

Academic Freedom and Tenure: Essex Community College (Maryland)¹

I. Introduction

On July 23, 1993, President Donald J. Slowinski of Essex Community College addressed a memorandum to the board of trustees of the Baltimore County Community Colleges System recommending discontinuance of seven career programs at the college and termination of the appointments of ten faculty members, nine of them tenured. He described the process as follows:

These recommendations arose from an extensive review of instructional functions and programs conducted during the 1992–93 academic year. Other cost reduction decisions resulting from this review process are not presented here but include the consolidation of functions in continuing education and in academic support and the discontinuance of four transfer curricula, Business Education, Food Technology, Mass Communications, and Recreation.

The decision to discontinue transfer curricula and the career programs presented here was based on a program review process developed in 1991–92 and known as “Four Flags.”

This process identifies or “flags” disciplines with enrollment problems and subjects them to further evaluation. These evaluations were conducted by a committee of faculty and administrators. This committee studied enrollment and employment data and the analysis of those data that program faculty were asked to provide. The committee looked at program costs, duplication, employment opportunities, and service to the community in addition to enrollment figures. Committee recommendations were forwarded to Dean [of

Instruction Andrew] Snope, who in turn submitted his recommendations to me. Faculty affected by program discontinuance recommendations have been given notice that, pending Board approval of the program recommendations, their contracts with the college will expire June 30, 1994. All ten affected faculty members have had the opportunity to appeal these decisions to Dean Snope and to me.

This report deals with the cases of four of the affected faculty members, Professors Jane H. Adams, G. Stewart Eidel, Gwen M. Nicholson, and Edward G. Sherwin. (The case of a fifth faculty member that had occasioned the Association’s concern was subsequently resolved with his reinstatement to his tenured position.)

II. Background

Essex Community College, founded in 1957, has been located since 1968 on a 147-acre wooded campus in Baltimore County, Maryland, some ten miles northeast of the city of Baltimore. The college offers courses for credit in Associate of Arts and Associate of Science degree programs that are designed to be terminal or to allow students to transfer to four-year colleges or universities to continue toward a baccalaureate degree. The college also offers career-oriented Associate of Science and Associate of Applied Science degree programs intended to prepare students for immediate employment in technical and paraprofessional positions, along with certificate programs for occupational study for individuals who wish to develop career-related skills. In addition, the college offers noncredit courses in a variety of disciplines and formats through its Office of Continuing Education as well as through contract training programs designed to meet the needs of county agencies and local business and industry. More than 3,000 full-time students, more than 8,000 part-time students taking credit courses, and nearly 15,000 students enrolled in noncredit offerings are taught by a faculty of approximately 170 full-time members and nearly 400 who teach on a part-time basis.

The board of trustees of the Baltimore County Community Colleges System serves as the single governing board for the three autonomous community colleges in the county. It is composed of eleven members appointed by the governor with the consent of

¹The 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 it was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of Essex Community College, to the chair of the board of trustees, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association’s staff, this final report has been prepared for publication.

the state legislature. Its current chair is Mr. Robert J. Kemmery, Jr., who succeeded Ms. Nancy M. Hubers in the spring of 1994.

Dr. Slowinski was appointed the fourth president of Essex Community College in 1991. Prior to his appointment, Dr. Slowinski, who holds a doctorate in education from George Washington University, served as the college's dean of students. Dr. Andrew J. Snope is dean of instruction. A long-time member of the Essex faculty, with a Ph.D. in biology from Indiana University, Dr. Snope moved up the administrative ranks from program director to division chair to associate dean before assuming his present position.

Academic courses and programs at Essex are grouped into six divisions (Allied Health; Business and Management; Health, Physical Education, Recreation, and Dance; Humanities and Arts; Science and Mathematics; and Social Sciences), each with a chair. The college has two associate deans of instruction, for credit and noncredit programs respectively.

The faculty role in academic governance at Essex Community College is exercised primarily through two institutional bodies. The Academic Council, consisting of faculty representatives from each division plus administration and student representatives, deals with policies on academic affairs. The Faculty Senate, made up of elected representatives of the faculty, deals with policies on faculty affairs. Roles in governance also are played by a college community council and an administrative forum.

III. "Four Flags" Program Review Process

During the early 1990s, Essex Community College began to experience major budgetary problems. Indeed, all three Baltimore County community colleges experienced similar problems and responded with a series of proposals. During a 1992 retreat, the presidents and members of the board discussed revenue enhancement and cost containment for the colleges. Minutes of the retreat make clear the trustees' dissatisfaction with the cost-containment scenarios the presidents presented to them the previous year, as well as the trustees' interest in having each president develop particular cost-reduction plans for his institution. The 1992 Essex Community College Self-Study Report had pointed out that the college's tuition was among the lowest of all postsecondary institutions in Maryland, and that increases in tuition and fees had not kept pace with increases in the cost of living since 1957, the year the college opened. While the trustees were willing to discuss new revenue sources at the retreat, the consensus was that "continuing to raise tuition is not an acceptable long-term solution to budget management." Instead, the trustees wanted the colleges to be "more focused in their missions" and to develop ways to contain costs, encouraging the presidents "to save money in one area so another area might benefit."

