAVID M. RABBAN (Law), University of Texas, ex officio; ERNST BENJAMIN (Political Science), Washington, D.C., consultant; MATTHEW W. FINKIN (Law), University of Illinois, consultant; ROBERT A. GORMAN (Law), University of Pennsylvania, consultant; LAWRENCE S. POSTON (English), University of Illinois at Chicago, consultant;* GREGORY F. SCHOLTZ (English), Wartburg College, liaison from Assembly of State Conferences. ✍

*Did not participate in the vote.