Already in the fall of 1991, responding to these and similar pressures, Dean Snope had asked the college's academic division heads to develop a process "that would (1) allow for easy identification of programs and disciplines most in need of review and

that would (2) result in recommendations for continuance or discontinuance." At an October 31 meeting with the division chairs, the dean directed them to plan how to reduce college expenses by re-examining program offerings in light of current and projected changes in the college's budget. The chairs soon agreed on several points: that over the next few years Essex might have to "down-size" some programs and activities, that the "core missions" of the college had to be identified and protected, and that the chairs should develop detailed guidelines for determining which programs would be affected and a process for carrying out the reviews. The program review procedure that they developed came to be called "Four Flags for Andy," so named because individual programs would be "flagged" where they deviated markedly from collegewide norms with respect to enrollment increase, average section size, and full-time-equivalent students per section, with programs receiving four or more "flags" singled out for special review. A final version of a "Four Flags" process, by then the product of much discussion and modification, was presented to Dean Snope ("Andy") in March 1992. He accepted the plan and suggested that it be implemented using data from the current year and the previous five years.

On April 6, 1992, Dean Snope sent a memorandum to all full-time faculty members describing the program review process. He stated that "Decisions could include, but would not be limited to, recommendations for program discontinuance, repackaging, or continuation without change. Unless otherwise required by a declaration of [financial] exigency, these recommendations will not include staff reductions, although redeployment is not ruled out." Later that spring, the dean established a Four Flags Review Committee consisting of both associate deans of instruction and five others from among the administration and the faculty.

The Four Flags Committee began its reviews in September 1992, with an examination of five programs for which information had been gathered from the divisions, but it soon determined that the process whereby each division had collected and analyzed its own data made for inconsistency. The committee then abandoned the previously approved review process in favor of a procedure under which the college research office provided the data and the divisions were to respond to the information according to a fixed set of data-based questions developed by the committee. The revised process resulted in fifteen programs being "flagged," and in January 1993 Dean Snope charged the committee with reviewing those programs and reporting back to him in March. In late February, an additional five programs were singled out for review, with a report due in April. Professor Ronald Drisko, who simultaneously was serving as a division representative to the Academic Council, as Council chair, and as Council representative to the Four Flags Committee, agreed to coordinate the process of reviewing the twenty "flagged" programs. In a May 11, 1993, memorandum to the Academic Council, written after the program review process had been completed, Professor Drisko stated that, from the very beginning, "the rationale provided in support of

[the Four Flags Committee's] charge was the need to eliminate unneeded, redundant, or outdated programs to free up funds which could be reallocated within the instructional budget. It was clear to the Committee that our work was not directed toward recouping dollars to meet a budgetary shortfall."

In early February 1993 the division chairs and program coordinators were asked to furnish additional information on the flagged programs. Each program or discipline was then provided with a variety of data and invited to respond in ways prescribed by the Four Flags Committee. The committee established an internal review procedure and agreed that all sessions would be closed "in the interest of frankness of discussion and time limitations." Professor Drisko informed the Academic Council that the flagged programs would be assessed in seven areas (enrollment history, employment opportunities, discipline/program cost, articulation, transferability, duplication, and service to the community), using the information provided by the college research office and the responses from the divisions. "It is understood," he wrote to the other members of the Four Flags Committee in mid-February, "that all seven areas of assessment do not apply equally to all programs; it is also anticipated that the Committee may assign greater weight to some areas than others."

"At the conclusion of discussion," Professor Drisko added, "each member of the Committee will vote to recommend that the program be continued; that the program be evaluated further for possible revision/restructuring; or that the program be discontinued. A majority vote will constitute the official recommendation of the Committee."

Because the meetings of the review committee were closed, no academic division head or program or department representative was allowed to address the group, nor was anyone allowed to alter or supplement any data once these had been submitted. Because the charge to the committee was to focus only on programs, the possibility of faculty appointments being terminated was discussed only briefly. In a letter to division chairs dated February 18, 1993, Dean Snope provided assurances "that all affected and interested individuals will have an opportunity to respond to decisions made by my office before they are implemented."

IV. The Administration's Actions

On April 2, 1993, the Four Flags Review Committee submitted to Dean Snope an interim report containing recommendations on thirteen programs, including a ranking of those it was recommending for discontinuance. On April 29, the committee sent the dean its recommendations on the remaining seven programs. The committee's report was not shared with the college faculty because of what Professor Drisko described as "the sensitive nature of the recommendations."

During the month of April, Dean Snope reviewed each report with the associate deans and developed his own recommendations for discontinuing programs and for terminating the appointments

of those faculty members whose primary responsibilities involved teaching courses in the affected programs. The dean did not consult further with the members of the Four Flags Committee before making his recommendations. He did meet individually with the division chairs and informed them orally, "in confidence," of the results of the program review, though he did not give them a copy of the committee's written report. He then reviewed his recommendations with his staff and with President Slowinski, obtaining the president's approval on April 27, whereupon he met with the division chairs and the affected faculty members and informed them of his recommendations. On April 30, nine faculty members were notified in writing that their services were being terminated effective at the end of the 1993-94 academic year. A tenth faculty member received similar notification on May 21. A memorandum dated April 30, 1993, described the seven academic programs and related faculty contracts to be terminated (as well as other personnel actions involving the termination of administrative and staff appointments) and then stated: "When fully implemented, all of these decisions will result in the recovery of more than \$800,000. Our goal is to reallocate this money, as well as the laboratories and offices recovered, to strengthen high priority programs and functions."

The actions caught most faculty members by surprise. Minutes of the April 19 Faculty Senate meeting recorded that Dean Snope had just received the first of the reports from the Four Flags Committee and that the Faculty Senate had scheduled a May 3 discussion of the program review process and of possible actions to be taken as a result of that process. Instead, with notices of termination having been issued in the interim, much of the May 3 meeting was devoted to a discussion of the decisions announced the previous week to terminate tenured faculty appointments and to a review of the Four Flags process. As described to the Senate by its representative on the Four Flags Committee, the programs were first flagged solely on the basis of enrollment, and then other criteria were applied. As a consequence, programs low in one of the criteria—enrollment—were likely to be flagged more than once, programs that were wasteful or costly but had large enrollments would not be flagged, and programs without problems—aside from low enrollment—could be singled out for continuous review. Agreement among the senators was reached on several points, among them that "the faculty ha[d] not been adequately informed about how the decisions were determined," that it had "not had adequate input in the process," and that it had "not yet been adequately notified of the actions taken by the administration."

In a letter sent to the faculty on May 4, President Slowinski wrote:

I know there are members of the college community who believe that the program changes in instruction are a result of budget reductions. Let me assure you that the decisions made to eliminate programs or reassign functions were the result of ongoing evaluation processes within instruction and will not

result in any decrease in funding for instructional offerings. In fact, the proposed changes should result in a strengthened instructional program.

On May 12, in a letter to President Slowinski that referred to "consternation, confusion, anger, and many unanswered questions concerning the unilateral nature of these recent decisions," the Faculty Senate asked for a general faculty meeting on May 24 to discuss the program eliminations. The Senate also requested that none of the recommendations regarding program discontinuation and termination of appointments be forwarded to the board of trustees until the college community had time to respond.

At the meetings he held with affected faculty members at the end of April, Dean Snope invited them to file individual appeals and encouraged them to arrange to meet with him again if they wished to discuss the decisions further. One month later, by memorandum of May 27, the dean requested affected faculty to send him any appeals and arrange to see him no later than June 9, "since I will be submitting to the President on June 11 any changes in my recommendations which might result from these appeals." No changes resulted. On July 22, President Slowinski notified the ten released faculty members that he would be submitting his recommendations on program discontinuance to the board of trustees at its August meeting, and the next day he transmitted his recommendations to the board. At their public meeting on August 25, the trustees voted unanimously to support President Slowinski's recommendation to discontinue seven career programs and four transfer options effective July 1, 1994.

While moving to discontinue programs and terminate tenured faculty appointments, President Slowinski and Dean Snope were assuring the public of continuing course offerings in the areas in which degree programs were slated for closure. The president, writing in mid-May to a member of the state legislature who had expressed concern about the discontinuance of the Hotel-Motel/Restaurant-Club Management degree program, assured him that the college "will continue to serve the training needs of the hospitality industry...through our noncredit offerings.... In other words, we will continue to offer hospitality training but in a more cost-effective format." Dean Snope, interviewed by the president's wife on the college's cable television station, emphasized that the college, in the interest of "flexibility" and "cost-effectiveness," was eliminating programs but not eliminating courses. "That is a very important point," he stated. "The college has not abandoned its commitment to provide educational opportunities in many of these areas. It is our intention to continue to offer instruction but in a different format and structure. Much of what we will continue to do is to provide...short-term training programs and courses through our Continuing Education Department, where we can more specifically meet the needs of industry. Individual courses in most of [the affected] areas will remain viable as individual offerings and provide students with opportunities to explore those areas."

A November 10 memorandum to the entire board of trustees from its Personnel and Finance Committees commended President Slowinski and his two fellow community college presidents "for their cost-containment efforts...in rightsizing our fine institutions" and urged them "to continue aggressively pursuing this necessary course of action. Downsizing within the college should continue to examine productivity and efficiency in a humane manner that protects our valued employees."

V. The Cases of Jane H. Adams and Gwen M. Nicholson

Jane Adams became a part-time instructor at Essex Community College in 1968 and two years later was appointed to a full-time position in the Division of Business and Management. She was granted tenure in 1974 and rose through the academic ranks to become a full professor in 1982. Professor Adams served as head of the Secretarial Science/Office Technology Department in 1980-81 and again from 1983 to 1986, and she was acting chair of the Business and Management Division from 1981 to 1983. From 1987 until the termination of her tenured appointment, Professor Adams, as part of her academic load, also served as the coordinator of noncredit office technology courses for the college's Office of Continuing Education.

Gwen Nicholson's full-time faculty service at Essex Community College began in the fall of 1973. She was granted tenure in 1977 and was promoted to the rank of professor in 1983. From 1986 until the termination of her tenured appointment, Professor Nicholson served as coordinator of the college's programs in Office Technology and Business Education and was chair of the Office Technology Department during the 1981-83 academic years and again from 1986 until the program was eliminated and her tenure was terminated.

The April 1993 report of the Four Flags Review Committee, in a three-paragraph evaluation of the programs in Office Technology and Business Education, noted "that four full-time faculty are assigned to this discipline and excessive amounts of released time have been allocated to these faculty. Credit enrollments may not support four full-time faculty if each were to have full teaching loads." The report found "a significant opportunity here for extensive programming in noncredit areas and in credit contracts for business and industry," and it recommended that the Office Technology and Business Education programs be discontinued and the number of available courses be reduced.

On April 29, Professors Adams and Nicholson, along with other faculty members in the Office Technology program, were called into a meeting with their division chair, Mr. Robert Scott, and Dean Snope. The dean read them the applicable part of the Four Flags Committee's report and then informed them that he was recommending the termination of the Office Technology program and with it their positions at Essex Community College effective July 1, 1994. The next day they received written notification.

Responding to what they took to be suggestions that the dean's decisions could be reversed, Professors Adams and Nicholson, along with two other affected faculty members in the same program, submitted additional information about the program. On June 8 they met with Dean Snope, on June 16 with President Slowinski, and on July 9 with Division Chair Scott to discuss the additional data, what they alleged to be discrepancies in the Four Flags Committee's report, and their own recommendations for changing the Office Technology program and courses. Their efforts, however, proved unavailing. Writing to Professors Adams and Nicholson on July 23, President Slowinski reaffirmed the administration's recommendation to discontinue the program.

Professors Adams and Nicholson, on May 28, also filed a grievance petition with the elected Faculty Appeals Committee. The appeals committee, after an extensive investigation, reported its findings on November 22, 1993. It concluded (1) that the letters notifying Professors Adams and Nicholson met none of the conditions for termination in their contracts; (2) that it was not clear who knew of the college's financial difficulties and who declared them to be *bona fide*; (3) that not allowing the Faculty Senate to review the entire decision-making process was a breach of shared governance; (4) that the cases of the two professors received inadequate consideration; and (5) that they may have suffered discrimination because of their age or rank. The committee recommended their continuance in the Business and Management Division at their current rank and advised that proposals submitted by the members of the Office Technology Department be studied with a view toward improving the department's offerings.

Writing to Professors Adams and Nicholson on January 6, 1994, President Slowinski rejected the Faculty Appeals Committee's findings and recommendations. Professors Adams and Nicholson appealed to the board of trustees and, together with other affected professors, they were afforded a hearing before a subcommittee of the board on February 16, 1994. Each of them was given ten minutes. Professors Adams and Nicholson were notified on March 25 that the board had denied their appeals and had affirmed President Slowinski's decisions.

In the summer of 1994, their tenured appointments having been terminated, Professors Adams and Nicholson were offered and accepted one-year contracts to fill mid-level administrative positions in Essex Community College's noncredit, continuing education program at salaries below what they had received in their former positions.

VI. The Cases of G. Stewart Eidel and Edward G. Sherwin

G. Stewart Eidel initially was appointed to the Essex Community College faculty in 1987 as an instructor in the Business and Management Division. Four years later he was granted tenure and promoted to the rank of assistant professor.

Edward G. Sherwin began at Essex in 1976 as an assistant pro-

fessor in the Business and Management Division. He was granted tenure in 1979 and was promoted to a full professorship in 1988. At the time he was notified of termination of appointment, Professor Sherwin was the head of the Hotel-Motel/Restaurant-Club Management (HMRC) program.

In a process similar to that described above for the program in Office Technology, on April 2, 1993, the Four Flags Review Committee sent Dean Snope a brief assessment of the HMRC program. The report noted the declining enrollments and questioned the need for a credit degree program to train students for entry-level employment. Recommending discontinuance of the existing certificate and associate degree programs, the committee urged "that the discipline remain and that restructuring be explored in the areas of credit contract training and noncredit programming."

On April 29, Dean Snope met with Professors Eidel and Sherwin and Division Chair Scott, read the applicable portion of the report, and informed them that he was recommending the discontinuance of the HMRC program and the termination of the tenured appointments of the two faculty members effective July 1, 1994. Both professors were issued written notice on April 30. On May 7, 1993, Professor Drisko, in his capacity as acting director of special sessions, wrote to the HMRC students that "your program will not change until the end of June 1994. What will happen after this date remains to be decided, but at this point it appears likely that the HMRC courses you will need...will continue to be available on the same contractual basis through which we operate."

Professor Eidel met with Dean Snope on May 18. Following the meeting he provided the dean with documentation on the HMRC program, hoping thereby to persuade him to reconsider. Responding on June 11, Dean Snope affirmed his previous decisions. Professor Eidel filed a grievance petition, and on November 22, 1993, in language similar to that in its report of the same date on the Adams and Nicholson grievances, the Faculty Appeals Committee found denial of academic due process and inadequacy of consideration, and recommended Professor Eidel's continuance in the Business and Management Division at his current academic rank. On January 6, 1994, President Slowinski notified Professor Eidel that his grievance and the recommendation of the Faculty Appeals Committee had been denied. A subsequent appeal to the board—the same brief appeal afforded to Professors Adams and Nicholson—proved unavailing. In the spring of 1994, Professor Eidel responded to a placement notice for Essex Community College, distributed in mid-May, advertising a position for an individual "to develop, implement, market, and evaluate continuing education, noncredit courses in hospitality and food service training...." Professor Eidel applied, was offered, and accepted appointment to a higher salaried administrative position as a "hospitality training specialist" in the college's Office of Continuing Education, with benefits but without tenure. According to a college press release dated August 26, 1994, the college "discontinued its credit program in hospitality management but has picked up the curriculum as noncredit offerings.... Courses have

already been scheduled beginning this September.”

In the case of Professor Sherwin, he informally appealed to Dean Snope and President Slowinski for a reversal of their decisions regarding the discontinuance of the HMRC program and the termination of his services. He was supported by an outpouring of correspondence from businesses, professional associations, and public officials familiar with his contributions to the hospitality field and concerned about the administration's decisions. On July 27, 1993, Professor Sherwin provided President Slowinski and Dean Snope with a memorandum and accompanying data showing that since 1991 program enrollments had increased by more than 20 percent and that, while the number of Associate of Arts degrees in the Business and Management Division had declined by 39 percent between 1988 and 1992, the number of HMRC Associate of Arts degrees increased by 45 percent and in 1992 was higher than any other program in the division. An article in the August 20–26, 1993, Baltimore *Business Journal* reported concerns that closure of the Essex program would displace some 500 students and undermine job opportunities in eastern Baltimore County. A prominent member of the Maryland House of Delegates was unsuccessful in urging college officials to save the program.

On November 30, 1993, Professor Sherwin, who had chosen not to pursue a formal intramural appeal at the college, filed a complaint with the Maryland Commission on Human Relations and the Equal Employment Opportunity Commission, charging that while he had been issued notice of termination the college had advertised for someone with his qualifications to conduct noncredit programs in his field and that he suffered from retaliation because he had “participated and raised issues pertaining to the racially discriminating promotion policies of my employer.” (Following a complaint of race-based discrimination filed with the federal Office for Civil Rights, the college administration in December 1994 revised the college's affirmative action plan and stated that it would provide OCR with annual reports of the results over the next five years.) Following the termination of his Essex appointment in June 1994, Professor Sherwin obtained a staff position with the Restaurant Association of Maryland.

VII. The Association's Involvement

Professor Eidel approached the Association on January 15, 1994, and Professor Sherwin on February 3, each seeking advice and assistance as a result of the actions taken to terminate their services. By letter of April 22, the AAUP staff conveyed the Association's concerns to the Essex Community College administration about apparent violations of Association-supported standards. Replying on May 25, President Slowinski emphasized the administration's adherence to board regulations and state law and said that he was constrained by then-pending litigation from responding in more detail. Having received a further request for assistance from Professors Adams and Nicholson, the staff addressed their cases as

well in a June 8 letter to President Slowinski. The president's reply noted “an honest, good faith difference of opinion” with the Association and stated that it was currently appropriate to confine examination of the issues of concern to the judicial process. On June 24, the general secretary authorized an investigation, and on August 10 the staff wrote to inform the president of the names of the undersigned investigating committee members and to propose dates for a visit. The president initially said that the administration could not cooperate because of pending lawsuits, but on the day before the scheduled visit, set for October 13–14, 1994, the chair of the investigating committee received a telephone call from Dean Snope indicating that he would be available to meet with the members of the committee while they were on the college campus. During its visit the committee met with members of the Essex faculty and administration and was cordially received by Dean Snope and President Slowinski.

VIII. Issues and Findings

1. *The Grounds for Terminating Tenured Faculty Appointments.* The 1940 *Statement of Principles on Academic Freedom and Tenure* recognizes that a tenured faculty appointment can be terminated on grounds of financial exigency, provided that the action is demonstrably *bona fide*. Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* defines financial exigency as an “imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means” than terminating tenured appointments. The *Recommended Institutional Regulations* also provide, in Regulation 4(d), that the appointment of a tenured faculty member can be terminated on grounds of “*bona fide* discontinuance of a program or department of instruction” not mandated by financial exigency. In such circumstances, the Association does not recognize program reduction or program shifts, in contrast to program discontinuance, as a basis for terminating tenured faculty appointments. “Discontinuance” is to be “based essentially upon educational considerations,” which “do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.”

The policies of Essex Community College provide that tenured faculty appointments may be terminated on grounds, *inter alia*, of “a bona fide financial exigency or the discontinuance of a program or department, or discontinuance of individual positions because of declining student enrollments or lack of funding.” The *Board of Trustees Policy Manual* defines financial exigency as “the formal recognition by the Board... that there exists or is about to exist a financial crisis that cannot be alleviated by less drastic means than breaking employment contracts.” Once a state of exigency has been declared, according to the “Contingency Policy Statement” in the *Policy Manual*, the college is supposed to “implement... a contingency plan which requires the involvement of

campus constituency representation from the governance structure, and due process for affected college employees, aimed at preserving the fiscal integrity of the college as [a] viable educational institution.”

In the cases of the nine tenured faculty members issued notice of termination of appointments in the spring of 1993, the administration cited the discontinuance of the degree program or “transfer option” in which these individuals had been teaching as the reason for its decision. While the action to terminate tenured appointments was attributed to program discontinuance on educational grounds, the decision to eliminate the several “flagged” programs and transfer patterns was attributed at least in part to financial considerations. At times the administration cited the “goal of strengthening instruction” as the motivating force behind its decision to cut programs. More often, however, the emphasis was on “reducing the cost of operating those educational programs” in order “to strengthen high priority programs and functions.” The chair of the Four Flags Review Committee referred to a need “to eliminate unneeded, redundant, or outdated programs to free up funds which could be reallocated within the instructional budget.” Dean Snope, addressing the board of trustees in February 1994, indicated that the elimination of programs was prompted by fiscal concerns:

In the fall of 1991, when it appeared that our budget challenges would be long-term and that we could not continue business as usual, I initiated in the instructional area a review of administrative functions and of all of our academic disciplines and programs. The original purpose of that review was to provide a rational basis for making decisions to possibly change or eliminate less efficient and less effective programs and services with the objective of preserving and strengthening the core mission of the college while resources continued to shrink.

On April 6, 1992, Dean Snope had written to the full-time faculty outlining the program review process then underway and giving assurances that, “Unless otherwise required by a declaration of [financial] exigency, [the] recommendations [resulting from this process] will not include staff reductions, although redeployment is not ruled out.” In none of the large quantity of documents examined by the investigating committee is there an assertion that the termination notices issued to affected faculty members were the consequence of a state of financial exigency. In their discussions with the members of the investigating committee, both Dean Snope and President Slowinski acknowledged that a state of exigency had never been declared.² According to the minutes of

the Essex Faculty Senate meeting of May 3, 1993, “Senators... questioned whether or not the actions of the administration amounted to a situation of contingency, but without the invocation of exigency and, hence, the safeguards of the Contingency Plan.” For its part, the Faculty Appeals Committee expressed its concern with a statement it received from college counsel “that the financial difficulties of the college are well-known and *bona fide*.” Said the FAC, “It is not clear to us who must know about the college’s financial difficulties and who declares them to be *bona fide*.” The committee also found it “troublesome...that the financial health of the college was not severe enough to declare a financial exigency and yet it was deemed bad enough to yield the same, or an even more severe, outcome—termination of tenured faculty members. If faculty terminations were deemed necessary, the contingency plan should have been followed.”

With regard to the discontinuance of programs, the stated basis for the decision to terminate appointments, the description of the work done by most of the subject faculty members as a “program” is a matter of dispute, as is the definition of the term itself. The board’s *Policy Manual* defines a “program” as “an interdisciplinary sequence of courses which lead to a well-stated goal.” For the Four Flags Review Committee, “‘programs’ refer[red] to both formal programs, such as career programs, and options under those programs as well as transfer patterns and pre-majors.” (In the judgment of the Faculty Appeals Committee, however, a “transfer option is not a department nor is it a program” but rather “a collection of courses which a student might select.”) In the administration’s summary history of the “Four Flags” review process that was issued in February 1994, the term “program” is taken to mean “all disciplines in the computer catalog file and any programs approved by the state as ‘career programs,’ degree or certificate.” The investigating committee believes that the various definitions of programs at Essex Community College, in terms of units that can be narrower or smaller than the coexisting department or other traditional academic units, place any and all faculty members at risk if faculty appointments can be terminated upon their discontinuance.

The confusion and/or uncertainty about what exactly is meant by a “program” at Essex Community College seems to have carried over into the decisions on discontinuance. On April 2, 1993, the Four Flags Review Committee sent Dean Snope its interim report, which contained recommendations on thirteen programs and disciplines that it had assessed. In its report on Office Technology, to cite one example, the committee “question[ed] the need for a *program* (with a rather confusing array of options and a bloated list of available courses) as opposed to a *limited number of course offerings*” [emphasis in original]. The report then went on to recommend that “The Office Technology and Business Education [credit] programs be discontinued, but that the OTEC discipline be retained. We recommend further that the discipline be more focused and the number of courses available be reduced. The committee feels that there is significant opportunity here for

²Board Chair Kemmery and President Slowinski, commenting on a draft text of this report sent to them prior to publication, reiterated that “a state of financial exigency did *not* exist.” “Indeed,” they wrote, “the college made it clear during the entire program review process that financial exigency was not the issue, although serious budget constraints precipitated the need to closely scrutinize our academic offerings and revisit our mission.”

extensive programming in non-credit areas and in credit contracts for business and industry." The committee made similar recommendations in the cases of several of the other programs under review.

Although the Four Flags Review Committee's report recommended the "discontinuance" of these various "programs," as "currently constituted," the committee was not recommending the *bona fide* formal discontinuance of "programs" in the sense understood in Regulation 4(d) of the Association's *Recommended Institutional Regulations*. Rather, the committee appears to have called for program reduction and "restructuring."³ The committee did not address the possibility that faculty appointments might have to be terminated if its recommendations were followed by the administration. It seems to have assumed that Dean Snope's assurances of the previous year—that no appointments would be terminated unless a state of financial exigency was declared—were still in effect. Nonetheless, the dean, within weeks after receiving the committee's recommendations, issued notices of termination of appointment to ten faculty members "based on recent program evaluations."

The investigating committee finds that the actions taken against Professors Adams, Nicholson, Eidel, Sherwin, and five others were not compelled either by a state of financial exigency or by program discontinuance.

2. *The Role of the Faculty in the Decisions to Terminate the Appointments.* Norms of sound academic governance in American higher education are enunciated in the *Statement on Government of Colleges and Universities*, which calls for the faculty to have primary responsibility for decisions affecting the institution's academic programs and determining faculty status. The Association's *Recommended Institutional Regulations* similarly call for meaningful faculty involvement in decisions involving termination of faculty appointments.

The College Constitution at Essex Community College states that "the authority of the president for the governance of the college is exercised in accordance with the principles of shared governance." The constitution provides for an Academic Council, consisting of representatives of the faculty, the administration, and

³Board Chair Kemmery and President Slowinski, in their prepublication comments on this report, argue that the HMRC and Office Technology programs were indeed discontinued because degrees or certificates in the two fields are no longer offered, virtually all credit-bearing courses in the fields have been eliminated, and the non-credit continuing education courses currently offered in these fields are taught only by part-time non-tenured faculty. These non-credit courses that replace the previous credit-bearing courses have been characterized by Dean Snope as "repackaging of content for delivery in different formats." The *content* of the two programs is thus apparently still being offered, and the affected tenured faculty members have been judged qualified to teach it. The investigating committee is accordingly unable to accept the argument that there was program discontinuance warranting the termination of tenured faculty appointments.

the student body, which is "responsible for making recommendations on all matters which affect the academic life of the college community," including "recommendations on the adoption and revision of academic courses and programs." The document also provides for an elected Faculty Senate, "which officially represents the faculty...in its participatory role in the formation of policy for the college." Among its duties, the Senate "reviews and makes recommendations on all policy matters related to...separation from the academic community."

Faculty members at Essex Community College contend, however, that both the judgment that the "flagged" programs should be closed and the subsequent decision to terminate tenured appointments were made by the college administration without meaningful involvement of the faculty. The Faculty Appeals Committee, to which several of the affected individuals appealed the administration's action, concluded that "the action of the college in terminating faculty members' contracts without allowing the Faculty Senate to review the entire decision-making process represents a breach of shared governance." The committee went on to criticize the fact that

between April 6, 1992, and April 30, 1993, there was a significant change in policy. In Dean Snope's memo of April 6, 1992, the most severe consequence was redeployment of faculty. It should be noted that redeployment was the normal outcome of discontinuance or downsizing of a program or department, even if this meant assigning a member of the teaching faculty to an administrative position. Contrast this with the memos of April 30, 1993, which included termination of employment. Because the Faculty Senate is charged with reviewing and making recommendations on policies which result in the separation of faculty from the college, this change of policy should have been presented to the Senate before implementation.

The administration has defended the decision-making process. President Slowinski, responding on May 19, 1993, to criticism of the prospective closure of the Hotel-Motel/Restaurant-Club Management credit program, stated that "The decision to terminate certain degree-granting credit programs and the faculty associated with those programs was not arrived at easily nor was it arrived at in secrecy. The decision was the result of an elaborate evaluation process that was designed by the academic divisions and was implemented with their full knowledge and concurrence."

Under Association-supported standards, as noted above, the faculty or an appropriate body of the faculty has primary responsibility for determining whether a program or department of instruction will be formally discontinued, and a decision to terminate a tenured faculty appointment on programmatic grounds should be preceded by meaningful faculty consideration of the matter. The stated policies of Essex Community College essentially are consistent with the foregoing standards. President Slowinski's above-cited statement to the contrary notwithstanding

ing, the investigating committee questions whether opportunity was afforded for meaningful involvement of the faculty or an appropriate body of the faculty in the decisions to terminate tenured faculty appointments.⁴

3. Faculty, Administration, and Board Review of the Decisions to Terminate the Appointments. Dean Snope, in a memorandum to the faculty dated February 18, 1993, stated: "Please understand that all affected and interested individuals will have an opportunity to respond to decisions made by my office before they are implemented." Only in late April 1993, however, on the eve of issuing the notices of termination of appointment, did Dean Snope first meet with each of the subject professors (in the company of their respective division chairs) to discuss the matter. At that meeting he informed them that, with the concurrence of President Slowinski (who had already agreed to forward the dean's recommendations to the board of trustees), he was recommending the discontinuance of the "program" in which they served and the consequent termination of their appointments. While Dean Snope invited them in the following weeks to respond to the proposed action, and while some of the affected faculty members used the opportunity to prepare alternate proposals for restructuring their respective "programs" or "transfer options" and to ask the dean to reconsider his earlier decision, each of them subsequently received a letter from him, reaffirming his original recommendations.

Regulation 4(d) of the Association's *Recommended Institutional Regulations* provides that faculty members, in the event of notification of termination of appointment for programmatic reasons, have the right to the essentials of an on-the-record adjudicative hearing before an independent faculty committee. In such a hearing, a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues—including whether every effort has been made to place the faculty member in another suitable position within the institution—rests with the administration. The governing board should be available for final review.

Under stated hearing procedures at Essex Community College, faculty members facing termination of appointment are entitled to access to the Faculty Appeals Committee, an elected faculty body. The college regulations further provide that "a faculty member has the right to appeal to the board of trustees after all appropriate preliminary avenues of appeal have been exhausted." In an appeal before the board the grievant has the right to call and cross-examine witnesses and be represented by legal counsel.

⁴Mr. Kemmerly and President Slowinski, in their prepublication comments, express the opinion that the faculty's involvement was adequate. They cite faculty participation in the development of the Four Flags system, opportunity for faculty members in affected programs to address the intended actions, and faculty membership on the program review committees.

Of the nine tenured faculty members who received notices of termination, six filed grievance petitions with the Faculty Appeals Committee in the spring of 1993, among them Professors Adams and Nicholson (who filed a joint appeal) and Professor Eidel. They questioned the basis for the decisions in their particular cases, challenging as inaccurate and incomplete the data on which those decisions had been based. They also took exception to the process that had been followed, particularly the lack of opportunity to respond to the questions or concerns of the Four Flags Review Committee and those of the administration. As reported earlier, in November the Faculty Appeals Committee found for the faculty members and recommended their full reinstatement, but in January 1994 President Slowinski informed each of the faculty members that he was rejecting the committee's findings and recommendations. His stated grounds were that "the recommendation that certain programs were to be terminated were not terminations for 'cause,' thereby implicating due process considerations, but rather, address matters covered entirely by the contracts." The six faculty members then appealed to the board of trustees. They were allowed a very brief appearance before the board in February, and in March they received notification, without explanation, that the board had affirmed the president's decisions.

The investigating committee finds that the hearings afforded the faculty members before the Faculty Appeals Committee comported in essential respects with the Association's applicable recommended standards. The committee further finds, however, that the Essex Community College administration, in rejecting the recommendations of the Faculty Appeals Committee without adequate explanation or further opportunity for faculty committee consideration, itself denied due process to the affected faculty members. The board of trustees compounded this denial with its unexplained affirmation of the decisions.

4. Relocation and Tenure Rights. According to Regulation 4(d)(2) of the *Recommended Institutional Regulations*, "Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position." In a letter to the entire Essex Community College faculty dated May 4, 1993—less than a week after nine of the termination notices had been issued—President Slowinski announced that the college would "do everything possible to assist personnel affected by those decisions." Three months later, at its meeting in August, the board of trustees stated its intention to do whatever it could to relocate the released faculty members within the Baltimore Community Colleges System.

In the summer and fall of 1994 Professors Adams, Nicholson, and Eidel each received renewable one-year appointments to perform administrative and other duties in the college's continuing education program. These new positions were without tenure and, in the cases of Professors Adams and Nicholson, at salaries

less than what they had previously earned. They, along with Professor Sherwin, contend that there are ongoing faculty positions for them at the institution. Regulation 4(d) of the *Recommended Institutional Regulations*, since it speaks to the discontinuance of an academic program, precludes ongoing coursework in the program when the appointment of a tenured faculty member is terminated. The elimination of the "flagged" programs at Essex Community College, however, did not result in their complete discontinuance, and courses that have been the responsibility of the subject professors, as well as other courses that they say they are able and willing to teach, continue to be offered at the college. Some of these faculty members provided the Faculty Appeals Committee as well as the administration with lists of courses they are qualified to teach beyond the curriculum of their respective "programs." In reporting its findings, the faculty committee concluded in each of the cases that are the subject of this investigation that the aggrieved faculty member "was given inadequate professional consideration" for ongoing work at the college "in their area of expertise (either credit or non-credit)."

In the opinion of the investigating committee, leaving aside work that might be available in other areas in which the faculty members considered here claim to be qualified to carry out, coursework continues to be available in the specific areas in which these individuals have been teaching. In some cases, that work is being offered, in a somewhat different format, in the college's continuing education program rather than in the former credit program. Indeed, Professors Adams and Nicholson are currently carrying out responsibilities in continuing education that, while different from their prior assignments, they were capable of filling prior to being issued notice of termination. Professor Nicholson is directing a job training program, while Professor Adams is involved in "repackaging" old offerings or creating new courses that would have been credit offerings in the past. For example, a three-credit word processing course formerly offered in the Office Technology Program that covered a period of fifteen weeks and met for a total of forty-five hours cost students \$148 in tuition. The same instruction is now offered through continuing education in the form of three "modules": a sixteen-hour module that costs students \$160, a second sixteen-hour module also costing \$160, and a concluding module of twelve hours of instruction costing \$120, making a total of forty-five hours for \$440. Professors Adams and Nicholson could have been available for such assignments by released time and a simple transfer of functions without loss of tenure, salary, or benefits. Both state that they are capable of teaching courses offered in the Essex Computer Information Systems Department and in the Office Technology Department at Dundalk Community College, which operates under the same governing board. From information provided by Professors Adams and Nicholson, it appears to the investigating committee that, despite assurances given directly to each of the faculty members of assistance in finding new positions, the administration and the governing board made little or no effort to ensure that these faculty mem-

bers received any consideration for such positions.

The investigating committee already has found that the action to terminate the services of these tenured faculty members on grounds of program discontinuance, when a continuing need remains for instruction in their areas of competence, is impermissible under Regulation 4(d) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. The investigating committee further finds that, in view of the availability of other "suitable positions," the administration of Essex Community College has failed to make reasonable effort to relocate the subject professors in those positions and to continue to recognize their tenure, thereby departing from AAUP's applicable recommended standards.⁵

IX. Conclusion

The administration and board of trustees of Essex Community College acted in disregard of the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association-supported standards in terminating the tenured appointments of Professors Jane H. Adams, G. Stewart Eidel, Gwen M. Nicholson, and Edward G. Sherwin in the absence of demonstrated cause or of financial exigency or of discontinuance of courses of instruction that they were qualified to teach. The terminations of the appointments of these and other faculty members were effected by the administration and the board in the face of contrary recommendations by the appropriate faculty hearing body and in the absence of procedural safeguards called for in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

JAMIE W. MOORE (History),
The Citadel, *Chair*

ALLAN J. KENNEDY (Telecommunications),
Morgan State University

Investigating Committee

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

⁵According to Board Chair Kemmerly and President Slowinski, "offerings in other disciplines that some of the subject faculty may be qualified to teach are insufficient to provide full teaching loads" and "the only 'suitable positions' available...were newly created administrative positions in the continuing education division of the college where in fact three of the four faculty were appointed at comparable salaries. The fourth subject faculty member did not express interest in the positions available." (That fourth faculty member, Professor Sherwin, reports having been informed that the administration was averse to retaining him in any capacity.)

ROBERT M. O'NEIL (Law), University of Virginia, *Chair*

Members: WILLIAM P. BERLINGHOFF (Mathematics), Colby College; MATTHEW W. FINKIN (Law), University of Illinois; ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; JEFFREY HALPERN (Anthropology), Rider University; THOMAS L. HASKELL (History), Rice University; BETSY LEVIN (Law), University of Baltimore; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, CUNY; LAWRENCE S. POSTON (English), University of Illinois at

Chicago; JOAN WALLACH SCOTT (History), Institute for Advanced Study; MARY BURGAN (English), AAUP Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), AAUP Washington Office, *ex officio*; JAMES E. PERLEY (Biology), College of Wooster, *ex officio*; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*.